

# **ADOPTION AND CHILDREN (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. This document relates to the Adoption and Children (Scotland) Bill introduced in the Scottish Parliament on 23 March 2006. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 61.

### **POLICY OBJECTIVES OF THE BILL**

2. The objective of the Adoption and Children (Scotland) Bill is to improve, modernise and extend adoption in Scotland and to provide greater stability for children who cannot live with their original families. The existing legislation is over 25 years old and has not been substantially updated for 10 years. The number of adoption applications is falling and there is an unmet need for families to adopt children. Many children are without families and are looked after by local authorities. The key aims of the Bill are to increase the number of potential adopters and to improve stability for children who cannot live with their original families, but for whom adoption is not an option. The Bill will help to fulfil the partnership commitment to give every child and young person the best possible start in life.

3. The main policy objectives of the Bill are:

- to modernise and improve the legal framework for adoption and permanence planning;
- to create greater long-term stability and permanence (the sense of belonging to a family) for children who cannot live with their original families;
- to improve procedures, services and support for adoptive and foster parents and everyone involved in adoption and permanence;
- to ensure that Scotland's most vulnerable children have the protection and security they need;
- to create a modern, child-centred adoption and permanence service that responds to the changing needs of individual children.

4. The Bill also contains provisions relating to adoptions from overseas. Additional provision relating to overseas adoptions is also contained in the Adoption (Intercountry Aspects) Act 1999.

In this Bill there will be a new power for Scottish Ministers to charge for processing intercountry adoption cases and new penalties for bringing children into Scotland outwith official channels.

5. The provisions in the Bill represent a comprehensive overview of the adoption and permanence system in Scotland.

6. Key provisions in the Bill are:

- Replacing existing freeing orders and parental responsibilities orders with a single order called a permanence order, which will increase stability for children who cannot live with their original families but which will be flexible enough to cater for the needs of individual children.
- Allowing joint adoption by unmarried couples (including same-sex couples). Currently, one person in an unmarried couple can adopt, while their partner may apply separately for an order under section 11 of the Children (Scotland) Act 1995 to gain parental responsibilities and parental rights. However, this would result in the child being treated in law as the child of the adopter and no-one else, whilst the other partner could only obtain parental responsibilities and rights in respect of the child.
- Better adoption support services for people affected by adoption.
- Giving Scottish Ministers the power to charge for processing intercountry adoption applications.
- The Bill will repeal and replace the Adoption (Scotland) Act 1978 (except Part IV) and will amend the Children (Scotland) Act 1995.

## **POLICY OBJECTIVES: SPECIFIC PROPOSALS**

7. The Bill is divided into four parts: Adoption (which is sub-divided into 7 sections: The adoption service; Pre-adoption services; Adoption; Post-adoption services; Care plans; Miscellaneous); Permanence Orders; and Miscellaneous and General.

8. In this memorandum the terms “birth parents” and “unmarried fathers” are employed to describe specific categories of persons although it should be noted that these terms are not used in the Bill itself. For the purposes of this memorandum the term “birth parents” is used to describe the child’s original family prior to the granting of any order under this Bill affecting their status. Such persons will be those who have parental rights and responsibilities in respect of the child. This could be their natural parents, step-parents or their parents or guardians who are looking after them and who have parental rights and parental responsibilities before any court order is made to alter that status. Although they will not always be the child’s natural parents, in most cases they will be and, for this reason, they are referred to as the “birth parents” for ease of reference.

9. The term “unmarried father” in this memorandum is used to describe those fathers of the child who have not assumed parental rights and parental responsibilities under the Children (Scotland) Act 1995. This group of fathers includes only those who have not assumed such

rights and responsibilities and does not include those who have had their parental rights and responsibilities removed by order of the court.

#### *Adoption Service*

10. The Bill will place local authorities under a duty to establish and operate an adoption service. This will extend the existing provisions for this function which lie at sections 1 and 2 of the Adoption (Scotland) Act 1978: all local authorities currently provide such a service by virtue of these existing provisions and the new provisions will be a continuation of this service. The Bill will address existing issues with the provision of support to people affected by adoption.

#### *Adoption*

11. The Bill will introduce a range of provisions to replace and extend the existing provisions contained in the Adoption (Scotland) Act 1978. These include extending the range of people who are eligible to adopt; simplifying the grounds for dispensing with parental agreement to adopt; giving some fathers new limited rights to be notified of an adoption hearing; amending section 11 of the Children (Scotland) Act 1995 to allow the possibility of contact orders under the Children (Scotland) Act 1995 for individuals who have previously lost such rights; and widening the range of issues that local authorities should have regard for when placing a child for adoption.

#### *Improved support services for people affected by adoption*

12. The Bill will introduce a statutory range of adoption services for people affected by adoption and will give the Scottish Ministers power to make regulations for the implementation and administration of such a service. All local authorities will have a duty to provide or secure the provision of these support services.

13. The current range of support services is considered insufficient and ineffective. Separate research undertaken independently by the Scottish Executive and Scottish Adoption Association shows that many people involved in adoption either do not receive adoption support or receive inadequate and inconsistent support. Poor awareness of services and a lack of consistency between local authorities mean that many people who are entitled to it do not receive support.

14. The provisions included in the Bill will place a duty on local authorities to make available a wide range of support services to people affected by adoption and to make people aware of such services at an early stage in the adoption process. The Bill will provide for a wider range of people affected by adoption to be assessed for their support needs, including birth parents, siblings, grandparents, wider members of the birth family and people involved in the child's life to the point of adoption even if not a relative. Certain categories of people, including birth parents of adopted children, adoptive parents and adoptive families, will be entitled to have their need assessed. Other people affected by adoption will be able to request an assessment of their need for support. The provisions in the Bill will be underpinned by secondary legislation which will set out the manner in which local authorities should assess the needs of relevant people and plan to meet any assessed needs.

*Joint adoption by unmarried couples, including same-sex couples*

15. The Bill introduces provisions to allow unmarried couples to adopt jointly a child. Currently, unmarried people are not eligible to adopt a child jointly. In practice, one partner can adopt as a single person (although he or she will be assessed as part of a couple) and the other partner can apply separately for an order under the Children (Scotland) Act 1995 to gain parental responsibilities and rights for the child. In this way some unmarried couples, including same-sex couples, already have shared responsibility for children, although they have not adopted jointly.

16. The provisions contained in the Bill will clarify and improve the existing situation. This will have advantages for unmarried couples and will give both partners equal legal status as adoptive parents. Adopted children will benefit from this situation, as both adults will have a legal adoptive relationship with the child, with full parental responsibilities and rights for the child. This will encourage greater stability for children and will contribute to a stronger family relationship where formal legal ties exist between a child and both adults. Children will also have added protection should the adults' relationship break down or should one partner become unable to care for the child, and will benefit from inheritance rights.

17. The intention is that unmarried couples who apply to adopt would be subject to the same assessment process as married couples to ensure that they are able to offer a child a stable and nurturing environment. Detailed provisions will be contained in regulations for adoption agencies to be made under the Bill. This will allow courts to make decisions which are in the best interests of a child, regardless of the marital status or sexual orientation of the prospective adopters.

*Simplify grounds for dispensing with parental agreement*

18. The Bill introduces new grounds for dispensing with parental agreement to the child being placed for adoption. The existing grounds, set out at section 16(2) of the Adoption (Scotland) Act 1978, are considered to be too complicated and difficult to apply. The Bill will introduce simpler grounds based on the parent or guardian not being found or being incapable of giving consent, or the welfare of the child requiring that parental consent is dispensed with. This will make it a more straightforward process and will reinforce the fact that the welfare of the child is the paramount consideration when considering whether to dispense with the need for parental consent.

19. An underlying principle is that adoption agencies and courts should, as far as practicable, allow birth parents the opportunity to give their consent to the adoption. Before courts dispense with the need for the birth parents' consent, all possible steps should have been taken to give birth parents the opportunity to consent. Only when these steps have been taken should courts dispense with the need for birth parents' consent.

*Increased rights for unmarried fathers*

20. The Bill will introduce new rights for unmarried fathers who have no parental responsibilities and parental rights in adoption cases. The Bill will place a duty on courts to notify such fathers, where they are known and can be found, about applications for adoption orders. Such fathers will not have an automatic right to be heard in adoption hearings.

*Section 11 of the Children (Scotland ) Act 1995*

21. This section allows a court to confer parental responsibilities and rights on an individual. Individuals who have lost parental responsibilities and rights through the making of an adoption order, a freeing order or a parental responsibilities order are currently excluded from applying for these rights under section 11. The Bill will amend section 11 so that such individuals will be able to apply for a contact order.

*Range of issues to which local authorities should have regard when placing a child for adoption*

22. Currently, under section 6(1)(b)(ii) of the Adoption (Scotland) Act 1978, an adoption agency must, when placing a child for adoption, have regard for the child's religious persuasion, racial origin and cultural and linguistic background. This requirement is replicated in the Bill and includes a requirement to have regard, so far as is reasonably practicable, to the wishes and feelings of any relative of the child. In addition separate provisions place a duty on adoption agencies and on the courts, when coming to a decision relating to the adoption of a child, to consider a wider range of factors. The courts and adoption agencies must consider all factors which are relevant for individual children. This will allow the specific circumstances of individual children to be taken into account. Additionally, the Bill places a duty on adoption agencies to consider the effect on a child of ceasing to be part of their birth family and becoming an adopted person.

*Step-parent adoptions*

23. The Bill will introduce new measures so that a wider range of people, including unmarried heterosexual partners of birth parents, civil partners of birth parents and unregistered homosexual partners of birth parents, can apply to adopt the child of their partner. Under existing law, only married step-parents may adopt the child of their partner. Step-parents may adopt a child without affecting the parental responsibilities and rights vested in the child's birth parent (the step-parent's partner).

24. The provision contained in the Adoption (Scotland ) Act 1978 which allows a step-parent and their partner to adopt jointly has not been replicated in the Bill as it was considered to be unnecessary and confusing (the 1978 Act also permits step-parents to adopt alone, as referred to above).

*Introduce a new order for children who cannot live with their birth families*

25. The Bill introduces a new court order called a permanence order. This will replace the existing freeing orders and parental responsibilities orders, both of which have shortcomings and often are not able to reflect fully the situation of individual children. The permanence order will provide increased stability for children who cannot live with their birth family and will be flexible enough to cater for the individual needs of such children.

26. Freeing orders were established by the Adoption (Scotland) Act 1978. They were originally intended to be used to allow birth parents to remove themselves from adoption proceedings at an early stage, but are now most commonly used in contested cases when birth parents have refused to consent to adoption. A freeing order removes all parental responsibilities and rights from birth parents and transfers them to a local authority which should then place the child for adoption. There are several problems with freeing orders. Between the making of a freeing

order and the making of an adoption order, only a local authority has parental responsibilities and rights for a child; freeing orders were premised on the assumption that an adoption would always mean a complete break from the birth family, but this is no longer always the case; if the child is not adopted, there is no way for a freeing order to be converted into a parental responsibilities order and a freeing order can only be revoked if there is someone who can exercise parental responsibilities and rights. All of these can leave a child lacking stability and security.

27. Parental responsibilities orders were introduced by the Children (Scotland) Act 1995. A parental responsibilities order removes most of the birth parents' parental responsibilities and rights, leaving them only with the right to agree or decline to agree to the making of an adoption order, either domestic or overseas. There are several shortcomings with parental responsibilities orders. They are regarded as indicating that the child will not return home, although the statutory provisions do not say that this is the purpose of the order; parental responsibilities and rights are transferred to a local authority rather than a substitute family; there is no way to vary what parental responsibilities and rights are transferred and which remain with the birth parents; and a person who has lost parental responsibilities and rights through a parental responsibilities orders cannot apply for a contact or residence order at a later date.

28. Freeing orders and parental responsibilities orders are considered to be insufficient to provide adequately for children who cannot live with their birth family. In 2004 only 341 parental responsibilities order were in place, compared to 4,427 children on supervision requirements. The permanence order will replace freeing orders and parental responsibilities orders, retaining the positive aspects of both but introducing greater stability and flexibility for children and carers. For example, a court will be able to allocate parental responsibilities and rights between a local authority, foster carers and birth parents, as it sees fit for the best interests of the child. The right to regulate a child's residence will always lie with the local authority, but other parental responsibilities and rights can lie with other parties. This recognises that for many children birth parents will continue to play a role in their life, even if they cannot live with them.

29. Only a local authority will be able to apply for a permanence order, as with freeing orders and parental responsibilities orders. A permanence order can be sought with or without a measure granting authority for the child to be adopted, dependant on the needs of a particular child. Where such authority is granted, the permanence order will ensure that the child remains properly looked after between the granting of the permanence order and the granting of an adoption order. This will be similar to the current process of "freeing" a child for adoption, but during the period between the making of a permanence order and the making of an adoption order, the child will have greater security. Should the child not be adopted, it will be possible to apply for a variation of the permanence order to allow parental responsibilities and rights to be reallocated; this is not possible with a freeing order. Where a local authority does not consider adoption to be an appropriate option for a child, a permanence order can be made without the measure authorising adoption of the child. In this case, parental responsibilities and rights will be granted to appropriate persons. In practice this situation may be similar to long-term fostering: a child will live with a family, with the intention that the placement is permanent. If, however, a local authority later decides that adoption is appropriate, it will be able to apply at a later date for the authority for the child to be adopted. The permanence order will be flexible enough to meet the changing needs of every individual child.

*Improved rights of access to information about adoption for adopted people*

30. The Bill includes a regulation making power allowing the Scottish Ministers to make regulations as to the release of information about adoptions to adopted persons and other persons.

*Improved rights of access to medical information of people involved in adoptions*

31. The Bill includes a power which will allow the Scottish Ministers to make regulations in connection with the disclosure of information about the health of the birth parents of a child who is to be, may be, or has been adopted. In certain circumstances (which will be prescribed in the regulations) such disclosure may take place without the consent of the birth parents.

32. This power will be used to ensure that important medical information that may affect a child can be made available to people who need to know this to plan for the child's future. Currently, there are concerns that adoptive parents have insufficient information about the medical history of a child's birth family. This can raise doubts over the health of the child and make it difficult to plan for the child. In some circumstances this uncertainty can discourage potential adopters from adopting a child. This can also be problematic for adopted people who want to know whether anything in the medical history of their birth family is likely to affect them. Birth parents' medical information can currently be released with their consent, but where consent is not given, either because birth parents refuse or are unable to give it, it can be difficult to get such information, even when it is in the child's best interests.

33. This information will be used when placing the child for adoption and may be passed on to adoptive parents so that they have appropriate information required to raise the child and also so that the information can be passed on to adopted children when it becomes appropriate.

*Regulations on Fostering Allowances*

34. The Bill includes a regulation making power allowing the Scottish Ministers to set a national system of fostering allowances. It is currently for local authorities to decide their own types and scales of payments to foster carers depending on local circumstances. However, there are currently significant differences between areas. A national system of fostering allowances would help ensure that levels of these allowances are consistent and adequate in all areas.

**ALTERNATIVE APPROACHES**

35. The provisions set out in the Bill are designed to comprehensively overhaul, modernise and improve the existing framework for adoption and permanence. Existing adoption legislation lies mainly in the Adoption (Scotland) Act 1978 and the Children (Scotland) Act 1995. This legislation is outdated and is no longer relevant to the needs of many children who cannot live with their birth family. Thus, it was considered that new legislation was required to bring the legal framework up to date. The Bill was seen as an opportunity to overhaul and improve various aspects of the existing legislation to create a modern system that is relevant to the needs of those who use it.

36. The Bill is heavily influenced by the work of the Adoption Policy Review Group, chaired by retired Sheriff Principal Graham Cox QC. This worked over the period 2001 – 2005 to look at ways of improving the adoption system in Scotland. Its work was carried out in two phases. The first phase looked at ways in which adoption practices could be improved within the existing legislative framework and the Phase 1 report, issued in March 2002, made a number of recommendations (not all aimed at the Scottish Executive) which have been, or are being, implemented. The Group believed, however, that some improvements necessitated changes to existing legislation and this was covered in its Phase 2 Report *Adoption Better Choices for our Children* published in June 2005. Subsequent consultation on these proposals through the Scottish Executive consultation paper *Secure and safe homes for our most vulnerable children: proposals for action* indicated widespread support for these proposals from a range of stakeholders.

37. Examples of issues that necessitate legislative change include:

- The new Permanence Order, replacing existing Freeing Orders and Parental Responsibilities Orders.
- The extension of the possibility of joint adoption to unmarried couples.
- Providing unambiguous rights to have needs for post-adoption support assessed.

38. Changes in relation to intercountry adoption (particularly the powers to charge for processing applications and to place special restrictions on inward adoptions from certain countries) might arguably have been effected by administrative means but given the potential impact on those prospective adopters who might be affected, a specific statutory basis seems preferable.

39. Adoption serves two needs: first and most importantly the need that some children have to be looked after outside the parental home, and second, the desire for a parental experience on the part of those people who for whatever reason are unable to produce children naturally. For the latter group, assisted fertility services and advances in medical science may diminish the number affected, but there will clearly be a demand for the foreseeable future. For the first group, while support to (birth) parents may diminish the number of children who need to be looked after outside the parental home, there will always be those for whom this is a necessity. While adoption may not always be the best approach in these circumstances, research indicates that in general adoption is associated with better outcomes for such children than other forms of care.<sup>1</sup>

## **CONSULTATION**

40. The proposals contained in the Bill have been developed from lengthy and wide-ranging discussion and consultation with key stakeholders (including local authorities, adoption and fostering organisations, the legal profession, the medical profession, organisations representing the interests of children, organisations representing the interests of people affected by adoption and religious and faith-based organisations), as well as with colleagues in other parts of the

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<sup>1</sup> J Triseliotis with J Shireman and M Hundleby *Adoption: theory, policy and practice* (London, 1997) pp 19 – 28 and R Parker (ed.) for Department of Health *Adoption Now: Messages from Research* (London, 1999) pp 10 – 14 conveniently summarise the range of evidence available on this point.



Scottish Executive and other government departments and from the findings of independent research. In addition, the Scottish Executive conducted a four-month open consultation.

### *Consultation and research*

41. In April 2001 the Minister for Education and Young People commissioned a comprehensive review of adoption policy and practice in Scotland. This review was carried out by the independent Adoption Policy Review Group (APRG), chaired by Sheriff Principal Graham Cox and made up of experts in a variety of fields. The review was conducted in two phases. Phase I looked at practice issues and reported in June 2002. Phase I made 33 recommendations, all of which were accepted by Scottish Ministers. Some of these recommendations have already been taken forward:

- in January 2002 the Scottish Parliament agreed measures to enable Scotland to join the National Adoption Register;
- National Care Standards for Adoption Agencies were published in March 2002;
- the Scottish Executive published proposals to improve recruitment and retention in the social work profession; and
- the Scottish Executive let a contract to the British Association for Adoption and Fostering (BAAF) for a regional and national matching scoping study.

42. Phase II of the review, co-chaired by Sheriff Principal Cox and Penny Simpson, looked at the legal framework of adoption. A discussion paper on the legal framework of adoption and fostering, *Choices for Children in Fostering and Adoption*, written by Alexandra Plumtree, the legal consultant to the APRG, was published on 9 September 2003. This paper asked 74 questions and the responses to this consultation were used as a base for the phase II recommendations. The Phase II report, *Adoption: Better Choices for Our Children*, was published in June 2005 and made 107 recommendations which touched on all parts of adoption and permanence. Scottish Ministers accepted all but three of the Phase II recommendations and the Scottish Executive published its response, in the form of a consultation paper entitled *Secure and Safe Homes for Our Most Vulnerable Children* on 30 June 2005. The consultation paper invited views on a specific range of questions as well as the recommendations in general.

43. The aim of the consultation was to allow as many people as possible to comment on the proposals and to gather views and information that would inform the development of policy. To this end a wide range of organisations were invited to respond to the consultation paper, particularly those representing people who are often unable to make known their views. Specific efforts were made to reach people who had been directly affected by adoption, including adopted people, adopters and people who had placed children for adoption.

44. The written consultation ran for four months and attracted around 500 responses, 77% of which were from individuals with the remaining 23% received from organisations. Alongside the written consultation, four public meetings, organised and facilitated by the Scottish Civic Forum, were held in various locations throughout Scotland. The purpose of these was to discuss the recommendations of the Phase II report and to allow people to air their views with a view to gaining further opinions on the proposals. These meetings were open to anyone who wished to

attend, and 63 people attended in total. Additionally, focus group meetings were held with people who had been affected by adoption (adopted people, adopters and those who have had a family member adopted) and with social workers. Thirty-four people participated in the focus groups. There was considerable media interest in the proposals throughout the consultation period.

45. Due to time constraints, no consultation took place on a draft Bill.

46. George Street Research was commissioned to analyse the consultation responses, including those gathered at public meetings and focus groups. The consultation analysis report was published in hard copy and on the Scottish Executive website. Several key themes emerged:

- The welfare of the child should be the most important factor when considering who should be able to adopt.
- Anything that would simplify and shorten the adoption process was welcomed.
- There was widespread support for adoption support services to be extended to all parties involved in adoption.
- Parents' medical information that affected children should be made available for the purposes of permanence planning, with or without consent.

47. Analysis of consultation responses showed that the majority of the Scottish Executive's positions were supported, with two notable exceptions.

48. The Scottish Executive rejected in principle recommendation 61, the creation of a national scheme for the training, appointment and payment of curators, reporting officers and safeguarders in adoption cases. The Scottish Executive believed this was a function that was best carried out locally, but asked for views on the benefits of a national system. Where respondents commented on this recommendation they were consistently in favour of a national system. The Scottish Executive will consider this further in the context of other circumstances in which such officers figure, such as Children's Hearings.

49. The majority of responses from individuals focussed on the proposal to allow joint adoption by unmarried couples (although the consultation paper did not directly ask about this issue) and overwhelmingly opposed this. Of those respondents who commented on this proposal, 89% were against same-sex adoption and 83% were against adoption by unmarried couples. Many of those people who commented on this proposal did so from a religious or faith-based position.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal Opportunities**

50. The provisions of the Bill are not discriminatory on the basis of gender, race, disability, marital status, religion or sexual orientation. It will have a positive impact for equal

opportunities. It will remove the ban on joint adoption by unmarried couples and will also allow same-sex couples to adopt jointly.

51. The Bill contains provisions which will require adoption agencies to take account of a child's religious, racial, cultural and linguistic background, and the wishes of the child's relatives with regard to these factors, when placing that child for adoption. This will expand the existing requirement to consider a child's religious background. Although adoption agencies will not be required to place children only with adopters of a similar religious, racial, cultural and linguistic background, they will need to give greater consideration to these factors when planning for children.

## **Human Rights**

52. The Executive is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights. Some specific issues in respect of this statement are discussed further below.

### *Adoption and permanence orders – removal of parental responsibilities and parental rights*

53. Article 8 of the Convention will necessarily be engaged as the provisions for the making of adoption orders and permanence orders will transfer parental responsibilities and parental rights and will interfere with the birth parents' right to respect for family life. The Executive is, however, satisfied that any infringement would be proportionate and justified in protecting the rights and interests of the child.

54. The approach of the European Court of Human Rights has been to allow Member States a wide margin of appreciation in determining the circumstances in which children may be removed from their natural parents. The test is whether the correct balance between the interests of the child and the rights of the parents has been carried out. A fair balance must be struck between the interests of the child and those of the parents and, in that balancing process particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents (*Sahin v Germany* (2004) 38 EHRR 35 at paragraph 66).

55. Section 8 (Considerations applying to the exercise of powers) of the Bill requires the welfare of the child to be treated as the paramount consideration in any decision concerning adoption. This test also applies to permanence orders (section 83(4)).

56. Article 8, although it does not expressly confer procedural safeguards, will also require a determination of whether the process leading to the decision to make the interference with the individual's private or family life was fair and provided adequate protection of those rights. The test is found at *W v UK* (8<sup>th</sup> July 1987, Series A no. 121, page 29) where the court found that, in a case where a child had been placed in care against the wishes of his parents, that what had to be determined was whether the parents had been involved in the decision making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests.

57. Article 6 is also relevant as any decision made in respect of an adoption order or a permanence order application will constitute a determination of the parents' civil rights and obligations. Adoption orders and permanence orders may only be made by the Court of Session or the sheriff court and the parents will have a right to participate in the proceedings as discussed below. Accordingly the Executive is satisfied that, to the extent that article 6 is engaged, the provisions of the Bill meet the procedural requirements.

58. Before an adoption order is made the birth parents must provide their consent to the making of the order and the court must be satisfied that the parents understand the effect of the adoption order. The court may only dispense with this requirement where the parents cannot be found or they are incapable of giving consent or where the welfare of the child requires the consent to be dispensed with.

59. The new permanence order provisions require the court to permit any person who has parental responsibilities or parental rights in relation to the child or any person who is able to demonstrate an interest, to make representations in the permanence order proceedings. Further provision requires that the rules of court must include provision requiring such persons to be notified of the date and place of the hearing and the fact that the person is entitled to be heard. The provisions will also incorporate the same consent requirements as for adoption where a measure seeking authority to have the child adopted is sought in the permanence order.

60. In addition any person who has lost their parental rights and parental responsibilities as a result of the making of the permanence order will have a right to apply to the court for a variation to alter the terms of the order. The application will, however, require leave of the court which can only be granted where the court is satisfied that there has been a material change in circumstances relating to the measures of the order.

61. Fathers who have never assumed parental rights and parental responsibilities will have a right to be notified of an application for a permanence order in terms of the rules of court. In addition the local authority must notify and send information to this group of persons where that authority is considering making an application for a permanence order or where it becomes aware that an application for an adoption order is to be made. These requirements will only apply where the father can be found.

#### *Adoption records*

62. The Bill contains a regulation making power to allow the Scottish Ministers to make provision for or in connection with the disclosure of information about the health of the child's natural parents when that child is to be or has been adopted (section 76).

63. Article 8 of the Convention provides a right of access to information regarding parentage (*Gaskin v UK* (1989) 12 EHRR 36 and *Odievre v France* (2004) 38 EHRR 43). Section 57 (Adopted Children Register and index) of the Bill requires connections to be possible between entries in the Adopted Person Register and the Register of Births in relation to that person.

64. The right to information must be balanced against the protection of personal information and the right to private life under article 8. Section 76 is an empowering provision and the Scottish

Ministers will be required to consider the effect of Article 8 given section 57(2) of the Scotland Act 1998 in the exercise of that power. Accordingly the Executive is of the view that the provision itself does not infringe article 8 of the Convention.

### **Island Communities**

65. The Bill will have no specific effect on island communities; the provisions of the Bill apply equally to all communities in Scotland.

### **Local Government**

66. The Bill will have a direct effect on local authorities' provision of an adoption system. All local authorities currently provide an adoption service, but the Bill will affect the way this operates. The most significant change is that local authorities will have a duty to provide a wider range of pre- and post-adoption services to a wider range of people. Additionally, a wider range of people will be able to request an assessment of their need for support services. These provisions are likely to result in an increase in the number of requests for such assessments and an increase in the services provided. However, it should be noted that the provision of support services is an existing service. The main differences will be in the range of people who can receive such services and in the steps that local authorities must take to ensure that people are aware of what services are available.

67. This is likely to result in a moderate increase in the cost to local authorities of these services. This is detailed in the Financial Memorandum.

### **Sustainable Development**

68. The Bill will have no specific effect on sustainable development.

*This document relates to the Adoption and Children (Scotland) Bill (SP Bill 61) as introduced in the Scottish Parliament on 27 March 2006*

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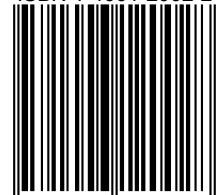
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