
STATUTORY INSTRUMENTS

2008 No. 1807

**CHILDREN AND YOUNG
PERSONS, ENGLAND AND WALES
CHILDREN AND YOUNG
PERSONS, NORTHERN IRELAND**

The Adoptions with a Foreign Element (Special
Restrictions on Adoptions from Abroad) Regulations 2008

<i>Made</i>	- - - -	<i>8th July 2008</i>
<i>Laid before Parliament</i>		<i>11th July 2008</i>
<i>Coming into force</i>	- -	<i>1st August 2008</i>

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by sections 11(3), 12(1), 16(4) and 16(5) of the Children and Adoption Act 2006⁽¹⁾:

Citation and commencement

1. These Regulations may be cited as the Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008 and come into force on 1st August 2008.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Children and Adoption Act 2006;

“the relevant authority” means the appropriate authority⁽²⁾ or, in relation to Northern Ireland, in a case which is not a Convention case⁽³⁾, the Secretary of State;

⁽¹⁾ 2006 c. 20.

⁽²⁾ “The appropriate authority” is defined in section 11(4) of the Children and Adoption Act 2006 (“the Act”) as meaning, in a Convention case, the Central Authority in relation to England, to Wales or to Northern Ireland as the case may be (i.e. the Secretary of State, the Welsh Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland respectively) and, in a non-Convention case, in relation to England and Wales, the Secretary of State and, in relation to Northern Ireland, the Secretary of State for the purposes of steps which he takes and the Department of Health, Social Services and Public Safety in Northern Ireland for the purposes of steps which it takes.

“a request” means a request made in writing by prospective adopters that the appropriate authority should take any step as mentioned in section 11(1) of the Act despite an order having been made under section 9(4) of the Act in relation to the State of origin; and

“the State of origin” means the country or territory from which the prospective adopters wish to bring a child into the United Kingdom.

(2) For the purposes of these Regulations, the relevant authority is “satisfied that the case is exceptional” if that authority is satisfied that the appropriate authority should take any step as mentioned in section 11(1) of the Act despite an order having been made under section 9(4) of the Act in relation to the State of origin.

Receipt of a request

3.—(1) On receipt of a request, the relevant authority must, subject to regulation 5—

- (a) acknowledge receipt of the request in writing as soon as is practicable,
- (b) make such enquiries of the prospective adopters as appear to the relevant authority necessary to clarify—
 - (i) the reasons why they consider that the relevant authority should be satisfied that the case is exceptional, or
 - (ii) any other information that the prospective adopters have submitted,
- (c) make such further enquiries as the relevant authority considers appropriate, and
- (d) ask the prospective adopters whether there exists any further information that they have not submitted but that they consider relevant to the request.

(2) The relevant authority may defer making a determination in accordance with regulation 4 until—

- (a) the prospective adopters confirm that there is no further information that they consider relevant to the request, or
- (b) where the prospective adopters indicate that there is further information that they have not submitted but that they consider relevant to the request, that information has been received.

Determining whether an exception to the special restrictions should be made

4.—(1) The relevant authority must consider all the information the authority holds that is relevant to the request and take the matters referred to in regulation 6 into account in determining whether the authority is satisfied that the case is exceptional.

(2) The relevant authority must notify the prospective adopters in writing as to whether the authority is satisfied that the case is exceptional, giving reasons, where the authority is not so satisfied, why the authority is not so satisfied.

(3) If, in relation to Northern Ireland, in a case which is not a Convention case, the Secretary of State is satisfied that the case is exceptional, the Secretary of State must also notify the Department of Health, Social Services and Public Safety in Northern Ireland.

Further requests

5.—(1) This regulation applies where the relevant authority has made a determination in accordance with regulation 4 and the prospective adopters submit a further request.

(3) “Convention case” is defined in section 11(4) of the Act as meaning a case where the child is intended to be adopted in accordance with the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at The Hague on 29th May 1993.

(2) The relevant authority need not consider that further request if the authority is of the view that—

- (a) the further request does not contain any new information, or
- (b) the new information is not such that, had that information been available to the relevant authority at the time that the authority made the determination, the information might have led to the relevant authority being satisfied that the case is exceptional.

Matters to be taken into account

6.—(1) For the purposes of paragraph (1) of regulation 4, the matters that the relevant authority is to take into account, whether or not the authority also takes other matters into account, are as follow.

- (2) Where the prospective adopters wish to adopt a particular child, the matters are—
 - (a) the circumstances leading to the child becoming available for adoption, including whether any competent authority in the State of origin has made a decision in relation to the adoption or availability for adoption of the child,
 - (b) the relationship that the child has with the prospective adopters, including how and when that relationship was formed,
 - (c) the child’s particular needs and the capacity of the prospective adopters to meet those needs, and
 - (d) the reasons why the State of origin was placed on the restricted list(4).
- (3) In any other case, the matter is the reasons why the State of origin was placed on the restricted list.
- (4) In this regulation, a “competent authority” means a court or a person who performs functions which correspond to the functions of an adoption agency or to the functions of the Secretary of State in respect of intercountry adoption, and “adoption agency” has the meaning given in section 2 of the Adoption and Children Act 2002(5).

Imposition of extra conditions

7.—(1) The Secretary of State may specify in the restricted list, in relation to any restricted country(6), a step which is not otherwise provided for by or by virtue of any enactment but which, by virtue of the arrangements between the United Kingdom and that country, the appropriate authority normally takes in connection with the bringing in of a child where that country is concerned.

(2) If a step has been specified under paragraph (1) in relation to a restricted country, the condition which is to be met for the purposes of section 12(1)(b) of the Act is that the relevant authority has notified the prospective adopters in writing that the adoption may proceed.

(3) A notification for the purpose of paragraph (2) must state that it is given for the purpose of that paragraph.

(4) “Restricted list” is defined in section 9(8) of the Act as the list of restricted countries.

(5) 2002 c. 38.

(6) “Restricted country” is defined in section 9(6) of the Act as being a country or territory in relation to which a declaration that special restrictions are for the time being to apply has effect.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

8th July 2008

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Department for Children, Schools and Families

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision under sections 11 and 12 of the Children and Adoption Act 2006 (“the Act”) relating to restrictions on adoptions from abroad.

Section 9 of the Act makes provision regarding the restriction of adoptions from abroad by British residents. Section 9(4) provides that the Secretary of State may by order declare in relation to a country or territory that special restrictions are for the time being to apply. Section 11(1) of the Act provides that the special restrictions are that the appropriate authority is not to take any step that the authority might otherwise have taken to further the adoption from abroad. Section 11(2) of the Act provides that, where special restrictions apply, the appropriate authority may take those steps if the prospective adopters satisfy the relevant authority that the appropriate authority should take those steps despite the special restrictions. Regulations 3 to 5 provide for the procedure to be followed by the relevant authority in the consideration of exceptional cases. Regulation 6 sets out the matters to be taken into account by the relevant authority in determining whether a case is exceptional. The relevant authority will be the appropriate authority (as defined in section 11(4) of the Act) except, in relation to Northern Ireland, in a case which is not a Convention case; in such a case, the relevant authority is the Secretary of State. A Convention case is one where the adoption is intended to be effected in accordance with the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at The Hague on 29th May 1993.

Regulation 7(1) enables the Secretary of State to specify in the restricted list (i.e. the list of restricted countries maintained under section 9(8) of the Act) a step in relation to a country or territory in respect of which special restrictions have been declared by virtue of an order made under section 9(4) of the Act (a “restricted country”). Where a step has been specified in relation to a restricted country, regulation 7(2) prescribes the condition that the relevant authority must notify the prospective adopters in writing that the adoption may proceed; a person who brings a child into the United Kingdom or causes another to do so in contravention of this condition commits an offence under section 12(3) of the Act.