

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

2010 No. 951

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Special Restrictions on Adoptions from Abroad (Nepal) Order 2010 imposes a statutory suspension on the adoption of children from Nepal 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 with 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. Nepal has signed, but not yet ratified, the Hague Convention. As such, the Hague Convention is not currently in force between Nepal and the United Kingdom.

- 4.4 Section 11(1) of the Act provides that the special restrictions in 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 7.1 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 and the procedure to enable this to be made. 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 (Nepal) 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 Nepal in the cases mentioned in section 9(2) of the Act (see 4.1 above). This amounts to a suspension of intercountry adoptions from Nepal 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 Nepalese authorities that the prospective adopters have been assessed as suitable to adopt. Nepal 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 Order is being made in response to evidence in a report published by the Hague Bureau in February 2010 following their Technical Assistance mission to Nepal. The Report found that Nepal has insufficient procedures in place to establish whether a child is adoptable. It also found evidence of a lack of support for birth parents about the legal effects of relinquishing their child for adoption and no procedures in place for the finding of a permanent family in Nepal for the child. The specific areas of concern included:
- failure to adhere to the key principles of the United Nations Convention on the Rights of the Child, such as the complete absence of the principle of best interests of the child;
 - an inadequate legal framework (despite recent legislation). The Report specifically recommends that Nepal suspend adoptions temporarily whilst it puts new legislation and improved procedures in place;
 - falsification of documents;
 - lack of transparency and accountability for the money brought into Nepal from intercountry adoptions.
- 7.3. In 2007, Nepal introduced a moratorium on intercountry adoptions whilst it made changes to its processes, intended to resolve serious issues of malpractice, and specifically the introduction of a new adoption act. UNICEF subsequently collected information on intercountry adoptions in Nepal and their findings published in 2008, were intended to assist Nepal in improving its procedures and legal framework. The findings of the UNICEF report were similar to those of the Hague Bureau's Report.
- 7.4. Nepal reopened intercountry adoptions in November 2009, having signed the Hague Convention in April 2009

- 7.5 The Hague Bureau's technical support programme is to assist countries that wish to comply with Hague Convention standards. The Hague Bureau's Report found that most of the problems identified by UNICEF in 2008 had not been resolved.

8. Consultation Outcome

- 8.1 The Special Restrictions on Adoptions from Abroad (Nepal) 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 A letter 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 a note on its website informing prospective adopters about the suspension and how it will affect both current and future applications.
- 9.2 We will write to the Nepalese Government to ask them how they intend to respond to the to the Hague report and to notify them of the suspension.

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. We are aware of less than ten

applications to adopt from Nepal made 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 Nepal and with international organisations such as the Hague Bureau.

13 Contact

13.1 Veronica Berti at the Department for Children, Schools and Families, Tel: 0207 7340 7180 or email veronica.beriti@dcsf.gsi.gov.uk to answer any queries regarding the instrument.

ANNEX A – DESCRIPTION OF INTER COUNTRY 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 Children, Schools and Families, 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 sends this 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

