EXPLANATORY MEMORANDUM TO

THE SPECIAL RESTRICTIONS ON ADOPTIONS FROM ABROAD (NIGERIA) ORDER 2021

2021 No. 64

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 (Nigeria) Order 2021 imposes a statutory restriction on the adoption of children from Nigeria by residents in England, Wales and Northern Ireland.

2.2 This is a child safeguarding measure to address concerns about integrity, practice and procedures within the Nigerian intercountry adoption system.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The extent of this instrument is England and Wales and Northern Ireland

4.2 The territorial application of this instrument is England, Wales, and Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 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.

6.2 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 in Northern Ireland before such an order is made.

6.3 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 in which it is not, such as Nigeria.

6.4 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. The appropriate authority is the Secretary of State in relation to intercountry adoptions from non-Hague Convention countries.

6.5 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.

7. Policy background

What is being done and why?

7.1 The Special Restrictions on Adoptions from Abroad (Nigeria) Order 2021 provides that special restrictions are to apply for the time being in relation to the bringing of children into the United Kingdom from Nigeria in the cases mentioned in section 9(2) of the Act (see paragraph 6.1 above). This amounts to a restriction on intercountry adoptions from Nigeria as it prevents the Secretary of State from taking any step, which he might otherwise have taken in processing such cases, unless he 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 Nigerian authorities that the prospective adopters have been assessed as suitable to adopt. Nigeria 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 integrity, practices and procedures in the Nigerian intercountry adoption system.

7.3 This decision is based on evidence received through international partners including Central Adoption Authorities and diplomatic missions as well as media sources. There is a pattern of evidence that there are weak safeguards and unreliable documentation

within the Nigerian intercountry adoption system which create significant safeguarding risks such as child trafficking and corruption. As a result, there is a lack of confidence that adoptions from Nigeria meet the high child safeguarding standards we expect in regard to the intercountry adoption process to ensure that adoptions are genuine and are the best outcome for the children.

7.4 Implementing a special restriction increases UK authority oversight of adoptions from Nigeria and is a deterrent to using intercountry adoption as a route for child trafficking. The special restriction requires that any adoption from Nigeria will need to satisfy exceptions criteria. This is a significant safeguarding measure to improve protection of children adopted from Nigeria and will help ensure adoptions are genuine and in the best interests of children.

7.5 Where a Certificate of Eligibility to adopt has been issued prior to the special restriction coming into effect it will continue to apply and there will be no requirement to satisfy exceptions criteria. In such cases the Secretary of State will be able to take the further step of confirming the issue of a Certificate of Eligibility if contacted by Entry Clearance Officers in relation to an entry clearance decision.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Consolidation is not relevant as this is a special restriction on a new country and no other SI is being amended.

10. Consultation outcome

10.1 The Special Restrictions on Adoptions from Abroad (Nigeria) Order 2021 relates to the processing of intercountry adoption cases by the Secretary of State, the Welsh Ministers or the Department of Health in Northern Ireland. As Nigeria is a non-Hague Convention country the Certificate of Eligibility is issued by the Secretary of State in relation to applications from prospective adopters living in England, Wales and Northern Ireland.

10.2 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. Both Welsh and Northern Ireland Ministers agree that a statutory restriction in this case is appropriate. The Secretary of State has written to the Scottish Government 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.

10.3 The Department has also informed the Foreign, Commonwealth & Development Office and the Home Office of the planned restrictions. Their responses indicate that they support the special restriction.

11. Guidance

11.1 A communication will be sent to UK adoption agencies that deal with intercountry adoptions to inform them of this Order. The Department will include information on the GOV.UK website on 12 March 2021 informing prospective adopters about the special restriction and guidance about the exceptions process for prospective adopters who want to adopt from Nigeria (e.g. family adoptions).

11.2 The Foreign, Commonwealth & Development Office will communicate officially with the Nigerian Government to notify them of the special restriction.

12. Impact

12.1 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.

12.2 There is no significant, impact on the public sector.

12.3 An impact assessment has not been prepared for the instrument because the impact will be minimal. We are aware of thirteen applications to adopt from Nigeria being made in 2019.

13. Regulating small business

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

14. Monitoring & review

14.1 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, Commonwealth and Development Office officials in Nigeria and international partners such as Central Authorities responsible for processing intercountry adoption applications in other countries.

14.2 A statutory review clause is not required as this SI regulates what the appropriate authority may do in relation to intercountry adoptions and it does not regulate business.

15. Contact

15.1 Stephen Heseltine at the Department for Education, Telephone: 0191 535 8982 or email: ica.darlington@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 John Myers, Deputy Director for Adoption, Care Leavers, Children's Rights and Family Justice, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Vicky Ford MP, Parliamentary Under Secretary of State for Children and Families at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.