



Department of  
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An Roinn Leanaí, Comhionannais,  
Míchumais, Lánpháirtíochta agus Óige  
Department of Children, Equality,  
Disability, Integration and Youth

**PROTOCOL BETWEEN  
NORTHERN IRELAND  
AND  
IRELAND  
FOR  
HANDLING INTER-JURISDICTIONAL  
CHILD CASES**

**1 August 2021**

**This protocol supersedes the protocol ‘Inter-Jurisdictional Protocol for Transfer of Children’s Social Care Cases between Northern Ireland and the Republic of Ireland November 2011’.**

**The protocol is compliant with appropriate international and domestic legislation. It also takes into account policies, procedures and guidance documents introduced or updated between November 2011 and July 2021 and learning from practice. It should be read and operated in conjunction with the international and domestic legislation, policies, procedures and guidance referred to in section 3.**

**Nothing in this protocol prevents a HSC Trust or the Child and Family Agency, Tusla, from taking any necessary actions within its area, and/or alerting other agencies outside its area as necessary, to protect a child if there is imminent danger or risk of significant harm.**

**Furthermore, in both jurisdictions there are respective legal duties, and associated thresholds of intervention, on authorities to make inquiries and to take immediate necessary action to safeguard or promote a child’s welfare where there is reasonable cause to suspect that a child in its area is suffering, or is likely to suffer significant harm.**

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## 1. DEFINITIONS

- (a) **“Central Authority”** is the term used in international and domestic legislation (see section 3). The central authorities for the purpose of this protocol are the Department of Justice (DOJ(I)) in Ireland and the Operational Policy Branch of the Northern Ireland Courts and Tribunal Service (NICTS) within the Department of Justice (DoJ) in Northern Ireland;
- (b) **“Competent Authority”** is the term used in international and domestic legislation (see section 3). The competent authorities for the purpose of this protocol are Tusla - the Child and Family Agency in Ireland and the Health and Social Care Trusts in Northern Ireland;
- (c) **“Child”** means a person under the age of 18;
- (d) **“Child protection cases”** in relation to children and families include cases:
- (i) which are assessed or are in the process of being assessed as a consequence of concerns relating to the potential for significant harm;
  - (ii) where children are placed on the Child Protection Notification System which operates in Ireland and/or on the Regional Child Protection Register in Northern Ireland;
- (e) **“Children in need”** has the same meaning as in [Article 17 of the Children \(Northern Ireland\) Order 1995](#). In Ireland, it includes children who are not receiving adequate care and protection as referred to in the [Child Care Act 1991](#) (Ireland);
- (f) **“Children subject to care placements”** means children who are placed in the care of Tusla as provided for in sections [4](#), [13](#), [16](#), [18](#), [23\(b\)](#) and [23\(c\)](#) of the [Child Care Act 1991](#) (Ireland) or looked after children within the meaning of [Article 25 of the Children \(Northern Ireland\) Order 1995](#), including those children placed in kinship care placements;
- (g) **“DCEDIY”** means the [Department of Children, Equality, Disability, Integration and Youth in Ireland](#);

- (h) “**DoH**” means the [Department of Health](#) in Northern Ireland;
- (i) “**DoJ**” means the [Department of Justice](#) in Northern Ireland which is the central authority for Northern Ireland;
- (j) “**DOJ(I)**” means the [Department of Justice in Ireland](#) which is the central authority for Ireland;
- (k) “**HSCB**” means the Regional [Health and Social Care Board](#) established under [section 7 of the Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#);
- (l) “**HSC Missing Children/Families Notification System**” is a system managed by the HSCB to capture and manage information relating to missing persons;
- (m) “**HSC Trust**” means a Health and Social Care Trust established under [Article 3 of the Health and Personal Social Services \(Northern Ireland\) Order 1994](#);
- (n) “**HSE**” means the [Health Service Executive](#) in Ireland established under [section 6 of the Health Act 2004](#);
- (o) “**Missing**” is defined as: anyone whose whereabouts cannot be established, where the circumstances may be out of character, and the context suggests the person may be subject of a crime or at risk of harm to themselves or another;
- (p) “**NICA**” means the Northern Ireland Central Authority. The role of the NICA is performed by the [DOJ Northern Ireland Courts and Tribunal Service Operational Policy Branch](#);
- (q) “**Originating authority**” means either a HSC Trust or Tusla Local Area Office in whose area the child immediately resides prior to moving or being placed across the border, or going missing and suspected to have crossed the border;
- (r) “**Receiving authority**” means either a HSC Trust or Tusla Local Area Office into whose area the child will reside after moving or being placed across the border, or has been discovered across the border;

- (s) “**Senior Manager**” means a person in the HSC Trust or Tusla with expertise in children’s services. This will be a person above Senior Social Worker/Team Leader level.
- (t) “**Tusla**” means the [Child and Family Agency](#) in Ireland established under the Child and Family Agency Act 2013 on 1 January 2014. Tusla is the dedicated state agency responsible for improving wellbeing and outcomes for children.

## 2. INTRODUCTION

- 2.1. The vulnerability of children in families who frequently change their address is well documented. Research and enquiries (UK and Ireland) have repeatedly highlighted how unstable the lives of children can be when families live in a sequence of addresses including temporary accommodation. Frequent moves can inadvertently result in the absence of an up to date and comprehensive assessment of a child's needs leading to missed opportunities to respond to significant child care concerns or child protection issues. In addition, a small but significant number of families frequently move address in an attempt to avoid statutory investigations/assessments.
- 2.2. There are regional policies and procedures to manage case transfers across each of the five HSC Trusts in Northern Ireland. These are outlined in "[Co-operating to Safeguard Children and Young People in Northern Ireland](#)", and the "[Safeguarding Board for Northern Ireland Regional Core Child Protection Policies and Procedures](#)".
- 2.3. Similarly, in Ireland within Tusla there is an agreed protocol, "The Case Transfer Policy 2020"<sup>1</sup>, to manage the movement of child care cases within the jurisdiction.
- 2.4. Whilst acknowledging the different systems which exist in both jurisdictions, it is imperative that co-operation is exercised in relation to the management of cases with a cross-border dimension and that there is a clear basis to share relevant information. This is necessary to assess and manage risk in relation to children and families who move between both jurisdictions. There is a pressing requirement to safeguard vulnerable children and to respond to assessed need in an appropriate and timely manner irrespective of geographical issues.
- 2.5. It is imperative that there is no unnecessary delay in the exchange of information. Where there are concerns, social workers should robustly follow up the matter and if necessary, escalate their concerns to an appropriate level within their organisation.

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<sup>1</sup> Internal document.

### 3. LEGISLATIVE CONTEXT

- 3.1. Obligations to safeguard children and to promote their welfare are contained in both international and domestic law. Social workers in each jurisdiction must comply with the legislative requirements in their respective jurisdiction. Social workers in either jurisdiction who provide face to face social work services to families and children in the other jurisdiction are required to be registered with professional bodies in both jurisdictions (dual registration). Dual registration is not required for Social Workers working remotely within their jurisdiction of registration.
- 3.2. This protocol underpins cross-jurisdictional cooperation and best practice between Northern Ireland and Ireland. In Northern Ireland the protocol is considered as having the force of law and therefore it must be viewed as obligatory. There are three international law instruments that can apply to inter-jurisdictional child cases between Northern Ireland and Ireland depending on the nature of the case and whether the case was ongoing at 31 December 2020 (end of the UK Transition Period). A brief summary of each is provided below.
- 3.3. The [1980 Hague Convention on the Civil Aspects of International Child Abduction](#) (the 1980 Hague Convention) came into force in Northern Ireland on 1 August 1986 and in Ireland on 1 October 1991. Its aim is to ensure the return of children without delay who have been wrongfully removed from their state of habitual residence<sup>2</sup>. It applies to children under 16 years of age.
- 3.4. The [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 1996 Hague Convention) came into force in Northern Ireland on 1 November 2012 and in Ireland on 1 January 2011. It is broader in scope than the 1980 Hague Convention and applies to children up to the age of 18. It provides an agreed set of legal provisions and co-operation arrangements to cover the handling of inter-jurisdictional cases where children's safety or welfare may be an issue and covers a range of civil measures including those relating to parental

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<sup>2</sup> 'Habitual residence' is open to legal interpretation but a working definition suitable for the purposes of this protocol is "*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*".

responsibility and contact and also public measures of protection or care. Tusla guidance<sup>3</sup> on Articles 32, 33 and 34 of the 1996 Hague Convention provides assistance to Tusla staff in dealing with cases under the Convention. Following UK exit from the EU, the 1996 Hague Convention is enshrined in UK legislation<sup>4</sup> applicable to Northern Ireland.

3.5. The [European Council Regulation \(EC\) No. 2201/2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgements in Matrimonial Matters and the Matters of Parental Responsibility](#) (Brussels IIa) came into force in Northern Ireland on 1 August 2004 and applied from 1 March 2005, with the exception of Articles 67, 68, 69 and 70, which applied from 1 August 2004. The Regulation came into force in Ireland on 1 March 2005 (S.I.112/2005). **The United Kingdom left the European Union on the 31 January 2020. The UK Transition Period ended on 31 December 2020. During the UK Transition Period Brussels IIa remained in place. Cases that were ongoing<sup>5</sup> at the end of the UK Transition Period must continue to be progressed in compliance with Brussels IIa. From 1 January 2021, new cases must be progressed in compliance with the appropriate Hague Convention.**

3.6. It is **imperative** that before requesting or providing information, HSC Trusts and Tusla consider Article 37 of the 1996 Hague Convention which states '*An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family*'.

3.7. Effective handling of inter-jurisdictional cases between Northern Ireland and Ireland requires the sharing of personal information. The law instruments referred to above allow for the exchange of personal information in accordance with the respective Data Protection Acts (DPAs) applicable to Northern Ireland ([UK DPA 2018](#)) and Ireland

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<sup>3</sup> Currently under development.

<sup>4</sup> [Private International Law \(Implementation of Agreements\) Act 2020 c.24](#)

<sup>5</sup> A case is considered ongoing when a document instituting the proceedings or an equivalent document has been lodged with the court, provided that the applicant has not subsequently failed to take the steps the applicant was required to take to have service effected on the respondent; or if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps the applicant was required to take to have the document lodged with the court.

([DPA 2018](#)). Following the UK's exit from the EU, the EU GDPR was retained in UK domestic law by the [EU \(Withdrawal\) Act 2018](#) and was renamed the UK General Data Protection Regulation (UK GDPR).<sup>6</sup>

- 3.8. The Data Protection regimes in both the UK and Ireland (referred to above) provide a framework to ensure that personal information is shared appropriately. Where appropriate, information should be shared with consent and, where appropriate, the wishes of those who do not consent to having their information shared should be respected. However, under the Data Protection regimes information may be shared without consent if, following consideration, there is a lawful basis to do so, for example, where the safety of a child is at risk. **The nature of child protection work means it will be inappropriate to seek consent in many instances where doing so, or the delay incurred from doing so, could put a child at increased risk of harm.** Practitioners should make information sharing decisions on a case by case basis, seeking advice where necessary from their managers and Data Protection Officer. The rationale for such decisions should be formally recorded.
- 3.9. The protocol is compliant with the principles enshrined in the [United Nations Convention on Rights of the Child](#) (UNCRC).
- 3.10. Social workers and their managers must take full cognisance of their respective domestic legislation, policies, procedures, protocols and guidance relevant to family support, safeguarding children and child protection.

### **Northern Ireland**

- 3.11. The [Children \(Northern Ireland\) Order 1995](#) is the principal statute governing the care, upbringing and protection of children in Northern Ireland. This remains the position for cases where there is an inter-jurisdictional element.
- 3.12. It is **imperative** that HSC Trusts consider [regulation 10 of the Parental Responsibility and Measures for the Protection of Children \(International Obligations\) \(England and Wales and Northern Ireland\) Regulations 2010](#). In particular, disclosure of information is

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<sup>6</sup> Powers in the in the [EU \(Withdrawal\) Act 2018](#), enabled regulations - [The Data Protection, Privacy and Electronic Communications \(Amendments etc\)\(EU Exit\) Regulations 2020](#) - to ensure the UK's legal framework for data protection continues to function after the UK Transition Period.

not required where this would constitute a criminal offence or contempt of court. If this is a matter of concern, legal advice should be sought. In potential contempt of court cases, if the HSC Trust considers it is in the child's interests to disclose information, it must seek the Court's leave to do so. However, in an emergency situation where there is imminent danger or risk of significant harm and it is considered necessary to share information immediately to protect the child, the appropriate information should be shared on a need to know basis and the Court subsequently informed of the decision and reasons why.

- 3.13. HSC Trusts must adhere to the Department of Health's policy [Co-operating to Safeguard Children and Young People in Northern Ireland](#) and the Safeguarding Board for Northern Ireland's [Regional Core Child Protection Policies and Procedures](#) in determining a proportionate response to the level of risk of harm to a child.
- 3.14. Depending on the nature of individual cases it may be appropriate for HSC Trusts to take action in line with the [Working Arrangements for the Welfare and Safeguarding of unaccompanied and separated children and young people](#) or [Working Arrangements for the Welfare and Safeguarding of child victims and potential child victims of human trafficking and modern slavery](#).

## **Ireland**

- 3.15. The [Child Care Act 1991](#) is the principal statute governing the care and protection of children in Ireland. The position regarding international matters of child care and protection are considered under the 1980 and 1996 Hague Conventions and Brussels IIa (see 3.3 - 3.5). The [Child and Family Agency Act 2013](#) underpins the work of the Child and Family Agency, and in particular its functions as set out in section 8 of the Act.
- 3.16. [Section 31 of the Child Care Act 1991](#) prohibits publication or broadcast of matters that may lead members of the public to identify a child who is, or has been, the subject of proceedings under the Act.
- 3.17. Additionally, Tusla must comply with the [Children Act 2001](#), [Children First Act 2015](#) and [Children First Guidance \(2017\)](#).

## 4. SCOPE

4.1. The protocol provides a framework to assist relevant social work authorities in Northern Ireland and Ireland to manage and fulfil their respective responsibilities. Its purpose is to assist them to implement procedures in the best interests of children and families who are assessed as vulnerable and have, or may have, moved across the border, or who are to be placed in the other jurisdiction. This includes children known to social services who are:

- in need;
- the subject of child protection assessments/investigations or included on the Child Protection Register or Child Protection Notification System;
- subject to public law orders, voluntary accommodation arrangements, or placements for therapeutic or assessment purposes; or
- missing.

4.2. The protocol covers the five HSC Trusts areas in Northern Ireland and all Tusla regions in Ireland.

## 5. GUIDING PRINCIPLES

- 5.1. The protocol is based on an assumption that for the majority of children and their families, it is in their best interest to receive support, including services and protection, from HSC, TUSLA and Education services which are local to where the family is residing.
- 5.2. The protocol should be regarded as a guideline to best practice for inter-jurisdictional case management between Northern Ireland and Ireland and applied collaboratively by the respective social work authorities. Where issues arise in its implementation they should be brought to the attention of the DoH and the DCEDIY for resolution.
- 5.3. Central to the operation of the protocol is the paramountcy of the child's welfare which is in line with the principles on which [the Children \(Northern Ireland\) Order 1995](#) is based and [section 3 of the Child Care Act 1991](#).
- 5.4. Successful operation of the protocol requires the following:
  - Clarity and role definition
  - Effective communication
  - Maintenance of high quality records
  - Effective decision making processes
  - Accountability
  - Timely responses
  - Joint responsibility during case management processes
  - Professional responsibility
  - Quality assessments
  - Collaboration and co-operation on an inter-jurisdictional basis
  - Promotion of the child's best interests
  - Commitment and adherence to agreed protocol
  - Full compliance with international and respective domestic law, policies and procedures.

## **6. MOVEMENT OF A CHILD OR FAMILY ACROSS THE BORDER**

- 6.1. When a child or family known to children and family services, and for whom there is a current concern that they may be at risk of harm, moves from one jurisdiction to another the move may or may not be notified in advance to social services in the originating authority.

### **No Advanced Notice of Intention to Move**

- 6.2. Where no advance notification is provided but the absence of the child or family becomes known to the authority in whose area they had been living and there is a reason to believe they may have crossed the border, it is the responsibility of that authority to contact the appropriate authority in the other jurisdiction, via respective Central Authorities when necessary. Where the actual cross-border destination is unknown, a notification should be made to the HSC Missing Children/Families Notification System or Tusla equivalent system.
- 6.3. Where no advance notification is provided but the presence of the child or family becomes known to an authority and the child or family are suspected or known to have crossed the border, contact should be made with the appropriate authority, via respective Central Authorities when necessary, in the other jurisdiction to make them aware that they have been located and, if appropriate, notification sent to the HSCB Missing Children/Families Notification System or Tusla equivalent system.
- 6.4. In either of the scenarios above, there are respective legal duties on authorities in both jurisdictions to make enquiries and to take immediate necessary action to protect, safeguard or promote a child's welfare where there is reasonable cause to suspect that a child in its area is suffering, or is likely to suffer, significant harm.
- 6.5. Information should be sought without delay from the originating authority to establish whether there are any unresolved concerns/identified risks and any planned mitigating action(s) to address these. Competent authorities (Tusla or the relevant HSC Trust) should involve their respective Central Authorities but this must not delay taking any necessary appropriate action.

## **Advanced Notice of Intention to Move – Children in Need**

- 6.6. When children who have been assessed as ‘children in need’ intend to move, or will move with their parent/carer or other person, from one jurisdiction to the other, the following action should be taken:-
- 6.6.1. The social worker in the originating authority will discuss the transfer with the parent/carer and if appropriate, the child. Following appropriate professional consideration of consent matters the receiving authority will be notified.
- 6.6.2. Within a maximum of 10 working days<sup>7</sup> of first being notified, or sooner if the case requires a more urgent response, the Senior Social Worker/Team Leader in the originating authority will make telephone contact with their counterpart in the receiving authority advising of relevant details.
- 6.6.3. This will be followed up in writing within a further 10 working days and will include provision of all relevant records including social work assessments, with due regard to regulatory and legislative obligations.
- 6.6.4. Both the originating authority Senior Social Worker/Team Leader and the receiving authority Senior Social Worker/Team Leader will decide and agree whether there is a requirement to convene a formal case transfer meeting. This decision will largely be informed by the assessed complexity of the case.
- 6.6.5. If a formal case transfer meeting is required it will be chaired by the receiving authority’s Senior Social Worker/Team Leader in the jurisdiction of the receiving authority.
- 6.6.6. The meeting will be convened within 3 working weeks of receipt of the written notification from the originating authority. The receiving authority will provide administrative support to include the recording of minutes of the meeting.

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<sup>7</sup> Although time limits are expressed in ‘working days’, particular care must be taken around holiday periods (eg Christmas, Easter, New Year, bank holidays) to not unduly delay taking necessary actions.

6.6.7. A transfer of responsibility completion date should be agreed and records/files in both jurisdictions should be updated to reflect the transfer arrangements.

### **Advanced Notice of Intention to Move – Children in Need of Protection**

6.7. When children who are subject to the respective authority's Child Protection Notification/Registration System intend to move, or will move with their parent/carer or other person, from one jurisdiction to the other, the following action should be taken:

6.7.1. The responsible Senior Social Worker/Team Leader in the originating authority will make telephone contact with their counterpart in the receiving authority within 1 working day of being notified of the intended move, to notify them of the child's child protection status, advise of relevant details and agree contingency arrangements should the child/family move in advance of the anticipated date.

6.7.2. The social worker with case coordination responsibility in the originating authority will advise the child's parent(s)/guardian(s) and, where appropriate, the child of the transfer and the requirement to notify the receiving authority. The nature of child protection work means it will be inappropriate to seek consent in many instances where doing so, or the delay incurred from doing so, could put a child at increased risk of significant harm, place an adult at risk of serious harm or jeopardise a criminal investigation.

6.7.3. The responsible Senior Social Worker/Team Leader in the originating authority will make written contact with their counterpart in the receiving authority within a further 5 working days, providing formal notification, including categories of registration, brief background information and essential information/family composition details. Key areas of concern/identified risks and planned mitigating action(s) to address these should be clearly identified. A formal request will be made to the receiving authority to convene a Child Protection Case Conference with a view to transferring responsibility for the case.

- 6.7.4. Pending the Child Protection Case Conference to agree transfer of responsibility for the case, the originating authority will retain case management responsibility.
- 6.7.5. The relevant Senior Managers will make the appropriate administrative arrangement to record the child's Child Protection status in their respective authority's register pending the outcome of the Child Protection Case Conference.
- 6.7.6. The receiving authority will convene a Child Protection Case Conference in line with their policies and procedures within 15 working days of receipt of formal written notification or sooner if necessary.
- 6.7.7. The Child Protection Case Conference will be chaired by a Senior Manager in the receiving authority. Administrative support and co-ordination arrangements are the responsibility of the receiving authority.
- 6.7.8. The originating authority will provide all the necessary reports/assessment to the Child Protection Case Conference Chairperson, at least 3 working days in advance of the Child Protection Case Conference.
- 6.7.9. The originating authority's Senior Manager must attend the Child Protection Case Conference and should be accompanied by relevant key staff and professionals from the originating authority/relevant agencies deemed necessary or who have requested to attend by either the originating or receiving authority. Where relevant key staff or professionals cannot attend the Child Protection Case Conference, the Senior Manager must be fully briefed on all relevant matters in advance of the Child Protection Case Conference.
- 6.7.10. Ideally, and with the agreement of the family, the move should be planned to take place within 20 working days from the date of the Child Protection Case Conference. Transfer of responsibility then takes place on the date the child moves across the border.
- 6.7.11. Records/ files in both jurisdictions should be updated to reflect the transfer arrangements.

6.7.12. All relevant records should be copied and sent to the receiving authority within a maximum of 10 working days of responsibility transferring.

### **The Child/Family Moves in Advance of the Planned Date**

6.7.13. In the event that a child moves from Northern Ireland to Ireland or vice versa prior to the Child Protection Case Conference taking place, the receiving authority has immediate responsibility once the child is in its area. Both the originating and receiving authorities must work together to ensure that any risks are identified and mitigating actions are agreed.

6.7.14. Where immediate action requires to be taken to safeguard the welfare of a child, the authority in whose jurisdiction the child is at that point in time, will take whatever actions are necessary to safeguard the welfare of the child.

6.7.15. The Child Protection Case Conference must now be held within 10 working days or sooner if the circumstances require it. The originating authority must send copies of all relevant records to the receiving authority within a maximum of 5 working days of the move / responsibility transferring and in advance of the Child Protection Case Conference unless there is an immediate and pressing need for the Case Conference to proceed earlier to assure the effective protection of a child.

### **Children or Families subject to a Child Protection Investigation/Assessment**

6.8. If during a child protection investigation a child or family moves from one jurisdiction to another the following process must be implemented:

6.8.1. If the destination in the other jurisdiction is known, the originating authority Senior Manager will make immediate contact, with his/her counterpart in the receiving authority, providing all relevant details and an up-to-date risk assessment.

6.8.2. The receiving authority Senior Manager will decide whether any immediate action is necessary to safeguard the welfare of

the child / person and progress any such action deemed necessary.

- 6.8.3. The Senior Manager in the receiving authority will decide on the requirement for convening a Child Protection Case Conference and will convey this decision in writing, to their counterpart in the originating authority within 5 working days of the initial contact. If it is decided to hold a Child Protection Case Conference it should be arranged and take place within a maximum of 15 working days of the initial contact or sooner if the circumstances require it. The receiving authority will, on the basis of the identified concerns, undertake enquiries in line with its policy and procedures and take whatever actions are required to ensure the protection of the child or to promote their welfare. It will communicate the outcome of its enquiries immediately on completion to the originating authority.
- 6.8.4. If the destination in the other jurisdiction is not known section 8 of this protocol 'Children that are Missing' applies.

## 7. CROSS-JURISDICTIONAL PLACEMENT OF CHILDREN

7.1. Children may be placed in the other jurisdiction for any of the following reasons:

- (1) the HSC Trust or Tusla considers that the most appropriate placement for a child is with family or other connected persons across the border;
- (2) a child's foster carer may want to move across the border and the HSC Trust or Tusla considers that it is in the child's best interests to stay with that foster carer;
- (3) a child may need placement in a specialist residential unit across the border.

7.2. In circumstances as described in point (2) above, both the originating and receiving authorities must consider each case and agree review arrangements including, where relevant, potential permanent transfer of parental responsibility to the receiving authority.

7.3. In all cases the placement should be in the best interests of the child and is either a recommendation of a Looked After Child Review by a HSC Trust or a consequence of a Statutory Child in Care Review by Tusla.

7.4. In Northern Ireland, in some cases, with the approval of the HSCB a child may be admitted to a placement in Ireland under an Extra Contractual Referral funding arrangement.

7.5. In all cases, the cross-jurisdiction placement must be in accordance with international and domestic legislation obligations.

### **International Legislation Obligations**

7.6. Placements ongoing at 31 December 2020 between Northern Ireland and Ireland in either direction that involve a child in the care of the HSC Trust or Tusla, either as a result of a court order or under a voluntary arrangement, must be continued under [Article 56 of Brussels IIa](#) (see 3.5). New placements from 1 January 2021 must be made under [Article 33 of the 1996 Hague Convention](#).

- 7.7. In all cases, in keeping with Article 33 of the 1996 Hague Convention and similarly under Article 56 of Brussels Ia, the consent of the receiving Competent Authority (the HSC Trust or Tusla) to the placement is required. Consent should be sought in writing through the respective Central Authorities (the NICA or the DOJ(I)) (see Appendix for contact details) and received prior to the making of any placement.

## **Domestic Legislation Obligations**

### **Northern Ireland**

- 7.8. Under [Article 33 \(1\) of the Children \(Northern Ireland\) Order 1995](#), a child currently in the care of a HSC Trust and subject to a care order, may only be placed outside of the jurisdiction of Northern Ireland with the approval of a Northern Ireland Court following an application by the HSC Trust.
- 7.9. Under [Article 33 \(2\) of the Children \(Northern Ireland\) Order 1995](#), a child currently looked after by a HSC Trust who is **not** subject to a care order but is voluntary accommodated under [Article 21\(1\) of the Children \(Northern Ireland\) Order 1995](#), may only be placed outside of the jurisdiction of Northern Ireland with the approval of every person who has parental responsibility for the child.
- 7.10. In addition to the requirements of [Article 33 of the Children \(Northern Ireland\) Order 1995](#), the HSC Trust must also satisfy the requirements, so far as is reasonably practicable, of [the Arrangements for Placement of Children \(General\) Regulations \(Northern Ireland\) 1996](#) for placing a child in care outside Northern Ireland; and [the Review of Children's Cases Regulations \(Northern Ireland\) 1996](#) ensuring that adequate arrangements are in place for supervising and reviewing the placement.
- 7.11. The [Private International Law \(Implementation of Agreements\) Act 2020](#) enshrines the 1996 Hague Convention in domestic legislation applicable to Northern Ireland post EU Exit and also provides transitional provisions in relation to the application of Brussels Ia for ongoing cases before the end of the transition period.
- 7.12. HSC Trusts should consult and comply with relevant NI guidance<sup>8</sup>.

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<sup>8</sup> Guidance on handling inter-jurisdictional child cases for HSCTs and the NICA is currently under development.

## **Ireland**

- 7.13. Under the [Child Care Act 1991](#), a child in the care of Tusla, may only be placed outside of the jurisdiction of Ireland with the approval of an Irish Court following an application by Tusla in this regard. A child in care under a voluntary care agreement ([section 4 of the Child Care Act 1991](#)) may only be placed outside of the jurisdiction of Ireland with the approval of every person who has parental responsibility for that child.
- 7.14. Tusla must also satisfy the requirements, so far as is reasonably practicable, of obligations placed on that Agency by Regulations made under the [Child Care Act 1991](#) so as to ensure that adequate arrangements are in place for supervising and reviewing the placement.
- 7.15. Tusla should consult and comply with internal guidance on Articles 32, 33 and 34 of the 1996 Hague Convention.

## **Case Management & Post-Placement Arrangements**

- 7.16. An inter-jurisdictional placement request should only be made to the relevant authority following a Looked After Child Review by the HSC Trust or a Statutory Child Care Review by Tusla, where the child's care plan indicates that the intended placement in the other jurisdiction is in the best interests of the child. It is important that the placing authority maintains proper records for all aspects of the intended placement. In particular, for appropriate cases, a record of the approval for the placement and caring arrangements, must be obtained from all persons with parental responsibility for the child.
- 7.17. An inter-jurisdiction, multi-disciplinary planning meeting involving key individuals from the placing and receiving authorities should be arranged and chaired by the Chairperson of the Looked After Child Review/Statutory Child Care Review which recommended the placement. The Chairperson must ensure that the international and domestic legislation obligations (see 7.5 - 7.15) are met in full.
- 7.18. The HSC Trust, Tusla (and, where relevant, all persons with parental responsibility for the child) must work together to consider the child's care plan and make arrangements for the placement. This will include taking account of potential child protection risks, ensuring necessary supports for the child and the child's carers will

be in place, the duration of the proposed placement, contact arrangements for family, monitoring and review arrangements and an agreed date for the placement to commence. Where possible, there should be a planned period of introduction for the child to the placement ahead of the commencement date.

- 7.19. Both the HSC Trust and Tusla should notify the NICA and DOJ(I) as their respective Central Authority, of the outcome of the placement decision and the date from which the placement will come into effect.
- 7.20. The placing authority (HSC Trust or Tusla) must ensure it fulfils its duties in respect of placing the child outside of the jurisdiction and that all necessary arrangements are made in advance of the placement.
- 7.21. The receiving authority (HSC Trust or Tusla) in whose area the child is to be placed, must assure itself that the requirements of the law, including obligations under the 1996 Hague Convention, as they relate to the placement of children, are met in full by the placing authority.
- 7.22. Subject to paragraph 7.23, the placing authority (HSC Trust/Tusla) will continue to act as Corporate Parent, retaining all duties that this statutory responsibility involves. It must continue to fulfil its duties with regard to monitoring and review of the placement. However, as highlighted at the start of this protocol, the HSC Trust or Tusla in whose area the child is placed and present should take immediate necessary actions within its area to protect the child if there is imminent danger or risk of significant harm.
- 7.23. In each case, the placing authority (HSC Trust or Tusla) holds management responsibility for the placement for its duration or, if applicable, to the time at which parental responsibility is transferred.
- 7.24. Both the placing and receiving authorities will exchange necessary information to facilitate the placement from the outset and as necessary for the duration of the placement in the best interests of the child.
- 7.25. Neither Tusla nor the HSC Trust in whose area the child is placed and present should make any change to the agreed placement arrangements without the prior agreement of the placing authority, except in cases where a child is at immediate risk and requires an

alternative placement as an emergency measure. Where the authority of the court is required or where a legal remedy is considered necessary to protect the child this should be sought from the court in the jurisdiction where the child is placed without delay.

- 7.26. When children leave care whilst in the other jurisdiction, the placing authority must continue to fulfil its responsibilities. In relation to a young person from Northern Ireland, a HSC Trust must fulfil its responsibilities under the [Children \(Leaving Care\) Act \(Northern Ireland\) 2002](#) and the [Children \(Leaving Care\) Regulations \(Northern Ireland\) 2005](#). In this regard, Tusla must fulfil the obligations placed on it by the [Child Care \(Amendment\) Act 2015](#) in relation to aftercare and the planning for same.

### **Cessation of Placement**

- 7.27. If in the course of its duties, the receiving authority discovers that the child's care plan is not being fulfilled or that there is a risk to the child should the placement continue, the placing authority should be notified immediately. In the event that a decision is taken that the placement must cease in advance of the intended end date, the HSC Trust/Tusla terminating the placement must convene a Looked After Child Review/Statutory Child in Care Review and give as much notice as possible in writing to its counterpart (HSC Trust/Tusla). This notification will include the revised end date and the reason. It should be sent to the relevant Senior Managers in both the relevant HSC Trust and Tusla. The HSC Trust and Tusla should notify their respective Central Authority that the placement has ceased.

## 8. CHILDREN THAT ARE MISSING

- 8.1. When a child or family goes missing, it is essential that actions are taken quickly to locate them. Given the land border between Northern Ireland and Ireland, it is highly likely that children and families, who have gone missing, may move across the border. Going missing can be an indicator of underlying safeguarding problems. There can be many reasons for a child or family going missing, including an attempt to avoid statutory investigations /assessments.
- 8.2. In Northern Ireland there is a [Runaway and Missing from Home and Care Missing Children Protocol](#) in place between the PSNI and the HSC Trusts. It is designed to support an effective collaborative safeguarding response. The protocol is to be applied when a child or young person runs away or goes missing from their home or where a looked after child goes missing. Police officers and social workers will share information and work cooperatively to effect the safe recovery of children who are missing.
- 8.3. In Ireland, a joint protocol between An Garda Síochána and Tusla (Protocol on Missing Children in Care 2012) applies when a child goes missing from a care placement. In addition, section 23NA of the Child Care Act 1991 provides that Tusla can apply to a District Court for an Order directing An Garda Síochána to search for, find and deliver up a child who absconds from special (secure) care.
- 8.4. In Northern Ireland, the HSCB is the lead agency in coordinating and disseminating information in relation to key categories of missing persons:
- Pregnant mothers where there is concern for the safety and welfare of the unborn child;
  - A parent or carer accompanied by children whose names are on the Child Protection Register;
  - Missing children where there are significant concerns about their safety and wellbeing and who are either missing within the jurisdiction or are believed to have left the jurisdiction; this includes:
    - Children from other jurisdictions;

- Separated/unaccompanied asylum seeking children; and
- Young people who have left care and where HSC Trusts are discharging duties under the Children (Leaving Care) Act 2002 (i.e. care leavers up to 21+ years).

8.5. The HSCB uses an electronic notifications system to manage notifications centrally of persons identified as missing by a HSC Trust, a local authority in England, Wales or Scotland, or Tusla in Ireland.

8.6. The HSCB system relies on prompt notifications from authorities when persons go missing and when they are found. Once a notification that a person is missing is received by the HSCB responsible officer it is included on the system. If the notification is from a HSC Trust, a notification is sent to responsible officers in England, Scotland, Wales and Ireland. If the notification is from England, Scotland, Wales or Ireland it is placed on the system for HSC Trusts to access. If a notification is received by the HSCB responsible officer that a person has been located, the system will be updated. Where this notification is from a HSC Trust a notification will be sent to responsible officers in England, Scotland, Wales and Ireland indicating that the person has been located.

## **9. REVIEW OF THIS PROTOCOL**

- 9.1. This protocol will be subject to an annual review by relevant authorities in both jurisdictions.

August 2021

## CONTACTS

Northern Ireland

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Looked After Children and Adoption Policy Unit	Tel: 028 90 522535 <a href="mailto:lookedafterchildren@health-ni.gov.uk">lookedafterchildren@health-ni.gov.uk</a>
Northern Ireland Central Authority (NI Courts & Tribunal Service, Department of Justice)	Tel: 028 9072 8808 <a href="mailto:InternationalChildAbduction@courtsni.gov.uk">InternationalChildAbduction@courtsni.gov.uk</a> <a href="http://si.gov.uk.cjism.net">si.gov.uk.cjism.net</a>
Regional Health and Social Care Board Missing Persons Notifications Office	Tel: 028 9536 2081 or 028 9536 3194 <a href="mailto:missing.childrenni@nhs.net">missing.childrenni@nhs.net</a>
Belfast HSC Trust	Senior Social Worker BHSCT Gateway Service 110 Saintfield Road Belfast BT8 6GR Tel: 028 90507000 <a href="mailto:Gateway.Services@BelfastTrust.hscni.net">Gateway.Services@BelfastTrust.hscni.net</a> <a href="http://et.CJSM.net">et.CJSM.net</a>
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Regional Emergency Social Work Team  (Out of Hours - after 5.00 pm, weekends and bank holidays)	Tel: 028 9504 9999  <a href="mailto:resws1@belfasttrust.hscni.net">resws1@belfasttrust.hscni.net</a>

## Ireland

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<p>Tusla Local Area Office Contact details are available below and at:</p>	<p><a href="http://www.tusla.ie/get-in-touch/local-area-offices/">www.tusla.ie/get-in-touch/local-area-offices/</a></p>
<p>Dublin North</p>	<p>Child and Family Agency,          180-189 Lakeshore Drive,          Airside Business Park,          Swords, Co Dublin.          Tel: 01-8708000</p>
<p>Dublin North City</p>	<p>Child and Family Agency,          Dublin North City,          Ballymun Healthcare Facility,          Ballymun Civic Centre,          Dublin 9.          Tel 01-8467129  <a href="mailto:joy.mcglynn@tusla.ie">joy.mcglynn@tusla.ie</a></p>
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Mayo	Child and Family Agency, Mayo, 2nd Floor, Mill Lane, Bridge Street, Castlebar,

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