



Department
for Education

Exception Requests: Adoptions from countries with special restrictions

Information for prospective adopters

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Introduction

1. This is a guide for prospective adopters outlining the Department for Education's (DfE) process for handling exception requests to adopt children from countries where special restrictions are in place.
2. The information provided here reflects and expands on the process set out in the Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008 (referred to hereafter as 'the regulations' and available at http://www.opsi.gov.uk/si/si2008/uksi_20081807_en_1). It applies only where requests for exceptions are submitted to the Secretary of State for Education as the 'relevant authority'. Annex A provides further details of the relevant authorities in England, Wales and Northern Ireland in relation to making requests for exceptions.
3. A special restriction on adoptions, by British residents, from a particular country, can be imposed by the Secretary of State through powers in Part 2 of the Children and Adoption Act 2006. Under these provisions a country which is the subject of a special restriction is known as a 'restricted country'. The Secretary of State is required to publish a list of restricted countries, 'the restricted list'. Further information about the statutory framework for the restriction of adoptions from abroad, as set out in Part 2 of the 2006 Act, is available at Annex B.
4. By virtue of the fact that a country is on the restricted list, adoptions of children from that country by British residents are not permitted unless an exception request is approved by the Secretary of State. For any application to proceed where a special restriction is in place, the relevant authority will need to be satisfied that the facts of a particular case are sufficiently exceptional to override the restrictions imposed on adoptions from the particular country.

Making a request for an exception

5. You must have a legal basis for making a request for an exception. Legislation governing the bringing of children into the UK, applies to all prospective adopters who are habitually resident in the British Islands, whatever their nationality. This means that bringing a child into the UK where section 83 of the Adoption and Children Act 2002 applies without complying with the relevant requirements, including being approved and assessed by a registered adoption agency, is a criminal offence. The Secretary of State for Education can only consider exception requests and authorise intercountry adoption applications to be processed in circumstances where section 83 of the 2002 Act applies.

6. Section 83 of the Adoption and Children Act 2002 applies to anyone habitually resident in the British Islands, who:

- (a) brings, or causes another to bring, a child who is habitually resident outside the British Islands into the United Kingdom for the purpose of adoption by the British resident, or
- (b) at any time brings, or causes another to bring, into the United Kingdom a child adopted by the British resident under an external adoption effected within the period of twelve months ending with that time.

7. Legislation also requires an exception request to be made in respect of intercountry adoptions made under the 1993 Hague Intercountry Adoption Convention if there are special restrictions in place on a specific country which has implemented the 1993 Hague Convention.

8. All prospective adopters who are habitually resident in the British Islands and wish to adopt a child habitually resident in another country are required to comply with the requirements of our adoption legislation and be approved and assessed by a registered adoption agency, which may charge a fee. This will be either a local authority or a voluntary adoption agency registered with the Office for Standards in Education, Children's Services and Skills (Ofsted) for the purposes of intercountry adoption. Details of local authorities and voluntary adoption agencies, including those authorised for intercountry adoption, can be found on the GOV.UK website at: www.gov.uk/child-adoption/adopting-a-child-from-overseas

9. Prospective adopters who are making an exception request to adopt from a country or territory where special restrictions are in place, should not proceed with making any arrangements to adopt a child until they have been both assessed and approved to adopt by an adoption agency and subsequently had an exception request granted by the Secretary of State for Education. This is to ensure that children who are adopted are safeguarded and not left in a situation where they are adopted by prospective adopters who have not been assessed and approved to adopt by an adoption agency.

10. The Department for Education will only accept and consider exception requests from prospective adopters if they have been assessed and approved to adopt by an adoption agency.

11. Following approval, prospective adopters who wish to request that their case be treated as an exception to a special restriction should make an application, in writing, to the DfE (contact details for the DfE and other UK relevant authorities can be found at Annex A). Requests should include evidence of approval (e.g. agency decision maker's letter). The DfE will not accept exception requests without this. The request should also set out the reasons why the prospective adopters consider their case is exceptional; in doing so prospective adopters should consider the list of 'matters' which must be considered when exceptions are being considered as set out at paragraphs 16 and 17.

12. When the DfE receives an eligible request for an exception request it will acknowledge receipt in writing as soon as possible and provide a reference number. If the request does not set out the reasons why the prospective adopters consider that the case should be treated as an exception, the DfE will seek clarification of these reasons and request confirmation if there is any further information prospective adopters wish to submit about the facts of the case. The DfE will also make any further enquiries it considers appropriate, for example, seeking information from the British Embassy in the country in respect of which the special restriction is in place.

13. Prospective adopters should ensure they provide all supporting information they wish to be considered in relation to their exception request. When submitting supporting evidence the documentation should be the original hard copy versions. Photocopies of documentation will not be accepted. If original documents are not available then certified true copies should be provided from the office which issued the original. It is not necessary to send passports unless specifically requested to do so. The Department will store all documentation securely and return original documentation by special delivery.

14. Once it has gathered this information and before any decision is made as to whether the case is exceptional, the DfE will ask the prospective adopters whether there is any further information which they would like to be considered as part of their request. This is the prospective adopter's opportunity to add anything further that they consider relevant. It may be that they have requested another person or body supply information that has not yet been received. The DfE will defer the decision until the prospective adopters have confirmed in writing that they have submitted all the information which they would like to be considered or any outstanding information is received. Please note that the DfE cannot provide legal advice on individual cases regarding submission of supporting information and prospective adopters may wish to seek independent legal advice regarding this.

Deciding whether a case is exceptional

15. In deciding whether or not a case is exceptional, consideration will be given to all the information provided which is relevant to the individual facts and circumstances of the case. The regulations list a number of 'matters' which must be taken into account when exception requests are being considered. The list is non-exhaustive – all the listed matters must be considered but matters other than those listed in the regulations may also be taken into account depending on the circumstances of the case.

16. Where an exception request is made in respect of the adoption of a specific child, regulation 6 details the 'matters' to be taken into account. These are:

- the 'circumstances leading to the child becoming available for adoption' which might include whether they have been orphaned, abandoned or relinquished and whether a court or adoption agency or any other competent authority has been involved in determining their status, including their availability for adoption;
- the 'nature of the relationship between the child and the prospective adopters or the relationship that the child has with the prospective adopters including how and when that relationship was formed' which might cover how the child was 'matched' with the prospective adopters, for example, whether the child and the prospective adopters are related or have a longstanding relationship;
- the 'child's particular needs and the capacity of the prospective adopters to meet those needs' which might include a child with a special need; and
- 'the reasons why the State of origin was placed on the restricted list' i.e. the particular issues in relation to adoption process and practice in the relevant country that led to it being placed on the restricted list.

17. Where a specific child has not been identified the only matter specified in the regulations is 'the reasons why the State of origin was placed on the restricted list' (i.e. the particular issues in relation to adoption process and practice in the relevant country that led to it being placed on the restricted list). The additional matters listed at regulation 6 are likely only to be relevant where a specific child has been identified, but other matters may be relevant depending on the circumstances of the case.

Notifying prospective adopters of a decision

18. When a decision has been made about whether a case should be treated as an exception to the special restriction, DfE will write to the prospective adopters as soon as possible to inform them of the outcome. Where an exception request has been approved an adoption application will be able to be processed by the relevant authority in England, Wales and Northern Ireland in accordance with adoption legislation. If a case is not approved as an exception to the special restriction, the DfE will write to the prospective adopters, setting out the reasons for the decision.

19. Following notification of a decision in respect of their request for an exception, prospective adopters who have new or additional information are entitled to submit further exception requests. However, the Secretary of State is not required to consider any further requests where a decision has been taken that the case should not be considered an exception if no new information is provided or it is not information that would have affected the outcome of the decision. Prospective adopters may also make further requests if the new request relates to a different

child, or to a different restricted country.

Timescales

20. Any requests for exceptions will be dealt with as quickly as possible. The DfE is unable to offer a fixed timescale for the consideration of cases. The time taken to consider requests is likely to vary according to the particular circumstances of the case.

Scotland

21. The Children and Adoption Act 2006 and the Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008 do not apply to Scotland. The Adoption and Children (Scotland) Act 2007 and the Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 give Scottish Ministers separate powers to restrict adoptions from countries parallel to those in the 2006 Act. Information on Scottish restrictions can be found at <https://www.gov.scot/publications/restricted-list-countries-with-restrictions-on-adoption/>. Prospective adopters who are resident in Scotland can contact the Scottish Government at the following email address for enquiries about special restrictions and applying for an exception: intercountryadoption@gov.scot

Letters of no objection

22. A 'letter of no objection' is issued (either by DfE or an overseas Foreign, Commonwealth & Development Office post) when prospective adopters provide confirmation that they are no longer habitually resident in the British Islands and are therefore not subject to UK adoption legislation. The letter can then be presented to the authority which requires such a statement. DfE would not generally expect to issue 'no objection' letters in respect of proposed adoptions from a 'restricted country' and would do so only if satisfied that there were 'exceptional circumstances'. Prospective adopters seeking a letter of no objection from a country which is the subject of a special restriction should contact DfE for further information.

Annex A: Relevant authorities

Habitual residence of prospective adopter	Hague Convention or non-Hague Convention case	'Relevant authority'	Address to which exception request should be sent
England	Hague Convention cases and non-Hague Convention cases	Secretary of State for Education	Intercountry Adoption Team Department for Education Bishopsgate House Darlington DL1 5QE Email: ica.darlington@education.gov.uk
Wales	Hague Convention cases	Welsh Ministers	Social Services and Integration Directorate Welsh Government Cathays Park Cardiff CF10 3NQ Email: PlantSynDerbynGofal@llyw.cymru
Wales	Non-Hague Convention cases	Secretary of State for Education	Intercountry Adoption Team Department for Education Bishopsgate House Darlington DL1 5QE Email: ica.darlington@education.gov.uk
Northern Ireland	Hague Convention cases	Department of Health (Northern Ireland)	Department of Health (Northern Ireland) Family and Children's Policy Directorate Castle Buildings Stormont Belfast, BT4 3SQ Email: intercountry.adoption@health-ni.gov.uk
Northern Ireland	Non-Hague Convention cases	Secretary of State for Education	Intercountry Adoption Team Department for Education Bishopsgate House Darlington DL1 5QE Email: ica.darlington@education.gov.uk

Annex B: The Statutory Framework: Part 2 of the Children and Adoption Act 2006

1. Section 9 of the Children and Adoption Act 2006 (the Act) makes provision regarding the restriction of adoptions from abroad by British residents. Section 9(4) provides that the Secretary of State may, by order, declare that special restrictions are to apply, for the time being, to adoptions from a country or territory. Special restrictions amount to a restriction of the processing of adoptions from the country in question.
2. The Secretary of State must publish the 'restricted list' and the reasons for declaring a country 'restricted' in whatever way he thinks appropriate to bring them to the attention of adoption agencies and members of the public. Section 10 requires the Secretary of State to keep each restricted country under review to determine whether it should remain a restricted country.
3. Section 11(1) of the Act provides that the special restrictions are that the appropriate authority is not to take any step that the authority might otherwise have taken to further the adoption from abroad. Section 11(2) of the Act provides that, where special restrictions apply, the appropriate authority may take those steps if the prospective adopters satisfy the relevant authority that the appropriate authority should take those steps despite the special restrictions.
4. The relevant authority will be the appropriate authority (as defined in section 11(4) of the Act) except, in relation to Northern Ireland, in a case which is not a Convention case; in such a case, the relevant authority is the Secretary of State. A Convention case is one where the adoption is intended to be effected in accordance with the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at The Hague on 29th May 1993.
5. The Children and Adoption Act 2006 is available at http://www.opsi.gov.uk/acts/acts2006/ukpga_20060020_en_1 Further explanation of the provisions relating to the restriction of adoptions from abroad may be found in the Explanatory Notes to the Act, available at http://www.opsi.gov.uk/acts/acts2006/en/ukpgaen_20060020_en.pdf (see paragraphs 55-63).



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