



Department  
for Education

# **Cross-border child protection cases: the 1996 Hague Convention**

**Departmental advice for local authorities,  
social workers, service managers and  
children's services lawyers**

**October 2012**

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# Summary

## About this departmental advice

This is advice from the Department for Education. The advice is non-statutory, and is designed to help local authorities when dealing with cross-border child protection cases under the 1996 Hague Convention<sup>1</sup>.

The 1996 Hague Convention ('the Convention') will be implemented in the UK on 1 November 2012. It provides an agreed set of legal provisions and cooperation 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:

- a) ask for help or essential information from authorities abroad when dealing, for example, with a child from this country who is in need of support or protection; and
- b) respond to similar requests put to them by authorities abroad.

## Expiry or review date

This advice will be reviewed by 1 April 2014.

## Who is this advice for?

This advice is primarily for local authority staff working with children and families, frontline social workers, their team managers, service managers, and children's services lawyers.

It may also be useful for other agencies involved in decisions about children's welfare, including staff from Cafcass and voluntary sector organisations.

## Key points

The Convention applies to situations where contracting states need to cooperate over child protection and welfare cases when there is an international dimension. This can include care proceedings, contact cases and foster placements abroad.

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<sup>1</sup> [1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and measures for the Protection of Children.](#)

- 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 is more efficient, avoids delays and delivers better outcomes for the children involved.
- This advice is distinct from Department guidance that already exists on the other main types of cross-border cases – inter-country adoption and child abduction. It is not intended as a definitive legal interpretation of the Convention – local authorities should seek their own legal advice on individual cases as required.
- 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 this country and countries outside the EU which have implemented the Convention. It will not apply between England and the other jurisdictions of the UK.

# Section 1: Overview of the cooperation arrangements

## Types of arrangement

Under the Convention contracting states can ask each other for information or other types of help when a child's welfare or protection is at issue.

A list of the countries that have implemented the Convention (referred to as 'contracting states') can be found on the [Hague Conference for Private International Law website](#). In this list only those States which have 'Entered into Force' (EIF) are operating the Convention.

The different types of requests are set out further on in 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'<sup>2</sup> 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; and
- asking for the transfer of 'jurisdiction' for a child from her home state, enabling an authority to make decisions about a child's welfare if it feels it is best placed to do so.

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 cooperation arrangements work

### The Central Authority

The 1996 Hague Convention and existing EU legislation in this area requires each country to establish a Central Authority to help ensure effective communication between child welfare authorities in contracting states. For England the day-to-day administration of the Central Authority's role will be carried out by the International Child Abduction and Contact Unit (ICACU) which is co-located in the office of Official Solicitor and Public

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<sup>2</sup> More information on the terms 'jurisdiction' and 'habitual residence' is provided in the Q&A section.

Trustee (OSPT). ICACU's contact details are set out in the 'Further sources of information' page.

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 on the 'Making requests for information or action to other contracting states' page. It is recommended, however, that local authorities consult ICACU in the first instance for advice about the most appropriate way to make their request. The Central Authority holds useful information about authorities in other countries, and has a wealth of practical experience of cross-border cooperation on child protection cases.

The English Central Authority also monitors the volume and effectiveness of cases handled under the Convention. If local authorities decide to deal directly with 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 of the work arising from the Convention.

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

- [Children and Families Across Borders](#) (CFAB). CFAB runs a national advice line on inter-country casework (funded by the Department)
- [Afruca](#)

## Local authority arrangements and responsibilities

Although the Regulations that support the Convention place a duty on local authorities 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.

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. Local authority social care staff consulted during the development of this advice 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.

## Links to other EU Regulations and Hague Conventions

A very similar framework for cooperation on child protection cases between EU member states already exists through an EU Council Regulation known as 'Brussels IIa'<sup>3</sup>. The 1996 Hague Convention does not therefore introduce wholly new concepts or arrangements for local authorities – instead it builds on existing powers and duties, extending these to cover this country's links with the growing number of countries beyond Europe that have decided to implement the Convention.

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

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

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<sup>3</sup> 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

This section explains, step by step, how local authorities can ask for help and cooperation from other contracting states.

The Convention enables a local authority to:

1. ask another state to provide a report/information to inform decisions on whether child protection measures should be taken<sup>4</sup>.
2. take action to protect a child at immediate risk of harm, even if the child is usually resident in another contracting state<sup>5</sup>.
3. 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 welfare, or ask another state to take on jurisdiction in the reverse situation<sup>6</sup>.
4. consult with the relevant authority in another state about placing a child in foster or residential care in that state<sup>7</sup>.
5. ask for help in tracing a child in a contracting state when a local authority is concerned about his/her welfare<sup>8</sup>.
6. ask another state to consider taking measures to protect a child who lives in that state<sup>9</sup>.
7. provide a report to support a parent's case for contact with a child living in another contracting state<sup>10</sup>.

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<sup>4</sup> Article 34

<sup>5</sup> Article 11

<sup>6</sup> Articles 8 and 9

<sup>7</sup> Article 23

<sup>8</sup> Article 31(c)

<sup>9</sup> Article 32(b)

<sup>10</sup> Article 35(2)

## Requesting information on the need for protective measures

If a local authority is considering action to protect or safeguard a child it can ask a competent authority in another contracting state to communicate information it holds that is relevant to the case, regardless of where the child is habitually resident<sup>11</sup>.

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 figure 1 for the recommended process for this.

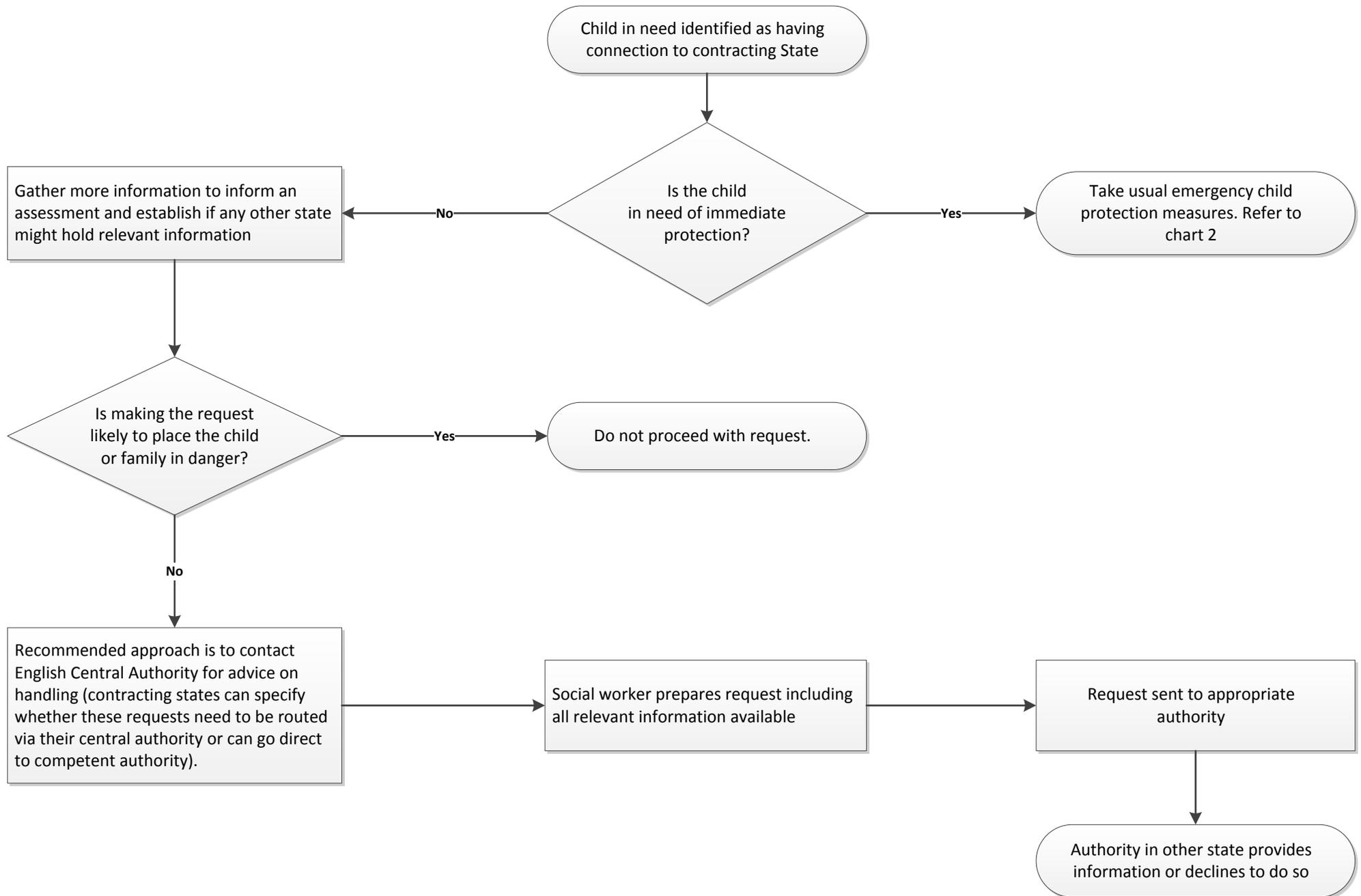
The authority in the contracting state is not formally obliged to provide this report. If a local authority has difficulty in getting the information it needs, the English Central Authority may be able to help through liaison with the other state's Central Authority.

A contracting state can specify that these requests for information (which are made under Article 34 of the Convention) must be routed through their 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.

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<sup>11</sup> Article 34

**Figure 1 - requesting a report to support decisions on the need for child protection measures**



## Taking action when a child usually lives in another state

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 action<sup>12</sup>. The presence of an international element to the case should not delay the necessary protective measures.

If the child is only temporarily present in England, the child's home country will have jurisdiction<sup>13</sup> 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 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. Figure 2 sets out the recommended process for such cases.

An initial approach to the English Central Authority is recommended, although in these cases contact can be via Central Authorities, or directly to the local authority's 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.

If the child needs continuing protection while the local authority is liaising with authority in the other state, the Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010<sup>14</sup> 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 required<sup>15</sup>.

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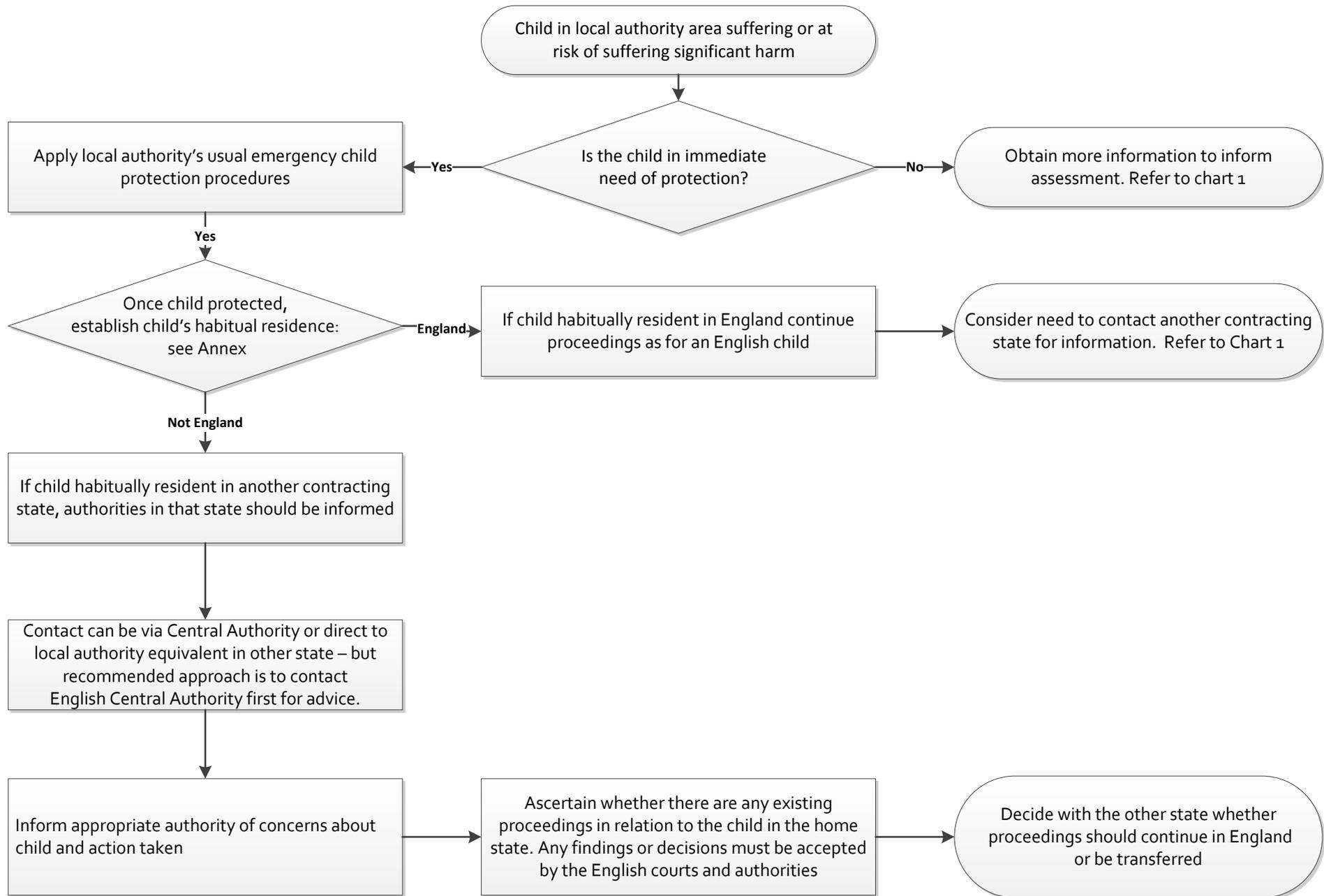
<sup>12</sup> Article 11

<sup>13</sup> Article 12

<sup>14</sup> SI 2010 No 1898

<sup>15</sup> Regulation 5

**Figure 2 - Taking action for a child at immediate risk**



## Transferring jurisdiction

A local authority 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 welfare<sup>16</sup>. This is done via an application to the High Court, who will then make the request to the child's home country if appropriate<sup>17</sup>.

The authority in the child's home country may itself ask for jurisdiction to be transferred to the English local authority<sup>18</sup>. The Central Authority in England aims to keep a record of transfers of jurisdiction, and local authorities are therefore asked to notify ICACU when such arrangements are made.

## Placing a child living in England in foster/residential care

The types of situation that this part of the Convention apply to 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; and where
- a child may need placement in a specialist residential unit in another country.

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 section 20 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 outside of this jurisdiction<sup>19</sup> (see the revised [statutory guidance](#) on Care Planning, Placement and Case Review).

Under the Convention a local authority considering this type of placement must consult the relevant authority in the other state<sup>20</sup>, 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

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<sup>16</sup> Article 9

<sup>17</sup> Regulation 4

<sup>18</sup> Article 8

<sup>19</sup> Children Act 1989 Schedule 2 paragraph 19

<sup>20</sup> Article 33

Ila. 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 placement<sup>21</sup>. 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 - there should be no need to create a new report form. The Convention allows for requests to be made either via the Central Authority of the proposed state of placement or to a competent authority. It is recommended however that local authorities route these requests through the English Central Authority who will then liaise with the Central Authority in the other state. Figure 3 sets out the recommended process for making this type of request.

If the child is the subject of court proceedings the court may approach the authority in the other state for permission to place the child. If the court sends the request directly to the Central Authority or competent authority in the other state, it must also send a copy of the request to the Central Authority for England<sup>22</sup>.

The local authority must also satisfy the requirements of Regulation 12 of the Care Planning, Placement and Case Review (England) Regulations 2010 in placing a child in care outside England and Wales, ensuring that adequate arrangements are in place for supervising and reviewing the placement.

This part of the Convention does not apply to:

- adoptive placements (these are governed by the 1993 Hague Convention on Intercountry Adoption);
- placements which are private family arrangements; or
- placements of children under special guardianship orders – these are private law orders and do not constitute a placement by a local authority.

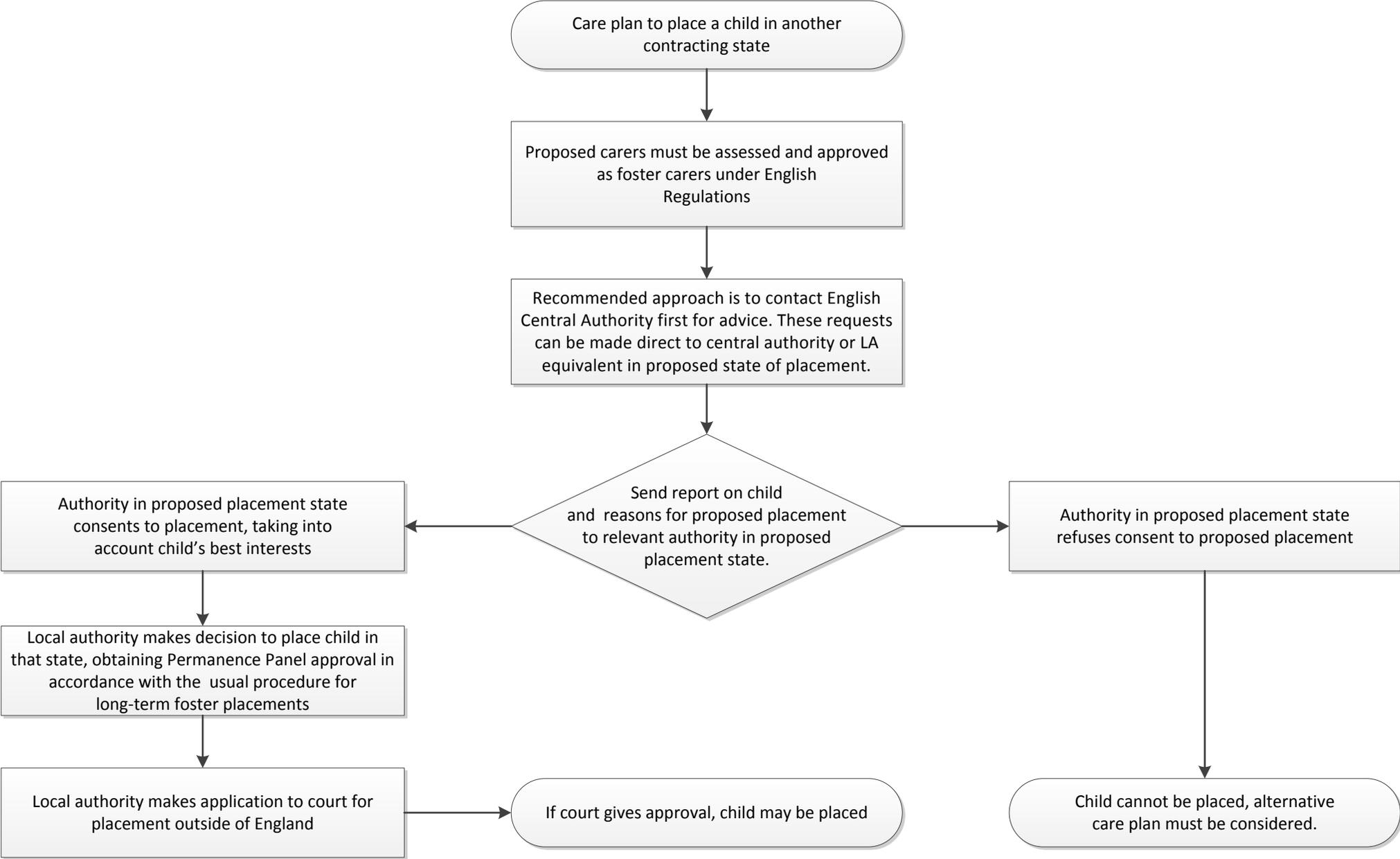
It will however apply to placements of a child in care for assessment in a possible adoptive placement (of the sort examined in *Re A (A Child)* [2009] EWCA Civ 41 where, in order not to fall foul of the restrictions on placing a child abroad for the purposes of adoption, the placement has to be clearly formulated as a foster placement). If a placement of this sort is contemplated the local authority should refer to Departmental guidance.

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<sup>21</sup> Regulation 13

<sup>22</sup> Family Procedure Rules 2010 12.70

**Figure 3 - Placing a child currently living in England in foster or residential care in another contracting state**



## Asking another state to trace a child

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. Figure 4 describes the process for this type of request.

These requests should be made to the Central Authority of the state to which it is believed the child has moved<sup>23</sup>, but it is recommended that this is done via the English Central Authority. The requests 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.

If the child is habitually resident in England and court proceedings are started or 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.

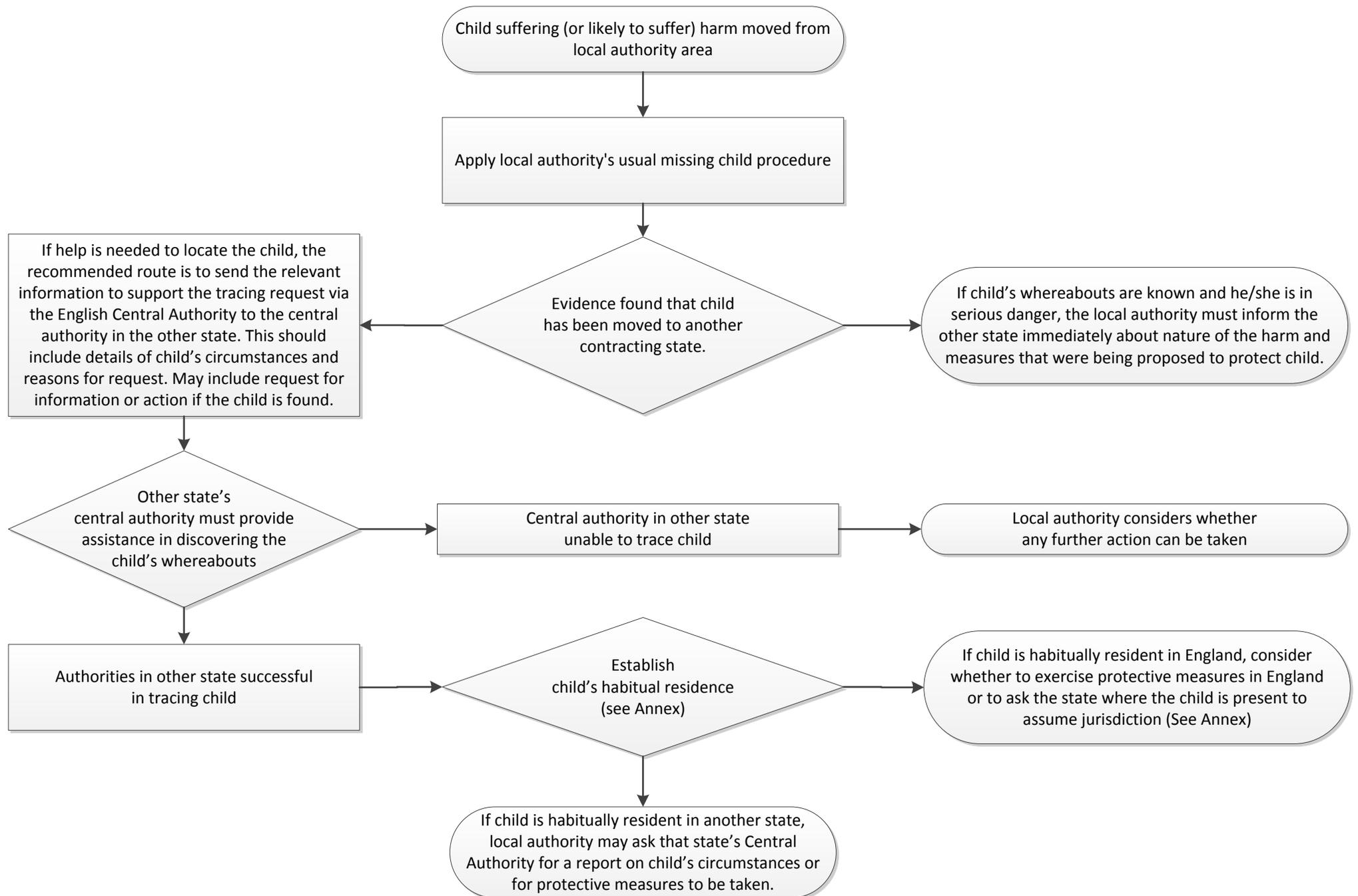
If there are serious concerns about a child suffering significant harm and this child is moved into another state, the local authority must inform the relevant authorities of that other state of the danger to that child and also of any measures they were taking or considering to protect the child<sup>24</sup>.

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<sup>23</sup> Article 31(c)

<sup>24</sup> Article 36

**Figure 4 - asking a central authority in another state to locate a child**



## Asking another state to protect a child living in that state

The Convention enables a local authority to ask another contracting state to consider the need to protect a child from harm who is habitually resident in that state<sup>25</sup>. Local authorities should provide sufficient information for the authority in the other state to make a decision. This request can be made via the English Central Authority or directly to the Central Authority in the other state. 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.

## Providing a report to support parents contacting a child

If a parent in England is seeking by court proceedings to obtain or maintain contact with a child living in another contracting state, he/she can ask their local authority to prepare a report on their suitability to have this contact for submission as evidence to the authorities in the other state<sup>26</sup>.

There is no duty on an English local authority to agree to prepare such a report or provide any information. However local authorities must exercise their discretion reasonably and cannot have a blanket policy of refusing to prepare such reports.

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.

The implementing Regulations<sup>27</sup> for the Convention 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.

A local authority may provide a service under this Article by subcontracting the work to another agency.

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<sup>25</sup> Article 32

<sup>26</sup> Article 35

<sup>27</sup> SI 2010 No 1898: The Parental Responsibility and measures for the Protection of Children (International Obligations)(England and Wales and Northern Ireland) Regulations 2010.

## Section 3: Handling requests from other contracting states

Just as local authorities in this country 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 our authorities. This section offers advice on handling these 'incoming' requests.

### Handling a request for information on a child's situation

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 lives<sup>28</sup>. In ratifying the Convention the United Kingdom has stipulated that these types of request to an English local authority be routed through the English Central Authority.

If a child is habitually resident and present in England, an authority of another contracting state with which the child has a substantial connection may ask the English Central Authority to provide a report on the child's situation. If the Central Authority thinks that it is appropriate to do so, it will pass the request on to the local authority which must provide a report as soon as reasonably practicable<sup>29</sup>.

The implementing Regulations<sup>30</sup> for the Convention allow local authorities 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 family.<sup>31</sup> Further advice on information sharing can be found in the Q&A section.

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 section 7 (a welfare report) or section 37 (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.

On occasions the local authority approach for this type of information may be made to Cafcass – for example, in situations where Cafcass has been involved with the child or the family in other court proceedings.

Figure 5 below sets out the recommended process for handling this type of request.

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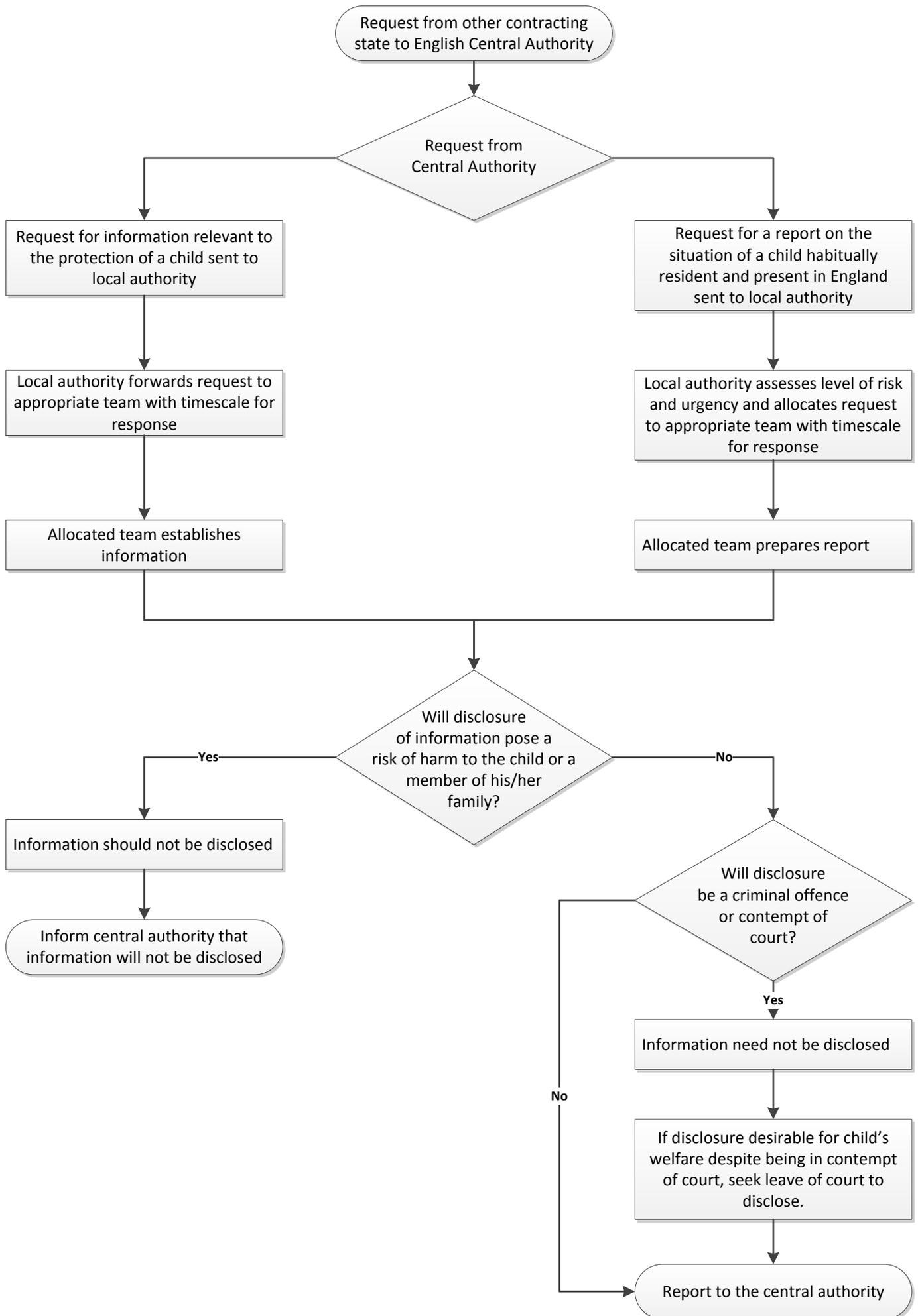
<sup>28</sup> Article 34

<sup>29</sup> Regulation 12(5) of SI 2010 1898

<sup>30</sup> SI 2010/1898: The Parental Responsibility and measures for the Protection of Children (International Obligations)(England and Wales and Northern Ireland) Regulations 2010

<sup>31</sup> Article 37

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



## Handling requests to transfer jurisdiction for a child

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 interests.<sup>32</sup>

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 this case the court dealing with the matter will need to transfer the request to the High Court for consideration.<sup>33</sup>

## Request from another state for foster care or home transfer

An authority in another contracting state can only place a child in foster care or a residential unit in England if the competent authority has consented to the placement.<sup>34</sup>

This restriction applies to a placement of a child, including placements under kafala, for whom the authority of another state is responsible. It does not apply to placements for adoption as these are governed by the 1993 Hague Convention on Inter-country Adoption.

In England, the competent authority for these purposes is the local authority with responsibility for children's services in the area where the contracting state proposes to place the child. The responsibility of local children's services to act as competent authorities for these purposes is compatible with local authorities' responsibilities under section 17 and Part VIII of the Children Act 1989.

In many cases, the child will not be the subject of any proceedings here. The authority in the contracting state must provide the English local authority with a report about the child and the reasons why the placement is being considered. The relevant local authority should deal with the placement request as quickly as possible.

Before consenting to the placement, the local authority, acting as the competent authority, will need to make its own independent assessment of whether the proposed placement is appropriate in the best interests of the child and provides him or her with the same safeguards as a comparable arrangement for the placement of an English child.

For example the authority may wish to consider such issues as:

- whether based on the information provided about the child's needs the placement for the child appears to be appropriate;
- the frequency and suitability of arrangements for keeping the plan under review (cf Regulation 33 of the Care Planning, Placement and Case Review Regulations 2010);

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<sup>32</sup> Article 9

<sup>33</sup> Family Procedure Rules 12.66

<sup>34</sup> Article 33

- arrangements for family contact (if appropriate);
- whether the plan has taken the wishes and feelings of the child into account and allows for the child to have access for support should they wish; and
- the planned duration of placement and aftercare arrangements.

Should a local authority, (acting as a competent authority), not have sufficient information to be able to give informed consent that confirms that the proposed placement is appropriate for the child concerned, it may seek further information from the authority in the contracting state wishing to make the placement.

The competent authority will be entitled to refuse consent. For example, following scrutiny of information, the authority could come to the view that the proposed placement is unsuitable for the individual child – perhaps because arrangements for review of the plan<sup>35</sup> or for aftercare are not suitable; or because the authority is concerned about the quality of the proposed placement indicating its unsuitability, because of other information in its possession about the care and safety of other children placed there.

If the local authority controls, manages or has some other interest in the institution at which the child is proposed to be placed, the local authority must ensure that the decision as regards consent is made autonomously from its involvement in running the institution.

If the local authority agrees to the placement, the legal framework under which the child will be placed should be established. The two authorities should agree the responsibility for monitoring and review of the placement. Such monitoring and review arrangements must be compatible with the equivalent arrangements for placing English children in comparable placements<sup>36</sup>.

Where the child is to be placed with a foster carer, 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 section 66 of the Children Act 1989.

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 request<sup>37</sup>.

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<sup>35</sup> For example, it would not be appropriate to give consent to placement in a secure children's home if the plan was to detain the child without legal review for any longer than such a placement would be allowed in England (cf Regulations 11 and 12 of The Children (Secure Accommodation) regulations 1991

<sup>36</sup> cf Care Planning, Placement and Case Review Regulations 2010; Secure Accommodation (England) Regulations 1991

<sup>37</sup> Family Procedure Rules 12.69

## Requests to locate a child believed to be in the LA area

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 England, they may request assistance from the English Central Authority<sup>38</sup> in tracing that child. Figure 6 sets out the recommended process for handling these requests.

Local authorities have a duty to assist with these requests. 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.

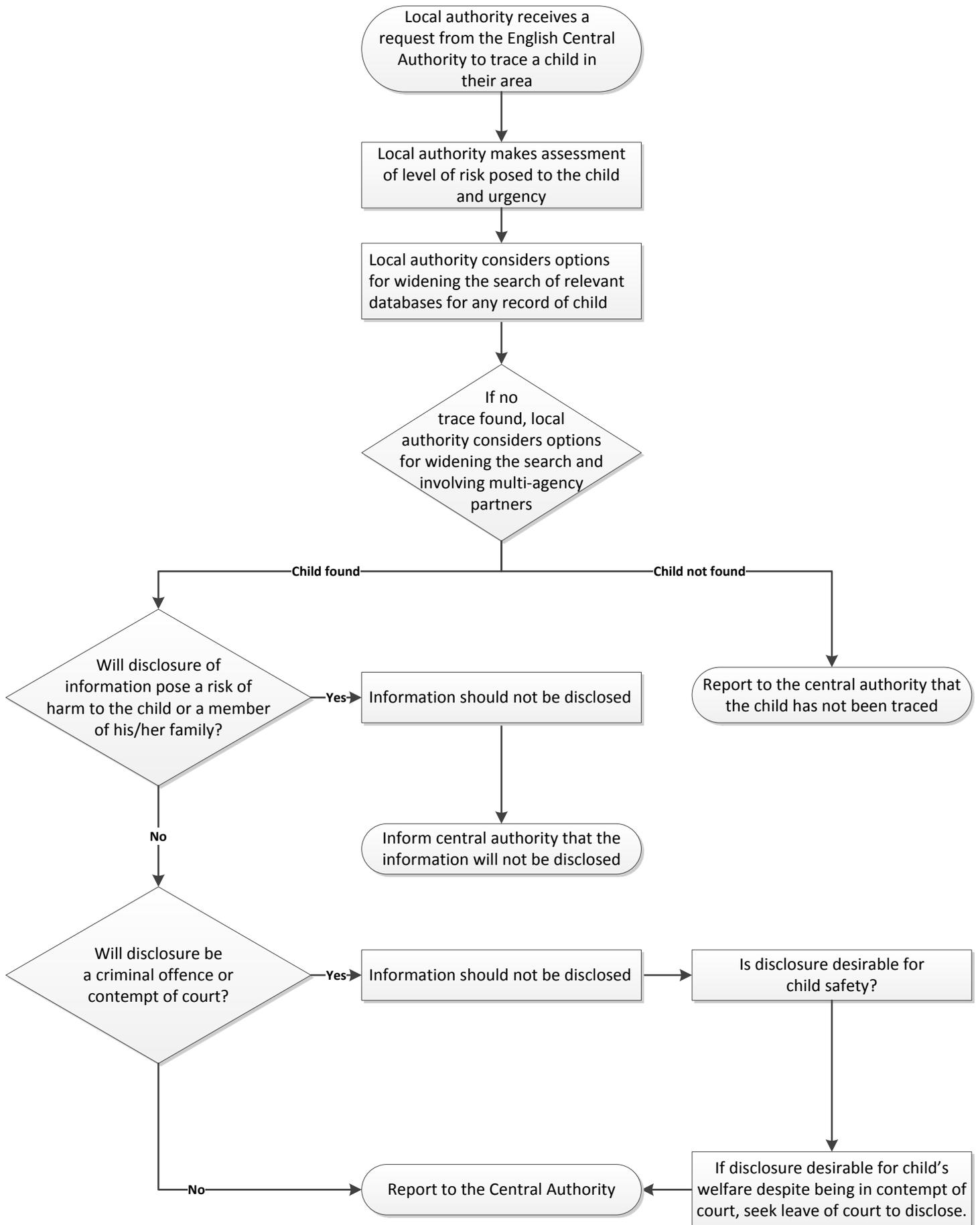
If the risk of harm to a child is significant and there is a credible reason to believe that the child is in the local authority's area, it may be proportionate to share information with other professionals, including community and voluntary agencies.

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. Local authorities can withhold information in these circumstances. 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.

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<sup>38</sup> Article 31(c)

**Figure 6 - Request to locate a child believed to be in the local authority area**



## Handling requests to protect a child living in the LA area

If a Central or other authority in a contracting state has concerns about the welfare of a child habitually resident and present in England, 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 England, who may pass the request on to the local authority.<sup>39</sup>

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<sup>39</sup> Article 32(b)

## Frequently asked questions

**Q: How do the Hague 1996 Convention and Brussels IIa Regulation work together?**

**A:** 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 IIa 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 the EU.

**Q: What is ‘habitual residence’?**

**A:** 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 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’<sup>40</sup>. 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 primary carer, 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 person or body with rights of custody, 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 normally become habitually resident in that state providing that no person or body has made a valid claim for the child to be returned<sup>41</sup>. If a child has been moved from one state to another without the consent of a person or body with rights of custody, her habitual residence will not change.

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<sup>40</sup> *Marinos v Marinos* [2007] EWHC 2047 (Fam)

<sup>41</sup> Article 7

Where a child is a refugee or displaced from her own country, the country in which the child is physically present will have jurisdiction<sup>42</sup>. 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 child<sup>43</sup>. If there is a dispute an application can be made to the High Court for a declaration on the child's habitual residence.

**Q: What is Parental Responsibility?**

**A:** 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 is a particular form of parental responsibility which overrides that held by parents or others with PR. 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.

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

**A:** 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 be doing so lawfully and will not therefore be in breach of the Data Protection Act.

When considering whether to ask for or to 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 family<sup>44</sup>.

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 sought<sup>45</sup>. 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.

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<sup>42</sup> Article 6

<sup>43</sup> Article 6

<sup>44</sup> Article 37

<sup>45</sup> Regulations 10(6), 11(5) & 12(6)

**Q: Can local authorities commission other agencies to carry out inter-country casework?**

**A:** It is up to local authorities to decide the extent to which they involve other agencies in exercising their statutory functions – providing that they retain the decision-making role. An agency can be authorised to liaise with the necessary authorities overseas, and gather information and make assessments on the authority’s behalf – but where legislation imposes a statutory function involving the exercise of discretion by a local authority, that local authority must discharge that function by making the decision over what action (if any) is needed.

See the ‘further sources of information’ section for details of agencies that can offer practical help with inter-country casework.

**Q: Which countries have implemented the 1996 Hague Convention?**

**A:** A list of countries and their current positions in relation to the Convention is available at the [Hague website](#). In this list only those States which have ‘Entered into Force’ (EIF) are operating the Convention.

**Q: In what language should local authorities communicate with other states?**

**A:** Communication between local authorities and authorities in other contracting states should be in English, accompanied ideally by a translation of the communication into one of the official languages of the other state<sup>46</sup>.

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. If a country has entered a reservation against the use of English, communication must either be in that country’s language or in French.

**Q: Does a local authority have to recognise a child protection order placed in a contracting state?**

**A:** The Convention requires the authorities of all contracting states to:

1. recognise measures taken in other contracting states<sup>47</sup>
2. accept any findings of fact made by an authority in another contracting state<sup>48</sup>
3. register and enforce an order made in another contracting state as if it had been made in their own state.<sup>49</sup>

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<sup>46</sup> Article 54

<sup>47</sup> Article 23

<sup>48</sup> Article 25

<sup>49</sup> Articles 26 & 28

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 protection<sup>50</sup>.

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 English order in another state or the recognition or non-recognition of another state's order in the English court, legal 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 English authorities.

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<sup>50</sup> Article 23

## Further sources of information

### The Central Authority for England and Wales

International Child Abduction and Contact Unit (ICACU)  
Central Authority for England and Wales. (1980 and 1996 Hague Conventions and Brussels IIa). Contact details are available on this page.

### The Hague Conference website

The [Hague Conference website](#) provides details on all the Hague Conventions, including the full text of each Convention, useful summaries and a status table showing the contracted states.

### Children and Families Across Borders (CFAB)

CFAB is the UK branch of the International Social Service (ISS) network. It aims to promote and protect the rights of family members left vulnerable or at risk through separation by international borders. CFAB provides inter-country casework services, training and advice to local authorities, CAFCASS, solicitors, judges, individuals and families. CFAB also offers a free advice and information helpline for individuals or practitioners facing an inter-country situation. Contact details can be found on this page.

Telephone: 020 7735 8941

Email: [info@cfab.uk.net](mailto: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 can be found on this page.

Telephone: 0844 660 8607

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



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