

EXECUTIVE NOTE TO
THE ADOPTIONS WITH A FOREIGN ELEMENT
(SPECIAL RESTRICTIONS ON ADOPTIONS FROM ABROAD) (SCOTLAND)
REGULATIONS 2008 (SSI 2008/303)

THE SPECIAL RESTRICTIONS ON ADOPTIONS FROM CAMBODIA
(SCOTLAND) ORDER 2008 (SSI 2008/304)

THE SPECIAL RESTRICTIONS ON ADOPTIONS FROM GUATEMALA
(SCOTLAND) ORDER 2008 (SSI 2008/305)

1. The above instruments were made in exercise of the powers conferred by sections 62(3), 64(3) and 65(1) and 117(2)(a) and (3) of the Adoption and Children (Scotland) Act 2007.

Legislative Background

2. Section 62 of the Adoption and Children (Scotland) Act 2007 (“the Act”) makes provision regarding the restriction of intercountry adoptions from a country or territory outside the British Islands (the “relevant country”) where the Scottish Ministers have reason to believe that, because of practices taking place in the relevant country in connection with the adoption of children, it would be contrary to public policy to further the bringing of children into the United Kingdom by British residents for the purposes of adoption or within 12 months of an adoption in the relevant country.
3. Section 62(3) allows the Scottish Ministers to declare by order that special restrictions are to apply for the time being to any relevant country. The Scottish Ministers will be able to apply restrictions to the bringing of children into the United Kingdom from outwith the British Islands who are adopted under the law of that country, or are brought into the United Kingdom for the purposes of adoption. The provisions in section 62 apply equally to adoptions from countries in which the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (“the Hague Convention”) is in force and those countries for which it is not. The United Kingdom has objected to the accession of both Cambodia and Guatemala; the Hague Convention is not therefore in force between these countries and the United Kingdom.
4. Section 64 makes provision for the special restrictions mentioned in section 62. These restrictions are that the Scottish Ministers should take no further action in connection with bringing a child from outwith the British Islands into the United Kingdom who was adopted under the law of the relevant country or is to be brought into the United Kingdom for the purposes of adoption. Section 64(2), however, allows for action to be taken by the Scottish Ministers if the prospective adopter satisfies them that they should take this action despite the special restrictions and section 64(3) allows the Scottish Ministers to make regulations that provide for the procedure to be followed to determine whether further steps should be taken despite the special restrictions, and for matters which should be taken into account when making such a determination.
5. Section 65(1) permits the Scottish Ministers to make regulations providing for the imposition of extra conditions in certain cases.

Policy Background and Objectives

6. On 22 June 2004 Margaret Hodge, the Minister of State for Children, Young People and Families at the (then) Department for Education and Skills announced the temporary suspension of adoptions of Cambodian children by UK residents. The suspension was introduced in response to evidence that the safeguards in the Cambodian adoption system were insufficient to prevent children being adopted without proper consents being given by their birth parents and improper financial gain being made by individuals involved in the adoption process. On 27 September 2007 the Parliamentary Under-Secretary of State at the Department for Children, Schools and Families announced a review of the suspension in order to update the information on which the suspension was based. In the circumstances it was reasonable that the United Kingdom should object to Cambodia's accession to the Hague Convention and the objection was logged on 13 December 2007. The Parliamentary Under-Secretary of State subsequently announced on 2 April 2008 that, following the review of the temporary suspension, the suspension would remain in place as adoption legislation, practice and procedure in Cambodia remained insufficient to ensure the proper protection of children and their families.
7. The United Kingdom objected, on 25 July 2003 to the accession of Guatemala to the Hague Convention due to concerns over child trafficking and birth mothers being coerced into giving up their children for adoption. This meant that British residents who adopted in Guatemala have to adopt the child again on returning to the United Kingdom. However, as a result of new evidence which demonstrated that there are insufficient safeguards in the Guatemalan adoption system to prevent children being adopted without proper consents being given and improper financial gain being made by individuals in the adoption process, the Parliamentary Under-Secretary of State (at the Department for Children, Schools and Families) announced, on 6 December 2007, an immediate suspension of adoptions of Guatemalan children by UK residents.
8. Both suspensions were put in place by the Department for Children, Schools and Families using prerogative powers for England, Wales, Northern Ireland and Scotland.
9. The Special Restrictions on Adoptions from Guatemala (Scotland) Order 2008 (SSI 2008/305) and the Special Restrictions on Adoptions from Cambodia (Scotland) Order 2008 (SSI 2008/304) provide that special restrictions are to apply for the time being in relation to the bringing of children into the United Kingdom from Guatemala and Cambodia in the cases mentioned in section 62 of the Act (see paragraphs 2 and 3 above). The Orders place on a statutory basis the suspensions that are currently in place and mirror Orders which were made by the Secretary of State for Children, Schools and Families on 8 July 2008 and came into effect in England, Wales and Northern Ireland on 1 August 2008
10. The Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 (SSI 2008/303) set out (a) the procedure to be followed by the Scottish Ministers when a request from a prospective adopter to be treated as an exception to the general suspension is being considered and (b) the 'matters' to be taken into account in determining whether a case merits an exception to the suspension. The Regulations also enable the Scottish Ministers to impose extra conditions in certain cases by specifying a 'step' in the process of dealing with applications from a restricted country

after which applications will be allowed to continue and imposing extra conditions in relation to that country.

Consultation

11. As indicated in paragraph 10, the Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 relate to procedural matters relevant to the Scottish Ministers and therefore impact primarily on the Scottish Government rather than the public or business, charity or the voluntary sector.
12. Consultation on the draft regulations was therefore limited to key stakeholders, including adoption agencies. Responses were in broad agreement with the principles of the regulations.

Children, Young People and Social Care Directorate
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