

## **EXECUTIVE NOTE**

### **THE SPECIAL RESTRICTIONS ON ADOPTIONS FROM HAITI (SCOTLAND) ORDER 2010 SSI 2010/341**

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 concluded at the “Special commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and co-operation in Respect of Intercountry Adoption” in June 2010 that: in a disaster situation, efforts to reunite a displaced child with his or her parents or family members must take priority; no new adoption applications should be considered in the period after the disaster or before the authorities in that State are in a position to apply the necessary safeguards; and stressed the need for a common approach on the part of Central Authorities in dealing with such situations.
6. UNICEF published a report in July assessing the situation pre and post earthquake. The report indicated that prior to the earthquake UNICEF was working with the Government of Haiti and other partners to improve standards and ensure that alternative care options were carefully considered in the best interest of the child but that proper safeguards are not always in place. The report suggests that, despite efforts to improve the

infrastructure, the situation in Haiti is still very difficult and that the standards for safeguarding children have deteriorated.

7. World Vision have indicated that, although the key Government of Haiti institutions associated with child protection are returning, they are highly centralised and still very weak and under-resourced. As such they are not in a situation to administer the processes involved in inter-country adoption effectively.
8. The Special Restrictions on Adoptions from Haiti (Scotland) Order 2010 provides that special restrictions are to apply for the time being in relation to the bringing of children into the United Kingdom from Haiti 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 following a natural disaster. Similar Orders have been made previously in respect of Cambodia, Guatemala and Nepal (S.S.I. 2008/304, 2008/305 and 2010/130 respectively).
9. 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**

10. The Special Restrictions on Adoptions from Haiti (Scotland) Order 2010 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.
11. Given the procedural nature of the Order, and the need to act speedily to ensure that safeguards are in place to ensure the best interests of children are being considered, there was no consultation on the draft Order. At the time of the Order there was one application that had been considered by the Scottish Ministers and was currently awaiting transmission to Haiti by the Department for Education.

#### **Financial Effect**

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