

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

EQUALITY IMPACT ASSESSMENT - RESULTS

February 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

EQUALITY IMPACT ASSESSMENT - RESULTS

<p>Title of Policy</p>	<p>THE SPECIAL RESTRICTIONS ON ADOPTIONS FROM NIGERIA (SCOTLAND) ORDER 2021</p>
<p>Summary of aims and desired outcomes of Policy</p>	<p>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 Adoption and Children (Scotland) Act 2007 (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.</p> <p>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.</p> <p>The SSI aims to increase safeguards to protect the rights and wellbeing of children subject to the intercountry adoption process in Nigeria. By implementing this process, it is anticipated that there will be more robust processes and procedures that promote the best interests of the child.</p>

Directorate: Division: team	Children and Families, Promise Hub, Family Care Team
------------------------------------	---

Executive summary

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.

Background

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. 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.

Legislative Background

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 Scope of the EQIA

In developing and delivering the SSI Special Restrictions Order (Nigeria), the Scottish Government and public sector partners have a duty under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 to have due regard to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct;
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and,
- Foster good relations between people who share a protected characteristic and those who do not.

The provision of this SSI is to ensure the safety and wellbeing of children subject to the adoption process in Nigeria by enacting safeguards that evidence ethical due process in each adoption case. It will aim to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not by ensuring that all prospective adopters will be subject to the same robust safeguards and the same pathways to adopt a child from Nigeria. In effect, any advantage that may have been gained from any illegal, unethical means will be eradicated by the introduction of more robust safeguards and quality of evidence required before an intercountry adoption in Nigeria can be progressed.

The SSI has been carefully considered and developed in collaboration with colleagues from the DfE and the FCDO to ensure that a streamlined and robust plan to implement the SSI is followed especially to limit any loopholes that could give others an unfair advantage and to ensure that everyone is impacted as fairly and equally as possible.

Key Findings

During the EQIA process, the potential impact on each of the protected characteristics was considered. Our assessment identified that the policy was likely to have a generally direct positive impact on all children and young people with protected characteristics - age; disability; gender reassignment; sexual orientation; religion or belief; maternity and pregnancy; and marriage and civil partnership does not have a direct bearing on the application of the SSI.

We did not encounter evidence that children and young people in any of these groups would be disproportionately adversely affected by the introduction of this SSI. The introduction of the SSI will increase the measures in place to protect and promote the safety and wellbeing of all children subject to the intercountry adoption process in Nigeria.

With regards to the child's views, regulation 4 of in "The Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 (legislation.gov.uk)", stipulates that Scottish Ministers must take into account, the circumstances of a prospective adoptive child, including the child's needs and the capacity of carers to meet their needs. An assessment of the child's needs will take into consideration the child's views and opinions in relation to the decisions that are made about them. This demonstrates we are conscious of the need to adhere to the equality duty of eliminating discrimination, promoting equality of opportunity and fostering good relations.

Race is the characteristic most likely to be impacted by this SSI. Careful consideration has been given to mitigate against any adverse impacts. The Scottish Government is clear that this is not a complete ban on restrictions. Scottish Ministers have legal powers to treat cases as exceptions if the prospective adopters are able to satisfy the exceptions criteria. In those circumstances, prospective adopters will be able to proceed. Decisions to grant exceptions are evidence based and made on a case-by-case basis. The exceptions procedure is set out in the Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008.

Recommendations and Conclusion

There is a potential for the SSI to be perceived to impact negatively on race relations given that the restrictions are placed on Nigeria, a country with a predominantly Black population. However this is balanced by the importance of ensuring that children from Nigeria are not trafficked to the UK. The SSI is being implemented solely to increase the safeguarding measures in the Nigerian Inter-country adoption system and is intended to have a positive impact on the adoption process.

The Scottish Government acknowledges that this impact may be perceived negatively but offers reassurance that the primary purpose of the legislation is to increase safeguards and protect children. The exceptions criteria will facilitate a process whereby inter-country adoptions from Nigeria remain possible but with greater safeguards to protect both children and prospective adopters.

In respect of other protected characteristics, no changes to the policy are necessary as a result of the Equality Impact Assessment as the proposals are intended to apply equally to anyone involved in inter-country adoption from Nigeria and therefore not anticipated to have any significant differential effect on the basis of these protected characteristics.



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2021

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80004-666-5 (web only)

Published by The Scottish Government, February 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS828166 (02/21)

W W W . g o v . s c o t