



Department  
for Education

# **Advice on placement of looked after children across Member States of the European Union**

**For local authority children's services**

**January 2013**

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# Summary

## About this departmental advice

This advice from the Department for Education has been produced to help local authorities understand their responsibilities under **Article 56 of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (“Brussels IIA”)**.

English local authorities are sometimes approached (directly or through the International Child Abduction and Contact Unit (ICACU)) to seek their agreement to the placement of a child from a European Union member state in a children’s home, or with a foster carer, in their area. These cases are infrequent – perhaps twenty in England in 2011. There may though be a good deal of uncertainty about the role and responsibilities of the local authority regarding individual cases. A decision from the Court of Justice of the European Union in April 2012 has served to clarify what needs to happen in such cases.

Generally an English local authority will usually receive requests to agree a placement via ICACU (which is based in the Office of the Official Solicitor). The local authority, as “competent authority”, will be asked to give its consent to a placement being made. The court in the relevant Member State cannot make a judgement placing a child until this has been received. It will not be the role of the local authority to re-examine the reasons for the proposed placement decision made in the other Member State. There are, though, a number of factors which it can properly take into account, and in certain circumstances it would be reasonable to refuse consent. The local authority will then communicate the details of its decision to ICACU.

This non-statutory advice note is designed to help local authorities in England by describing the process that should be followed when dealing with requests, under Article 56 of the Brussels IIA Regulation, from authorities in other EU member states, to consent to placements of children in residential or foster care in their area, where such placements are **not** ones where the child requires detention or assessment and/or treatment of a mental disorder (“compulsory mental health placements”)<sup>1</sup>.

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<sup>1</sup> Article 56 also deals with the situation where a court in England and Wales wishes to place a child in institutional care or with foster parents in another Member State, but this note will not deal with these “outbound” placements.

## Expiry or review date

If, in future, there are changes to relevant European law this advice would be reviewed,

## Who is this advice for?

This advice is for local authorities with children's services responsibilities.

## Key points

- Where a court in another Member State is considering placing a child in “institutional care” (for example, in a children's home) or with a foster family, that court must first obtain the consent of the “competent authority” before it is able to make a judgement about whether it will be appropriate to place the child.
- The competent authority for these purposes is the local authority responsible for children's services in the area where the child is to be placed. Whilst the local authority should not re-examine the reasons for the proposed placement decision made by the other Member State it should ensure that the proposed placement is appropriate. The authority will need to be satisfied that it has the information necessary to establish that the plan for child provides him or her with the same safeguards as a comparable plan for the placement of a child by an English local authority.
- Once the competent authority has made its decision, it should inform ICACU.

## Information for local authorities on placing children from other Member States

In April 2012 the UK government received a judgement from the Court of Justice of the European Union (CJEU) about an EU Regulation concerning the jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (This Regulation is known as Brussels IIA ('BIIA'))<sup>2</sup>.

The text of Article 56 of Brussels IIA is as follows:

“Article 56

### Placement of a child in another Member State

1. *Where a court having jurisdiction under Articles 8 to 15 **contemplates the placement of a child in institutional care or with a foster family** and where such placement is to take place in another Member State, it shall first consult the central authority or other authority having jurisdiction in the latter State where public authority intervention in that Member State is required for domestic cases of child placement.*
2. *The judgment on placement referred to in paragraph 1 may be made in the requesting State **only if the competent authority of the requested State has consented to the placement.***
3. ***The procedures for consultation or consent referred to in paragraphs 1 and 2 shall be governed by the national law of the requested State.***
4. *Where the authority having jurisdiction under Articles 8 to 15 decides to place the child in a foster family, and where such placement is to take place in another Member State and where no public authority intervention is required in the latter Member State for domestic cases of child placement, it shall so inform the central authority or other authority having jurisdiction in the latter State.”<sup>3</sup>*

**Emphasis added.**

The effect of this Article is that where a court in another Member State is considering placing a child in “institutional care” (for example, in a children’s home, including a secure children’s home), or with foster carers that court must first consult the “competent authority”. This requirement to consult only applies if the placement would require “public authority intervention” in the state in which the placement is proposed to take place.

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<sup>2</sup> C-92/12 PPU 26 April 2012.

<sup>3</sup> This provision could apply where a child from an EU Member State is being placed by a Court in that state with family members in England or Wales; or if a child from another Member State was to be placed with approved foster carers.

The “competent authority” has to give consent to such placement before the court in the other member state makes a judgment placing the child.

Given local authorities’ responsibilities under section 17 and Part VIII of the Children Act 1989, Government has decided that the competent authority for these purposes and in relation to placements other than compulsory mental health placements is the local authority with responsibility for children’s services in the area where the child from another Member State is to be placed.

## Process

The local authority will usually receive the request for a placement under Article 56 from the Central Authority for England and Wales. The day-to-day administration of the Central Authority’s role in England and Wales is carried out by the International Child Abduction and Contact Unit (ICACU) based in the Office of the Official Solicitor. Once a request for a placement under Article 56 is received from another Member State’s central authority, unless there are obvious problems with the consent requested<sup>4</sup>, ICACU will forward the request to the relevant local authority so that the local authority can consider whether it consents to the placement.

## Local authority responsibilities

The relevant local authority should deal with the placement request as expeditiously as possible.

The local authority will be required to make its own independent professional assessment of whether the proposed placement is appropriate. 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.

Whilst the local authority should not re-examine the reasons for the proposed decision on placement made in the other Member State, as mentioned above, the local authority must carry out an independent assessment on the appropriateness of the placement. Before consenting to the placement, the local authority will need to be satisfied that it has the information necessary to establish that the plan for child provides him or her with the same safeguards as a comparable plan for the placement of an English child.

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<sup>4</sup> Such problems might consist of insufficient detail of what placement is being proposed, or a request for a placement of unlimited duration that would obviously be inappropriate in the circumstances (e.g. a proposed placement of unlimited duration in a secure children’s home).

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

- a) whether based on the information provided about the child's needs and circumstances the placement for the child appears to be appropriate<sup>5</sup>;
- b) 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) and assessing the ongoing need for the placement;
- c) arrangements to ensure the child has equivalent safeguards to children from our own jurisdiction who are in such placements;
- d) arrangements for family contact (if appropriate);and
- e) the planned duration of placement and aftercare arrangements.

Should a local authority not have sufficient information to be able to give informed consent that confirms that the proposed placement is appropriate for the child concerned then the local authority may request ICACU to seek further information from the relevant authority of the Member State seeking to make the placement.

The local authority will be entitled to refuse consent, if, for example, following scrutiny of information, about the child and the child's plan, the authority reaches the view that the proposed placement is unsuitable for the individual child – for example because, the proposed placement is inappropriate for the child's age<sup>6</sup>, arrangements for review of the plan<sup>7</sup> or for aftercare are not suitable; or because the local authority has information about the quality of the proposed placement indicating its unsuitability in view of any concerns that relate to the care and safety of other children.

Once the relevant local authority has made its decision, it should communicate that decision clearly, through ICACU. If the local authority consents to the placement, the court in the other Member State is entitled to make the judgment ordering the placement. Once the judgment has been made by the court in the other Member State, practical arrangements relating to the placement can be dealt with directly with the authority from the other Member State that has requested the placement. However, before accepting physical placement of the child, the local authority will need to be satisfied that there is lawful authority for the placement in terms of either the judgment from the other Member State being registered in accordance with the recognition and enforceability procedures of BIIA<sup>8</sup> or that an order under Article 20 of BIIA has been made<sup>9</sup>.

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<sup>5</sup> For example, if the placement is proposed to be in secure accommodation this should only take place if those conditions set out in section 25(1)(a) and (b) of the Children Act 1989 are satisfied.

<sup>6</sup> For example, in relation to placement in a secure children's home where the child is under 13 years of age, such a placement should not be made without the prior approval of the Secretary of State for Education, to accord with the position domestically. If the Secretary of State does not approve the placement, the local authority should refuse consent.

<sup>7</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>8</sup> And the Family Procedure Rules SI 2010/2995; Part 31

If, you have queries concerning a specific request under Article 56, where that request relates to placements other than compulsory mental health placements please contact Mark Burrows Team Manager in the Children in Care Division of the Department for Education: [Mark.Burrows@education.gsi.gov.uk](mailto:Mark.Burrows@education.gsi.gov.uk)

## Further sources of information

- [Case C-92/12 PPUCJEU case: C-92/12 PPU 26 April 12. Health Service Executive v S.C. and A.C.....Judgment ordering placement of the child in a secure care institution in England - Material scope of the regulation - Article 56 - Procedures for consultation and consent.....](#)
- [DfE guidance on placing children with family and friends](#)
- [DfE information and advice about arrangements under the 1996 Hague Convention for inter-country co-operation, when dealing with cross-border cases where children's safety or welfare may be an issue](#)

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<sup>9</sup> This allows the court in urgent cases to take provisional and protective measures that would be available under the law in England and Wales.



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Any enquiries regarding this publication should be sent to us at:  
Department for Education, Castle View House, East Lane, Runcorn, Cheshire  
WA7 2GJ

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