

POLICY NOTE

THE ADOPTION (RECOGNITION OF OVERSEAS ADOPTIONS) (SCOTLAND) REGULATIONS 2013

SSI 2013/310

1. These Regulations are made under Section 67 of the Adoption and Children (Scotland) Act 2007 (“the 2007 Act”) which enables the Scottish Ministers to prescribe the requirements that have to be met by an adoption for it to be recognised as an overseas adoption. They replace, for Scotland, The Adoption (Designation of Overseas Adoptions) Order 1973 (“the 1973 Order”). This instrument is subject to negative procedure and comes into force on 3rd January 2014.

Purpose of the instrument

2. These Regulations list countries whose domestic adoption orders are automatically recognised in Scotland as ‘overseas adoptions’ for the purposes of the 2007 Act and in respect of which there is therefore no requirement to re-adopt in a Scottish court.
3. The purpose of the Regulations is to ensure that adoption orders are only recognised as overseas adoptions when the processes followed to obtain the adoption order are robust and provide safeguards equivalent to those used in Scottish domestic adoptions. To ensure this is the case the Regulations only include countries that have implemented the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (“the Convention”), or have signed but not implemented the Convention and have a bilateral agreement with the United Kingdom. At the moment all the countries on the list have implemented the Convention but there is the potential in the future for the list to be added to, to include those countries who have signed but not implemented the Convention and have a bilateral agreement with the UK. Any such additions would be consistent with the current policy intention.

Policy background

4. Prior to the current Regulations being made ‘overseas adoptions’ were those made in countries listed in the schedule to the 1973 Order (“the designated list”). The designated list had not been reviewed since its introduction. The countries listed included Commonwealth and European countries but the criteria for a country being included on the designated list were not clear.
5. Adoption processes in some of the countries on the designated list were not sufficiently robust and children were being brought into the UK without the operation of sufficient safeguards. For example, prospective adopters adopting in countries included on the designated list could potentially avoid assessment of their suitability to adopt if the adoption occurred more than 12 months before the entry to the United Kingdom.. This would mean that the adoption would have been carried out without appropriate checks and safeguards being in place.

6. The Regulations will recognise adoptions effected under the law of any country outside the British Islands that has implemented the Convention. Many of the countries on the designated list had not implemented the Convention despite the protection and safeguards it affords children. Domestic adoption legislation in Convention countries has to reflect the objectives of the Convention.
7. As stated above, the Regulations only include countries that have implemented the Convention. The Regulations could, in future, also be amended to recognise adoptions effected under the law of any country outside the British Islands that has signed the Convention and with which the United Kingdom has a bilateral agreement. The bilateral agreement will set out an agreed procedure for processing intercountry adoptions and that bilateral agreement would reflect the Convention. It is expected that bilateral agreements will be rare as the usual expectation is that all countries should implement the Convention as soon as they are able. No bilateral agreement will be put in place without due process and evidence that processes and procedures are robust.
8. Eligible prospective adopters who are habitually resident in a Convention country can now adopt a child who is also habitually resident there and have that adoption recognised automatically in Scotland, should they return. Adoptions of children who were habitually resident in other countries are also recognised if they are readopted in a Convention country. We take an assurance that when a country has implemented the Convention its domestic adoption processes are as robust as domestic policies in Scotland.
9. The Regulations include savings provisions so that adoption orders made in countries on the previous designated list, prior to the new Regulations coming into force, continue to be recognised. There is a clear cut-off date of 2 January 2014. From 3 January 2014, adoptions made in countries on the designated list will no longer be recognised unless they are also listed in the new Regulations.
10. Section 62 of the 2007 Act makes provision for the suspension of intercountry adoption from a country outside the British Islands where there are concerns about adoption practices in that country. It will be possible to suspend intercountry adoptions from countries that are on the Regulations if there are concerns about the adoption processes operating in those countries.

Consultation

11. A joint UK public consultation (led by the Department for Education with input from the devolved administrations) was carried out on this instrument.

Impact and financial effects

12. An EQIA has not been prepared for this instrument because the impact will be minimal.
13. A BRIA has not been prepared for this instrument because the impact will be minimal.

The Scottish Government
Children and Families Directorate
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