

Placing Children Overseas: Legal Frameworks

1. Recognition of UK court order

Court orders made in the UK for placement in a country that is signatory to Brussels IIa or Hague 1996 *should* be automatically recognised by the other country, but additional steps can be made to make sure this recognition is certain (see BIIa Article 21(1); 1996 HC Article 23 (1))

2. Mirror Orders

An order can be made in the country where the child is placed to 'mirror' the order made in the UK. This is an option for countries not covered by Brussels IIa or Hague 1996.

Recognition BIIa / 96 HC

Brussels IIa = Applies between all EU Member States (except Denmark)

1996 Hague Convention = Applies between 11 EU Member States (including Denmark) + Contracting States below

- Albania
- Armenia
- Australia
- Cuba
- Dominican Republic
- Ecuador
- Fiji
- Georgia
- Guyana (*from 1 December 2019*)*
- Honduras
- Lesotho
- Monaco
- Montenegro
- Morocco
- Nicaragua (*from 1 December 2019*)*
- Norway
- Paraguay (*from 1 December 2019*)*
- Russia
- Serbia
- Switzerland
- Turkey
- Ukraine
- Uruguay

*Check <https://www.hcch.net/en/instruments/conventions/status-table/?cid=70>

- Where a state uses both instruments BIIa takes priority over 96HC for the recognition of orders (see BIIa Article 61 (b))
- Brussels IIa Article 39 Annex II Certificate. Certifies order is enforceable in UK and therefore should be recognised in another BIIa Member State . No equivalent in 1996 HC
- Recognition can still be challenged in the other Member State / Contracting State by 'any interested person' using any of the grounds in BIIa Article 23 (a) – (g) or 96 HC Article 23 (2) (a) – (f)

Ways of protecting an order from a challenge to its recognition;

- Child given an opportunity to be heard? If not – due to urgency? (BIIa Article 23 (b); 96 HC Article 23 (b))
- Order infringes someone's PR? Have they been heard? Have they been properly served with the LA's application? (BIIa Article 23 (d); 96 HC Article 23 (2) (c))
- Order made in default of appearance – was the person in default of appearance served with the application in time to enable them to arrange for their defence – or have they accepted the judgment unequivocally? (BIIa Article 23 (c))
- Order inconsistent with a subsequent judgment in the State in which recognition is sought? Or a third State? (BIIa Article 23 (e) or (f); 96 HC Article 23 (2) (e))
- Is this deemed a placement with a 'foster family' in 'institutional care' or '*kafala*'? Consent obtained from Competent Authority (pursuant to Art 33 96HC/Art 56 BIIa). (see BIIa Article 23 (g); 96 HC Article 23 (2) f)
- Appropriate jurisdictional basis for order recorded? (96 HC Article 23 (2) (a))
- Could the order be seen as 'manifestly contrary to public policy'? (BIIa Article 23 (a); 96 HC Article 23 (d))

Achieving the Recognition of an Order in a BIIa / 96HC State

- Placement in BIIa Member State → Carer can apply for specific recognition BIIa Article 21 (3) in the Member State
- Placement in 1996 HC Contracting State → Any interested person can ask for 'advance recognition' 96 HC Article 24 from the competent authority
- ICACU Co-operation request may assist with the procedure for this. Be aware this procedure constitutes further proceedings overseas and there may be a challenge to recognition.

Resources

1. Joint Resolution and ALC Note to Public Children Lawyers on No Deal Brexit
http://www.resolution.org.uk/site_content_files/files/joint_resolution_and_association_of_lawyers_for_children_note_no_deal_on_eu_exit_26_february_2019.pdf
2. International Academy of Family Lawyers – to identify a family lawyer overseas to advise on mirror orders. <https://www.iafl.com/>
3. Government List of English Speaking Lawyers Abroad:
<https://www.gov.uk/government/collections/list-of-lawyers>
4. President's Guidance of 10 November 2014: The International Child Abduction and Contact Unit (ICACU) : <https://www.judiciary.uk/wp-content/uploads/2014/11/pfd-guidance-icacu.pdf>