

## FAMILY LAW COMMITTEE OF THE SCOTTISH CIVIL JUSTICE COUNCIL POLICY PAPER ON POTENTIAL FURTHER RULES OF COURT FOR HAGUE 1996 CONVENTION

### Introduction

1. This is an **open** policy paper by the Scottish Government.
2. It invites the Committee to consider the need for further rules of court in relation to [the Hague Convention 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children](#) .

### Background

3. The Hague Convention 1996 (“the Convention”) was ratified by the United Kingdom on 27 July 2012. The [Private International Law \(Implementation of Agreements\) Act 2020](#) makes provision for the Convention to have the force of law in the UK.
4. During the lead up to ratification in 2012, the Scottish Ministers made [The Parental Responsibility and Measures for the Protection of Children \(International Obligations\) \(Scotland\) Regulations 2010](#) (SSI 2010/213) to help implement the Convention.
5. The Scottish Government also prepared a policy paper for the then Sheriff Court Rules Council. This paper is attached at Annex A.
6. At a meeting on 4 February 2011, the Sheriff Court Rules Council agreed rules were needed for Articles 8 and 9 of the Convention<sup>1</sup>. The then Court of Session Rules Council considered a draft Act of Sederunt at a meeting on 14 February 2011<sup>2</sup>.
7. Following these meetings, two Acts of Sederunt were made:

[Act of Sederunt \(Rules of the Court of Session Amendment No. 3\) \(Miscellaneous\) 2011 \(legislation.gov.uk\)](#) (see paragraph 4)

[Act of Sederunt \(Jurisdiction in Respect of Parental Responsibility and Measures for the Protection of Children Rules\) 2011 \(legislation.gov.uk\)](#)

8. Since then, as a consequence of Brexit, EU regulation 2201/2003 (Brussels II a or II bis) no longer applies in Scotland (subject to transitional arrangements)<sup>3</sup>. A recast version of Brussels IIa, EU Regulation 2019/1111, now applies across the EU but, of course, does not apply in the UK. Brussels

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<sup>1</sup> See [minutes-04-02-11.pdf \(scotcourts.gov.uk\)](#) [item 8]

<sup>2</sup> See [MINUTES OF THE MEETING OF THE COURT OF SESSION RULES COUNCIL \(scotcourts.gov.uk\)](#) [item 11].

<sup>3</sup> [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(legislation.gov.uk\)](#)

Ila and the Convention cover similar areas and the UK's departure from the EU may lead to more use of the Convention in Scotland.

### Potential rules now – broad approach

9. As Brussels Ila no longer applies, this raises the question of whether further rules of court are needed in respect of the Convention, given the Convention is now likely to be used more frequently in Scotland.
10. A good starting point when considering the need for further rules may be to consider what is already in place in Scotland and also to look at the rules in place in England and Wales<sup>4</sup>.
11. Rules were also put in place in respect of Brussels Ila (eg see Part XI of Chapter 62 of the Rules of the Court of Session and Sheriff Court Rules<sup>5</sup>). It would appear that the rules put in place for the Convention at that time were along similar lines to rules that had been put in place previously for Brussels Ila.
12. The table at Annex B of this paper outlines:
  - relevant articles of the Convention;
  - provision made by the Scottish Ministers in SSI 2010/213;
  - the Scottish Government's understanding of rules in place already in Scotland in relation to the Convention;
  - the Scottish Government's understanding of rules in place in England and Wales in relation to the Convention.

### Provisional suggestions

13. In the light of this work, the Scottish Government provisionally suggests rules may be needed as outlined below.
14. There are Sheriff Court rules in place in respect of **Articles 8 and 9** of the Convention, on transfer of proceedings. Similar rules may be needed for the Court of Session.
15. **Article 11** of the Convention empowers the courts of a Contracting State, in whose territory a child or their property is present, to take necessary measures of protection in urgent cases, notwithstanding that jurisdiction under the Convention lies with the authorities of another Contracting State. The Scottish Government understands Article 11 can be used in conjunction with

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<sup>4</sup> Rules in place in England and Wales are at [https://www.justice.gov.uk/courts/procedure-rules/family/parts/part\\_12#IDAFR15B](https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_12#IDAFR15B) [see chapter VI]. The President of the Family Division has issued guidance on transfer of proceedings under Article 15 of Brussels Ila and Articles 8 and/or 9 of the 1996 Hague Convention. [Microsoft Word - Judicial guidance -cross-bordertransfer final +PJL 2\\_3 .doc \(familylaw.co.uk\)](#)

<sup>5</sup> Sheriff Court rules put in place for Brussels Ila are at [Act of Sederunt \(Jurisdiction, Recognition and Enforcement of Judgments in Matrimonial Matters and Matters of Parental Responsibility Rules\) 2006 \(legislation.gov.uk\)](#).

the 1980 Hague Convention (on civil aspects of international child abduction) as a measure of protection until the State of habitual residence has measures in place.

16. It is possible court rules may be needed in respect of article 11 although the Committee may consider that nothing further is needed beyond the Convention.
17. Similar points arise on **article 12**.
18. It appears court rules are in place in England and Wales in respect of **article 13** of the Convention, where protection measures have been requested from the authorities of another Contracting State. The Scottish Government's initial view is that the Committee may consider the rules in England and Wales are not an appropriate precedent to follow here as it is not certain these rules are needed in Scotland.
19. It appears court rules are in place in England and Wales in respect of **article 16** of the Convention, on applications for a declaration as to the extent, or existence, of parental responsibility.
20. The Scottish Government notes that regulation 7(3(b)) of SSI 2010/213 made by the Scottish Ministers provides:

*“(3) The Court of Session is also to have jurisdiction.....*

*(b) to entertain an application for a declarator— (i) that a person has, or does not have, parental responsibility for a child by virtue of Article 16 of the Convention, or (ii) as to the extent of a person's parental responsibility for a child by virtue of that Article.”*

21. The Scottish Government's initial view is that Court of Session rules may be needed on the form of any such application. It appears this may have been missed when rules were made previously.
22. **Article 24** makes provision on the recognition or non-recognition of a measure taken in another Contracting State. Court of Session rules are in place in relation to articles 24 and 26. However, given the terms of regulation 7(2) of SSI 2010/.213 made by the Scottish Ministers, the Committee may consider some Sheriff Court rules are required too. Again, it appears this may have been missed when rules were made previously

23. Regulation 7(1) and (2) provide:

*“7.—(1) The Court of Session is to have jurisdiction to entertain an application under Article 24 of the Convention for recognition, or non-recognition, of a measure taken in another Contracting State.*

*(2) But where the recognition or non-recognition of a measure is raised as an incidental question in another court, that court may determine the issue.”*

24. In relation to **Article 26**, Regulation 7(3)(a) of SSI 2010/213 makes it clear that registration is matter for the Court of Session:-

*“(3) The Court of Session is also to have jurisdiction—*

*(a) to register a measure taken in another Contracting State for enforcement under Article 26 of the Convention.”*

25. Court of Session rules are in place here and it does not appear any more is required.

26. **Article 33** relates to the possibility of the placement of a child in a foster family or institutional care in another Contracting State and the role of the Central Authority. It appears court rules are in place for this article in England and Wales. The Scottish Government’s initial view is that similar rules may be needed for both the Sheriff Court and the Court of Session.

27. Finally, the sheriff court rules on the Convention make provision on **translation of documents**<sup>6</sup>:

*“Where any document received from a foreign authority or otherwise under these Rules is in a language other than English, the sheriff may order that there shall be lodged with that document a translation into English certified as correct by the translator; and the certificate shall include the translator’s full name, address and qualifications.”*

28. The Scottish Government’s initial view is that the Committee may consider there should be an equivalent provision in Court of Session rules.

29. On translations, Article 54 of the Convention provides:

*(1) Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.*

*(2) However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both*

## Conclusion

30. The Scottish Government asks the Family Law Committee to:

- Consider this paper;
- Consider the provisional suggestions at paragraph 13 to 28;
- Advise where it considers further rules of court are required in respect of the Convention.

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<sup>6</sup> <https://www.legislation.gov.uk/ssi/2011/192/article/8/made>

**The Scottish Government  
November 2023**

**ANNEX A****SHERIFF COURT RULES COUNCIL – MEETING ON 4 FEBRUARY 2011****ITEM [ ]: 1996 HAGUE CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN**

1. The Rules Council is asked to agree that new court rules should be made in consequence of the UK's impending ratification of the 1996 Hague Convention (see [HCCH 1996](#)). In anticipation of UK ratification, implementing Regulations (the *Parental Responsibilities and Measures for the Protection of Children International Obligations (Scotland) Regulations 2010*) were made by Scottish Ministers on 25 May 2010 to facilitate the working of the Convention in the Scottish legal system (see [Scottish Regulations](#)). **NB** As a matter of European law, the Convention is directly applicable in the UK. For that reason, the Regulations do not articulate the effect of the Convention in domestic law; rather, they are confined to specific provisions facilitating proper application of the Convention in Scottish domestic law, and any necessary amendments to primary legislation.
2. It is essential that new Scottish Court Rules are in place by April, to ensure the UK can ratify the 1996 Convention as planned (see para 4 below).

**Background**

3. It is intended that the 1996 Convention will allow for the establishment of uniform rules with other countries to deliver better recognition and enforcement of measures for the protection of children and their property in cases involving more than one country. The Convention also emphasises co-operation between competent authorities, including courts, in Contracting States taking measures for the protection of children.
4. The UK Government decided in 2001, following a public consultation exercise in England & Wales and Scotland, to ratify the 1996 Convention whenever it was brought forward for implementation by the European Community (the consultation prompted only a small response, unanimously in favour of ratification). The Convention was signed by the UK in April 2003; thereafter, it was expected that ratification would be done by the EU on behalf of all Member States. However, that will not now happen and numerous Member States have recently ratified individually, prompting UK Ministers to seek ratification by the UK as soon as possible.
5. It was first thought that ratification could take place once implementing Regulations for Scotland, England & Wales and Northern Ireland had been made. The Scottish Regulations were made in May 2010 and Regulations for England & Wales and NI were made in July. The Regulations will not come into effect until the day on which

the Convention comes into force for the UK, which will be three months from the end of the month in which ratification occurs). However, Foreign & Commonwealth [redacted] have now indicated that ratification cannot take place until additions/amendments to Rules of Court have also been made. Rule changes in England & Wales will be implemented in April; Northern Ireland also expects to have rules made by then. Consequently, we have to ensure that new rules for Scottish courts are made by April so as not to further delay the UK's ratification of this Convention (ratification in April would mean that the Convention would come into force on 1 August, as would the 2010 Regulations and associated court rules).

### Role of Court of Session

6. Regulation 7 of the 2010 Regulations provides that the Court of Session has jurisdiction in relation to applications under Article 24 of the 1996 Convention for recognition, or non-recognition of measures taken in another Contracting State; however, where recognition or non-recognition of a measure is raised as an incidental question in a sheriff court, that court may determine the issue (see below). Regulation 7 also provides for the Court of Session to register measures for enforcement (Article 26 of the Convention) and to entertain applications in relation to Article 16 of the Convention (application for declarator on parental rights). A draft Act of Sederunt has already been drafted for consideration by the Court of Session Rules Council on 14 February.

### Required Sheriff Court Rule Changes

7. The main provisions which need to be encompassed in new procedural Rules are set out below:
  - **Article 8 of the 1996 Convention** – power of a court to request the court of another Contracting State to assume jurisdiction to take measures of protection or to sist proceedings and invite the parties to apply to the other court.
  - **Regulation 3 of the 2010 Regulations** – power of the Scottish court to recall a sist granted under Article 8 of the 1996 Convention.
  - **Article 8 of the 1996 Convention** – application by the parties to the court of another Contracting State for transfer of proceedings.
  - **Article 9 of the 1996 Convention** – power of a court to request the court of another Contracting State for authorisation to exercise jurisdiction to take measures of protection or to invite the parties to apply to the other court.
  - **Article 9 of the 1996 Convention** – application by the parties to the court of another Contracting State for transfer of proceedings.
  - **Article 9 of the 1996 Convention and Regulation 4 of the 2010 Regulations** – application by a local authority, prior to making an application for a permanence order, for the Scottish court to request another Contracting State for authorisation to exercise jurisdiction.
  - **Article 11 of the 1996 Convention** – power of the courts of a Contracting State, in whose territory a child or their property is present, to take necessary measures of protection in urgent cases, notwithstanding that jurisdiction under the Convention lies with the authorities of another Contracting State.

- **Article 12 of the 1996 Convention** - power of the courts of a Contracting State, in whose territory a child or their property is present but where jurisdiction lies with another Contracting State, to take provisional measures regarding the child or their property, provided such measures are not incompatible with those taken by the authorities with jurisdiction.
  - **Article 24 of the 1996 Convention and Regulation 7 of the 2010 Regulations** – power of sheriff court to determine recognition, or non-recognition, of a measure taken in another Contracting State, if raised as an incidental question in sheriff court proceedings (see para 5 above).
8. Minor consequential changes may also need to be made to the 1993 Ordinary Cause Rules to make reference to the 1996 Convention.
9. It is suggested that new rules should be drafted along similar lines to those made for Council Regulation (EC) No 2201/2003 (see [Council Regulation and Jurisdiction, Recognition and Enforcement of Judgments in Matrimonial Matters and Matters of Parental Responsibility Rules 2006](#)).

### **Anticipated Caseload**

10. There have been only a handful of cases between those countries which have already ratified this Convention. As far as can be ascertained, it seems likely that ratification by the UK will prompt only a small number of applications or requests under the Convention.

### **Conclusion**

11. Is the Council content for draft rules and amendments to be prepared as set out above?

26 January 2011

**[redacted]**

Scottish Government  
Justice Directorate  
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**[redacted]**



**Annex B: Potential Articles of 1996 Hague Convention Requiring Court Rules**

Article	SSI 2010/213	Court of Session and Sheriff Court Rules	Rules in England & Wales
<b>Article 8</b>	Regulation 3 – Power of court to recall sist under Article 8	Sheriff Court rules are in place in respect of <ul style="list-style-type: none"> <li>• Transfer of case involving matters of parental responsibility to Sheriff Court</li> <li>• General provisions for transfer to sheriff court</li> <li>• Request to foreign authority to assume jurisdiction in case involving matters of paternal responsibility etc</li> </ul>	Transfer of proceedings under Article 8
1) By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either <ul style="list-style-type: none"> <li>– request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or</li> </ul>	(1) This regulation applies where— <ul style="list-style-type: none"> <li>(a) a court has exercised its power under Article 8 of the Convention to request an authority of another Contracting State to assume jurisdiction in relation to an application, and</li> <li>(b) the court has sist ed proceedings on the application, and</li> <li>(c) Part 1 of the Family Law Act</li> </ul>	<u>Sheriff Court (SSI 2011/192)</u>  2 (1) A request by parties to the sheriff court under Article 8(1) of the 1996 Convention (request to sheriff court to assume jurisdiction) shall be made by initial writ under these Rules. (2) Where a sheriff court receives a request from a foreign authority under Article 8(1) of the 1996 Convention— <ul style="list-style-type: none"> <li>(a) the sheriff clerk shall forthwith—                             <ul style="list-style-type: none"> <li>(i) acknowledge receipt of the request to the foreign authority; and</li> <li>(ii) intimate the request to the parties to any action, their Scottish agents, if known, and any other party to whom the sheriff considers that intimation should be made; and</li> </ul> </li> </ul>	12.61 (1) Where the court is considering the transfer of proceedings to the court of another Contracting State under rules 12.62 to 12.64 it will – <ul style="list-style-type: none"> <li>(a) fix a date for a hearing for the court to consider the question of transfer; and</li> <li>(b) give directions as to the manner in which the parties may make representations.</li> </ul> (2) The court may, with the consent of all parties, deal with the question of transfer without a hearing. (3) Directions which are in force immediately prior to the transfer of proceedings to a court in another Contracting State under rules 12.62 to

Article	SSI 2010/213	Court of Session and Sheriff Court Rules	Rules in England & Wales
<p>– suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.</p> <p>(2) The Contracting States whose authorities may be addressed as provided in the preceding paragraph are</p> <p>a) a State of which the child is a national,</p> <p>b) a State in which property of the child is located,</p> <p>c) a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,</p> <p>d) a State with which the child has a substantial connection.</p> <p>(3) The authorities concerned may proceed to an exchange of views.</p> <p>(4) The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.</p>	<p>1986 does not apply in relation to the application.</p> <p>(2) The court may recall a sist granted in order for it to exercise its powers under Article 8 of the Convention, and withdraw any request made by it under that Article to an authority in another Contracting State to assume jurisdiction, if—</p> <p>(a) the authority in the other Contracting State does not assume jurisdiction within the period for which the court granted the sist, or</p> <p>(b) the parties do not, within the period specified by the court, request the authority in the other Contracting</p>	<p>(b) one of the parties shall lodge an initial writ under these Rules.</p> <p>-----</p> <p>3 (1) An initial writ under these Rules shall—</p> <p>(a) include the following heading printed above the instance—</p> <p>1. “ACT OF SEDERUNT (JURISDICTION IN RESPECT OF PARENTAL RESPONSIBILTY AND MEASURES FOR THE PROTECTION OF CHILDREN RULES) 2011”; and</p> <p>(b) include averments stating—</p> <p>(i) the full name, designation, postal address, telephone and facsimile numbers and, where appropriate, e-mail address of each of the parties to the action involving parental responsibility and measures for the protection of children, including any Scottish agent instructed to represent any of the parties;</p> <p>(ii) the postal address and telephone and facsimile numbers of the foreign authority and the name and, where appropriate, e-mail address of any official of the foreign authority to whom any document may be sent by the sheriff clerk;</p> <p>(iii) the full name, postal address and date of birth of the child;</p> <p>(iv) if the foreign authority is a court, the status of proceedings in that court;</p> <p>(v) the basis upon which the sheriff court is better placed to assess the best interests of</p>	<p>12.64 will continue to apply until the court in that other State accepts jurisdiction in accordance with the provisions of the 1996 Hague Convention, subject to any variation or revocation of the directions.</p> <p>(4) The court or court officer will—</p> <p>(a) take a note of the giving, variation or revocation of directions under this rule; and</p> <p>(b) as soon as practicable serve a copy of the directions order on every party.</p> <p>(5) A register of all applications and requests for transfer of jurisdiction to or from another Contracting State will be kept by the principal registry.</p> <p>Application by a party for transfer of the proceedings</p> <p>12.62</p> <p>(1) A party may apply to the court under Article 8(1) of the 1996 Hague Convention –</p> <p>(a) to stay the proceedings or a specified part of the proceedings and to invite the parties to introduce a request before a court of another Contracting State; or</p>

Article	SSI 2010/213	Court of Session and Sheriff Court Rules	Rules in England & Wales
	<p>State to assume jurisdiction.</p>	<p>the child, by reference to one or more of the circumstances referred to in Article 8(2).                      (2) There shall be lodged with an initial writ under these Rules any document considered by the pursuer to be relevant to the action involving parental responsibilities and measures for the protection of children, including any papers forming part of the process of any case in a foreign court.                      (3) A warrant for citation in respect of an initial writ under these Rules shall be signed by the sheriff.                      (4) The sheriff may make such order as to intimation or service, fixing a hearing to determine jurisdiction or otherwise as he or she thinks fit.                      (5) On the fixing of a date for a hearing to determine jurisdiction the pursuer shall, within any time limit specified by the sheriff—                      (a) intimate to every other party a notice in Form 1 as set out in the Schedule to this Act of Sederunt;                      (b) lodge a certificate of intimation in Form 2 as set out in the Schedule to this Act of Sederunt.</p> <p>-----</p> <p>4.—(1) An interlocutor accepting or refusing to accept jurisdiction to hear an action</p>	<p>(b) to make a request to a court of another Contracting State to assume jurisdiction for the proceedings, or a specified part of the proceedings.                      (2) An application under paragraph (1) must be made –                      (a) to the court in which the relevant parental responsibility proceedings are pending; and                      (b) using the Part 18 procedure.                      (3) The applicant must file the application notice and serve it on the respondents not less than 42 days before the hearing of the application –                      (a) where the application is also made under Article 11 of the Council Regulation, not less than 5 days, and                      (b) in any other case, not less than 42 days,                      before the hearing of the application.                      Exercise by the court of its own initiative of powers to seek to transfer the proceedings                      12.64                      (1) The court having jurisdiction in relation to the proceedings may exercise its powers of its own initiative under Article 8 of the 1996 Hague Convention in relation to the proceedings or a specified part of the proceedings.</p>

Article	SSI 2010/213	Court of Session and Sheriff Court Rules	Rules in England & Wales
		<p>commenced by initial writ under these Rules shall be signed by the sheriff.</p> <p>(2) After the expiry of the time limit for any appeal the sheriff clerk shall intimate the decision of the sheriff court to the foreign authority by sending to the foreign authority—</p> <p>(a) a copy interlocutor by e-mail or facsimile transmission; and</p> <p>(b) a certified copy interlocutor by first class recorded delivery or registered post.</p> <p>-----</p> <p>5(1) Where a sheriff pronounces an interlocutor sisting a case and inviting parties to introduce a request to a foreign authority or directly requesting a foreign authority to assume jurisdiction as referred to in Article 8(1), the sheriff shall append to the interlocutor a note specifying—</p> <p>(a) why the foreign authority would be better placed in the particular case to assess the best interests of the child; and</p> <p>(b) such other matters as the sheriff considers would be of assistance to the foreign authority in deciding whether it shall assume jurisdiction as referred to in Article 8(1).</p> <p>(2) The sheriff clerk shall send a certified copy of the interlocutor and note to each of the parties.</p> <p>(3) After the expiry of the time limit for any appeal against an interlocutor pronounced</p>	<p>(2) Where the court proposes to exercise its powers, the court officer will give the parties not less than 5 days' notice of the hearing</p>

Article	SSI 2010/213	Court of Session and Sheriff Court Rules	Rules in England & Wales
		<p>under Article 8(1) (request to foreign authority to assume jurisdiction), the sheriff clerk shall send to the foreign authority—</p> <p>(a) a copy of the interlocutor and note under paragraph (1) by e-mail or by facsimile transmission; and</p> <p>(b) a certified copy of the interlocutor and note by first class recorded delivery or registered post.</p> <p>(4) Where a foreign authority assumes jurisdiction as referred to in Article 8(1), the foreign authority or one of the parties shall lodge in process a certificate stating the date on which jurisdiction was assumed.</p> <p>(5) Within 14 days of the date of the decision of the foreign authority whether or not to assume jurisdiction as referred to in Article 8(1), the foreign authority or one of the parties shall lodge in process a certified copy of any court order or other document confirming that decision</p>	
<b>Article 9</b>	Regulation 4 – Local Authorities: application to court to make request under Article 9	<p>Sheriff Court rules are in place to:</p> <ul style="list-style-type: none"> <li>• Application by a local authority, prior to making an application for a permanence order, for the court to request another Contracting State for authorisation to exercise jurisdiction</li> <li>• Request by court to foreign authority for authorisation to exercise jurisdiction</li> </ul>	Transfer Proceedings – Article 9

Article	SSI 2010/213	Court of Session and Sheriff Court Rules	Rules in England & Wales
<p>(1) If the authorities of a Contracting State referred to in Article 8, paragraph 2, consider that they are better placed in the particular case to assess the child's best interests, they may either – request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or – invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.</p> <p>(2) The authorities concerned may proceed to an exchange of views.</p> <p>(3) The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting</p>	<p>(1) This regulation applies where—                      (a) a local authority in Scotland wishes to make an application for a permanence order in respect of a child under section 80 of the Adoption and Children(Scotland) Act 2007(5); and                      (b) the authorities of another Contracting State have jurisdiction in respect of the child under the Convention.</p> <p>(2) The local authority must make an application to the court requesting the court to exercise its power under Article 9 of the Convention (request to competent authority of the Contracting State of the habitual</p>	<p><u>Sheriff court</u></p> <p>6 (1) An application by a local authority to the sheriff court under regulation 4(2) of the Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010(1) (request to exercise power under Article 9) shall be made by initial writ.                      (2) An initial writ under paragraph (1) shall contain averments stating—                      (a) the full name, designation, and postal address, telephone and facsimile numbers and, where appropriate, e-mail address of all the parties to the case, including any agent instructed to represent the parties before the foreign authority; and                      (b) why the sheriff court is better placed than the competent authority of the Contracting State of the habitual residence of the child to assess the child’s best interests.</p> <p>-----</p> <p>7 (1) Where in any action a sheriff decides to make a direct request to a competent authority of the Contracting State of the habitual residence of the child that the sheriff court be authorised to exercise jurisdiction as referred to in Article 9(1) (request for authorisation to exercise jurisdiction to take</p>	<p>Application by a court of another Contracting State for transfer of the proceedings                      12.63                      (1) This rule applies where a court of another Contracting State makes an application under Article 9 of the 1996 Hague Convention that the court having jurisdiction in relation to the proceedings transfer the proceedings or a specific part of the proceedings to the applicant court.                      (2) When the court receives the application, the court officer will –                      (a) as soon as practicable, notify the domestic Central Authority of the application; and                      (b) serve the application, and notice of the hearing on all other parties in England and Wales not less than 5 days before the hearing of the application.</p> <p>Application to High Court to make request under Article 9 of the 1996 Hague Convention to request transfer of jurisdiction                      12.65                      (1) An application for the court to request transfer of jurisdiction in a matter concerning a child from</p>

Article	SSI 2010/213	Court of Session and Sheriff Court Rules	Rules in England & Wales
<p>State of the habitual residence of the child only if the latter authority has accepted the request</p>	<p>residence of the child for authorisation to exercise jurisdiction).</p>	<p>measures of protection) the sheriff shall append to the interlocutor a note specifying—                      (a)the full name, designation, and postal address, telephone and facsimile numbers and, where appropriate, e-mail address of all the parties to the case, including any agent instructed to represent the parties before the foreign authority;                      (b)why the sheriff court is better placed than the competent authority of the Contracting State of the habitual residence of the child to assess the child’s best interests; and                      (c)such other matters as the sheriff considers would be of assistance to the foreign authority in deciding whether the sheriff court should be authorised to exercise jurisdiction as referred to in Article 9(1).                      (2) The sheriff clerk shall forthwith send to the foreign authority—                      (a)a copy interlocutor and note under paragraph (1) by e-mail or by facsimile transmission; and                      (b)a certified copy interlocutor and note by first class recorded delivery or registered post.</p>	<p>another Contracting State under Article 9 of the 1996 Hague Convention must be made to the principal registry and heard in the High Court.                      (2) An application must be made without notice to any other person and the court may give directions about joining any other party to the application.                      (3) Where there is agreement between the court and the court or competent authority to which the request under paragraph (1) is made to transfer the matter to the courts of England and Wales, the court will consider with that other court or competent authority the specific timing and conditions for the transfer.                      (4) Upon receipt of agreement to transfer jurisdiction from the court or other competent authority in the Contracting State to which the request has been made, the court officer will serve on the applicant a notice that jurisdiction has been accepted by the courts of England and Wales.                      (5) The applicant must attach the notice referred to in paragraph (3) to any subsequent application in relation to the child.</p>

Article	SSI 2010/213	Court of Session and Sheriff Court Rules	Rules in England & Wales
			<p>(6) Nothing in this rule requires an application with respect to a child commenced following a transfer of jurisdiction to be made to or heard in the High Court.</p> <p>(7) Upon allocation, the court to which the proceedings are allocated must immediately fix a directions hearing to consider the future conduct of the case.</p>
<p>Additional information on Transfer of Jurisdiction</p>			<p>Procedure where the court receives a request from the authorities of another Contracting State to assume jurisdiction in a matter concerning a child.</p> <p>12.66</p> <p>(1) Where any court other than the High Court receives a request to assume jurisdiction in a matter concerning a child from a court or other authority which has jurisdiction in another Contracting State, that court must immediately refer the request to a Judge of the High Court for a decision regarding acceptance of jurisdiction to be made.</p> <p>(2) Upon the High Court agreeing to the request under paragraph (1), the court officer will notify the parties to</p>



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			<p>the proceedings before the other Contracting State of that decision, and the case must be allocated as if the application had been made in England and Wales.</p> <p>(3) Upon allocation, the court to which the proceedings are allocated must immediately fix a directions hearing to consider the future conduct of the case.</p> <p>(4) The court officer will serve notice of the directions hearing on all parties to the proceedings in the other Contracting State no later than 5 days before the date of that hearing. Service of the court's order or request relating to transfer of jurisdiction under the 1996 Hague Convention</p> <p>12.67 The court officer will serve an order or request relating to transfer of jurisdiction on all parties, the Central Authority of the other Contracting State, and the domestic Central Authority.</p>
<b>Article 11</b>		The Scottish Government is not aware of any court rules in place in Scotland for this article.	The Scottish Government is not aware of any court rules in place in England and Wales for this article.

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<p>(1) In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.</p> <p>(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.</p> <p>(3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.</p>			

<b>Article</b>	<b>SSI 2010/213</b>	<b>Court of Session and Sheriff Court Rules</b>	<b>Rules in England &amp; Wales</b>
<b>Article 12</b>		The Scottish Government is not aware of any court rules in place in Scotland for this article.	The Scottish Government is not aware of any court rules in place in England and Wales for this article.
<p>(1) Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.</p> <p>(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of</p>			

Article	SSI 2010/213	Court of Session and Sheriff Court Rules	Rules in England & Wales
<p>protection which may be required by the situation.                      (3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.</p>			
<p><b>Article 13</b></p>		<p>The Scottish Government is not aware of any court rules in place in Scotland for this article.</p>	<p>Questions as to the court's jurisdiction or whether proceedings should be stayed – rule 12.68</p>
<p>(1) The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities</p>			<p>(1) If at any time after issue of the application it appears to the court that under Article 13 of the 1996 Hague Convention it is or may be required to stay the proceedings or to decline jurisdiction, the court must –                      (a) stay the proceedings; and                      (b) fix a date for a hearing to determine jurisdiction or whether there should be a stay or other order.                      (2) The court officer will serve notice of the hearing referred to at paragraph</p>

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<p>of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.                      (2) The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction</p>			<p>(1)(b) on the parties to the proceedings.                      (3) The court must, in writing –                      (a) give reasons for its decision under paragraph (1); and                      (b) where it makes a finding of fact, state such finding.                      (4) The court may with the consent of all the parties deal with any question as to the jurisdiction of the court, or as to whether the proceedings should be stayed, without a hearing.</p>
<p><b>Article 16</b></p>		<p>The Scottish Government is not aware of any court rules in place in Scotland for this article.</p>	<p>Application for a declaration as to the extent, or existence, of parental responsibility in relation to a child under Article 16 of the 1996 Hague Convention – Rule 12.71</p>
<p>(1) The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.                      (2) The attribution or extinction of parental responsibility by an agreement or a unilateral act,</p>	<p>Regulation 7)(3)(b)                       “7 (3) The Court of Session is also to have jurisdiction.....                       (b) to entertain an application for a declarator—</p>		<p>(1) Any interested person may apply for a declaration –                      (a) that a person has, or does not have, parental responsibility for a child; or                      (b) as to the extent of a person's parental responsibility for a child, where the question arises by virtue of the application of Article 16 of the 1996 Hague Convention.</p>

<b>Article</b>	<b>SSI 2010/213</b>	<b>Court of Session and Sheriff Court Rules</b>	<b>Rules in England &amp; Wales</b>
<p>without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.</p> <p>(3) Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.</p> <p>(4) If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.</p>	<p>(i) that a person has, or does not have, parental responsibility for a child by virtue of Article 16 of the Convention, or</p> <p>(ii) as to the extent of a person's parental responsibility for a child by virtue of that Article.</p>		<p>(2) An application for a declaration as to the extent, or existence of a person's parental responsibility for a child by virtue of Article 16 of the 1996 Hague Convention must be made in the principal registry and heard in the High Court.</p> <p>(3) An application for a declaration referred to in paragraph (1) may not be made where the question raised is otherwise capable of resolution in any other family proceedings in respect of the child.</p>
<p><b>Article 24</b></p>	<p>Regulation 7 – Judicial Authorities under Article 24</p>	<p>There are Court of Session rules in place on recognition/non-recognition, enforcement and registration of measures from another contracting state.</p>	<p>The Scottish Government is not aware of any court rules in place in England and Wales for this article.</p>

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<p>Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.</p>	<p>(1) The Court of Session is to have jurisdiction to entertain an application under Article 24 of the Convention for recognition, or non-recognition, of a measure taken in another Contracting State.                      (2) But where the recognition or non-recognition of a measure is raised as an incidental question in another court, that court may determine the issue.                      (3) The Court of Session is also to have jurisdiction—                      (a) to register a measure taken in another Contracting State for enforcement under Article 26 of the Convention, and</p>	<p><u>Rules of the Court of Session</u></p> <p>62.98.-(1) An application-</p> <p>(a) under Article 24 of the 1996 Convention for recognition or non-recognition of a measure taken in a Contracting State other than the United Kingdom; or</p> <p>(b) under Article 26 of the 1996 Convention for enforcement of a measure taken in a Contracting State other than the United Kingdom, shall be made by petition in Form 62.98</p> <p>(2) The petition shall include averments on the matters outlined at Article 23(2) of the 1996 Convention (grounds for refusal of recognition).</p> <p>(3) There shall be produced with the petition an authentic copy of any judgment or other document which outlines the measure to be registered.</p> <p>(4) The court shall, on being satisfied that the petition complies with the requirements of the 1996 Convention, pronounce an interlocutor-</p>	

Article	SSI 2010/213	Court of Session and Sheriff Court Rules	Rules in England & Wales
	<p>(b)to entertain an application for a declarator—</p> <p>(i)that a person has, or does not have, parental responsibility for a child by virtue of Article 16 of the Convention, or</p> <p>(ii)as to the extent of a person’s parental responsibility for a child by virtue of that Article.</p>	<p>(a) granting warrant for the registration of the measure; and</p> <p>(b) where necessary, granting decree in accordance with Scots law.</p> <p>(5) The interlocutor pronounced under paragraph (4) shall specify the petition may register the measure under rule 62.100 (registration under the 1996 Convention).</p> <p>Intimation to the petitioner</p> <p>62.99. Where the court pronounces an interlocutor under rule 62.98(4) the Deputy Principal Clerk shall intimate such interlocutor to the petitioner, by sending to his address for service in Scotland a certified copy of the interlocutor by registered post or the first class recorded delivery service.</p> <p>62.100.-(1) Where the court pronounces an interlocutor under rule 62.98(4) granting warrant for registration, the Deputy Principal Clerk shall enter the measure in the register of judgments, authentic instruments and court settlements kept in the Petition Department.</p> <p>(2) On presentation by the petitioner to the Keeper of the Registers of-</p>	



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		<p>(a) a certified copy of the interlocutor under rule 62.98(4) granting warrant for registration,</p> <p>(b) an authentic copy of any judgment or other document which outlines the measure to be registered and any translation of such a document, they shall be registered in the register of judgments in the Books of Council and Session.</p> <p>(3) On registration under paragraph (2), the Keeper of the Registers shall issue an extract of the registered document with a warrant for execution. Service of warrant for registration under the 1996 Convention</p> <p>62.101. The petitioner shall serve a copy of the interlocutor under rule 62.98(4) granting warrant for registration of a judgment and notice in Form 62.101 on the person against whom enforcement is sought</p>	
<b>Article 26</b>			
(1) If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of	See under Article 24	See under Article 24	The Scottish Government is not aware of any court rules in place in England and Wales for this article

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<p>enforcement in that other State according to the procedure provided in the law of the latter State.</p> <p>(2) Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.</p> <p>(3) The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2</p>			
<p><b>Article 33</b></p>		<p>The Scottish Government is not aware of any court rules in place in Scotland for this article.</p>	<p>Request for consultation as to contemplated placement of child in England and Wales – Rule 12.69 and contemplated placement of child in another Contracting State – Rule 12.70</p>
<p>(1) If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by kafala or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first</p>			<p>(1) This rule applies to a request made –</p> <p>(a) Omitted</p> <p>(b) under Article 33 of the 1996 Hague Convention by a court in another Contracting State for consultation on or consent to the contemplated placement of a child in England and Wales.</p> <p>(2) Where the court receives a request directly from a court in</p>

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<p>consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.</p> <p>(2) The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.</p>			<p>another Contracting State, the court shall, as soon as practicable after receipt of the request, notify the domestic Central Authority of the request and take the appropriate action under paragraph (4).</p> <p>(3) Where it appears to the court officer that no proceedings relating to the child are pending before a court in England and Wales, the court officer must inform the domestic Central Authority of that fact and forward to the Central Authority all documents relating to the request sent by the court in the other Contracting State.</p> <p>(4) Where the court receives a request forwarded by the domestic Central Authority, the court must, as soon as practicable after receipt of the request, either –</p> <p>(a) where proceedings relating to the child are pending before the court, fix a directions hearing; or</p> <p>(b) where proceedings relating to the child are pending before another court in England and Wales, send a copy of the request to that court.</p> <p>12.70</p> <p>(1) This rule applies where the court is contemplating the placement of a</p>

Article	SSI 2010/213	Court of Session and Sheriff Court Rules	Rules in England & Wales
			<p>child in another Contracting State under Article 33 of the 1996 Hague Convention, and proposes to send a request for consultation with or for the consent of the central authority or other authority having jurisdiction in the other State in relation to the contemplated placement.</p> <p>(2) In this rule, a reference to ‘the request’ includes a reference to a report prepared for purposes of Article 33 of the 1996 Hague Convention where the request is made under that Convention.</p> <p>(3) Where the court sends the request directly to the central authority or other authority having jurisdiction in the other State, it shall at the same time send a copy of the request to the domestic Central Authority.</p> <p>(4) The court may send the request to the domestic Central Authority for onward transmission to the central authority or other authority having jurisdiction in the other State.</p> <p>(5) The court should give consideration to the documents which should accompany the request.</p> <p>(See Chapters 1 to 3 of this Part generally, for the procedure governing applications for an order under</p>

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			<p>paragraph 19(1) of Schedule 2 to the 1989 Act permitting a local authority to arrange for any child in its care to live outside England and Wales.)                      (Part 14 sets out the procedure governing applications for an order under section 84 (giving parental responsibility prior to adoption abroad) of the Adoption and Children Act 2002.</p>
Article 54		<p><u>Sheriff court rules</u></p> <p>Where any document received from a foreign authority or otherwise under these Rules is in a language other than English, the sheriff may order that there shall be lodged with that document a translation into English certified as correct by the translator; and the certificate shall include the translator's full name, address and qualifications.</p>	