

Placing Children Overseas in Non-Contracting States to the 1996 Hague Convention

This factsheet is intended to assist with planning for a child with international connections to live with extended family overseas, in a country which is not a Contracting State to the 1996 Hague Convention.

The 1996 Hague Convention provides a legal framework for the mutual recognition of orders concerning children between Contracting States. It also sets up a system for co-operation between different countries through Central Authorities, either working directly, or indirectly through other bodies, to exchange information about children with transnational links.

However, a child may have a significant connection to a state which is not a Contracting State to the 1996 Hague Convention. In such cases, practitioners may need to think about planning and supporting placements with kin overseas in a different way.

This factsheet is intended to highlight some key considerations for professionals who are formulating a plan to place a child in kinship care in a non-Contracting State to the 1996 Hague Convention.

About CFAB

CFAB is the UK Branch of International Social Services. The charity has extensive social and legal expertise in the field of cross-border child protection and can provide a range of services to support professionals in helping children with international connections.

CFAB can provides a range of cross-border services to support vulnerable children with international connections. Working with partners in 130 countries (including 1996 Hague Convention Contracting States and beyond) we can provide;

- a) Record Checks
- b) Welfare Checks – to ascertain if a child overseas is safe and well
- c) Kinship and parenting assessments conducted by professionals in other countries
- d) Post Placement Support Services

CFAB runs a free Advice Line, five days a week, to provide guidance and practical support on international kinship care cases and overseas placements.

For further information on any of the issues raised in this factsheet, please contact CFAB's Advice Line on 0207 735 8941 or info@cfab.org.uk

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Which states are non-Contracting States?

All of the EU Member States, and a number of states outside of the EU, are Contracting States to the 1996 Hague Convention. At the time of writing, the 1996 Hague Convention applies between the UK and the following states:

1996 Hague Convention Contracting States (December 2021)		
Albania	France	Nicaragua
Armenia	Georgia	Norway
Australia	Germany	Paraguay
Austria	Greece	Poland
Barbados	Guyana	Portugal
Belgium	Honduras	Romania
Bulgaria	Hungary	Russian Federation
Costa Rica	Ireland	Serbia
Croatia	Italy	Slovakia
Cuba	Latvia	Slovenia
Cyprus	Lesotho	Spain
Czech Republic	Lithuania	Sweden
Denmark	Luxembourg	Switzerland
Dominican Republic	Malta	Turkey
Ecuador	Monaco	Ukraine
Estonia	Montenegro	Uruguay
Fiji	Morocco	
Finland	Netherlands	

Non-Contracting States CFAB commonly encounters in the context of care proceedings are Nigeria, Ghana, Pakistan, USA and Canada. However, CFAB has partners worldwide and may be able to assist in a number of non-Contracting States.

The Importance of Ascertaining Nationality and Immigration Status

In all cases where an overseas placement is contemplated, it is important to ascertain the nationality and immigration status of the child you are working with at an early stage.

Best practice guidance issued in March 2021ⁱ requires that immigration issues are addressed at the outset of care proceedings. In particular;

- For children with a foreign nationality without a birth certificate, a copy of the biometric page of their passport(s) or their identity documentation should be included as a core document in the court bundle.
- Where any party to proceedings is a foreign national, where immigration status is unclear, a Request to the Home Office (on [form EX660](#)) should be made to clarify

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their immigration status.

You can check whether a child is entitled to British nationality [here](#).

It is also important to consider the nationality / immigration status of any prospective kinship carer overseas. This information is vital to inform the assessment and planning process for an overseas kinship placement as it may determine;

- a) Whether it will be possible for the child to enter and remain in the country in question.

It is important that children placed overseas are able to secure permanent residence in the country in question – this is vital for the long-term stability and future of the children placed overseas.

- b) The type of assessment required for a prospective carer.

In some countries, complications in obtaining residence permits can mean that the placement must be approached through inter-country adoption rather than as a kinship placement. CFAB can, through its advice line service, assist with clarifying what sort of assessment is possible in a particular state and signpost to appropriate organisations where this is the case.

For these reasons, it is advisable to consider at an early stage, and prior to embarking on the assessment process, whether the child would be able to lawfully reside in the country in question.

Ultimately, where the immigration position is not straight forward, expert evidence may be required from a lawyer qualified to advise on the immigration laws of the foreign state. The relevant [embassy](#) may however be able to give generic information on visas, sponsorship and entry requirements for a child to live in the state in question

Assessing a Potential Kinship Carer in a Non-Contracting State

There are a number of potential methods for assessing a kinship carer overseas. In all cases it is advisable where possible to conduct a screening assessment with the prospective carer, prior to instructing an overseas professional to conduct a full assessment.ⁱⁱ

CFAB's overseas assessors can also conduct an initial screening assessment, and make recommendations as to whether it should progress to a full assessment or not. This may be particularly important when the prospective carer's first language is not English, or where high level of cultural sensitivity is required

A full assessment by a professional based in the relevant non-Contracting state will have a number of advantages; a proximity to the local environment and the services and support available there, awareness of the relevant culture and norms, and usually there will not be a language barrier.

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CFAB has a number of partners in non-Contracting States who are able to provide comprehensive assessments of kin for use in care proceedings. In particular, partners in Nigeria, Ghana, South Africa, Zimbabwe, Pakistan, India, Jamaica, China and Japan are able to provide detailed assessments.

In some cases, particularly where it is not possible to obtain a comprehensive assessment from the state in question, it will be helpful for UK social workers collaborate with overseas professionals to co-produce an assessment (joint assessment).

Alternatively, a UK social worker may conduct some parts of the assessment, by inviting prospective carers to travel to the UK for assessment. An overseas professional may conduct those parts which relate to the prospective carer's home, environment, support network and so on (split assessment).

In all cases, CFAB can advise on the capacity of its partner in the relevant state, and what Local Authorities might expect from any assessment through the International Social Service Network.

The practice of social workers travelling overseas to conduct assessments entails a number of legal and ethical risks and challenges. For further information on this practice, reference can be made to CFAB's [factsheet on social workers travelling overseas](#), and the [International Kinship Care Guide](#) (see Resources and Guidance below)

Legal Frameworks for Placing Children in Non-Contracting States

The 1996 Hague Convention provides a system for the mutual recognition of orders, so that an order made in relation to a child in one Contracting State should be recognised in another by operation of law (1996 Hague Convention Article 23)

This is not possible where a child is placed in a non-Contracting state. To secure legal permanence for a child to live in a non-Contracting State, consideration may need to be given to a **mirror order**, which reflects the terms of the order made in the UK.

Legal advice from a lawyer qualified in the relevant jurisdiction will be required. The relevant embassy may also be able to assist with providing generic information to assist with mirroring any domestic order, however this is unlikely to be sufficient on its own. Matters to consider when exploring the possibility of a mirror order include;

- That UK orders may not be familiar to courts and lawyers in other jurisdictions; in particular, special guardianship orders and the specific set of rights and responsibilities they bestow. It may be helpful to set out in communications with lawyers qualified overseas the order which the court is contemplating making, the rights it gives the carer in relation to the child, and the status of the parents in this legal structure.
- It may not be possible for courts in a non-Contracting State to make an order which mirrors exactly the terms of a UK order.
- You may need to seek advice on costs, procedures and timescales for the making

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of a mirror order, and explore whether it is possible for a mirror order to be sought prior to the child's move to the relevant state.

- Prospective kinship carers may need independent legal advice, and may need to be funded to obtain this and to make any application to court.

It should be remembered that obtaining a mirror order overseas necessarily requires proceedings to be issued in another state concerning the child. This opens up the possibility of a court re-hearing matters which have already been determined by a court in the UK, or substituting its own order. To mitigate the risk of this occurring, it may be helpful for any findings to be recorded on a relevant order. However, this issue should be considered on advice from a lawyer qualified to advise on family law in the relevant jurisdiction.

Relevant court documentation such as the court's judgment, order, the final care plan and support plan and any other relevant evidence should in any event be translated, where appropriate, and provided to the prospective carers.

Post Placement Support

It is important to consider how an overseas kinship placement will be supported. Whilst a Local Authority's obligations to support a placement may go with a particular legal status, statutory guidance confirms that 'it is essential that services are not allocated solely on the basis of the child's legal status'.ⁱⁱⁱ The child's needs must be the guiding principle.

A Local Authority's duties in relation to an overseas special guardianship placement for a child who is looked after prior to the making of the SGO are the same as for an 'out of area' placement.^{iv} Carers should be clear as to what support they will be receiving, who will be providing it, and who they can contact should they experience any difficulties.

Often it will be appropriate for support services to be provided by local agencies and bodies. There should be an effective plan in place for the provision of these services.

CFAB are able to provide post-placement visits by partners in a number of countries. Post-placement visits may assist with identifying any challenges the child or carer is experiencing, and ways that any support may be tailored to meet these challenges.

Transition Planning and Contingency Planning

The [International Kinship Care Guide](#), co-produced by CFAB and a number of agencies with expertise in this area, has a wealth of information to assist with planning for a child's transition to an overseas kinship placement. A separate transition plan may be helpful to work out the mechanics of the child's move to their kinship carer.

In all cases, consideration should be given to a contingency plan should the child's placement breaks down. Matters to consider in any contingency plan include;

- Any potential alternative carers in the country who have been positively assessed, who may be prepared to assist.

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- Whether the child's right to live in the country in question be impacted by the placement breaking down.
- Which authority will have responsibility for ensuring the child safely transitions to an alternative placement, or returns to the UK.

It is helpful to ensure that local child protection bodies, where available, are aware of the placement and able to assist where appropriate. In this regard, the 1996 Hague Convention places an obligation on Local Authorities to notify overseas state authorities about the presence of a child in their country, in the following circumstances;

Article 36

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

This obligation applies even if a child moves to a non-Contracting State, unless to do so would 'place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.' (Article 37). As such it will often be necessary and appropriate for Local Authorities to liaise with child protection authorities in the state that the child is moving to, and make them aware of the child's move, and the background of care proceedings. This may ensure that the relevant authorities are aware of the child, and are ready to assist should the placement. It should not, however, be assumed that child protection authorities overseas will intervene to assist in the event of a placement breakdown. CFAB or the relevant embassy may be able to assist with identifying the appropriate overseas authority as a point of contact.

Documents

Original copies of court orders and relevant documents should be provided, and copies should be translated into the local language in the country where the child will reside.

It is often helpful for original documents to be legalised / apostilled by the Legalisation Section at the Foreign and Commonwealth Office (see Resources and Guidance), as this provides official recognition that any seal or signature on the documents is genuine.^v

If documents are translated, many translation companies offer a service whereby the translation can be accompanied by a legalisation / apostille certificate which confirms the translation is a genuine original document.

Resources and Guidance

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- List of [Foreign Embassies in the UK](#)
- Office of International Family Justice: The International Family Justice Office is responsible for liaising with members of The Hague Network and the European Judicial Network of judges for the purpose of assisting, where possible, in the efficient resolution of cross-border family cases. This includes liaison with judges in other jurisdictions on international family law issues arising in individual cases, including in cross-border public law (care) cases relating to children, and in international child abduction and relocation cases. IFJOffice@Justice.gov.uk; Tel: 020 7947 7197
- The [Legalisation Office](#), Foreign, Commonwealth and Development Office, P.O. Box 7656, Milton Keynes MK11 9NS Tel: +44 3700 002 244 Legalisation@fcdof.gov.uk.
- [ACRO Criminal Records Office](#)
- [IAC – The Centre for Adoption](#). 020 8449 2562 / outbound@icacentre.org.uk
- [International Kinship Care Guide](#) (2020)
- [International Family Justice Office: Family Courts Informing Consular Authorities of Proceedings](#) (2019)
- [Protocol on Communicating with UK Visas and Immigration in Family Proceedings \(including link to form EX660\)](#)
- CFAB Factsheet, [‘UK Social Workers Practising Overseas: Assessing Family Members Abroad’](#)

Relevant Case Law

- *Re J (Care Proceedings: Placement in Bangladesh)* [2020] EWHC 490 (Fam)
- *K, T and U (Placement of Children with Kinship Carers Abroad)* [2019] EWFC 59
- *London Borough of Islington v EV* [2010] EWHC 3240
- *Re O (A Child: International Placement)* [2019] EWFC B20
- *Re V-Z (Children)* [2016] EWCA Civ 475
- *Leicester City Council v S* [2014] EWHC 1575 (Fam), [2015] 1 FLR 1182

ⁱ Public Law Working Group, [‘Public law working group Recommendations to achieve best practice in the child protection and family justice systems’](#) (March 2021) [3], [154 -157]

ⁱⁱ Some states may object to the interview of their nationals by UK based social workers on the telephone / skype without obtaining consent from the relevant embassy. This issue was discussed in *Re V-Z (Children)* [2016] EWCA Civ 475

ⁱⁱⁱ Department for Education, ‘Family and Friends Care: Statutory Guidance for Local Authorities’ [2.12] Ref: ISBN 978-1-84775-865-1, DfE-00025-2011

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^{iv} K, T and U (Placement of Children with Kinship Carers Abroad) [2019] EWFC 59 [129]; SGO Regulations 2005 Reg 5, CA 89 S 14F

^v See Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents

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