

**EXECUTIVE NOTE TO**  
**THE SPECIAL RESTRICTIONS ON ADOPTIONS FROM NEPAL**  
**(SCOTLAND) ORDER 2010**

**SSI 2010/130**

1. The above instrument was made in exercise of the power conferred by section 62(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.
4. Section 64 of the Act 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.

**Policy Background and Objectives**

5. The Hague Bureau (which administers the Hague Convention) undertook a Technical Assistance mission to Nepal which investigated whether the recommendations of UNICEF’s 2008 report had been implemented and the issues raised addressed prior to Nepal acceding to the Hague Convention. The report, published in February 2010, is highly critical and found that most of the problems identified by UNICEF in 2008 had not been resolved. The report specifically recommends that Nepal suspend adoptions temporarily whilst it puts new legislation and improved procedures in place
6. The Special Restrictions on Adoptions from Nepal (Scotland) Order 2010 (SSI 2010/130) provides that special restrictions are to apply for the time being in relation to the bringing of children into the United Kingdom from Nepal in the cases mentioned in section 62 of the Act (see paragraphs 2 and 3 above). The Order places, on a statutory basis, the suspension of adoptions recommended by the Hague Bureau. Similar Orders have been

made previously in respect of Cambodia and Guatemala (S.S.I. 2008/304 and 2008/305 respectively).

7. Provision is made for the processing of exceptional cases in the Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 (SSI 2008/303). These regulations 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.

#### **Consultation**

8. The Special Restrictions on Adoptions from Nepal (Scotland) Order 2010 (SSI 2010/130) relates 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.
9. Given the procedural nature of the Order, and the need to act speedily in response to the Hague Bureau's report of February 2010, there was no consultation on the draft Order. At the time of the Order there were no applications that the Order would affect.

#### **Financial Effect**

10. As this Order imposes restrictions on the actions of Scottish Ministers in processing a case to adopt a child from Nepal, the Order will not create any extra financial burden on the Scottish Government, local authorities or adoption agencies.

**Children, Young People and Social Care Directorate  
March 2010**