

# Recognition and Enforcement of Children Orders under the Hague Convention 1996

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## Introduction

This article considers how a ‘child arrangements’ order made by a court in another country that is a signatory to the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children 1996<sup>1</sup> (‘the 1996 Convention’) can be recognised and/or registered for enforcement in the Family Court of England and Wales.

## Scenario

Your client, F, is an English national. His former partner (‘M’) is a Spanish national. They have two children who are of dual English-Spanish nationality. Until recently the parties lived in Spain. They separated 12 months ago; 6 months ago the Spanish Courts made a final order in respect of child arrangements. Two months ago (four months after the date of the Spanish Order), both parties (and the children) moved to England to be closer to the paternal family. The Spanish Order provided for the children to spend alternate weekends with your client however M has on several occasions failed to make them available, stating they no longer want to see him. Your client says he had a good relationship with the children, nothing has changed, and he wants to enforce the Spanish Order.

## Step 1: Does the Family Court in England and Wales have jurisdiction?

1. Where both countries involved are signatories to the 1996 Convention, then jurisdiction is governed by the Convention<sup>2</sup>. A list of Contracting Member States to the 1996 Convention can be found here: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=70>

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<sup>1</sup> Brussels IIa (Regulation 2201/2003) now only applies to cases issued on or before 31 December 2020. Practitioners should be mindful when reading cases decided under those Regulations that the provisions cited are no longer applicable.

<sup>2</sup> Where the 1996 Convention does not apply (the other country not being a Contracting State) then domestic legislation shall determine jurisdiction. It is important to note that the 1996 Convention does not apply to questions of jurisdiction as between England/Wales/ Northern Ireland and Scotland (which is instead governed by the Family Law Act 1986).

2. Article 5 (a) of the 1996 Convention provides that “*The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.*”
3. In other words, jurisdiction in relation to a child is founded on a child’s habitual residence, as determined by reference to the date on which the proceedings were commenced (save for emergency cases that fall under Article 11, which are not considered here).
4. Practitioners should note that jurisdiction may be lost if the child ceases to be habitually resident in England and Wales during the course of proceedings (Article 7), that Articles 8 and 9 allow for the transfer of jurisdiction to another contracting State and Article 24 allows for orders that are made in one Member State to be ‘recognised in advance’ in another Member State that is anticipated as obtaining jurisdiction upon e.g. the children obtaining habitual residence there.
5. ‘Habitual residence’ is purely a question of fact. Practitioners are referred to the Court of Appeal’s guidance in *Re F (Habitual Residence)* [2025] EWCA Civ 911 which is drawn from the Supreme Court’s decisions in *A v A A v A (Children: Habitual Residence)* [2013] UKSC 60, *Re KL (Abduction: Habitual Residence: Inherent Jurisdiction)* [2013] UKSC 75, *Re LC (Children) (Reunite International Child Abduction Centre intervening)* [2014] UKSC 1, *Re R (Children)*[2015] UKSC 35, and *Re B (Habitual Residence: Inherent Jurisdiction)* [2016] UKSC 4.
6. Practitioners will need to ascertain from the outset whether jurisdiction is in fact contested by the other party. If it is, detailed instructions will need to be taken as to the children’s circumstances, to include any factors supportive of a finding that their presence here is in no way temporary or intermittent. There is no requirement that the child should have been resident here for a particular period of time as habitual residence can be acquired quickly (*A v A*, §44)
7. In our scenario, where the children are settled, attending school and embedded within the paternal family here in England, and both parents agree that the children should remain living predominantly in England, then the court is likely to declare with little difficulty, even in the face of opposition, that it has jurisdiction.

## Step 2: Recognition of the Spanish Order

8. Article 23(1) of the 1996 Convention states “*The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.*”
9. Recognition is not however automatic: it must be applied for. The application must be made to a district Judge sitting in the Principal Registry (FPR 2010, Rule 31.4) using the Pt 19 procedure and Form C69 alongside the documents set out in PD31A and Procedural Guide D18.
10. Whilst the requirement that all the documents be provided may be dispensed with (r. 31.5(c)), and whilst the court may apply a ‘light touch’ to those requirements (*Re P (Recognition and Registration of Orders under the Hague Child Protection Convention)* [2014] EWHC 2845 (Fam), *F v M* [2018] EWHC 2106 (Fam)), it is advised that the default position should be full compliance unless the court directs otherwise.
11. M may not however agree to the Spanish Judgment being recognised here and may state that she is not and should not be bound by its terms. She may have made her own application, or a cross-application, for an order of non-recognition of the Spanish judgment (r. 31.8(3)), relying on the grounds for non-recognition specified in Article 23, paragraph 2 of the 1996 Convention.
12. These grounds include, *inter alia*, that: (b) the child did not have the opportunity to be heard; (c) the party requesting non-recognition states that the Order infringed upon their parental responsibility; and (d) such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child. In considering any reliance on Article 23(2) the court is however prohibited from undertaking a ‘review of the merits of the measures taken’ (Article 27).
13. Presuming M has made an application for an order for non-recognition of the Spanish judgment, your client will need to file an ‘answer’ (r.31.8(3)(b)). He should, in his answer, request that the Spanish Judgment be registered for enforcement and ensure the requisite documents are produced alongside his answer (r 31.8(5), PD31A para 4).

### Stage 3: Registration for Enforcement of the Spanish Judgment

14. In our scenario we proceed on the basis that the Court has considered and refused M's application for non-recognition of the Spanish Judgment having had regard to F's answer and has therefore proceeded to order that the Spanish Judgment be registered for enforcement (r 31.10, r31.11(1)).
15. The court officer will then register the Judgment in the central index of Judgments kept at the Principal Registry (r 31.13) and serve on the parties a sealed order confirming that the Judgment has been registered (r 31.11(3), Articles 24 and 26 of the 1996 Convention).

### Stage 4: Enforcement of the Spanish Judgment

16. We proceed on the basis that the Spanish Judgment has been both recognised and registered for enforcement. Your client now wishes to apply for an enforcement order. Unless the children's welfare require urgent enforcement (r 31.17(1A)), F must wait until the expiration of any domestic period within which an appeal or application for stay may be lodged against the Spanish Judgment in the Spanish courts before seeking enforcement of the Judgment (r 31.15, r 31.16).
17. We proceed on the basis that M did not lodge an appeal / application for a stay within the Spanish Courts against the Spanish Judgment and that the time periods to do so have expired.
18. Once registered, Article 28 states that the Spanish Judgment must be enforced in the same way as if it were a validly made domestic order, 'taking into consideration the best interests of the child'. That is to say, F can now issue his application for enforcement in the Family Courts in the usual way save that he will need to produce to the Court a certificate of service on the other party of the notice of registration of the Judgment and any order made in relation to the Judgment (r 31.17(2)).

### Stage 5: M's cross-application to vary

19. As is often the case with Child Arrangement Orders made here, an application to enforce is often met with a cross-application to vary and the Family court must often draw the distinction between "*the inappropriate re-litigation of issues that have already been*

*decided*” and the need for “*appropriate... welfare enquiries... [when] there are real issues to be decided*” (Peter Jackson LJ in *Re E (Blla: Recognition and Enforcement)* [2021] Fam 211 at [67, 70]).

20. In the event of a cross-application to vary, practitioners are directed to the Court of Appeal’s decision in *Re A (A Child) (Enforcement of a Foreign Order)* [2022] EWCA Civ 904 which whilst decided under the Brussels IIa regulations, is very helpful on this issue.
21. In our scenario, it may be that notwithstanding the Spanish Judgment being relatively recent, the relocation of the parties and children from Spain to England (and change of schools etc.) will amount to a change of circumstances such as would render it appropriate for the court to embark on a fresh welfare assessment and it may be that F’s expectations will need to be appropriately managed.

## **Final observations**

22. As with all Private Law Children proceedings, practitioners are referred to FPR 2010, Part 3. Save for the procedural requirements in respect of the recognition and registration of the Spanish Judgment, the substantive issue between the parties is a straightforward one that does not otherwise require any international expertise and may be highly suitable for NCDR.
23. PD27A applies to these proceedings as do the usual costs provisions applicable to private law children.
24. The scenario in this article is a straightforward one. There will of course be cases where jurisdiction is contested, applications for the non-recognition of a foreign Judgment are meritorious or appeals against the Registration of Judgments are filed. Please do not hesitate to contact our clerks should you require further support on any of the issues raised.

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