

Written Submission from Children in Scotland. Scottish Parliament Education Committee May 2006:

Adoption and Children (Scotland) Bill

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 all of the 1 per cent of children and young people who are looked after and accommodated.

There are a number of specific points Children in Scotland would like to raise in this short submission. A more detailed response will be given in our written evidence to the Committee.

Children's Rights

Children in Scotland is concerned that the Bill gives no recognition to the rights and views of children under the age of 12 years. Children age 12 years or over will have the option of not consenting to an adoption order and, where this is the case, no order will be made. Whilst recognising the difficulty in law of **not** having an age 'bar' Children in Scotland believes that this is too important and sensitive an issue to place an overemphasis on the age of the child. The Age of Legal Capacity Act 1991 and the Children (Scotland) Act 1995 both have 12 as the age at which children are to be considered mature enough to give an opinion. The 1995 Act also provides that a local authority must have regard to a child's views. We are concerned that the Bill is too rigid in using 12 years or over as the age which children can refuse to consent to an adoption order. The maturity of the child must be taken into consideration. Many 10 or 11 year olds will be more mature than some 12 year olds. Whilst we are aware of the often rigid nature of legislation Children in Scotland believes that the issue of age and access to rights for children needs to be addressed particularly in relation to looked after children.

Advocacy for Children

A great deal of good work goes into supporting children and young people who are looked after and accommodated. Professionals from both the statutory and voluntary sector have a strong record of working to safeguard children and young people's rights. The provisions of the Bill, including the creation of permanence orders and allowing more people from different backgrounds to adopt, will inevitably mean that there will be an increase in the number of children and young people who go through the adoption process. The main policy objectives of the Bill reflect this and we agree that its provisions will go a long way to creating greater long term stability and permanence for children who cannot live with their original families. We are however concerned that with an increase in the numbers of children and young people going through the adoption process current services that provide support around representing children and young people's views will

be stretched. The Executive has placed an emphasis on advocacy for children in recent legislation. The Mental Health (Care and Treatment) (Scotland) Act 2002 gives children the right to an advocate if they suffer from a mental disorder and Health Boards must provide this service. It is worth remembering that of the 11,000 children who are looked after over 40 per cent have emotional or mental health problems¹ There is currently a dearth of advocacy services for children in Scotland. We would welcome further discussion on how this situation could be addressed through this legislation to ensure that all children who go through the adoption process are fully supported and their views reflected in any decisions taken.

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 form part of this. 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 and these should be recognised and support provided. Section 51(3) 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 what is contained in the care plan.

For further information contact Eddie Follan, Head of Policy on 0131 222 2437 or efollan@childreninscotland.org.uk

¹ Needs Assessment Report on Child and Adolescent Mental Health, Final Report – May 2003, Public Health Institute Scotland