Education Committee
12th Meeting, 2006

Wednesday 17 May 2006

The Committee will meet at 10.00 am in Committee Room 4

1. **Adoption and Children (Scotland) Bill:** The Committee will take evidence at Stage 1 from—

   Sue Grant, Family Law Association

   Morag Wise, Faculty of Advocates

   and then from—

   Kirstie MacLean, Children and Families Department, City of Edinburgh Council

   Margaret Anne McLean, Head of Fostering and Adoption, Glasgow City Council

2. **Child protection reform programme:** The Committee will consider an update from the Scottish Executive.

Eugene Windsor
Clerk to the Committee
Room T3.40, Committee Office
Ext. 0131 348 5204

The following papers are enclosed for the meeting:

**Agenda items 1**
Submission from Faculty of Advocates ED/S2/06/12/1
Submission from Edinburgh City Council ED/S2/06/12/2
Submission from Glasgow City Council ED/S2/06/12/3

**Agenda item 2**
Child Protection Reform update ED/S2/06/12/4
RESPONSE  
by  
THE FACULTY OF ADVOCATES  
to  
THE SCOTTISH PARLIAMENT  
on  
ADOPTION AND CHILDREN (SCOTLAND) BILL  

Introduction  
We have sought in this paper to comment only on those parts of the Bill that relate to the quality of legislation and matters of practical importance in relation to legal practice and procedure. We have avoided comment upon those matters that appear not to fall within our area of expertise.

By way of general comment, we observe that at times the Bill as drafted seems unnecessarily convoluted and repetitious. For example, in proposed section 1(1) it seems that what is intended is that a statutory duty is imposed upon local authorities to provide services. As drafted the section appears somewhat cumbersome if all that is intended to be enacted is that each local authority must provide an adoption service in its area. The importance of clarity in proposed section 1(1) of the Bill seems obvious. Other examples may be seen in sections 20-22 and 27-28. It seems to us that these provisions could be drawn together in single sections, if appropriate, to create offences in relation to these wrongs. We shall comment upon the appropriateness of the creation of criminal offences in relation to these matters later in this response.

Section 11
The proposed section relates to placing a child for adoption (in the absence of care proceedings). We note that a parent is not included in the definition of “relative” at section 111. If a parent is involved in the placement of a child for adoption that parent will, as we understand the section, be guilty of an offence. The penalty is severe. It seems to us that a circumstance could arise where, for example, a young mother may decide to place her child with a close friend or relative, intending that the child will be adopted by them. In those circumstances, by reason of the section as drafted, the young mother could be guilty of an offence and face imprisonment or a substantial fine. We wonder whether this was the intended effect of the section. If not, “parent” should be included in the definition of “relative” in this context.

Sections 20-21; 27-28
We question the need for the introduction of statutory criminal offences in these proposed sections in relation to the adoption process. Presently, the court would deal with the circumstances anticipated in the proposed sections as a civil wrong if called upon to do so. Civil remedies are available in terms of the Children (Scotland) Act 1995 (“the 1995 Act”) and under section 26 of this proposed legislation. Our concern is that there might be merit in the adoption provisions being essentially civil and that unduly introducing the concept of criminality could be counter-productive to all relevant parties arriving at a mature and civilised outcome. It may be preferable and sufficient to emphasise the aim of keeping the welfare of the child at the heart of all major considerations.

Section 31

In the Family Law (Scotland) Act 2006, cohabitants are defined as living together as husband and wife or as civil partners. Such a formulation is easily understood and commonly used in legislation. If proposed s.31(3)(c) is intended to relate to cohabitants and proposed s. 31(3)(d) to people in a homosexual relationship who are not civil partners, the inclusion of the word “if” may serve to confuse matters.
The use of the expression “enduring family relationship” does not appear to add to the concept of people living together as described. The inclusion of the word “enduring” seems to relate to time rather than to the quality of the relationship. It is acknowledged that there may be policy reasons for reference to the “enduring” nature of the relationship, but the word “stable” may be more appropriate. If it is intended to use the word “enduring”, that word should be further and clearly defined.

Section 32(1)(d)
The Faculty struggled to envisage the circumstances where a natural parent would require to adopt his or her own child, except in the circumstances anticipated in subsection (3), for which provision is made there. There otherwise would not appear to be a need for a parent to adopt his or her own child. A parent may simply seek parental responsibilities and rights in terms of the 1995 Act.

Section 33
Again, this section appears unnecessarily convoluted. It occurs to us that the heading of the section might be misleading and unhelpful and that it might better be headed “Conditions for Adoption Orders”. We also consider the format used of stating “The first condition is” etc to be confusing and inelegant. It is normally preferable to list the conditions and to allocate each one a number. At present the first condition is in subsection 2 and so on. It would be clearer if these were all a subsection numbered one to five or such like.

In relation to proposed s.33(2)(b)(ii) we note that the welfare of the child is always at the forefront of the mind of those concerned about making decisions relating to adoption. We are concerned that proposed s.33(3) renders it sufficient that a permanence order is in place, and makes no provision for changes in the child’s circumstances since the making of the order.

Section 84 – Permanence Orders
In our previous paper “Response by the Faculty of Advocates to the Scottish Executive Adoption Policy Review Group Consultation Paper - Secure and safe homes for our most vulnerable children”, we commented, in relation to Permanence Orders, as follows:-

“We agree that the current “freeing” and parental responsibilities orders should be abolished. We have no difficulty with the concept of a Permanence Order to secure children in a long term placement and be flexible enough to meet the needs of individual parents and children. We agree that the Permanence Order should remove the right of the parent to determine the child’s residence or to have the child live with him, as a minimum. The corollary of that is that from the local authority’s perspective, all that the Order can do as a minimum is provide the right to determine residence. Other rights and responsibilities require to be determined on a case by case basis. Otherwise, the desire for flexibility to meet the needs of each individual child would not be met.

We agree that a child on a Permanence Order should remain “looked after” by the local authority. If a child on a Permanence Order is no longer involved in the children’s hearing system (i.e. if a supervision requirement is terminated) and the parent retains rights and responsibilities, there must be provision for the parent to seek a “looked after” child review in order to assert their rights and fulfil their responsibilities.

We agree that there should be scope for provisions attaching to a Permanence Order to allow the local authority to place the child for adoption. However, such a far-reaching provision for the child within the Permanence Order requires that careful scrutiny be given to the procedural implications and the provision of accurate information to parents. It seems to us that if the local authority retains the power to apply for an order that permits the placing of the child for adoption, and dispensing with the agreement of the parent to a subsequent adoption order, this does not represent any significant improvement on the present situation, except insofar as the parent retains the right to seek an order for contact.
There should be clarity in the legislation in relation to the stage at which a child may be placed with an individual or individuals who it is anticipated will be potential adopters.

We agree that only the local authority should be able to apply for a Permanence Order.”

We consider that there is a lack of clarity in the proposed section in respect of the effect of a Permanence Order and the express powers of the court where a Permanence Order has been made. In relation to the mandatory provision, per proposed section 84(3), we consider that the statutory provision may be clearer if it simply provided that the mandatory provision removes the right to have the child live with the parent and transfers it to the applicant.

In relation to the ancillary provisions it seems to us that the drafters may be confusing the power of the court with the test to be applied.

Section 86(2)(d)

The inclusion of the words “in the opinion of the court” may be tautologous.

Section 89

We note that no provision is made in this proposed section for leave to apply for a variation. The requirement for leave is to be found in proposed section 91(5). It seems to us that the drafting of this section could be improved. A similar provision is required to that found in section 91(5) – or that provision should be included in section 89.

The Faculty wishes to reiterate its concerns regarding the concept of requiring leave to apply, which is not established in Scottish legal procedure.

Section 100

The amendments to section 11(3) appear to reflect the policy but are unnecessarily tautologous. It is not necessary to restate the words “that application for an order …”
found at s.11(3)(a) of the 1995 Act. In proposed new s.11(3)(aa), the restriction to applications for orders for contact could be provided without restatement in full of the words at the outset of s.11(3)(a).
EDUCATION COMMITTEE CALL FOR EVIDENCE ON THE ADOPTION AND CHILDREN (SCOTLAND) BILL
RESPONSE FROM THE CITY OF EDINBURGH COUNCIL

General Principles of the Bill

The City of Edinburgh Council is very supportive of the general principles of the Bill. We believe the Bill represents a catching up with societal and cultural changes. We fully support the wish to simplify, streamline and speed up the adoption process and we like the principle of the potential for sharing parental responsibilities and rights. The principle of including the issue of fostering allowances is supported but we feel that this is a missed opportunity to bring forward legislation to promote and regularise different forms of foster care. We think the principle of bringing adoption and fostering together is a good one but not taken far enough in the Bill as presented. We continue to disagree with the principle of giving Children’s Hearings a place in permanence and adoption. As we have said in each and every relevant consultation it is our view that Children’s Hearings should be concerned with the short-term care arrangements for children.

Although not in the Bill we absolutely disagree with paragraph 39 in the Adoption and Children (Scotland) Bill Policy Memorandum which states that adoption serves two needs. The City of Edinburgh Council disagrees with the statement that adoption is first and most importantly the need that some children have to be looked after outside the parental home. This is clearly not the purpose of adoption which is to provide care throughout life by the making of an adoption order for those small number of children for whom it is in their best interest to have a relationship in law with a family other than their birth family. We totally disagree with the supposedly second need, namely the desire for a parental experience on the part of those people who, for whatever reason, are unable to produce children naturally. Categorically we believe that adoption is about securing family relationships for life for children and it is not about providing children for childless individuals or couples. We most urgently suggest that this paragraph be deleted.

The advantages and disadvantages of the proposed legislation

The City of Edinburgh Council believes that the Bill as presented provides the opportunity for better choices for children in a cleaner and quicker process. The broader eligibility is very welcome and is likely to lead to more adoptions. Access to relevant medical information is again much welcomed and certainly we believe is in the best interests of children. We welcome the emphasis on ensuring that adequate supports are in place for all those affected by adoption but remain concerned as to the financial aspects of this. We have a concern that the possibility of re-opening cases may have a disincentive on potential adopters as we have much experience of family pressure to contest applications under the current legislation. We think that there will be considerable family pressure in some cases to push for revocation. We
certainly do not want the instability of placements governed by the Children’s Hearing system to be replaced by instability brought about by repeated applications under Section 11.

**Particular elements and suggestions for improvements.**

We think that the Bill would be considerably improved by removing the principle of the involvement of Children’s Hearings and also by increasing the provision in relation to fostering. Many more children are affected by fostering and this is an opportunity to regularise different forms of fostering. It occurs to us that the creation of a permanence order regularises the circumstances of many children but there is no reciprocal arrangement in relation to permanent foster carers.

Scotland is a relatively small country and it seems to us that there should be oversight of adoption across the country. We believe that the Bill should contain a duty on local authorities as adoption agencies to co-operate and promote the adoption of children across Scotland. The duty to co-operate features in the Children (Scotland) Act 1995 and we believe should be included here. The Bill could include consortia arrangements and inter-agency fees for placements in a way that would really increase the opportunity for adoption for many children in Scotland. The avoidance of setting adoption allowances nationally could lead to regional differences in people coming forward as potential adopters.

We uphold the principle of adoption allowances being linked to the needs of the child. The flexibility in permanence orders will mitigate the very difficult issues around contact in freeing applications.

We would like to see a greater deterrent for breaches of the Bill than are currently suggested – we understand that instances of trafficking are increasing and we are concerned that more children may be brought into the country illegally for the purposes of adoption and believe that those convicted of such offences should be subject to considerably longer prison sentences than under three months.

We are somewhat confused between references in the Bill to the United Kingdom, Great Britain and The British Islands and believe this could be made more straightforward.

The Bill lacks any particular requirements on Courts and we think the Bill would be considerably improved by making it clear that adoption needs to be within timescales to suit children.

**Other relevant issues**

We have some concern about the timescale involved in locating birth fathers and would wish to ensure that this process does not build in further delays for children.
A major area for The City of Edinburgh Council is around the transitional arrangements. In particular we would very much welcome the inclusion of the automatic conversion on the enactment of the Bill of freeings to permanence orders. The City of Edinburgh Council has a number of children currently freed for adoption but with little prospect of actually being adopted. We have experienced some difficulty in Court when seeking to convert freeings to parental responsibility orders. Whilst we appreciate that this process will be much more straightforward in terms of seeking permanence orders for these children, it would be very much easier for all involved if the transitional arrangements included the automatic conversion of current freeings to permanence orders.

Although not part of the Bill we believe paragraph 391 within the financial memorandum to be complete nonsense.

Consultation

The City of Edinburgh Council believes that the consultation process has been absolutely fine.

Financial Memorandum

This document appears to be based on a number of dubious or flawed assumptions which have the result of downplaying the costs of introducing a new Adoption Act. Paragraph numbers relate to paragraph numbers in the Memorandum:

368. There is a general assumption throughout the Memorandum of static numbers of looked after and accommodated children. While 2004 - 2005 Scottish Executive statistics will not be published until the autumn, there is a view among many local authorities that numbers are rising and/ or that there has been an increase in younger children i.e. those more likely to be placed for adoption or on permanence orders. Consequently, while it is hoped that the Act will facilitate more children being placed for adoption, this may not lead to a reduction of children in foster or residential care. The assumption of a reduction of children in residential care is highly dubious - these children are not being prevented from placement for adoption by lack of adopters and/ or cumbersome legal procedures but because adoption is very rarely in their best interests. Their older age (usually 8+), continuing face to face family contact, behavioural difficulties and taking account of their usually negative views concerning adoption mean that it is extremely unlikely there will be an increase in adoptive placements of children currently in residential care. There are no children or young people currently in residential care in Edinburgh assessed as in need of adoption.

369. While the research evidence of "catch up" of adopted children is heartening, much of this concerns placement of babies and infants. Where older or disabled children are placed for adoption, the impact of adoption on their development is less marked. If there is to be an increase in looked after children placed for adoption, they will come from the latter groups. This is not an argument against adoption which, by usually providing a child with a supportive family well into adulthood, has many advantages but a caution
against over-optimistic assumptions concerning the reparative powers of adoption. An audit in Glasgow (Bell J. and Sim M. in Phillips R. (Ed.) *Children exposed to parental substance misuse - implications for family placement.* BAAF 2004) found that 48% of children in foster care came from drug misusing families (this did not include families solely misusing alcohol). It was suggested that this was an underestimate because drug use tends to be hidden. It was also found that children more recently admitted to care were more likely to come from drug misusing families. Whilst we have not collected data for Edinburgh, similar findings would be likely. The adverse affects on children of being born into and living in drug or alcohol misusing families can include irreversible brain or physical damage while in the womb, withdrawal from addiction post natally (which has a number of distressing results for the baby and can lead to longer term damage) and abuse and/or neglect within the family (which can often lead to irreversible physical, psychological and emotional damage). It seems likely that some of the research findings used in the Memorandum are already out of date. Although children harmed through parental drug and alcohol misuse are likely to get optimum opportunities for recovery if placed for adoption, most of them will never fully recover and they will present ongoing challenges for their adopters and for social work, education and health services. Adopters will need expert advice and support throughout the child’s childhood, adolescence and in some cases adulthood if they are to be sustained in the demanding and complex parenting tasks they are taking on. They will often require respite services and the children will need a variety of therapeutic and supportive services. It seems likely that the number of children born to substance misusing parents will increase as will the proportion of them accommodated. They are children who do not often successfully return home and therefore they are likely to be placed subsequently for adoption. The maintenance of contact between adopted children and birth families has also become a feature in most adoptions in the last ten years. While the contact is not usually face to face with parents, although it can often be with siblings and grandparents, an agency needs to act as an intermediary. Edinburgh has over 130 of these arrangements and has a service level agreement with a voluntary organisation to support them. The number of arrangements, the amount of work involved and the costs are markedly increasing.

370. The rationale for additional costs to local authorities of £2,350,000 appears to be that this is approximately 1/10 of the amount allocated by the UK government for their recent adoption Bill/Act. The rationale for this figure is not given, nor is there any comparison of the provisions of the 2 Bills/Acts or of the social contexts. For instance, we know that more children are living in drug and alcohol misusing families in Scotland than England. The amount in Scotland provides £73,437 per local authority which will not provide a great deal in the way of additional services. The changing nature of children placed for adoption and adoption placements, outlined above, and the increased costs likely to be incurred in supporting them are not considered at all in the Memorandum. It appears to be assumed that it is only increased numbers of children placed for adoption that will increase costs - this is not the case. The cost, over a lifetime, of each adopted child is increasing.

380. The rationale for believing that Permanence Orders may lead to a reduction in costs is not provided. We were unable to identify any, apart from a very minor saving because there would no longer be a need to write and
present reports to Children’s Hearings. However, this will only be a saving if more children are placed on Permanence Orders than are currently subject to Freeing for Adoption or Parental Responsibilities Orders - something the Memorandum states is unlikely! We actually consider that because Permanence Orders will not have some of drawbacks associated with the previous orders, there is likely to be increased usage thus securing the long term futures of a greater number of children. Indeed, why introduce them unless this is the intended outcome?

382. There are costs for the recruitment and support of domestic adopters not incurred in overseas adoption. For instance, overseas adopters come forward of their own accord whereas insufficient domestic adopters do so, necessitating recruitment campaigns (the City of Edinburgh Council will spend £50,000+ this year on a recruitment campaign for adopters and foster carers), the costs of introductions of domestic adopters to the child/ren and any equipment they require and their legal costs are usually paid. Domestic adopters will usually be eligible to attend relevant courses and support groups provided by the local authority or voluntary agency for their foster carers and adopters.

385. It is a rather odd and unlikely assumption that while the number of people accessing post adoption services will increase, the range of services required "is unlikely to differ greatly from the current situation". One of the triggers for the Bill was the dissatisfaction of adopters, adopted adults and birth families with the range of services available. In particular, there are increasing and usually justified demands from adopters for therapeutic services for their children, for support with the practicalities and emotional impact of contact arrangements and for respite services. Local authorities, or the voluntary agencies with which they have service level agreements, are currently very over-stretched trying to meet existing demand. The ability to pay cash in lieu of services (paragraph 387) is likely to increase pressure as adopters see this as a way of buying (often expensive) services in the private sector which local authorities and health services are not in a position to provide.

388. The changing nature of children placed for adoption has meant that for many years (probably at least the last 15) placement with an adoption allowance is not exceptional, it occurs in at least half of all placements. Edinburgh regularly approves existing foster carers to adopt children placed with them (research shows these placements are particularly stable) but foster carers cannot generally afford to give up the fostering maintenance allowance. The City of Edinburgh Council is currently paying around 150 adoption allowances; most of them full (i.e. the fostering maintenance allowance minus child benefit). An increase in numbers of children placed for adoption, given that the children placed are likely to be older and/or disabled or developmentally delayed, will mean that most are placed with adoption allowances.

389. We consider that the time has come to adopt the Fostering Network recommended rates. A number of Council’s have used the Scottish Executive fostering grant to move towards or achieve this (Edinburgh has increased its allowances by 20% this year but is still some way short of the TFN rates). COSLA has stopped recommending rates from this year (presumably the
figures in the Memorandum are 2005-2006 figures). A low recommended rate from the Scottish Executive, e.g. based on the DfES figure, would be a retrograde step and, if adopted by local authorities, would lead to the trickle of carers currently being lost to the voluntary/independent sector becoming a flood. We are already having to use this very expensive sector because of shortage of carers. One of the main organisations we use, Barnardos, has adopted TFN rates this year and most of the independent providers pay similar rates. It is imperative that the costs of not paying carers sufficient allowances, i.e. the necessity of greater use of the voluntary and independent sectors is acknowledged. If, as seems likely, the number of looked after children has increased, this needs to be factored in to calculations concerning costs.

391. Although legal aid costs are not an issue for local authorities, we were more than a little surprised by the statement that “it is rare for a birth parent to contest a freeing or adoption order as, in our experience, most are contested. Certainly it is not the Edinburgh experience that it is rare for a birth parent to contest a freeing or adoption order and that where contact arrangements are made this is usually by agreement outside the Court process. Our experience is completely contrary – many families engage counsel to dispute freeing applications and indeed in many cases each parent engages separate counsel. We think this paragraph is completely inaccurate.

399. As indicated previously, we find the suggestion that any costs will be saved in provision of residential care very unlikely.

Conclusion

The City of Edinburgh Council welcomes the Bill believing it to be in many respects long overdue and very much looks forward to working with modern, clean legislation.

Pam Smith
Head of service Development (Social Work Services)
Children and Families Department
The general principles of this Bill are seen to be positive. It is noted that although the 1978 Act would be repealed (apart from Part IV), a large part of the Bill is the incorporation of the 1978 Act as amended by the 1995 Children (Scotland) Act. It is not therefore, a radical change from previous legislation.

There has already been a very full consultation with Local Authorities which was helpful.

Positive Changes Incorporated in this Bill:

- The repeal of Section 18 is welcome.
- Section 16: Adoption Order cannot be granted unless the agency (implies placing agency) has had sufficient opportunity to see child in home with applicants. This is welcome in specifying good practice.
- Section 31: Adoption by same sex/unmarried couples.
- Section 38: Automatic revocation of Section 70 on granting of Adoption Order.
- Section 78: Provision of disclosure of parental medical information.
- Section 79: Power to make payment in lieu of Adoption Support Service, although it needs to be clear whether this adds to existing powers.
- The provision of Permanence Orders is positive allowing for ancillary responsibilities to be transferred to others such as foster carers. This provision addresses concerns raised consistently by children and their carers about the need to devolve decision-making powers when it is a permanent fostering.
- The Adoption Service plan is new and will be of benefit in planning services within the Local Authority.

The following points contain concerns raised about particular elements and some suggestions for improvement:

- Terminology
  ‘Adoption Service’ is defined in Section 4 (definition as per Regulation of Care (Scotland) Act 2001). Seems to be used interchangeably with ‘Adoption Agency’ (undefined).

- Adoption
  No provision for children’s medical information equivalent to that in Section 78 for birth parents. Will still have problem of requiring parental consent for completion of B forms.

Section 21 and 22: Restrictions on removal of children from prospective adopters. Very little about the role of the Hearing system. This is a very difficult area, with both
Courts and Hearings having a role. Could have taken the opportunity via this Bill to clarify, e.g. if all matters relating to adoption had to be referred to Court.

Section 31: Minimum age to adopt has been kept at 21. How many people actually adopt at that age? Adoption is more complex than when it was first made subject to legislation, and we are more aware of responsibilities. A minimum of 25 would be better.

Section 33: Executive have not taken the opportunity to introduce advance consent to adoption as has been done in the 2002 Act (Section 20). It would have been useful in some cases. Likewise, Placement Orders (Section 21 of the 2002 Act).

Section 99: Throughout the consultation process, it was evident that there was a tension between the Hearing system and the need for permanence for children. Practitioners felt strongly that the current system was flawed and resulted in increasing delays and inappropriate contact levels which prevented children being secured. In this area the Bill appears to have compromised.

Section 84 (6): Concern raised that there are only 2 grounds to dispense with parental consent, neither of which is rooted in historical fact. The 2 grounds are: cannot be found or that the welfare of the child requires it. The latter one is the one that will be used more frequently and is entirely subjective. Concern that to different Sheriffs, the welfare of the child means completely different things. It would be helpful to keep this 2nd ground as a replacement for unreasonably withholding consent, and put in a factual based ground as have at present.

Section 100: Adoption Order is no longer a bar to the making of a Contact Order. Seems a wrong move to make, it is as open as it appears, and will leave the way open for some of the most destructive birth families to continue with actions which will threaten the stability of the adoptive placement. It is important that adoption offers children and families a sense of permanence and security.

Possibly the Executive were considering birth families who have been promised contact, and where it was seen to be in the best interest of the child for it to continue – or they may have been thinking of step parent adoptions. At the very least, there should be a requirement that applications must have leave of the Court. Social Work and legal professionals were unanimous in their concerns about this area and the effects on children.

- Post Adoption

Section 47: Does not include adopted adults – possibly an oversight? A pity that the Executive have decided against specifying post of Adoption Support Services, Adviser cp the 2002 Act.

Section 48 and 49: Assessment of need and provision of services. There was a lot of discussion about where responsibilities fall when families are approved by an agency other than their own authority and children placed with them. It included suggestions the placing agency retain responsibility for a specified period of time. The Bill does not seem to offer anything to help with this issue.

Section 52: Duration of care plan. Why 3 years? In a lot of cases, the timing, i.e. the plan, ceases to have effect 3 years after the granting of the Order – it will mean that it covers an early phase when few problems/issues might arise, and finishes just as the
difficulties are starting. Also, needs a minimum reviewing time. Section 54 ‘from time to time’ is too vague.

Section 56: Unsure about intervention of Scottish Ministers, in what situations?

- **Adoption Allowances**

  Section 77: No national rate – why not similar provision as for fostering allowances?

- **Step Parent Adoption**

  It is unfortunate that there is no provision for step parent agreements. Adoption should be a last resort as a means of securing children with relatives.

- **Permanence Orders**

  From attached 1st paragraph, under permanence, there is no provision for revocation of Section 70. There are no provisions at all about the Hearing system in relation to Permanence Orders – seems an omission.

  Whilst welcoming the flexibility that a Permanence Order brings, there is the view that the allocation of various rights and responsibilities to different parties is complex in practice.

  Section 84: The applicant should be the Local Authority as an authority – not in its capacity as an Adoption Agency (corporate responsibility).

  Section 86: ‘Representations’ lacks clarity – persons/agencies are either parties to an action, or they are not.

  Section 87: BAAF comment that there should be no automatic revocation of an Adoption Order – but presumably the principle is that parental responsibilities/rights should be vested in one body/person, and that this is in the best interests of the child.

  Section 89: It is confusing to have 2 terms – ‘variations and amendments’. Variation is the usual term in relation to Orders.

- **Curators**

  Section 101: does not include any provision for regulating curators, as was widely requested. There is still confusion about who pays their fees and it would be helpful to have this clarified.

  Practitioners from Area Teams and the Fostering and Adoption Services stress the need to consider the resource implications in implementation of the Bill. There are a number of additional responsibilities detailed which are welcome but given the increased complexity of the children being placed, this is likely to be a considerable and not as stated, ‘moderate’ demand on services.

**In conclusion**, the Bill is generally welcomed and there was comprehensive consultation at earlier stages with a variety of staff from this Local Authority. The Permanence Order will be of benefit to Looked After Children, as will improvements in the Adoption section. There is the view that the effects cannot be fully appreciated until the detail of the Regulations are known.
Dear Iain

UPDATE ON CHILD PROTECTION: It’s everyone’s job to make sure I’m alright

As requested by the Committee, I attach a further update on developments in child protection in relation to the recommendations made in the audit and review of child protection published in November 2002. To avoid repetition, where recommendations have been actioned and previously reported to the Committee, this is indicated and the update concentrates mainly on where there is further information or new developments to report. I hope this is helpful.

As previously indicated, the 3 year child protection reform programme is wider than responding to the 17 recommendations in that report and other work which has relevance includes the implementation of the Bichard recommendations on safer recruitment. We have just concluded a first programme of consultation on our proposals for a new vetting and barring scheme for those who work with children and adults at risk and are developing the necessary legislation to provide the framework for that scheme which we hope to bring to the Parliament later this year.

I hope the Committee is reassured that we continue to tackle the issues raised in It’s everyone’s’ job...alongside a range of other matters, working together with agencies and practitioners to make sure that children get the help they need when they need it.

I am copying this letter and the attachment to Lord James Douglas-Hamilton, Deputy Convenor and Eugene Windsor, Clerk to the Committee.

Best Wishes

ROBERT E BROWN
"It's everyone's job to make sure I'm alright"
Report of the Child Protection Audit and Review

Update from Scottish Executive: May 2006

Recommendation 1: All agencies should review their procedures and processes and put in place measures - to ensure that practitioners have access to the right information at the right time, and in particular to ensure that:

- Where children present to medical practitioners with an injury or complaint, practitioners must consider what further information is available from their own or other agencies before they rule out the possibility of continuing risk.

- Where children present to any hospital, there should be in place mechanisms for checking other health records to ensure a pattern of injuries is not being missed.

- Where there have been concerns about possible abuse or neglect, schools, police, health service and social work service files should contain a succinct, readily accessible chronology of events or concerns which can be easily referred to should a further incident or concern arise. This chronology should contain information relating to the child and, where known, information relating to other people in the child's life, for example, any previous deaths of children of a mother's new partner.

- Courts should ensure bail address suitability checks are undertaken in cases where the alleged offence is against children, or in the case of domestic abuse, where children may be at risk.

- Caldicott guardians in Health Boards and Trusts should ensure that health professionals are aware of their responsibilities towards the care and protection of children. In particular they should ensure that where children are at risk of abuse and neglect information is shared promptly with other relevant professionals in line with the General Medical Council and the Scottish Executive guidance on when medical confidentiality can be breached.

Update: This is primarily a recommendation for agencies. As previously reported:

- November 2002 - Chief Inspector of Social Work Services wrote to the Chief Executives of local authorities, Directors of Social Work, Directors of Education, Chief Executives of Health Boards, Chief Executives of NHS Trusts, Chief Constables and the Scottish Children's Reporter Administration to take forward the recommendations in this report.

- December 2003 the Chief Executive of the NHS issued a Plan for Immediate Action\(^1\) in the NHS dealing with issues of accountability, information sharing, communication and training. The Child Health Performance Framework (PAF) includes questions on the implementation of this Plan.

- September 2004 - Chief Medical Officer wrote to all Caldicott Guardians to remind them of the responsibility of sharing information if a child is potentially at risk. Also issued a paper Sharing information about children at risk: a brief guide to good practice\(^2\) to health professionals copied to Chief Executives of local authorities, Directors of social work and Child Protection Committees.

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\(^1\) Available at [www.show.scot.nhs.uk/publicationsindex.htm](http://www.show.scot.nhs.uk/publicationsindex.htm) - keyword: child protection, category Scottish Executive

\(^2\) Available at [www.show.scot.nhs.uk/publicationsindex.htm](http://www.show.scot.nhs.uk/publicationsindex.htm) - keyword: child protection
Duty to share information

The First Minister announced in February 2006 the intention to make it a duty in law for professionals to share the information necessary to protect children.

Letters of assurance

- November 2003 - Ministers for Education, Justice, and Health and Community Care jointly wrote to the Chief Executives of local authorities, leaders of Health Boards and Chief Constables seeking joint statements of assurance that local services had been reviewed, singly and jointly, action taken where necessary and that robust quality assurance systems were in place to ensure procedures and processes are robust and fit for purpose.
- June 2004 – Responses received and reviewed.
- October 2004 – Ministers sent generic response and summary to respondents which was followed up by members of the reform team with briefings and meetings in each CPC area over the next several months.
- March 2006 – further letter of assurance issued

Inspections

Joint Inspections of child protection in the following areas will start by the end of 2006:
- East Lothian
- Angus
- Midlothian
- Argyll & Bute
- Scottish Borders
- South Ayrshire
- West Dunbartonshire
- Orkney
- Edinburgh

The aim is for every authority area to be inspected by 2008.

Information Technology

In conjunction with partners in Lanarkshire, we have piloted the delivery of a child protection messaging system using the eCare Framework. This links closely with work in relation to recommendation 15.

The messages are generated whenever a formal child protection activity is recorded on the Social Work IT application. The messages are viewed and acknowledged on the Social Work application, sent to the local eCare Multi-Agency Store (MAS), then viewed and acknowledged by partner agency practitioners with agreed permissions. Messages

3 available on Scottish Executive website at [http://www.scotland.gov.uk/Topics/People/Young-People/children-families/17834/Letterassure2#top](http://www.scotland.gov.uk/Topics/People/Young-People/children-families/17834/Letterassure2#top)

4 What you can do to help if you are worried about a child or young person leaflet at [www.scotland.gov.uk/library/5/education/pycp04-00.asp](www.scotland.gov.uk/library/5/education/pycp04-00.asp)


6 Child death and significant case review group, membership and remit at [www.scotland.gov.uk/topics/people/young-people/children-families/17834/childdeathmembership#top](www.scotland.gov.uk/topics/people/young-people/children-families/17834/childdeathmembership#top) and [www.scotland.gov.uk/topics/people/young-people/children-families/17834/childdeathremit#top](www.scotland.gov.uk/topics/people/young-people/children-families/17834/childdeathremit#top)
on persons linked to the child (e.g. sibling and primary carer) are also generated.

The messages are a prompt to practitioners to share information and are embedded in and support child protection procedures. These messages went live across Social Work in North and South Lanarkshire in June 2005. Since Autumn 2005, the messages have been viewed and acknowledged by NHS Lanarkshire Primary Care staff, school nurses and Education staff involved in the Coatbridge and East Kilbride pilots. Strathclyde Police Family Protection Units in North and South Lanarkshire and Scottish Children Reporter Administration staff will also access the information, by way of a separate interim solution. The NHS SCI store has now been linked. Following staff briefings, Accident & Emergency staff and GPs will be the first groups to receive the child protection messages. A&E will receive the messages via the SCI store, the initial testing with GPs using the SCI store and evaluation of other options is ongoing to determine the most appropriate IT solution for GPs. Plans are in place to rollout the solution via the SCI store to the Child Health Directorate, Maternity Services, Outpatients Clinics, Psychiatric Wards and NHS 24.

The Pilot will continue for at least another two months. Further technical work is currently underway and the results of this will be tested within the Pilot. Then roll out beyond Pilot and with SCI store users. Evaluation is being carried out by the OD and technical groups and by the two practitioner's focus groups in Coatbridge and East Kilbride.

We have begun informal consultation on how we might nationally implement messaging, based on the lessons learned in Lanarkshire. The purpose is to seek agreement on a clear and detailed statement of the specific information requirements and business needs that the technology is intended to support. The minimum standards will have to be nationally agreed to ensure fit with procedures across all CPC areas, and fit with national policy.

This is being taken forward by the Executive’s Data Sharing and Standards Division which manages the eCare Framework. A new governance structure to support this work has now been implemented, with 14 Local Data Sharing Partnerships (based on Health Board geographies) reporting to a National Data Sharing Forum. At the first meeting of this forum, held in April 2006, Tom McCabe, Minister for Finance and Public Service Reform, highlighted the development of the rollout strategy for the Child Protection Messaging solution as one of the key priorities for 2006-07. Clearly an important aspect of this will be the development locally of the appropriate interfaces with these Partnerships and Child Protection Committees.

The Executive is also currently considering options for an architectural framework for Scotland-wide information sharing.

**Recommendation 2:** Through the Child Protection Committees all agencies should improve access to help for children who have been abused or neglected by:

- providing for single-page contact information for telephone directories, public phones and the web, which identifies local contact points in health services, local authorities, police services, SCRA and the voluntary sector;

- providing for services users and referrers, information about how to access help for children about whom they are worried. This should include information about how and when children and young people will be consulted, what will happen after a referral is made and what, and how, feedback to people who refer concerns will be provided.

**Update:** This is primarily a recommendation for agencies and CPCs. The Scottish Executive is working with CPCs to help improve public information, understanding of what might happen when a concern is reported and how to contact services if someone
has a concern. This has involved:

- issue of leaflet *What you can do to help if you are worried about a child or young person* with local contact numbers for access to services, information on what to look out for and an indication of what might happen when a concern is raised;

- the provision of public information as a key function of a CPC and new guidance (issued Feb 2005) requires them to produce and disseminate public information about protecting children and young people with the development and implementation of a communication strategy. This will be monitored in annual reports from the CPC as well as through the work of the child protection reform team members who are paired with each CPC;

- development of a single telephone number nationally through which people can ask for general information or raise specific concerns building on the experience from the pilot media campaign in Grampian last year.

**Recommendation 3:** The Scottish Executive should, in consultation with service providers, draw up standards of practice that reflect children's rights to be protected and to receive appropriate help. All local authorities, health boards, police services and SCRA should undertake regular audits of practice against these standards and report on them annually to the Scottish Executive and local Child Protection Committees.

**Update:**

- March 2004 – publication of the *Children's Charter*;
- March 2004 – publication of the *Framework for Standards*;

**Recommendation 4:** The Scottish Executive should revise the remit of the Child Protection Committees to include:

- Annual auditing and reporting, to constituent agencies and to the Scottish Executive, on the quality of agency and inter-agency work.

- The provision of information to members of the public, volunteers and other professionals.

- Assisting a wider range of organisations to help prevent abuse and neglect through training for staff and volunteers.

- The development of safe recruitment practices for agencies working with young people.

**Update:** Actioned as indicated in previous update.

**Recommendation 5:** Local authority Chief Executives, in consultation with other services, should review the structure, membership and scope of the Child Protection Committee covering their authority and report to their Council and partner agencies on whether it is best constituted to take on the responsibilities for assuring the quality of agency and inter-agency services and the recommendations about their role contained in this report.

**Update:** This has been taken forward in conjunction with recommendation 4 and actioned as indicated in previous update.

**Recommendation 6:** The Scottish Executive should consult on how child fatality
reviews should be introduced in Scotland. This should include consultation on how they should be conducted, how review teams should be constituted, to whom they would report and what legislative framework is required to ensure their effectiveness.

**Update:** A Child Death and Significant Case Review Group has been set up under the independent chairmanship of John Elliot, a solicitor, and overseen by the Child Protection Reform Programme Steering Group. Draft guidance on the conduct of Significant incident Reviews is to be issued for consultation shortly.

**Recommendation 7:** The Scottish Executive should strengthen the current arrangements for the development and dissemination of knowledge about abuse and neglect. In particular it should identify:

- the most effective arrangements for recording and collating examples of effective practice;
- the delivery of staff training across all disciplines or agencies;
- the best means of disseminating research findings and best practice; and
- the links between research and knowledge and staff education and training and how this can be consolidated.

**Update:** In addition to the strands of work previously reported on the first phase of the work of the Child Protection Strategic Training Group will be completed by the end of the summer. This will provide a Training Framework for child and the first tranche of a national suite of materials to support this. In addition, with the Child Protection Reform Programme Steering Group we are working on how we better connect current supports and put in place new elements where necessary to deliver on the aspirations of recommendations 27 from the Western Isles report issued last year.

**Recommendation 8:** The Scottish Executive should initiate a long-term study of the effectiveness of current methods of responding to abuse and neglect. The study should follow children from infancy to adulthood.

**Update:** Actioned as indicated in previous update.

**Recommendation 9:** Children’s Services Plans should be developed so that they include clear plans for the implementation of national priorities and demonstrate the application of resources to these outcome targets set out in *Building a Better Scotland*.

**Update:** Actioned as indicated in previous update.

**Recommendation 10:** Local authorities' plans for integrated children's services, as the overarching plans and drivers for all local children's services, should develop *positive childhood* initiatives. These should be led by a children's rights rather than a public service perspective and should promote every child's rights to life, health, decency and development. The Executive should support this with a public campaign.

**Update:** Actioned as indicated in previous update.

**Recommendation 11:** The Scottish Executive should:

- Advise on how agency resources can be pooled and what systems may best be deployed to ensure the most effective joint commissioning of services on behalf of children.
- Commission a study of the costs and benefits of the current child protection system in Scotland and identify costed alternative options for improving outcomes.
Recommendation 12: There needs to be a new approach to tackling risks and the needs of the most vulnerable. As a first step this should start with assessment of the needs of all new-born babies born to drug- or alcohol-misusing parents; parents who have a history of neglecting or abusing children and parents where there have been concerns about previous unexplained deaths in infancy. The inter-agency assessment and subsequent action plan in respect of each child should clearly state:

- standards of child care and developmental milestones the child is expected to experience or achieve;
- resources to be provided for the child or to assist the parents in their parenting role; and
- monitoring that will be put into place along with contingency plans should the child’s needs fail to be met.

Recommendation 13: In keeping with the philosophy of the Children (Scotland) Act 1995, agencies referring to the Reporter should indicate what action they or their agency has undertaken to achieve change through consent and why compulsory measures of supervision may now be necessary.

Recommendation 14: The Scottish Executive should review the grounds for referral to the children's Hearing's system. Specifically, it should explore the feasibility of grounds being framed to reflect more clearly the needs of the child and to be more closely aligned with definitions of need outlined in the Children (Scotland) Act 1995.

Recommendation 15: In order to meet the shortcomings identified in this report, developing linked computer-based information systems should include a single integrated assessment, planning and review report framework for children in need. For those in need of protection the framework should include reason for concern, needs of the child, plans to meet them and protect them when necessary, and progress since any previous meetings. This core assessment, planning and review framework should be accessible and common to all partner agencies, multi-agency case conferences and the children's hearing. Arrangements should be made for appropriate access to information for children.

Update: Actioned as indicated in previous update.

Update: Actioned as indicated in previous update.

Update: Proposals for action contained in consultation, Getting It Right For Every Child, include changes to the referral making process. Where a child's needs are complex, serious, require multi-agency input or are likely to require compulsory measures, it is proposed that an action plan must be agreed by all agencies involved and kept under review. The action plan would be the principal source of information for the Reporter if the child is subsequently referred. It would be for a Children's Hearing to determine if compulsion is required. In order to assist the hearing to take a decision it would be necessary for agencies to demonstrate what action had been attempted and why in their view compulsion was necessary.

The detail of the legislation is being considered in the light of the consultation responses which will be published shortly along with Scottish Ministers’ implementation strategy for Getting it Right for Every Child.
by agencies in other areas should children or their families move.

**Update:** *Getting it Right For Every Child* (GIRFEC) set out a framework for an integrated framework for assessment, plans and records and proposals for joint case handling with the identification of a single key worker. As part of the work the Executive is working to support a pathfinder project in Highland which will test out the approaches. In this context, we will deliver the eCare Framework solution to the pathfinder project, as a managed service, in September 2006. The Scottish Executive is currently developing the eCare Framework to enable electronic multi-agency information exchange for a number of client groups, including vulnerable children and adults to help support such an approach. Current developments are described in the update at recommendation 1.

From September 2006, the framework will be subject to agile development to meet some (as many as possible) of the practitioners’ developing needs until March 2007. During this period all of these requirements will be properly documented into a generic requirements document so that all IT vendors can make their solutions fully GIRFEC compliant after March 2007, to facilitate national implementation from March 2008.

**Recommendation 16:** The Scottish Executive in partnership with the regulatory bodies should consult on the minimum standards of professional knowledge and competence required of practitioners who undertake investigations, assessments and clinical diagnosis when working with children and their families. In particular it should establish the minimum necessary qualifications and experience required of those making decisions that fundamentally affect the future wellbeing of children.

**Update:** Actioned as indicated in previous update.

**Recommendation 17:** The Scottish Executive should:

- Establish a national implementation team to take forward the recommendations in the review, in particular the development of standards and local auditing processes.
- Establish a review process for annual reporting on progress and improvements.
- Implement a further national review of child protection in three years' time to be undertaken by a multi-disciplinary inspection team using this report as a baseline against which progress can be assessed.

**Update:** Actioned as indicated in previous update.

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Scottish Executive

Children and Families Division

May 2006