POLICY NOTE

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

SSI 2021/30

The above instrument was made in exercise of the powers conferred by section 62(3) of the Adoption and Children (Scotland) Act 2007 ("the Act"). The instrument is subject to the negative procedure.

Purpose of the instrument.

A special restriction on intercountry adoptions from Nigeria has been implemented due to significant child safeguarding concerns about practices and procedures in the Nigerian intercountry adoption system.

Policy Objectives

This is a significant safeguarding measure to improve protection of children adopted from Nigeria and will help ensure adoptions take place in the best interests of children.

Section 62 of the Act makes provision regarding the restriction of intercountry adoptions from a country or territory outside the British Islands (the "relevant country") where the Scottish Ministers have reason to believe that, because of practices taking place in the relevant 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 an adoption in the relevant country.

Section 62(3) of the Act allows the Scottish Ministers to declare by order that special restrictions are to apply for the time being to any relevant country. Scottish Ministers will be able to apply restrictions to the bringing of children who are adopted under the law of that country into the United Kingdom from outwith the British Islands, or who are brought into the United Kingdom for the purposes of adoption. The provisions in section 62 apply equally to adoptions from countries in which the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption ("the Hague Convention") is in force and those countries in which it is not.

Section 64 of the Act makes provision for the special restrictions mentioned in section 62. These restrictions are that, in those relevant cases, the Scottish Ministers should take no further action in connection with furthering the bringing of a child from outwith the British Islands into the United Kingdom who was adopted under the law of the relevant country or is to be brought into the United Kingdom for the purposes of adoption. However, Scottish Ministers will not be prevented from taking steps to further a relevant intercountry adoption in cases where the adopters/prospective adopters satisfy the Scottish Ministers that they should take those steps despite the special restrictions.
The Special Restrictions on Adoptions from Nigeria (Scotland) Order 2021 provides that special restrictions are to apply for the time being in relation to the bringing of children from

Nigeria into Scotland in the cases mentioned by section 62 of the Act. This amounts to a restriction of intercountry adoptions from Nigeria as it prevents the Scottish Government 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 reason for making the Order is in response to significant child safeguarding concerns about integrity, practices and procedures in the Nigerian intercountry adoption system.

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.

The information received by the Scottish Government indicates that there are adoption practices and procedures taking place in the Nigerian intercountry adoption system that cause significant risk to the welfare and safeguarding of prospective adoptive children in Nigeria. As such, restrictions are deemed appropriate on the basis that it would be contrary to public policy to further the bringing of these children into the UK. The special restriction requires that any adoption from Nigeria will need to satisfy an exceptions criteria. This is a significant safeguarding measure to improve protection of children adopted from Nigeria and will help ensure adoptions are in the best interests of the child. The special restriction is a child safeguarding measure which will increase Scottish authorities' oversight of adoptions of children from Nigeria and be a deterrent to using intercountry adoption as a potential route for child trafficking.

Putting in place this suspension means that future applications to adopt from Nigeria will not be permitted unless the Scottish Ministers are satisfied that a particular case ought to be treated as an exception.

Consultation

The Special Restrictions on Adoptions from Nigeria (Scotland) Order 2021 relates to procedural matters relevant to Scottish Ministers. Any impact falls primarily on the Scottish Government rather than the public or business, charity or the voluntary sector.

The Scottish Government has informed the UK Government, Foreign, Commonwealth & Development Office and the Home Office of the planned restrictions. Their responses indicate that they support the special restriction and we are aware that the UK Government are laying their own regulations.

Impact Assessments

DPIA

There will not be any increase in the information that is required to be processed as a result of this instrument. Prospective adopters who want to adopt a child from Nigeria will be subject to the exceptions procedure which is enshrined in The Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 (legislation.gov.uk). In deciding whether or not they are satisfied that a case is exceptional,

the Scottish Ministers must take the following matters into account (whether or not they also take other matters into account)::

where the prospective adopters wish to adopt a particular child–

(i)the circumstances leading to the child becoming available for adoption;

(ii)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;

(iii)the relationship of the child to the prospective adopters, including how and when it was formed;

(iv)the child's particular needs and the capacity of the prospective adopters to meet those needs; and

(v)the reasons why the State of origin was placed on the restricted list(1);

This is pre-existing legislation and there are not any new processes being introduced as these pathways are already in place .

Scottish Ministers already have a pre-existing duty to assess anyone subject to the exceptions request. The implementation of the SSI does not change this and therefore Ministers and relevant bodies will not be required to process any additional information as part of the SSI.

For the purpose of completeness, an Article 36 (4) Form has been completed and reviewed by the Data Protection Officer as not relevant to the scope of this SSI and submitted to the ICO for further consideration.

Islands Assessment

We have consulted with colleagues leading on the Islands Assessment requirements as per the Islands (Scotland) Act 2018. Consideration has been given to whether there would be any disproportionate impact on the island communities. We have concluded that there will not be any adverse impact on the island communities given there are no differences for how the SSI should affect people depending on where in Scotland they live. Therefore, an ICIA is not required.

Fairer Scotland Duty Impact Assessment

The special restriction does not provide for new policy or revise existing policy and is technical in nature. It utilises pre-existing legislation and processes to provide a pathway to safeguard children subject to the intercountry adoption process in Nigeria. The exceptions procedure, that will become the means by which intercountry adoptions from Nigeria will be processed draws on regulations set out in the Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008. The duty on the Socttish Government to implement a special restriction order is set out in the Adoption and Children (Scotland) Act 2007.

As the special restriction is being implemented as a result of pre-existing legislation, an assessment under the Fairer Scotland Duty is not required because the SSI does not represent a strategic decision, and it's provisions should not have any direct implications for inequalities arising from socio-economic disadvantage.

Financial Effects

The Minister for Children and Young People confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Strategy, GIRFEC and the Promise Division

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