

**EXPLANATORY MEMORANDUM TO**  
**THE SPECIAL RESTRICTIONS ON ADOPTIONS FROM ABROAD (ETHIOPIA)**  
**ORDER 2018**

**2018 No. 517**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The Special Restrictions on Adoptions from Abroad (Ethiopia) Order 2018 imposes a statutory suspension on the adoption of children from Ethiopia by British residents.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Section 9 of the Children and Adoption Act 2006 (“the Act”) enables the Secretary of State to impose special restrictions on intercountry adoptions by British residents from a country or territory outside the British Islands (“the other country”). The Secretary of State must have reason to believe because of practices taking place in the other 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 the adoption in the other country.
- 4.2 Section 9(4) of the Act provides for the Secretary of State to declare by order that special restrictions are to apply for the time being in relation to a country or territory. Section 9(5) requires the Secretary of State to consult with the Welsh Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland before such an order is made. Section 1(5) of the Departments Act (Northern Ireland) 2016 renamed the Department of Health, Social Services and Public Safety in Northern Ireland to the Department of Health from 8th May 2016.
- 4.3 The Secretary of State must publish reasons for declaring a country ‘restricted’ and a list of restricted countries (“the restricted list”). These are to be published in whatever way he thinks appropriate to bring them to the attention of adoption agencies (defined in section 2 of the Adoption and Children Act 2002 as local authorities and registered adoption societies) and members of the public. Section 10 of the Act requires the Secretary of State to keep each restricted country under review to determine whether it should remain a restricted country. The provisions in section 9 apply equally to

adoptions from countries in which the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (“the Hague Convention”) is in force as well as those countries which it is not, such as Ethiopia.

- 4.4 Section 11(1) of the Act provides that the special restrictions in section 9(4) are that the appropriate authority is not to take any step which that authority might have taken in connection with furthering the bringing of a child into the United Kingdom by a British resident for the purposes of adoption or within 12 months of an adoption in that country or territory.
- 4.5 Section 11(2) of the Act provides for cases to be treated as an exception notwithstanding that there are restrictions, where the relevant authority is satisfied that the case should be processed despite the special restrictions. The Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008 (SI 2008/1807) made under the Act set out the procedures to be followed for a case to be treated as an exception.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales and Northern Ireland.
- 5.2 The territorial application of this instrument is England, Wales and Northern Ireland.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 The Special Restrictions on Adoptions from Abroad (Ethiopia) Order 2018 provides that special restrictions are to apply for the time being in relation to the bringing of children into the United Kingdom from Ethiopia in the cases mentioned in section 9(2) of the Act (see paragraph 4.1 above). This amounts to a suspension of intercountry adoptions from Ethiopia as it prevents the appropriate authority from taking any step, which it might otherwise have taken in processing such cases, unless it is satisfied that a case should be treated as an exception. The main step for the Secretary of State in the process is the issuing of a Certificate of Eligibility confirming to the Ethiopian authorities that the prospective adopters have been assessed as suitable to adopt. Ethiopia is a non-Hague Convention country and the Certificate is issued by the Secretary of State in relation to applications from prospective adopters living in England, Wales and Northern Ireland.
- 7.2 The reason for making the Order is in response to significant child safeguarding concerns about practices and procedures in the Ethiopian intercountry adoption system. This decision is based on evidence received through international partners including Central Adoption Authorities and diplomatic missions. The evidence shows a pattern of cases of unethical practice and procedural irregularities within the Ethiopian system. This includes private orphanages receiving remuneration in relation to child placement decisions and false claims in relation to children available for adoption. There is also a lack of certainty around the legal guarantees in the Ethiopian adoption process regarding issues such as child matching. The Ethiopian Government has failed to provide satisfactory reassurance, guarantees or clarification that pending

and future intercountry adoption applications will be able to be processed and finalised in line with satisfactory international standards. As a result, there is a lack of confidence that adoptions from Ethiopia meet the requirements we expect in regards to the adoption process and to ensure adoption is the best outcome for the children.

- 7.3 Putting in place a suspension means that future applications to adopt from Ethiopia will not be permitted unless they satisfy the exception criteria. Without statutory restrictions there will be a child safeguarding risk in relation to applications for the adoption of Ethiopian children by British residents without any adequate assurances about Ethiopian procedures.
- 7.4 The adoption sector is aware of the problems within the Ethiopia intercountry adoption system and several prospective adopters have already withdrawn from the process. Several other countries have also suspended adoptions from Ethiopia due to concerns about its adoption system (e.g. Spain in 2017, Denmark in 2016).

## **8. Consultation outcome**

- 8.1 The Special Restrictions on Adoptions from Abroad (Ethiopia) Order 2018 relates to the processing of intercountry adoption cases by the Secretary of State, the Welsh Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland and will therefore impact primarily on central government rather than the public or businesses, charity or the voluntary sector.
- 8.2 In accordance with section 9(5) of the Act, the Secretary of State has consulted the Welsh Ministers and the Department of Health in Northern Ireland in relation to the making of this Order. The instrument erroneously refers to the Secretary of State having consulted with the Department of Health, Social Services and Public Safety in Northern Ireland rather than referring to the Department of Health. A correction slip will be issued to rectify this error. Both Welsh Ministers and the Department of Health in Northern Ireland agree that a statutory suspension in this case is appropriate. The Secretary of State has written to the Scottish Executive to inform them of the making of the Order. The provisions of the Act do not extend to Scotland but Scottish Ministers have similar powers under the Adoption and Children (Scotland) Act 2007 to suspend intercountry adoptions from a particular country.
- 8.3 The Department has also written to the Foreign and Commonwealth Office and the Home Office. Their responses indicate that they support the suspension.

## **9. Guidance**

- 9.1 A communication will be sent to all adoption agencies in England and Wales that deal with intercountry adoptions to inform them of this Order. The Department will include information on the GOV.UK website informing prospective adopters about the suspension.
- 9.2 The Foreign and Commonwealth Office will contact the Ethiopian Government to notify them of the suspension.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is minimal. A small number of applications from prospective adopters are processed by non-profit making voluntary adoption agencies.

10.2 An impact assessment has not been prepared for the instrument because the impact will be minimal. We are aware of nine applications to adopt from Ethiopia being made in 2017.

**11. Regulating small business**

11.1 The legislation does not apply to activities that are undertaken by small businesses.

**12. Monitoring & review**

12.1 The Act requires the Secretary of State to keep under review whether a country should continue to be on the restricted list. The Department will do this through regular contact with Foreign and Commonwealth Office officials in Ethiopia and international partners such as Central Authorities responsible for processing intercountry adoption applications in other countries.

**13. Contact**

13.1 Stephen Heseltine at the Department for Education, Telephone: 01325 340890 or email: [ica.darlington@education.gov.uk](mailto:ica.darlington@education.gov.uk) can answer any queries regarding the instrument.