

Handling Cross- Border Child Protection Cases: A “Key Steps” Guide For Local Authorities, Health Boards And NHS Trusts In Wales

About This Advice

This is advice from the Welsh Government. It is non-statutory, and is designed to primarily help Local Authorities, when dealing with cross-border child protection cases under the 1996 Hague Convention¹. This advice is also intended to help Health Boards and NHS Trusts which can also be required to provide information in relation to these cases. Similar advice has been issued by the Department for Education in England.

The 1996 Hague Convention will be implemented in the UK in November 2011. It provides an agreed set of legal provisions and co-operation arrangements to cover the handling of cross-border cases where children’s safety or welfare may be an issue.

This advice sets out the key steps that Local Authorities can take to ask for help or essential information from authorities abroad when dealing, for example, with a child from this country whom is in need of support or protection. This advice also aims to set out how Local Authorities, Health Boards and NHS Trusts in Wales should respond to similar requests put to them by authorities abroad.

Section 1 provides an overview of the co-operation arrangements between contracting states.

Section 2 provides advice on making requests for information or action to other contracting States and will primarily be of interest to Local Authorities.

Section 3 provides advice on handling requests from other contracting States and will apply to Local Authorities, Health Boards and NHS Trusts in Wales.

Key Points:

- The Convention applies to situations where contracting states need to co-operate over child protection and welfare cases when there is an international dimension. This can include care proceedings, contact cases and foster placements abroad.
- The aim of the Convention is to bring about better co-operation between countries so that the handling of cases and protections put in place are more efficient, avoid delays and deliver better outcomes for the children involved.

¹ 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and measures for the Protection of Children.

- This advice is distinct from the guidance that already exists on the other main types of cross-border cases – by the Welsh Government in relation to inter-country adoption and by the Department for Education in relation to child abduction.
- The Convention's provisions do not mean major change for Local Authorities – in a number of respects they mirror arrangements already in place governing co-operation arrangements between EU member states on these types of children's cases.
- The Convention does, however, extend these arrangements in some situations and will mean that similar co-operation processes will now also apply between the UK and countries outside the EU which have implemented the Convention. A list of those countries (referred to as 'contracting states') can be found on the Hague Conference for Private International Law [here](#).

Section 1: Overview of the co-operation arrangements

Types of arrangement

1.1 Under the Convention contracting states can ask each other for information or other types of help when a child's welfare or protection are at issue. The different types of requests are set out in sections 2 and 3 of this guidance, but they include, for example:

- Asking for another state's help in tracing a child.
- Asking for a report on a child 'habitually resident'² in another contracting state.
- Asking another state to take measures to protect a child's welfare.
- Seeking the agreement of another state for a child to be placed there in foster or residential care.
- Asking for the transfer of 'jurisdiction' for a child from his/her home state, enabling an authority to make decisions about a child's welfare if it feels it is best placed to do so.

1.2 Local Authorities may also be asked by a parent to consider preparing a report on their suitability to have contact with a child living in another state.

How the co-operation arrangements work

The Central Authority

1.3 The 1996 Hague Convention and existing EU legislation requires each Contracting State to establish a Central Authority to help ensure effective communication between child welfare authorities in contracting states.

1.4 Welsh Ministers will be designated as the Central Authority for Wales and be responsible for discharging functions under the convention. There will be separate Central Authorities for England, Scotland and Northern Ireland. It is anticipated that the Central Authority for England may often be contacted in the first instance by contracting states outside the UK and will then pass on the request to relevant Central Authority within the UK as necessary.

1.5 Certain types of request have to be made via Central Authorities, while in some cases Local Authorities can deal directly with their counterparts abroad. Further advice on this issue is provided in sections 2 and 3. It is recommended however that Local Authorities consult the Welsh Central Authority in the first instance for advice about the most appropriate way to make their request.

1.6 The Welsh Central Authority also monitors the volume and effectiveness of cases handled under the Convention. If Local Authorities decide to deal directly with

² More information on the terms 'jurisdiction' and 'habitual residence' is provided in the Q&A section on page 25

their counterparts in other contracting states it is recommended that they notify the Central Authority so they can build as complete a picture as possible.

1.7 There are other agencies too that can offer practical advice and support on handling cross-border cases. These include:

- Children and Families Across Borders (CFAB).
- Africa.
- NSPCC Cymru.

See page 28 for further information on these organisations.

Local Authority, Health Boards and NHS Trusts arrangements and responsibilities

1.8 Although the Regulations that support the Convention place a duty on Local Authorities, Health Boards and NHS Trusts in Wales to respond in a timely way to certain types of request, there is no prescription as to the form that responses should take. As far as possible, authorities should follow their existing local procedures based on a proportionate response to the level of risk of harm to the child.

1.9 Local Authorities are encouraged to agree a first point of contact to manage any communications between the Central Authority and relevant frontline staff and to let the Central Authority know the contact details. It is suggested that any nominated person should be of sufficient seniority to make decisions on action for international cases, and that there should be cover to ensure that urgent requests can be dealt with promptly. The Welsh Government has written to all Local Authority Head of Children's Services in Wales to identify a first contact. Contacts have also been identified in Health Boards and NHS Trusts.

Links to other EU Regulations and Hague Conventions

1.10 A very similar framework for co-operation on child protection cases between EU member states already exists through an EU Council Regulation known as 'Brussels IIa'³. The 1996 Hague Convention does not introduce wholly new concepts or arrangements for Local Authorities – but it builds on existing powers and duties, extending these to cover links with the growing number of countries beyond Europe that have implemented the Convention.

1.11 This advice is therefore relevant to the practical application of both Brussels IIa and 1996 Hague.

1.12 The Hague 1996 Convention is distinct from the 1980 Hague Convention on the Civil Aspects of International Child Abduction and 1993 Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption 1993.

³ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

Section 2: Making requests for information or action to other contracting states.

2.1 This Section explains, step by step, how Local Authorities can ask for help and co-operation from other contracting states.

2.2 The Convention enables a Local Authority to:

- i) Ask another state to provide a report/information to inform decisions on whether child protection measures should be taken⁴.
- ii) Take action to protect a child at immediate risk of harm, even if the child is usually resident in another contracting state⁵.
- iii) Ask another contracting state to transfer jurisdiction for a child if a Local Authority feels it is better placed to make decisions about his/her welfare⁶.
- iv) Consult with the relevant authority in another state about placing a child in foster or residential care in that state⁷.
- v) Ask for help in tracing a child in a contracting state when a Local Authority is concerned about his/her welfare⁸.
- vi) Ask another state to consider taking measures to protect a child who lives in that state⁹.
- vii) Provide a report to support a parent's case for contact with a child living in another contracting state¹⁰.

Requesting a report/information from another state to support decisions on the need for child protection measures

2.3 If a Local Authority is considering action to protect or safeguard a child it can ask a competent authority (any person or organisation that has the legally delegated or invested authority, capacity or power to perform a designated function) in another contracting state to communicate information it holds that is relevant to the case, regardless of where the child is habitually resident¹¹.

2.4 If a Local Authority has welfare concerns about a child who is temporarily living in or visiting their area, it can ask the child's main country of residence for a report on his/her situation – see chart 1 for the recommended process for this.

2.5 Under the Convention, the authority in the contracting state is not formally obliged to provide this report if they believe that doing so would put the child or their property at risk, or threaten the life or liberty of a member of the child's family. If a

⁴ Article 34

⁵ Article 11

⁶ Article 8

⁷ Article 23

⁸ Article 31(c)

⁹ Article 32(b)

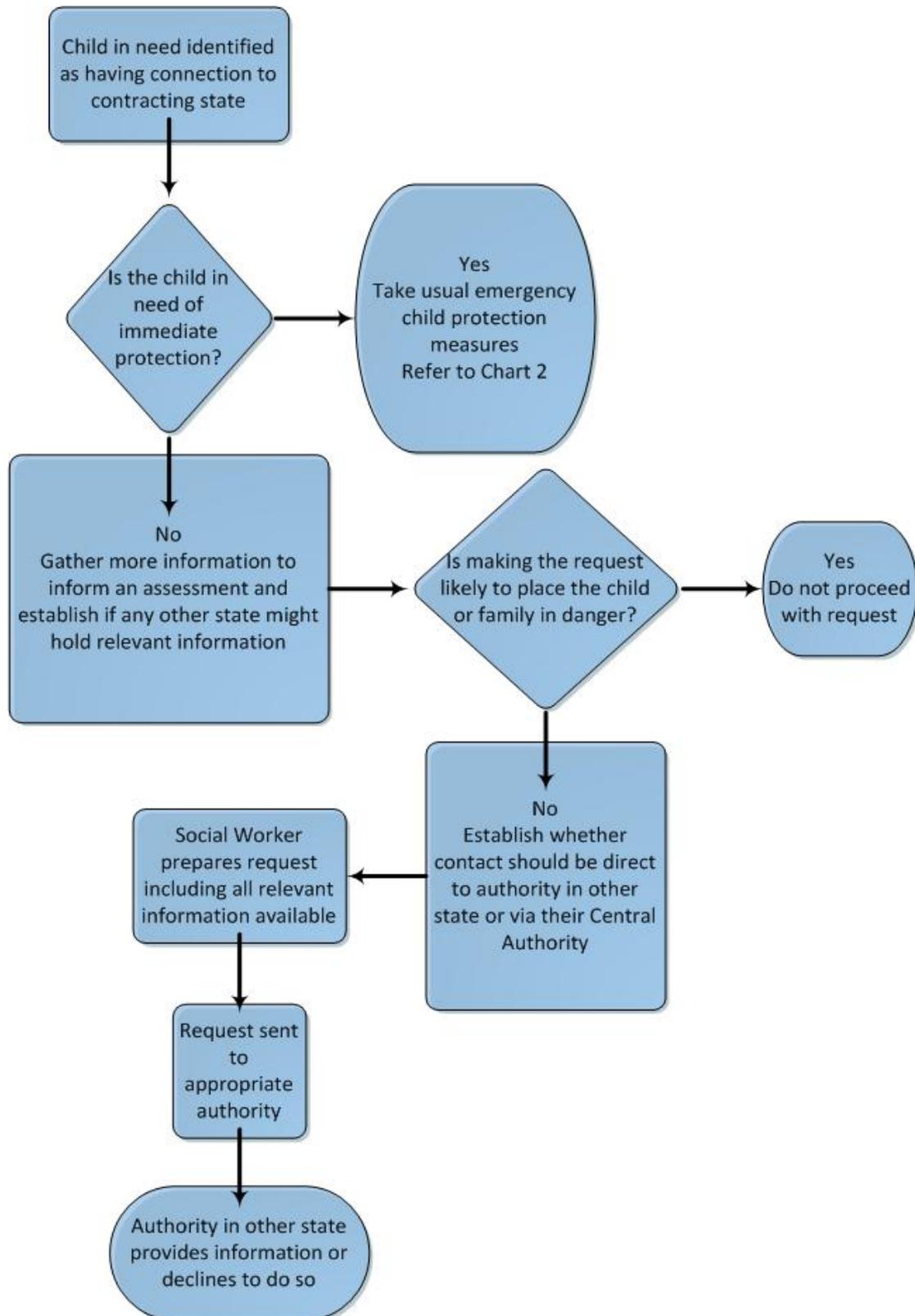
¹⁰ Article 35(2)

¹¹ Article 34

Local Authority has difficulty in getting the information it needs, the Central Authority may be able to help through liaison with the other state's Central Authority.

2.6 A contracting state can specify that these requests for information (which are made under Article 34 of the Convention) must be routed through its Central Authority. You can check whether the country you need to approach has specified this by checking the 'Reservations/Declarations' column for that country in the Hague Convention Status Table, available at the Hague Conference website [here](#).

Chart 1 – requesting a report to support decisions on the need for child protection measures



Taking action for a child at immediate risk of harm when he/she usually lives in another contracting state.

2.7 If a Local Authority identifies a child in need of immediate protection it must exercise its duties to safeguard and promote the welfare of that child under the Children Act 1989. In urgent cases the Convention provides the Local Authority with the jurisdiction to take any necessary steps to protect the child until the authorities in the state where the child is habitually resident have taken any necessary action¹². The presence of an international element to the case should not delay the necessary protective measures.

2.8 If the child is only temporarily present in the UK, the child's home country will have jurisdiction¹³ and the appropriate authority there is responsible for decisions about the child's welfare and protection beyond the immediate measures taken (unless a transfer of jurisdiction is sought – see section 3 below). Once steps have been taken to protect the child, the Local Authority should contact the relevant authority in the child's home country to inform them of the action taken, ask for information about the child's circumstances, and agree what further action is needed. Chart 2 sets out the recommended process for such cases. An initial approach to the Welsh Central Authority is recommended, although in these cases contact can be via the Central Authority, or directly to the Local Authority equivalent in the other state. The Central Authority of the other state should be able to provide information on the child protection procedures in that state and may be able to supply the contact details for the appropriate equivalent authority.

2.9 If the child needs continuing protection while the Local Authority is liaising with the authority in the other state, the Parental Responsibility and measures for the Protection of Children (International Obligations)(England and Wales and Northern Ireland) Regulations 2010¹⁴ allow for an application for an interim care or supervision order, even though it is anticipated that another state will take over jurisdiction before a final order is required¹⁵.

Transferring jurisdiction

2.10 A Local Authority in Wales can seek a transfer of jurisdiction for a child who is habitually resident in another state if it feels it is better placed to make decisions about that child's welfare¹⁶. This is done via an application to the High Court, who will then make the request to the child's home country if appropriate¹⁷.

2.11 The authority in the child's home country may itself ask for jurisdiction to be transferred to the Welsh Local Authority¹⁸ - see page 21.

¹² Article 11

¹³ Article 12

¹⁴ SI 2010 No 1898

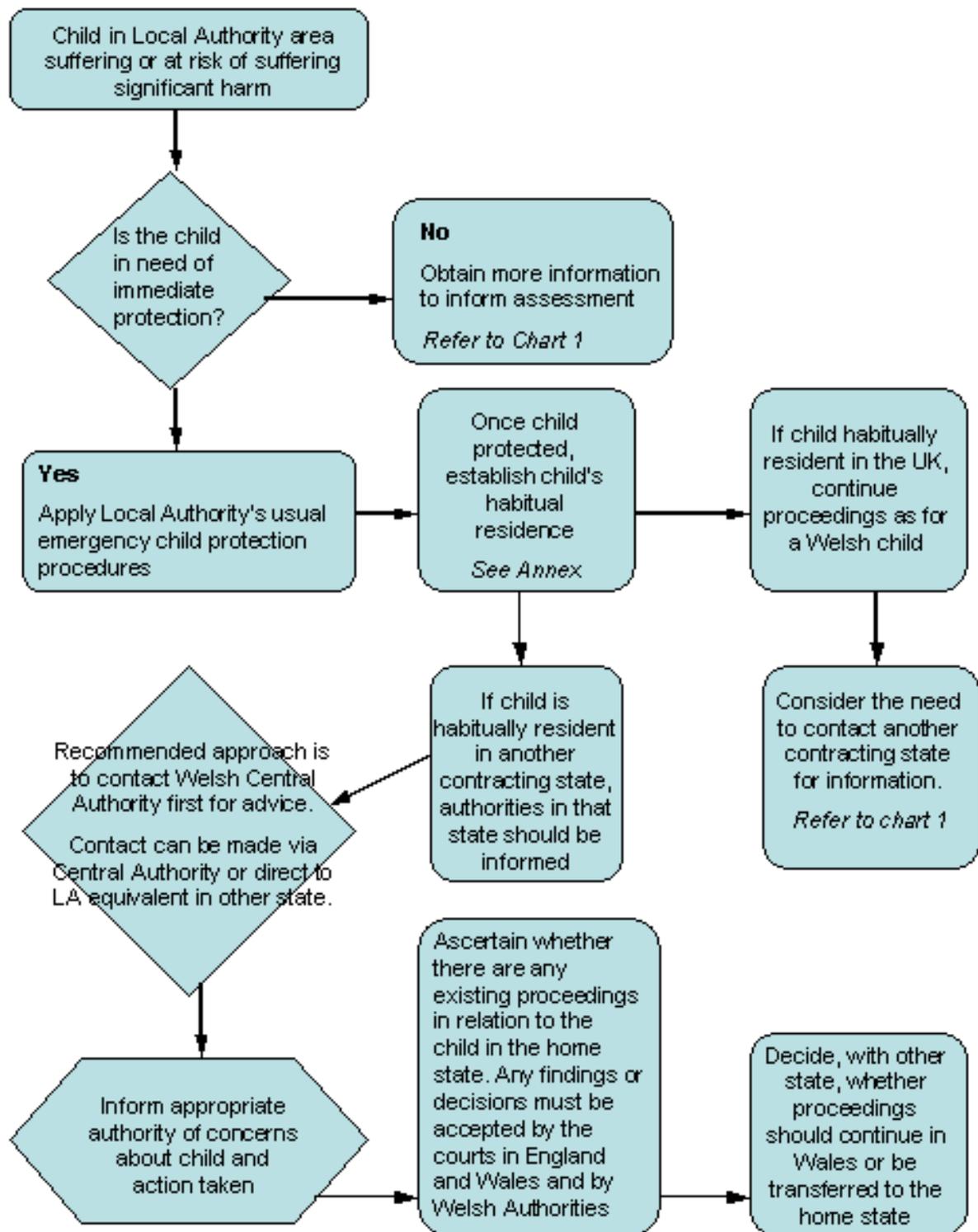
¹⁵ Regulation 5

¹⁶ Article 9

¹⁷ Regulation 4

¹⁸ Article 8

Chart 2 - Taking action for a child at immediate risk



Placing a child living in Wales in foster or residential care in another contracting state.

2.12 The types of situations that this part of the Convention applies include those where:

- A Local Authority feels that the most appropriate placement for a child is with family or other connected persons in another state.
- A child's foster carer may want to move abroad and the Local Authority considers it in the child's best interests to stay with that carer.
- A child may need placement in a specialist residential unit in another country.

2.13 If a Local Authority wants to make arrangements for a child in their care (i.e one subject to a care or interim care order) to live outside England and Wales, it must make an application to court for leave to place the child outside their jurisdiction in accordance with the Children Act 1989 Schedule 2 paragraph 19. If the child is accommodated under s20 the Court's leave is not required, but the authority must obtain the consent of every person with parental responsibility for the child before placing the child overseas¹⁹. [Link to be inserted here to the forthcoming amendments to the revised statutory guidance on Care Planning, Placement and Case Review].

2.14 Under the Convention, a Local Authority considering this type of placement must consult the relevant authority in the other state,²⁰ and a placement cannot be made unless consent is given by this authority. This is one of the areas however where there is a practical difference between the application of the Hague 1996 Convention and the EU Council Regulation known as Brussels IIa. If Local Authorities are considering a placement in a country that is a Member State of the EU, they must do so under Brussels IIa. Placement to another Member State requires their consent only if the law of that state requires public authority intervention for the type of placement concerned. Where consultation is required the Local Authority must provide a report on the child and the reasons for the proposed placement²¹.

2.15 It is suggested that the Child's Permanence Report, Foster Carer's assessment report or any matching report would contain adequate information for this purpose so there is no need to create a new report form. The approach can be made either to the Central Authority of the proposed state of placement or to a competent authority. It is recommended that Local Authorities consult the Welsh Central Authority in the first instance for advice about the most appropriate approach. Chart 3 sets out the recommended process for making this type of request.

¹⁹ Children Act 1989 Schedule 2 paragraph 19

²⁰ Article 33

²¹ Regulation 13

2.16 If the child is the subject of court proceedings the court may approach the authority in the other state for permission to place the child²².

2.17 The Local Authority must also satisfy the duties set out in the Review of Children Cases (Wales) Regulations 2000, the Placement of Children (Wales) Regulations 2007 and Part 3 of the Children and Families (Wales) Measure 2010 in placing a child in care outside England and Wales, ensuring that adequate arrangements are in place for supervising and reviewing the placement.

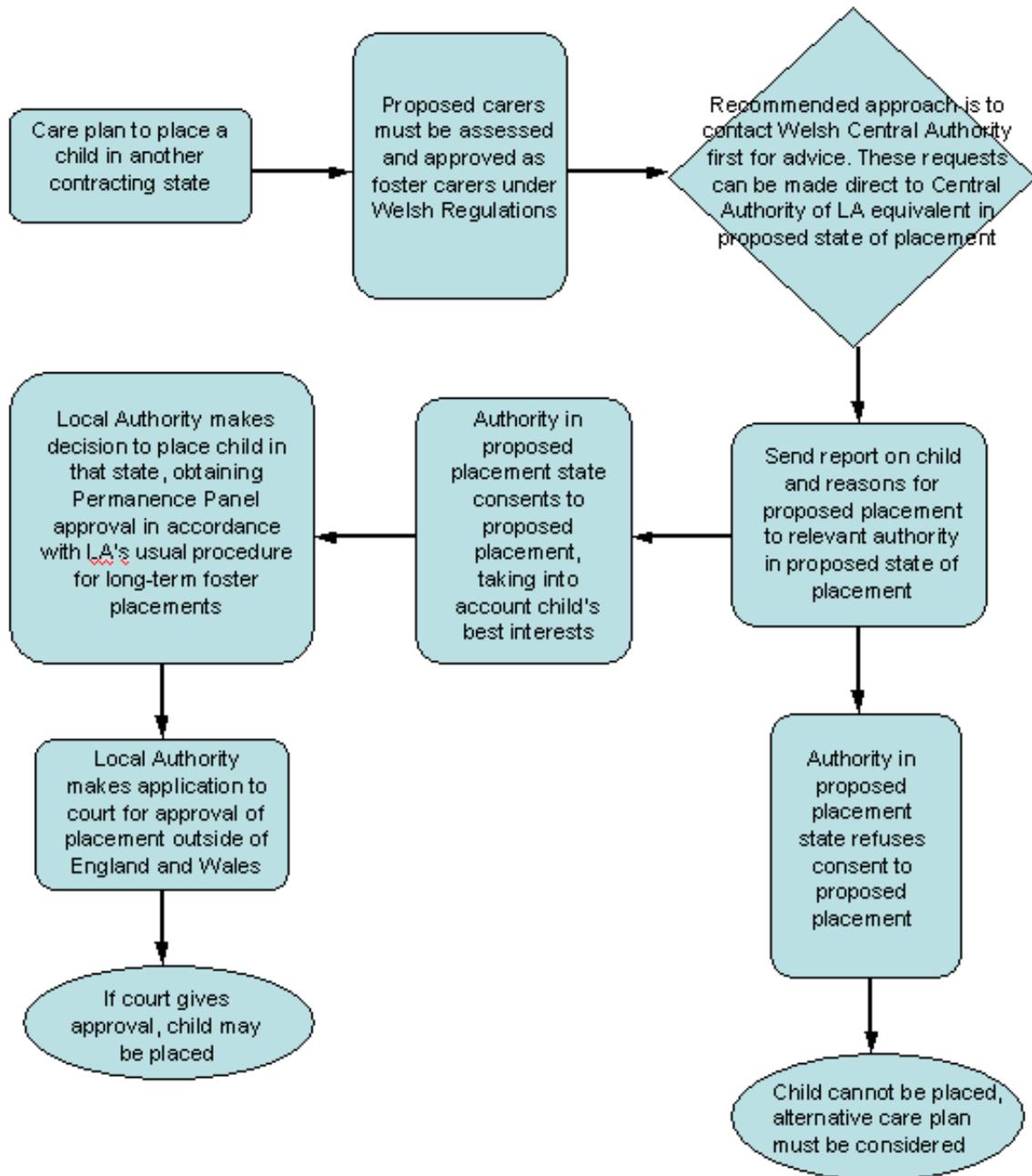
2.18 This part of the Convention does not apply to:

- Adoptive placements (these are governed by the Hague Convention on Inter-country Adoption).
- Placements which are private family arrangements.
- Placements of children under special guardianship orders - these are private law orders and do not constitute a placement by a Local Authority.

2.19 It will however apply to placements of a child in care for assessment in a possible adoptive placement (of the sort examined in *Re A (A Child)* [2009] EWCA Civ 41 where, in order not to fall foul of the restrictions on placing a child abroad for the purposes of adoption, the placement has to be clearly formulated as a foster placement). If a placement of this sort is contemplated the Local Authority should refer to Welsh Government guidance
<http://wales.gov.uk/topics/childrenyoungpeople/publications/cofadecision/?lang=en>

²² Family Procedure Rules 12.70

Chart 3 – Placing a child currently living in Wales in foster or residential care in another contracting state



5) Asking another state to trace a child

2.20 If a Local Authority has taken steps to safeguard a child's welfare (or plans to do so) and believes that he/she has been taken out of the Local Authority area to another contracting state, the Convention enables the Local Authority to ask another contracting state for help in determining the child's location, although it is recommended that the Welsh Central Authority also be notified. Chart 4 describes the process for this type of request.

2.21 These requests should be made to the Central Authority of the state to which it is believed the child has moved to²³, and should be accompanied by an explanation of the child's circumstances and any information which might assist the other state in tracing the child's address.

2.22 If the child is habitually resident in England or Wales and court proceedings are started or are ongoing, the court can request the authorities in the other state to assume jurisdiction over the child if they appear better placed to do so (see paragraph 2.9).

2.23 If there are serious concerns about a child suffering significant harm and this child is moved into another state the Local Authority must inform the relevant authorities of that other state about the danger to that child and also about whatever measures they were taking or considering to protect the child²⁴.

Asking another state to consider taking measures to protect a child who usually lives in that state.

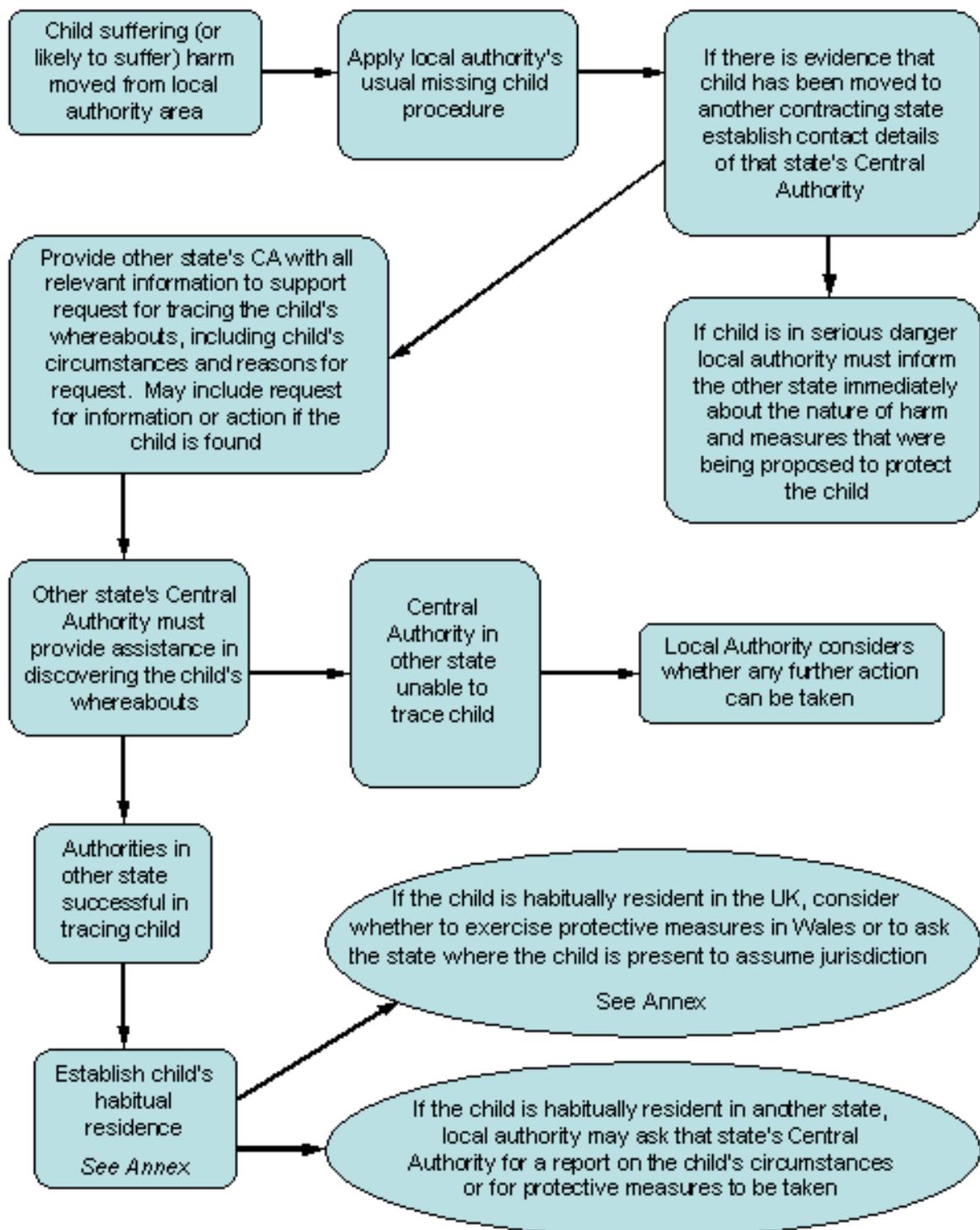
2.24 The Convention enables a Local Authority to ask another contracting state to take measures to protect a child from harm who is habitually resident in that state²⁵. Local Authorities should provide sufficient information for the authority in the other state to make a decision. This request can be made via the Welsh Central Authority or directly to the Central Authority in the other state (although Local Authorities are recommended to at least notify the Welsh Central Authority of any requests made). The Central Authority in that state can ask its competent authority to consider the need to take protective measures, but the authority is not obliged to do so.

²³ Article 31(c)

²⁴ Article 36

²⁵ Article 32

Chart 4 – asking a Central Authority in another state to locate a child



Providing a report to support a parent's case for contact with a child living in another contracting state

2.25 If a parent in Wales is seeking to obtain, extend or re-establish contact with a child living outside the UK in another contracting state, that person can ask its Local Authority to carry out an assessment of his suitability to have this contact so he/she can pursue this with the authorities in the other state²⁶.

2.26 There is no duty on a Welsh Local Authority to agree to carry out such an assessment or provide any information. However Local Authorities must exercise their discretion reasonably and cannot have a blanket policy of refusing to carry out such assessments.

2.27 If a Local Authority agrees to this request, it can gather information about the parent's suitability to have contact with the child and about any conditions that it thinks it would be appropriate for the overseas court to impose. The court or authority dealing with the application for contact in the child's home state must consider the local authority's report before making their decision.

2.28 The Regulations allow a Local Authority to charge a 'reasonable' fee for providing this service. This means a charge that is as close as possible to the actual costs of providing that service, including indirect costs (for example a proportion of the on costs). Local Authorities will need to include their charging scheme, if any, as part of their policy on providing this service.

2.29 A Local Authority may provide a service under this Article by subcontracting the work to another agency.

Providing a report in contact proceedings

M and F are a divorced couple with a 9 year old child, Georgie. M lives with the child in Switzerland, F in Cardiff. Georgie spends school holidays with F in Cardiff under the terms of a Swiss contact order.

M applies to vary the contact order as Georgie has told her that F's new partner and her children are living in F's house and are hostile and bullying towards her. She no longer wants to visit.

F asks his Local Authority to provide a report for the Swiss court about his home circumstances and his capacity to provide appropriate contact for Georgie.

Article 35(2)

²⁶ Article 35

Section 3: Advice on handling requests for other contracting states outside the UK

3.1 Just as Local Authorities in Wales can ask for certain types of help or information from other contracting states, other contracting states can ask for a similar range of help from Welsh Local Authorities, Heath Boards and NHS Trusts. This section offers advice on handling these 'incoming' requests.

Handling a request for a report/information on a child's situation

Information requested from Local Authority

Callie is a young woman from Wrexham with poor mental health and a learning disability. Her first child, David, was the subject of care proceedings as a baby and was removed from Callie's care and placed for adoption. Callie becomes pregnant again and the Local Authority has held a pre-birth child protection conference.

Callie and her partner move to Spain to prevent the local authority taking care proceedings and removing the new baby at birth.

The Spanish authorities are concerned about the welfare of the baby and contact the Welsh Central Authority for information. The Welsh Central Authority asks social services in Wrexham to provide the Spanish authorities with details of Callie's parenting history and how her difficulties led to David's removal.

Article 34

3.2 A Local Authority may be asked for information about a child by a competent authority in another contracting state that is considering protection measures for that child, regardless of where the child usually lives²⁷. These types of request must be routed through the Welsh Central Authority.

3.3 If a child is habitually resident and present in Wales, an authority of another contracting state with which the child has a substantial connection may ask the

²⁷ Article 34

Welsh Central Authority to provide a report on the child's situation. If the Central Authority thinks that it is appropriate to do so it can pass the request onto Local Authorities, Health Boards and/or NHS Trusts in Wales as is necessary.

3.4 These bodies must provide a report as soon as reasonably practicable²⁸. The implementing Regulations²⁹ for the Convention allow these bodies to supply relevant information lawfully, providing that doing so would not put the child or their property at risk, or threaten the life or liberty of a member of the child's family³⁰. Further advice on information sharing can be found in the Q&A section on page 25.

3.5 There is no prescribed format for responding to these requests. A letter may be enough, or if a more detailed report is required a format similar to those used to respond to Court requests for reports under s7 (a welfare report) or s37 (Court direction to investigate child's circumstances and consider whether to apply for a care or supervision order) of the Children Act 1989 would be appropriate. Local Authorities will already have formats for these reports on their electronic recording systems.

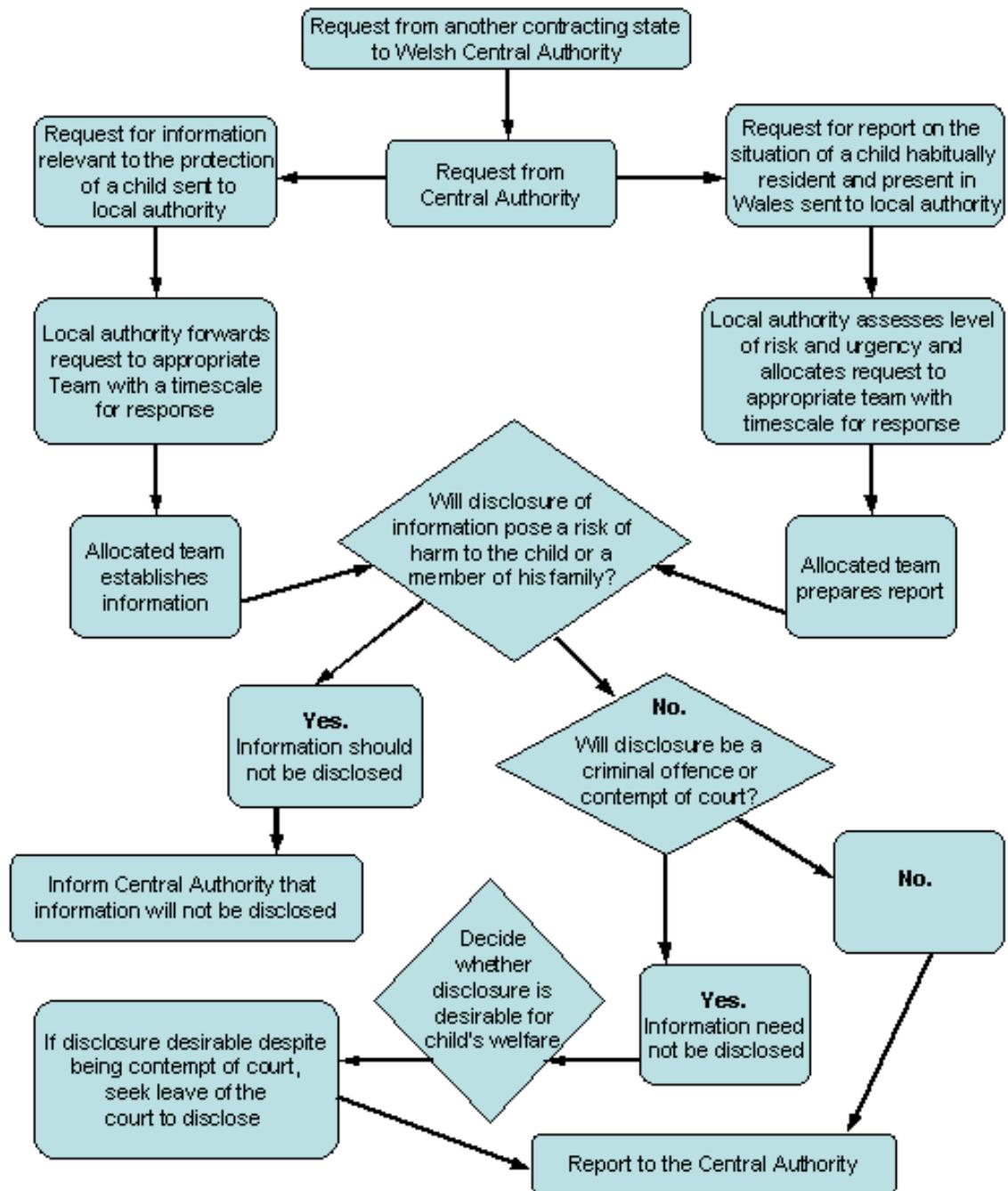
3.6 On occasions the approach for this type of information may be made to CAFCASS Cymru– for example, in situations where CAFCASS Cymru are already involved with the child or the family in other court proceedings.

²⁸ Regulation 12(5)

²⁹ The Parental Responsibility and measures for the Protection of Children (International Obligations)(England and Wales and Northern Ireland) Regulations 2010

³⁰ Article 37

Chart 5 - Handling a request for a report/information on a child's situation



Handling a request to transfer jurisdiction for a child to an authority in another contracting state

3.7 An authority in another contracting state can seek a transfer of jurisdiction for a child if it feels that it is better placed to assess the child's best interests³¹.

3.8 The other contracting state will need to make an application to the High Court for transfer of jurisdiction, unless the child is already the subject of court proceedings, in which case the court dealing with the matter will be need to transfer the request to the High Court to consent to the transfer of jurisdiction³². Wales as a Central Authority would in practice do everything reasonably possible to help this matter.

Handling a request from another state for a child to be placed in foster or residential care in the Local Authority area

3.9 An authority in another contracting state can only place a child in foster care or a residential setting in Wales if the competent authority has consented to the placement³³.

3.10 This restriction applies to a placement of a child, including placements under kafala, the Islamic regulations regarding adoption, for whom the authority of another state is responsible. It does not apply to placements for adoption which will be governed by the 1993 Hague Convention on Inter country Adoption.

3.11 However, in many cases, the child will not be the subject of any proceedings here. The authority in the contracting state must provide the Welsh Local Authority with a report about the child and the reasons why the placement is being considered. The Local Authority must assess the placement and decide whether it is in the best interests of the child. If the Local Authority agrees to the placement, the legal framework under which the child will be admitted into the UK and placed should be established. The two authorities should agree the responsibility for monitoring the placement.

3.12 The Local Authority should establish whether the legal structure of the placement gives the carer parental responsibility. If it does not, regardless of any agreement between the authorities, the Local Authority will have responsibility to monitor the placement as a private fostering arrangement under s66 of the Children Act 1989.

3.13 If the child is the subject of any court proceedings in England and Wales the competent authority to make the decision is the court, which will fix a directions hearing to consider the request³⁴.

³¹ Article 9

³² Family Procedure Rules 12.66

³³ Article 33

³⁴ Family Procedure Rules 12.69

Request to locate a child believed to be in the Local Authority area.

3.14 If an authority in a contracting state is concerned that a child needs protection and believes the child has been removed from their area and taken to Wales, they may request assistance from the Welsh Central Authority³⁵ in tracing that child. The Welsh Central Authority can then pass this request onto Local Authorities, Health Boards and/or NHS Trusts as necessary. Chart 6 sets out recommended process for handling these requests.

3.15 Local Authorities, Health Boards and NHS Trusts have a duty to assist with these requests. In the case of Local Authorities it is suggested that the starting point should be the usual Local Authority procedure for tracing a child missing from care or education. If initial checks of any relevant databases do not trace the child, Local Authorities can decide what level of further checking is proportionate to the risk factors described by the requesting authority.

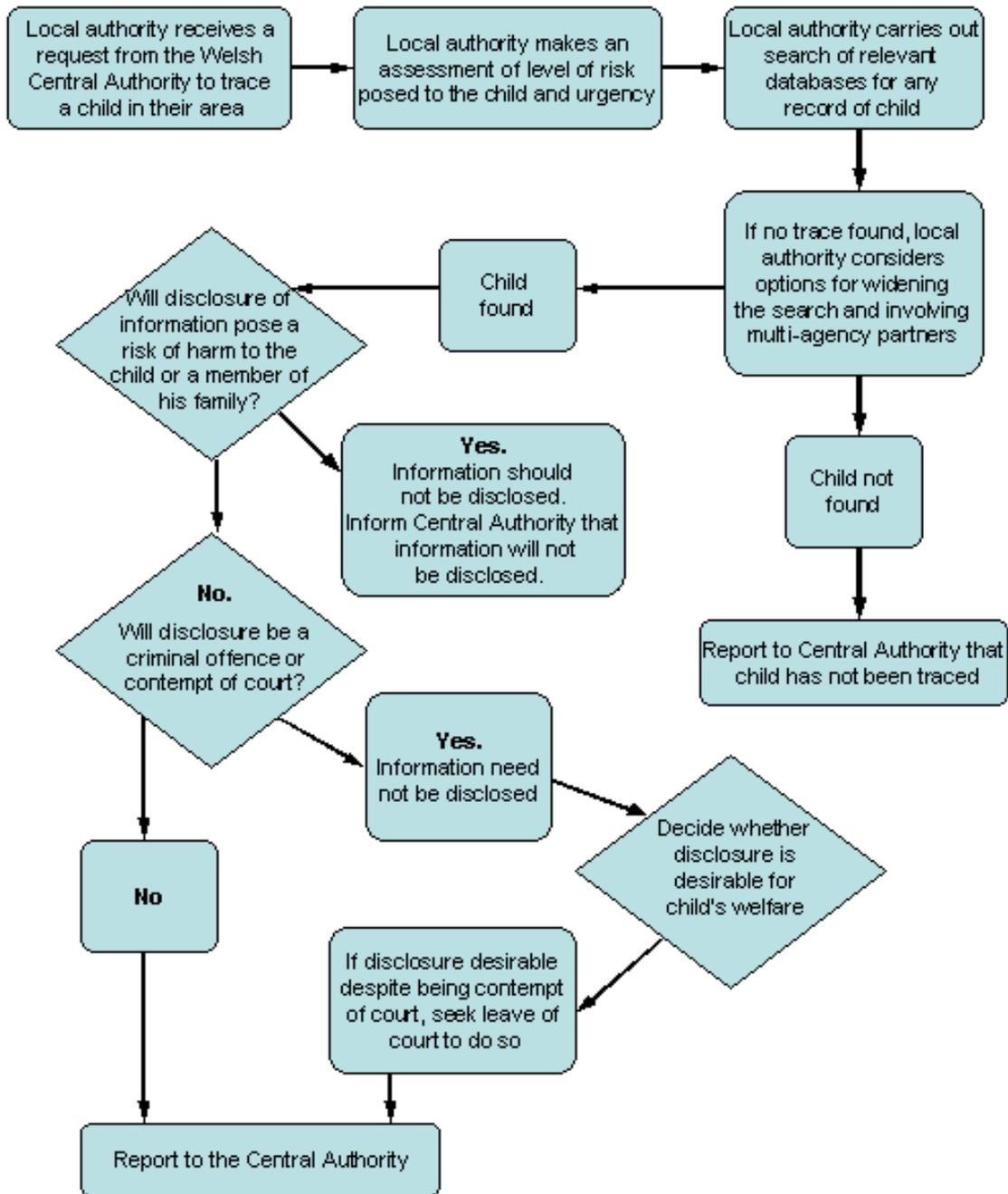
3.16 If an address is found for the child, the Local Authority should consider whether disclosing this information will pose a risk of harm to the child or his family, or be a criminal offence or contempt of court, information can be withheld. In contempt of court cases the Local Authority feels it is in the child's interests to disclose information, they must seek the court's leave to do so.

3.17 In the case of Health Boards and NHS Trusts it is suggested that the Caldicott Guardian for that Health Board/NHS Trust may wish to first confirm whether the child is listed on the local Community Child Health System (CCH200). If a child is identified as being within the locality the Health Board/ NHS Trust should retrieve any further information they hold on that child that is appropriate in responding to the request being made. The Caldicott Guardian may wish to liaise with the local Information Governance Manager for advice and guidance as part of the assessment process.

3.18 In all cases if the risk of harm to a child is significant and there is a credible reason to believe that the child is in the locality there will also be a need to share information with other professionals, including community and voluntary agencies, to safeguard that child.

³⁵ Article 31(c)

Chart 6 – Request to locate a child believed to be in the Local Authority area



Request that the Local Authority consider taking measures to protect a child who usually lives in the Local Authority area.

3.19 If a Central or other authority in a contracting state outside the UK has concerns about the welfare of a child habitually resident and present in Wales, it can ask the relevant Local Authority to take measures to protect that child. The request needs to be made with supporting reasons to the Central Authority in Wales, who may pass the request on to the Local Authority³⁶. The Local Authority is not obliged to take any particular action, but must consider if protection measures are needed. If the Local Authority decides to take protective action it will do so under their usual child protection procedures and may request further supporting information from the other authority under Article 34.

³⁶ Article 32(b)

Section 4. Questions and Answers

How do the 1996 Convention and Brussels Ila Regulation work together?

Cases between the UK and other EU Member States continue to be dealt with under Council Regulation 2201/2003 for matters (where this Regulation applies). However, the implementing Regulations for Hague 1996 include provisions to ensure that the requirements under Brussels Ila are in line with those applying under the Convention. This is to ensure that co-operation between EU states is consistent with that available to Hague 1996 countries outside of the EU.

What is 'habitual residence'?

The nature of the duties and arrangements described in Convention depend on where a child is 'habitually resident'. The general rule is that the state in which the child is habitually resident is the state which has jurisdiction over the child, and the power to take and decide proceedings to safeguard that child's welfare. Establishing the child's habitual residence is therefore often an important stage in the assessment of a child's situation.

Habitual residence has been judicially defined as "the place where a person has established, on a fixed basis, his permanent or habitual centre of interests, with all the relevant facts being taken into account for the purpose of determining such residence".³⁷ This is usually a matter of common sense. For a child evidence of habitual residence will include factors such as:

- Where they are registered for school or nursery.
- Where they are registered for medical care.
- The habitual residence of their primary carer.
- How custody arrangements dictate where a child should usually live.

The habitual residence of a child is not automatically that of their parent, nor is it connected to the child's nationality.

If a child has been moved from one state to another without the consent of a parent with parental responsibility, her habitual residence will not change. However if a child has lived in a state for a year and is settled there, that child will become habitually resident in that state providing that no person has made a valid claim for the child to be returned³⁸. However if a child has been moved from one state to another without the consent of a parent with parental responsibility, her habitual residence will not change.

Where a child is a refugee or displaced from her own country, the country in which the child is physically present will have jurisdiction³⁹.

³⁷ *Marinos v Marinos* [2007] EWHC 2047 (Fam)

³⁸ Article 7

³⁹ Article 6

If it is not clear where a child is habitually resident, legal advice should be sought. If habitual residence cannot be established the state in which the child is present will have jurisdiction over the child⁴⁰. If there is a dispute an application can be made to the High Court for a declaration on the child's habitual residence.

Parental responsibility

Parental responsibility is defined in Article 1 of the Convention as including parental authority or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the child.

Once parental responsibility has been established in one country the person holding it will continue to hold parental responsibility after moving to a different state, but any further grant of parental responsibility can only be made under the law of the state in which the child is habitually resident at the time.

Special Guardianship has a particular form of parental responsibility which overrides that held by parents or others with parental responsibility. It is not necessarily easily understood or replicated in other states and care should be taken to explain the meaning of parental responsibility held by special guardians.

Does the sharing of information under the Convention risk a breach of the Data Protection Act?

Where a Local Authority or Central Authority has the duty or power to provide information, the Regulations that support the Convention ensure that they will do so lawfully and will not therefore be in breach of the Data Protection Act.

When considering whether to either ask for or send information, Local Authorities must apply Article 37 of the Convention. This states that information should not be requested or provided if to do so could put the child or their property at risk, or would threaten the life or liberty of a member of the child's family⁴¹.

Information need not be provided if to do so would constitute a criminal offence or contempt of court. If this is a matter of concern, legal advice should be sought⁴². If in contempt of court cases the Local Authority feels it is in the child's interests to disclose information, they must seek the court's leave to do so.

Which countries have implemented the 1996 Hague Convention

In March 2011 the following countries had implemented the Convention (to be updated before advice is issued).

Albania	Dominican Republic	Latvia	Romania
Armenia	Ecuador	Lithuania	Slovakia
Australia	Estonia	Luxembourg	Slovenia

⁴⁰ Article 6

⁴¹ Article 37

⁴² Regulations 10(6), 11(5) & 12(6)

Austria	Finland	Malta	Switzerland
Bulgaria	France	Monaco	Ukraine
Croatia	Germany	Morocco	Uruguay
Cyprus	Hungary	Netherlands	
Czech Republic	Ireland	Poland	

More countries are expected to implement the Convention; a list of countries and their current positions in relation to the Convention is available at http://www.hcch.net/index_en.php?act=conventions.status&cid=70

In what language should Local Authorities communicate with other states?

Communication between Local Authorities, Health Boards and NHS Trusts and authorities in other contracting states should be in English, accompanied if possible by a translation of the communication into one of the official languages of the other state. Local Authorities, Health Boards and NHS Trusts in Wales can use Welsh providing that communication is via the Central Authority for Wales.

If translation is not feasible, communication in English is acceptable unless the other state concerned has entered a reservation against the use of the English language. This can be established by checking the reservations noted in the status table on the Hague website:

http://www.hcch.net/index_en.php?act=conventions.authorities&cid=70

If a country has entered a reservation against the use of English, communication must either be in that country's language or in French. On ratification the UK will make a declaration objecting to the use of French in communications between English authorities and authorities of other Contracting States⁴³.

⁴³ Article 54

Does a Local Authority have to recognise a child protection order placed in a contracting state?

The Convention requires the authorities of all contracting states to:

- 1) Recognise measures taken in other contracting states⁴⁴.
- 2) Accept any findings of fact made by an authority in another contracting state⁴⁵.
- 3) Register and enforce an order made in another contracting state as if it had been made in their own state⁴⁶.

The Convention provides that each contracting state recognises any orders or other measures taken in every other contracting state in respect of parental responsibility and child protection⁴⁷.

Any person with an interest in the child's case may apply to the High Court for recognition or non-recognition of an order made in another contracting state. Non-recognition is permissible in some cases, for example where an order has been obtained without the child, or a person with parental responsibility, having had an opportunity to make representations about it. If a Local Authority with responsibility for a child needs to apply for recognition of an order issued by a court in England and Wales in another state or the recognition or non-recognition of another state's order in the court, legal in England and Wales advice should be sought.

When considering whether to recognise an order the court will be bound by any findings of fact made in the original state, so the Local Authority cannot apply for non-recognition of an order on the basis that their assessment of the child's situation conflicts with that of another state.

An interested party may also apply to the High Court that an order made by another state be enforceable by Welsh authorities⁴⁸.

⁴⁴ Article 23

⁴⁵ Article 25

⁴⁶ Articles 26 & 28

⁴⁷ Article 23

⁴⁸ Reg 8, Family Procedure Rules Part 12

Recognising other state's orders

Dmitro is a 10 year old boy from the Ukraine who has recently arrived in Wales with his mother Elena. Concerns about Elena's mental health have prompted section 47 enquiries. Using the Convention, the Local Authority contacts the Ukrainian authorities and discovers that there is a court order in the Ukraine equivalent to a care order. The order was granted as a result of Elena's unpredictable behaviour which included threats to harm Dmitro. Under the order Dmitro was placed in a children's home from which Elena removed him unlawfully.

Elena's mental health practitioner in Wales has changed Elena's medication and produces an assessment which says that as long as she continues to comply with her medication regime she will be able to provide good safe care to Dmitro.

Despite the Local Authority's belief that Elena is no longer a threat to Dmitro and that there are no grounds to separate mother and son, they are bound by the findings of fact of the Ukrainian court and must recognise and enforce the Ukrainian care order.

Articles 23 & 25

Further sources of information

The Central Authority for Wales

[Contact details to be inserted]

The Hague Conference website

http://www.hcch.net/index_en.php?act=text.display&tid=1

This site provides details on all of the Hague Conventions, including the full text of each Convention, useful summaries and a status table showing the contracted states.

Other agencies offering practical advice

Children and Families Across Borders (CFAB)

CFAB is the UK branch of the International Social Service (ISS) network. ISS facilitates the effective exchange of social work services between countries. Its main area of work include a free advice line, child protection, children in care, private fostering, child trafficking, child abduction, contact disputes and leave to remove cases.

Contact details:

CFAB
Canterbury Court, Unit 1.03
1 -3 Brixton Road
London
SW9 6DE
Advice Line: 020 7735 8941

Email: info@cfab.uk.net

Website: <http://www.cfab.uk.net/>

Africans Unite Against Child Abuse (AFRUCA)

With offices in London and Manchester, AFRUCA promotes the welfare of African children in the UK. They also work in partnership with other organisations in Africa and across Europe

Contact details:

AFRUCA
Unit 3D/F Leroy House
436 Essex Road
London
N1 3QP
United Kingdom
Telephone: 0844 660 8607

Website: <http://www.afruca.org/>

NSPCC Cymru

NSPCC offers a wide range of services for organisations working to protect children from harm.

Contact details:

Telephone: 0844 892 1026

Email: contactus@nspcc.org.uk

Website: <http://www.nspcc.org.uk/>