

**EXPLANATORY MEMORANDUM TO**  
**THE SPECIAL RESTRICTIONS ON ADOPTIONS FROM ABROAD (HAITI)**  
**ORDER 2010**

**2010 No. 2265**

1. This explanatory memorandum has been prepared by the Department for Education (“the Department”) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Special Restrictions on Adoptions from Abroad (Haiti) Order 2010 imposes a statutory suspension on the adoption of children from Haiti by British residents.

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

3.1 None.

**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 from a country or territory outside the British Islands (“the other country”) where the Secretary of State has reason to believe that, 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 the Welsh Ministers and the Department for Health, Social Services and Public Safety in Northern Ireland before such an order is made.

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 and those that are not. Haiti has not signed or ratified the Hague Convention. As such, the Hague Convention is not currently in force between Haiti and the United Kingdom.

- 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. Annex A contains an outline of the intercountry adoption process.
- 4.5 Section 11(2) of the Act permits the processing of cases involving adoptions from countries that are the subject of an order under section 9(4) where the relevant authority (see below) is satisfied that the case should be processed despite the special restrictions.
- 4.6 Section 11(3) of the Act enables the Secretary of State to make regulations providing for the procedure to be followed by the ‘appropriate authority’ or, as the case may be, the Secretary of State in determining whether a case should be treated as an exception to a general suspension. The ‘appropriate authority’ is defined in section 11(4) of the Act as meaning (i) in a case under the Hague Convention, 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 (ii) 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.
- 4.7 Section 12(1) of the Act permits the Secretary of State to make regulations providing for the imposition of extra conditions in certain cases. The Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008 (SI 2008/1807) have been made under sections 11(3) and 12(1).

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

- 5.1 This instrument applies to England and 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**

- 7.1. The Special Restrictions on Adoptions from Abroad (Haiti) 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 9(2) of the Act (see 4.1 above). This amounts to a suspension of intercountry adoptions from Haiti 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 in the process is the issue of a Certificate of Eligibility confirming to the Haitian authorities that the prospective adopters have been assessed as suitable to adopt. Haiti is a non-Hague Convention country and the Certificate is issued by the Secretary of State in relation to English, Welsh and Northern Irish prospective adopters.
- 7.2. The Disasters Emergency Committee (DEC), the Hague Bureau and a number of international organisations concerned with intercountry adoption provided advice on intercountry adoption following the earthquake in Haiti in January. That advice was that priority must be given to international efforts to reunite children with their own families. Signatories to the Interagency Principles on Unaccompanied or Separated Children (including UNICEF, Save the Children, World Vision (a voluntary organisation) and the Red Cross) agree that intercountry adoption should not take place in a situation of natural disaster, normally for at least 2 years to allow separated children to be identified and their circumstances ascertained. In the immediate aftermath, the Haitian Prime Minister made a statement about due processes and not removing children inappropriately.
- 7.3. Whilst new applications for intercountry adoption were not being accepted in Haiti, the Haitian authorities made an exception in a case where an adoption had already been completed by a court in Haiti and all safeguards had been applied, prior to the earthquake, but certain administrative procedures remained to be completed. In such cases, it was thought to be justifiable to expedite the processes within the Receiving State to support the transfer of the child to the Receiving State and the adoptive parents.
- 7.4. This situation changed recently when at a Hague Conference at the end of June it was established that Haiti was now accepting new intercountry adoption applications.
- 7.5. This Order has been made in response to up to date information obtained during July indicating that the infrastructure in Haiti remains very weak. The evidence suggests that the government authorities in Haiti that normally deal with child protection and are responsible for the administration of intercountry adoptions are not in a position to ensure that the correct processes are being followed. There are indications that the disaster has made a system which was already inadequate worse.
- 7.6. The evidence has been provided by several reputable organisations,

including UNICEF, World Vision, and The International Social Services (ISS). The evidence falls into two categories:

- a) general advice against intercountry adoptions for a period of two years following a natural disaster. This is because in the aftermath of a catastrophe intercountry adoption is not considered a valid response until conditions permit full family tracing efforts to be completed; and
- b) evidence about practices and systems in Haiti. A full report published by the International Social Services in August, and its executive summary published earlier by the Hague Bureau refers in particular to the following:
  - no competent authority in place to ensure internal adoption procedures are complied with;
  - neither Haiti nor Receiving States are in a position to ensure family reunification and other domestic solutions had been exhausted (in other words, the principle of subsidiarity was breached)
  - few efforts are made to confirm adoptability of children, and no preparation of children prior to transfer to new country (with an example)
  - lack of proper consent of parents to adoption.
- c) World Vision advised that the infrastructure in Government institutions in Haiti is inadequate, such that key child protection institutions are still very weak, under resourced and not in a position to effectively administer Intercountry adoption processes.

## **8. Consultation Outcome**

- 8.1 The Special Restrictions on Adoptions from Abroad (Haiti) Order 2010 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, Social Services and Public Safety in Northern Ireland in relation to the making of this Order. Both Welsh Ministers and Ministers 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 The Department will include a note on its website informing prospective adopters about the suspension and how it will affect both current and future applications; and will write to those adoption agencies in England and Wales known to have current applications.

## **10. Impact**

- 10.1 The impact on the public sector of this change is minimal: some local authorities, in their capacity as an adoption agency, process intercountry adoption applications by applicants for approvals as prospective adopters, but most such applications 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. The Department received fewer than ten applications to adopt from Haiti between 2007 and 2009.

## **11. Regulating small business**

- 11.1 The Order does not impose an additional burden on small business.

## **12. Monitoring and 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 Office officials in the Dominican Republic and with international organisations such as the Hague Bureau.

## **13. Contact**

- 13.1 Veronica Berti at the Department for Education, Tel: 0207 7340 7180 or email [veronica.beriti@education.gsi.gov.uk](mailto:veronica.beriti@education.gsi.gov.uk) to answer any queries regarding the instrument.

## **ANNEX A – DESCRIPTION OF INTERCOUNTRY ADOPTION PROCESS**

1. Prospective intercountry adopters in England, Wales and Northern Ireland go through a very similar assessment and approval procedure as someone applying to adopt domestically. The assessment is carried out by a professional social worker of a local authority or Voluntary Adoption Agency (VAA). After the assessment is complete, an adoption panel considers the case and makes a recommendation as to whether or not the prospective adopter should be approved in respect of the adoption of a child from a named country. A senior manager at the local authority or VAA then makes a decision about the application, taking the panel's recommendation into account.

2. If the prospective adopter is approved, the papers are sent to the intercountry adoption casework team in the Department for Education, or the relevant team in the Department of Health, Social Services and Public Safety in Northern Ireland or the Welsh Assembly Government.

The casework team:

- checks that the papers are complete, and that the prospective adopter has been assessed in accordance with regulations;
- prints a certificate of eligibility to adopt and then arranges for the papers to be notarised, legalised and translated as per requirements of the country from which the prospective wants to adopt;
- then issues the certificate of eligibility to adopt and other papers to the foreign authority (and notifies the prospective adopter that this has happened.)

3. The Secretary of State (or Welsh Ministers or Department of Health, Social Services and Public Safety in Northern Ireland as applicable) is then sometimes involved at further stages in the process, in an administrative function through the casework team. After the foreign authorities have matched the prospective adopters with a child, details of the proposed match are sometimes routed through the UK Government but not in all cases. Applicants would then travel to meet the child and decide whether they wish to proceed with the adoption.

4. Other administrative functions which the Secretary of State (or Welsh Ministers/ Department of Health, Social Services and Public Safety in Northern Ireland as applicable) and the casework team carry out later in the adoption process include, for some countries, forwarding an invitation to travel visa from the child's country of origin or co-ordinating post placement reports in the UK.

## Intercountry Adoption Process

