

# Adoption and Children (Scotland) Bill

## Stage 1 briefing

Children in Scotland welcomes this Bill as a positive and well-thought-out approach to modernising the adoption system in Scotland. The need for reform has been well documented and it is hoped that the bill, when implemented, will improve the situation and life chances of children and young people in Scotland.

There are, however, a few points that need to be addressed in order to improve its effect on the lives of children and young people. In particular, there are a number of issues around the current provisions relating to the child's right to be heard on, and give consent to, an adoption. The lack of provision for independent advocacy for this group of vulnerable children and young people also needs to be given more attention. Finally, the current provisions for unmarried and non-resident parents needs to take greater account of the positive roles this group can play.

### Children's rights

#### *Rights after the age of 12*

As the Bill stands<sup>1</sup>, only children aged 12 and over will have the **right** to express their views on<sup>2</sup>, and be asked for consent to<sup>3</sup>, any proposed adoption. By contrast, Article 12 of the UN Convention on the Rights of the Child provides that **all** children have a right to be heard and heeded in decisions that affect their lives<sup>4</sup>. Being adopted is one of the most important decision that can be made about a child's life. Thus, it is a clear of example of a decision about which the views of affected children absolutely should be sought and taken into account (*in advance* of the decision).

There is no empirical evidence supporting the idea that service providers or policy makers should see the age of 12 as a watershed. It is an arbitrary line that cannot withstand careful scrutiny. Worse, the effect will be to disempower and exclude children below the age of 12 from what is arguably the most crucial single decision ever made about them. The right for all children to be heard – based on *maturity not age* -- should be explicitly enshrined in this legislation. Similarly, *maturity not age*, also should be the overriding, deciding factor in their right to consent to an adoption.

#### *The right to be heard – section 9*

Children and young people often speak of 'not having a voice' in the adoption process. Arguably, not listening to the views of the children and young people themselves has resulted in unsuitable and

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<sup>1</sup> Adoption and Children (Scotland) Bill 2006 - Sections 9 and 34.

<sup>2</sup> Adoption and Children (Scotland) Bill 2006 - Section 9

<sup>3</sup> Adoption and Children (Scotland) Bill 2006 - Section 34

<sup>4</sup> Article 12 UNCRC

often unsuccessful placements<sup>5</sup> that could have prevented. The thorough and meaningful participation of children and young people throughout the adoption process is good practice and leads to less conflict and more successful adoptions. It is essential, therefore, that the views of all children are sought on an ongoing basis throughout the placement and adoption processes.

This principle is supported by Scottish legal precedence in the case of *Shields vs. Shields*<sup>6</sup>, which states that the only test in deciding whether to give a child an opportunity to be heard is *practicability*. The Children in Scotland Act 1995 also places a duty on adoption agencies and courts to consider the views of the child in ‘any decision relating to adoption’.

This right for all children and young people to be heard should be reflected throughout the Bill. At a minimum, it should be applied at such crucial stages in the adoption process as:

- ⇒ When an adoption is agreed
- ⇒ When a permanency order is agreed
- ⇒ If an adoption fails and a child is returned

### ***The right to consent to adoption – section 34***

The Bill does provide for a judge to override the age limit for consenting to an adoption on the grounds of maturity. Children in Scotland believes that as a general principle, by the time that a case is brought to a judge, it is far past the point at which a child’s views should have been considered. Worse, however, is the prospect that this provision will be used far more often as an **exclusionary** measure than as an inclusive one. In other words, it seems likely that it will be invoked as a justification *not* to hear or heed 14 year-olds, rather than as a means by which the views of capable 10 year-olds will be taken into account in adoption decisions. Thus, there is a danger that those under 12 will therefore be excluded from consenting to an adoption regardless of their maturity.

### **Advocacy for Children**

The aim of this Bill is to increase the number of children who go through the adoption processes. By their very nature, the children are likely to be vulnerable and in need of independent advice and support. Independent advocates put forward children and young people’s views without reference to or judgements on ‘their best interest’. This is different to the role played by professionals and parents who act based upon their own determination of a child’s ‘best interest’<sup>7</sup>.

The Executive has recognised the need for advocacy services for children in a number of policy documents and legislation. The following documents make reference to the need for and benefits of advocacy:

- ⇒ The U.N. Convention on the Rights of the Child (ratified by the U.K. Government in 1991)
- ⇒ Children (Scotland) Act 1995
- ⇒ Child Strategy Statement (Scottish Executive, 2000)
- ⇒ “Implementing Inclusiveness, Realising Potential” (The Beattie Report, Scottish Executive, 1999)
- ⇒ The Strategic Framework for Planning Children’s Services (Scottish Executive)
- ⇒ The Commission for Children and Young People (Scotland) Act, 2003
- ⇒ The Education (Additional Support for Learning) (Scotland) Act, 2004
- ⇒ The Mental Health (Care and Treatment) Act (Scotland), 2003.

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<sup>5</sup> Voices from care (The Fostering Network 2003)

<sup>6</sup> Shields vs Shields 2003 SCLR 334

<sup>7</sup> ‘Advocacy for Children and Young People in Scotland’ Advocacy Safeguards Agency

Advocacy and Participation are closely linked – particularly in such an emotive and complex issue as adoption. A Scottish Executive report ‘ Big Words and Big Tables’ identified a number of inhibiting factors to children’s participation (in this case, in the children’s hearing system). Language and style of presenting information, emotions such as shyness, embarrassment, suspicion and the belief that they are not being listened to, all contribute to the lack of participation of children and young people in formal discussions. The report also indicated the very positive effect of independent advocacy services for those children who received it and noted that: *‘The fact that children and young people link trusting an advocate to the maintenance of privacy and confidence, and that they may want an advocate to be able to challenge panel members...suggests that independence may be an important ingredient to advocacy support services in practice’*<sup>8</sup>

Children in Scotland strongly believes that if this Bill does not make some provision for independent advocacy services for this section of Scotland’s children and young people, they will be deprived of the means to communicate effectively with, and have their views represented without judgement or qualification to, adult decision-makers. Independent advocacy should be available throughout the adoption process and be considered as a normal part of the adoption service nationwide.

### **Unmarried and Non-Resident Fathers**

The current wording of the Bill details how unmarried fathers should be informed about an adoption *if they can be found*. They will have no power to consent or object to an adoption unless they have parental rights and responsibilities. Unmarried fathers can request parental rights and responsibilities from a judge, and will then have full rights to consent and involvement. However, guidance needs to ensure that sufficient effort is put in to finding these fathers, so as to enable them to acquire their parental rights and responsibilities in a timely fashion. This will ensure that a child’s adoption is not unnecessarily delayed and that unmarried and non-resident fathers are given the option of caring for their child.

Children in Scotland feels that the current provisions for unmarried fathers carry a negative presumption. The implication is that unmarried and non-resident fathers need to be informed rather than heard, consulted and supported as a potential resource for their child. Unmarried fathers may offer a solution to a potential adoptee and should be treated as a positive resource that could prove to be in the best interests of the child.

The Bill should also clearly stipulate that mothers and fathers are a relative, and guidance should positively encourage the involvement of the mother’s live-in partner or spouse (even if not the biological father) as well as unmarried and non resident fathers in the adoption process. If this is does not happen, there is a danger that these important father figures in the child’s life will be overlooked or treated as a bureaucratic complication, rather than potential solution, in the adoption process.

### **Post-Adoption Services**

The provisions in the bill for local authorities to establish adoption services are welcome. Of particular significance is that post-adoption services should become a normal part of the system. The early stages of a child’s life with a new family are crucial and it is essential that the level of support the adopted child and family receive is appropriate and efficient. Many adopted children may have significant additional support needs. These should be recognised and the support provided.

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<sup>8</sup> ‘Big Words and Big Tables – Children and young people’s experiences of advocacy in the children’s hearing system’ Scottish Executive 2006

Section 51(3) of the bill gives a comprehensive list of what a care plan must record and specify. Although there is a general requirement to record any details of any previous assessment of the needs of a child, adoptive parents, or others, there is no mention of the plan containing details of any assessment carried out under the Education (Additional Support for Learning) (Scotland) Act 2004. This is of particular relevance for those children and young people who may have a co-ordinated support plan (CSP).

Children in Scotland welcome the duty on local authorities in sections 48 and 49 to carry out an assessment of need and, where support needs are identified, to provide for them. We believe, however, that the link between this statutory duty to provide and what is contained in the care plan outlined in section 51 is unclear. As the Bill stands, the requirement to provide what is contained in an initial care plan is reliant on the statutory duty in section 49. There is no direct duty in section 51 to provide what is contained in the plan. Moreover, there is a legal duty to provide, s55(4), if an existing plan is reassessed. We believe that to achieve consistency in law, there is merit in including a specific duty to provide whatever services or supports are contained in the care plan.

### **In conclusion**

Children in Scotland fully supports the aims and content of this Bill. However, we believe that the following changes would further improve the lives of children and young people in Scotland. We urge parliamentarians to support these points during the Stage 1 debate.

- ⇒ **Children of all ages should be asked for their views throughout the adoption process. All children have the right to be involved in decisions made about their lives and this should be explicit in the legislation.**
- ⇒ **The right to be listened to is not the same as the right to give consent. Thus, these two issues should be separated. Where the right to consent applies, maturity should be the overriding principle, and not an arbitrary age limit.**
- ⇒ **Independent advocates should be provided for children and young people from the beginning of the adoption process to ensure that their views are represented and heard by professionals and other decision-makers.**
- ⇒ **There should be more recognition of the role that unmarried or non-resident fathers (who have not had their parental rights and responsibilities removed) could play in the lives of their children.**

#### **About Children in Scotland**

*Children in Scotland is Scotland's national agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies, services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society. Children in Scotland represents over 400 members, including all major voluntary, statutory and private children's agencies, professionals organisations, as well as many other smaller community groups and children's services.*

*The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Executive, local authorities and practitioners. It also services a number of groups such as: the Cross Party Group on Children and Young People; the National Children's Voluntary Forum; the National Early Years Forum and the Additional Support Needs Network. Children in Scotland also hosts Enquire, the advice service for additional support for learning.*