



PRESIDENT OF THE
FAMILY DIVISION

Guidance for the Judiciary

Transfer of proceedings under Article 15 of Brussels IIa and Articles 8 and/or 9 of the 1996 Hague Convention.

Introduction

This Guidance is being provided along with Guidance to HMCTS staff. Its principal purpose is to deal with the process for the registration of all applications and requests for transfer of jurisdiction as required by FPR 2010 r. 12.61(5).

The Guidance provides an administrative/procedural context for the registration process and is not intended to provide guidance on legal issues arising from Articles 15, 8 or 9 or more generally.

1. Background

Brussels IIa

1.1 Council Regulation (EC) No 2201/2003 (**BrIIa**) governs jurisdiction and recognition of judgments in matrimonial matters and matters of parental responsibility. The Regulation applies to all EU member states with the exception of Denmark. In matters of parental responsibility, the Regulation gives primary jurisdiction to the courts of the State in which the child is habitually resident at the time the court becomes involved, but there are exceptions to this.

1.2 In particular, Article 15 provides a procedure for the “transfer” of proceedings from a court having substantive jurisdiction to the court of another Member State if certain conditions are fulfilled.

The court may take the steps set out in Article 15(1)(a) or (b) (see para 1.3 below) if:

- (i) the child has a particular connection with that State, as described in Art. 15(3); and
- (ii) the court considers that a court of that State would be better placed to hear the case, or a specific part of it; and
- (iii) the court considers that it is in the best interests of the child to do so

1.3 Where these criteria are satisfied the court may

(a) stay the proceedings (or part of them) and invite the parties to introduce a request before the other court to assume jurisdiction; or

(b) request the other court to assume jurisdiction.

Where the court invites the parties to take the necessary steps, it must set a time limit by which the parties should introduce the request to the other court. If the other court is not thereby seised within that time, jurisdiction will remain with the original court.

1.4 The court to which the request is made (either by the parties or by the court) may accept jurisdiction within 6 weeks from its “seizure” – which would seem to mean from receipt of the request. If it does so, the original court must decline jurisdiction; otherwise the original court retains jurisdiction.

1.5 The court’s powers under Article 15 may be exercised on the application of a party or on the court’s own initiative or on application from a court of another Member State with which the child has a particular connection.

1.6 Court has a broad definition: Article 2(1).

1996 Hague Convention

1.7 Articles 8 and 9 of the **1996 Hague Convention** provide for the transfer of jurisdiction to or from another Hague Convention State in broadly similar terms to Article 15 of BIIa.

Proceedings Not within BIIa or 1996 Convention

1.8 Note that the provisions for transfer do not apply to matrimonial proceedings or to the establishment of the parent-child relationship, to decisions about or preparatory to adoption or to maintenance obligations: Article 1(3) of BIIa and Article 4 of the 1996 Convention.

2. Procedure

2.1 The procedure on an application for transfer of proceedings under Article 15 of Brussels IIa or Articles 8 or 9 of the 1996 Hague Convention is governed by the Family Procedure Rules 2010, rr 12.61-12.67.

There is a specific form available for an application for transfer (Form C68), which is intended for use by a person who is or would be a party to the proceedings. It is expected that an application or request from the court of another State will be made informally.

2.2 An application / request for transfer of jurisdiction **from** England and Wales under Article 15 of BIIa or under Article 8/ 9 of the 1996 Hague Convention is known as an ‘outgoing request’. An application / request for transfer of jurisdiction **to** England and Wales is known as an ‘incoming request’

Outgoing requests

2.3 An application by a party to transfer proceedings from a court in England and Wales to the court of another Member State or Contracting State must be made to the court in which the proceedings are continuing and it is that court which may exercise powers under Article 15 or Article 8, as appropriate.

2.4 Where the court is considering exercising its powers under Article 15 or Article 8 on its own initiative, the court must fix a hearing and give the parties as least 5 days notice(r.12.64)

2.5 Where a request is received from another State by a court in which proceedings are continuing in England and Wales, the court must fix a hearing and notify the parties **and** the Central Authority (ICACU in England and Wales) not less than 5 days before the hearing(r.12.63).

2.6 In any of these cases the court may give directions for the filing of evidence or representations.

2.7 When the court is considering whether to make an outgoing request under Article 15 or Article 8, in the absence of a party having already made the appropriate enquiries, early consideration should be given to directing a nominated party to obtain information through ICACU (i) of the process by which such a request would need to be made and (ii) of how arrangements might be made for the child/children to move/ to be cared for in the other State if the request is accepted.

2.8 When the court has made a request under Article 15 or Article 8, the request should be sent by a nominated party to ICACU for onward transmission to the other State unless the court has been notified that it should be sent otherwise.

Incoming requests

2.9 An application for the court in England and Wales to request transfer of jurisdiction from a court of another Member State or Contracting State to a court in England and Wales under Article 15 or Article 9 must be made to the High Court (PRFD) (r.12.65).

2.10 Any request by the court of another Member State or Contracting State for a court in England and Wales to assume jurisdiction must be considered by the High Court. Where a request is received by a court other than the High Court, it must be referred to a Judge of the High Court for a decision on acceptance (r.12.66).

2.11 If, as a result of a request made by the High Court or by a court in another State, jurisdiction is transferred to a court in England and Wales, the proceedings may be allocated to the Family Court or High Court as appropriate, in the same manner as proceedings commenced in England and Wales.

3. Register for incoming and outgoing requests under Article 15 of Brussels Ia and Articles 8 and/or 9 of the 1996 Hague Convention

3.1 There is a requirement that the details of all applications and requests for transfer of jurisdiction to or from another Member State or Contracting State must be entered in a Register kept by the High Court (PRFD): see FPR 2010, r 12.61(5).

3.2 The guidance below sets out the information which is required for inclusion in the Register. This guidance has also been provided to HMCTS staff.

The Register for outgoing requests

3.3 An outgoing request will be considered by the relevant court in England and Wales. If granted, it is then for the other state to accept or refuse the transfer request.

3.4 Once the court in England and Wales has determined an application/request for a transfer of jurisdiction under Article 15 or under Articles 8 and/or 9 (either by making a request or by staying the proceedings or by not making a request or by refusing a request) the information set out below must be sent by a member of HMCTS staff to the National Family Team, who will keep the register on behalf of the PRFD.

3.5 The Central Register will be updated and maintained by the National Family Team in the Courts and Tribunals Development Directorate. Courts are instructed to provide the National Family Team with the relevant information via email to update the register.

Information required by the Court

3.6 The National Family Team will require a copy of the order and the following information:

- Whether it relates to Article 15 or Article 8 and/or 9
- Case Number
- Name of Applicant
- Name of Respondent
- Name of children
- The other country / state involved
- Date of order and whether the request was granted
- Confirmation of whether the request was made by a party, of the court's own motion or from another state /country
- Whether the transfer has been accepted by the other state

3.7 This information should be included in the order, but if any information is omitted it should be contained in the body of the email to the National Family Team. Court staff should send the email with the order attached to civil&familybusinesssupport@hmcts.gsi.gov.uk with 'Central Register entry' in the subject box

3.8 The core information required for the register should be provided as soon as possible after the order is made. It is not necessary to wait until a response is received from the court in the other State.

3.9 However, the register must also record whether the transfer request has been accepted or refused. It is recommended that once an order has been made a diary entry be noted 6 weeks ahead to check the position. The court

order should direct the applicant, or, in public law children proceedings, the Local Authority to inform the court of the decision made by the other State. Once this information is received by the court, it must be sent to the National Family Team by email as above.

Incoming Requests

3.10 Applications to the court in England and Wales for transfer from another State must be made to the High Court (PRFD) at the Royal Courts of Justice. These applications will be entered onto the register maintained by the team at the PRFD.

3.11 If the request is accepted, the court officer will notify the parties to the proceedings and the case will be allocated as if the application had been made in England and Wales. Allocation will normally be to the relevant Family Court centre, unless a direction has been made for the case to proceed in the High Court.

Requests for information

3.12 If the court receives a request for information as to whether a case has been transferred out under Article 15 or Article 8 the enquirer will be advised by court staff to email civil&familybusinesssupport@hmcts.gsi.gov.uk who will be able to deal with their request.

3.13 For information on whether a transfer in was accepted a request can be emailed to the team at the PRFD – rcj.familyhighcourt@hmcts.gsi.gov.uk

The Rt Hon Sir James Munby
President of the Family Division.

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