Education Committee
14th Meeting, 2006
Wednesday 31 May 2006

The Committee will meet at 10.00 am in Committee Room 2

1. **Adoption and Children (Scotland) Bill**: The Committee will take evidence at Stage 1 from—
   - Cathy Dewar, Scottish Adoption Association
   - Michael Mesarowicz, St Margaret’s Children and Family Care Society
   - Stephen Small, St Andrew’s Children Society
   
   and then from—
   - Fergus McMillan, LGBT Youth Scotland
   - Nico Juetten, LGBT Youth Scotland
   - Ewan Jeffrey, Gay Dads Scotland
   - Sue Robertson, Lesbian Mothers Scotland
   - Rebekah Pratt, Rainbow Families

2. **Early years inquiry (in private)**: The Committee will consider a draft report

The following papers are enclosed for the meeting:

- Agenda item 1
- Submission from Scottish Adoption Association  
- Submission from St Margaret’s Children and Family Care Society  
- Submission from St Andrew’s Children Society

Eugene Windsor
Clerk to the Committee
Room T3.40, Committee Office
Ext. 0131 348 5204
Joint submission from LGBT Youth Scotland, Stonewall Scotland, Equality Network, Lesbian Mothers Scotland and Gay Dads Scotland

Agenda item 2
Early years report (private paper)
SUBMISSION FROM SCOTTISH ADOPTION ASSOCIATION

Adoption and Children (Scotland) Bill

The objectives of the Adoption and Children (Scotland) Bill are to improve, modernise and extend the adoption system. It aims to increase the number of potential adopters and provide greater stability for children who cannot live with their birth families.

Scottish Adoption Association approves of the general principles of the Bill, and welcomes the statement from Scottish Executive restating the important options that full adoption provides for many children unable to live with their birth families. The same standards should be applied to domestic and overseas adoption.

We would like to comment on particular aspects of the Bill:

Recommendations 15 – 17

We think that contact between adopted children and birth family members has grown over the years. Some guidance would be welcomed – how decisions about contact are made; how contact is supported, monitored and terminated if it does not meet a child’s need.

Recommendations 33 – 36

We welcome the Executive’s view that there is a need for a more comprehensive legal framework on adoption support as a tool to improve the delivery of services. Crucial to this is that adoption support services are properly resourced through adequate funding. Our experience is that adoptive parents are more likely rather than less likely to require some form of support service during their child’s childhood and teenage years.

These support services have expanded over recent years in response to practice development. For example at Scottish Adoption we now have 166 information exchanges between birth relatives and adoptive families. This number is increasing annually and requires additional funding to support it as much of its current costs are met through fundraising. Likewise face to face contact between adoptive children and birth relatives is increasing. This area of work is demanding because of the often conflicting needs and wishes of each part and calls for considerable time commitment and skill from workers so that contact can be sustained and adopted to children’s changing needs. Again this service needs to be adequately funded.

It is encouraging to see that services to meet the therapeutic needs of children have been highlighted. Funding is needed for specialist training in therapeutic interventions no only for social workers and adoptive parents but across disciplines eg. Education and Primary Care Trusts.

We agree that the current arrangements for adoption allowance should be revised and that there should be a national scheme for adoption allowances across Scotland. We also accept the restrictions on receiving assistance in cash should be removed.

In the interests of fairness there should be a national criteria for eligibility, and we would propose a national minimum level of allowance. Whilst we appreciate the importance of local discretion in the level of allowance paid, it is important that adopters are not financially disadvantaged because of the area they live in.
Recommendation 38
Local Authority Support Services

We very much welcome the recommendation that each local authority should have and adoption support worker within the senior management team for social services who has lead responsibility for service provision. From our experience as a specialist adoption agency support cannot be separated from early planning for children within the care system, and this person will have an integral role to play with children’s services.

We appreciate that this will generate substantial work in large local authorities but will be a narrower, although important, role for a senior manager in a small authority where adoptions are fewer.

Recommendations 41 – 44
Adoption support for families that move

This has been a longstanding problem and we welcome the clarity of a three year period for transfer after an adoption order is granted. In our experience some particularly difficult adoption placements may result in longer delays before an order is applied for eg. a child being in placement for two years prior to adoption petition being lodged because of difficulties in the placement. In these circumstances the Executive may wish to consider whether the three year post adoption order still applied. Another significant issue related to this recommendation is that of funding support services. Some rich recruitment authorities happen to be smaller local authorities and there would need to be adequate financial resources put in place to cope with the additional support needs after the three year period.

Adoption support services should be available for all parties involved in adoption

From our experience it is helpful to offer support services in the form of individual in the form of individual counselling and/or group-work to birth parents and appropriate persons within the wider family. Counselling also needs to be open-ended as birth parents may require it at different stages in their lives.

We know from our colleagues in England that it can be very frustrating and unhelpful for all concerned if adoptive families are entitled to an assessment of their support needs but these are not delivered. Whilst we appreciate the need for local authorities to have some discretion in service provision, it is important that discretion does not become an excuse for limiting or not providing support services resulting in assessments being little more than paper exercise.

Whilst ‘duty’ may be too definite a work there needs to be a strong expectation that assessments (which have to be reality based) will be delivered upon; and if there are gaps in service provision, there is scope for funding to crate new services to meet identified needs.

From the Scottish wide assessment of After Adoption support we undertook in 2002 – 2005 with the lottery funded ACES project, one of our recommendations is that at point of placement, adoptive parents should be provided with a written agreement on what services will be available to them and their child throughout childhood. This should be drawn up by the placing agency and should involve all relevant parties.

Recommendation 101 and 102
It is vital that adequate funding is provided for adoption counselling, support and intermediary services through voluntary agencies. This work is becoming increasingly complex as the population of birth parents/relatives requiring a service shifts from relinquishing birth parents to contested adoptions where parents/relatives may have complex needs through drug/alcohol use, mental health issues and learning difficulties.

Legislation in England and Wales has given birth parents and relatives the right to seek information about the adopted person. In order to meet this additional important service, funding has been put in place. At Scottish Adoption Association we have been providing this service for many years, through the development of good practice. However it is inadequately funded. It is important that this is addressed so that adoption counselling and intermediary services are given the recognition and financial support that our counterparts enjoy in England and Wales.

We consider that Scottish Executive have consulted effectively on the Bill before it was introduced to the Scottish Parliament.

12 May 2006

Catherine Dewar
Chief Executive
Scottish Adoption Association
Submission from St Margaret’s Children and Family Care Society

St Margaret’s

St Margaret’s Children and Family Care Society is a voluntary organisation and is a registered charity. St Margaret’s is a registered adoption agency, which has been serving the West of Scotland for the past 51 years. St Margaret’s was founded by the Roman Catholic Church as a Catholic response to the need for adoption, and we currently provide a service to the whole community, regardless of religious persuasion.

St Margaret’s will assess couples and individuals who wish to apply to be adoptive parents. We provide a full assessment and preparation of applicants; we present the application to our Adoption Panel, and we arrange and supervise the placement of children from various local authorities with those applicants whom we have assessed.

The Bill

In principle St Margaret’s is supportive of this Bill and we found the principles which were proposed in the Adoption Policy Review to be in the main, positive and welcome. However, we do have some concerns which we would wish to put before the Committee.

Same Sex Couple Placements

We would wish to reiterate our views in respect of the proposal for adoption by same sex couples. We are of the opinion that an opt out for faith based agencies is appropriate both in terms of respect for that point of view, and in terms of offering a choice to prospective adopters.

Children to be placed for adoption have been removed from their family of origin. It is likely that they will have been accommodated by the local authority in at least one temporary placement before being presented for adoption. The trauma associated with early separation often leaves children vulnerable and insecure. It goes without saying therefore, that the selection of an appropriate placement is crucial for the healthy development of such children. The placement of a child with a same sex couple presents additional dilemmas for children, who are unlikely to be well equipped to deal with these alongside the many adjustments they are required to make. It would be difficult for some children to fully appreciate the implications of a placement in a same sex household. It is perhaps presumptuous to legislate for this to become the norm. It is the view of this agency that placement with a same sex couple is not yet a mainstream resource within our society at large. Therefore, such a placement would leave children who are already vulnerable, on the fringes of society. We believe that a placement within a heterosexual family placement would better meet the needs of vulnerable children. We would stress that this is not a
reflection on individual people, or on the issue of homosexuality; it is our view of the best form of placement for disadvantaged children.

We also note that the research into adoption by same sex couples is limited. The research referred to in the Adoption Policy Review Group report focuses on female/female relationships where one partner is the biological parent. We also note that the numbers in the samples used by those research papers which exist are relatively small. It seems inappropriate to make changes to legislation on the basis of limited research.

**Post Adoption Support**

The Bill makes provision for post adoption support over a three year period. Currently a voluntary organisation which makes a placement on behalf of a local authority receives a small fee for post adoption support. This is intended to cover a one year period after the adoption order is granted. Similarly, there is no provision for the funding of voluntary agencies in terms of Origins Counselling work where adopted people wish to trace their origins. This work often leads to supervised reunions with birth parents, and involves considerable preparation and counselling as well as searches. The position of voluntary agencies should be taken into account in terms of the costing of increased responsibilities to agencies as a result of this Bill.

**Permanence Orders**

We welcome the introduction of the new Permanence Order. We believe that this new order will assist with the planning process for children. It is appropriate to replace the existing legislative options with more appropriate and child centred legislation.
Adoption and Children (Scotland) Bill

Stage 1 Scrutiny by the Education Committee on 31.05.06

This agency welcomes the opportunity to give oral evidence to the Committee members about such an important and necessary piece of new legislation. The following comments précis this agency’s position on the main parts of the bill.

Adoption
We wholeheartedly welcome the strong statement in the Bill regarding the important option that full adoption provides for many children who cannot live with their birth families on a permanent basis. We are also supportive of the view that there should be no change in the statutory grounds for revocation of adoption orders, which affirms the permanent nature of adoption.

Who Should adopt?
Our view is that for the vast majority of children the best option will be for them to be adopted by two parents who have made the most public and legally secure of commitments to each other through marriage. We would anticipate that this would continue to be the case for these children.

As an agency we have assessed and approved unmarried couples to adopt children having made an assessment of the nature and strengths of their relationship and operating within the current legislative framework. All these couples went on to marry before legally adopting their child and some involved the child in the ceremony as a way of emphasising the child’s importance within their family unit. We recognise that this kind of family experience is ‘normal’ for an increasing number of children and so see this as allowing practice to follow social trends.

The argument for same-sex couples to adopt seems less compelling since this must still be seen as an unusual family unit. Do such relationships offer everything that a relationship between two people of complementary gender does? There is no research evidence yet available to give a clear view of how children from a looked after care system cope being brought up by a couple living within a same sex relationship. All the evidence that is presented seems to consider the child’s experience of a same sex relationship where they are genetically related to one of the partners. Is it right to place unrelated children, who have already had a difficult early life, in such families without more evidence from children about how they experience it?

The suggestion of having an exemption or special rule that would allow faith-based agencies to opt out of provided a service to same sex couples (as with the new English legislation) is one that has merit for an agency like ours. Having said that, the current consultation being carried out by the Department of Trade and Industry on discrimination in the provision of goods and services adds a further complication.

It has been clearly stated throughout the consultation process that this is not about the rights of adults and must be about the needs of children and we believe that our reservations are completely consistent with this assertion.

Contact in adoption
The practice of considering different forms of ongoing contact between adopted children and birth family members has grown over the years but we feel that it is now time to look at how decisions about contact are made and how the contact is supported, monitored, reviewed and
terminated if it does not meet a child’s needs. We look forward to being party to drawing guidance on this very important area.

**Support For Adoption**

The time is now here for there to be offered to everyone involved in adoption, comprehensive support services based on a sound legal framework that are properly resourced and financed. Our hope would be that the knowledge and expertise that exists within the voluntary sector will be recognised and utilised by the Scottish Executive in this new legislation.

The unseemly arguments that can take place between local authorities when deciding who should pay for services required by adopted children and their families should not be allowed to continue and most certainly acts against the best interests of adopted children and their new families.

We would welcome a national scheme for the payment of adoption allowances.

**Curators, Reporting Officers and Safeguarders**

We are disappointed that the Scottish Executive rejected the recommendation that a centralised national system to appoint and train Curators, Reporting Officers and Safeguarders should be put in place. It would be a big improvement in the current system if these officers’ services were funded and paid for centrally. We have had the experience in this agency where one curator charged £180 to produce a report for the Sheriff Court in respect of an application to adopt two siblings and another curator charge in excess of £700 to do the same work involving a relatively uncomplicated 1 year old child. From our perspective the system as it currently operates is iniquitous.

**Access to information**

We support the status quo regarding those with an automatic right to information about an adoption i.e. adopted people over the age of 16 yrs. Tracing and accessing information services are patchy across the country and we agree that this should be included as a distinct service within the overall adoption support system, as proposed earlier in the this review. Since voluntary agencies (ourselves included) currently do provide a tracing and access to records services it is only right that this be recognised within any updated legislation. Clearer guidance to ensure that all relevant information about children should be made known to prospective adopter is overdue and greatly welcomed by this agency.

Stephen Small,
Director.
Adoption and Children (Scotland) Bill
Written Evidence to the Scottish Parliament Education Committee
May 2006

Introduction

This is a joint submission of written evidence to the Scottish Parliament Education Committee by five national lesbian, gay, bisexual and transgender (LGBT) organisations.

- **LGBT Youth Scotland** is an organisation working towards a Scotland in which every LGBT young person is included in society, can grow up happy and healthy, enjoy a safe and supportive upbringing, and is able to reach their full potential. LGBT Youth Scotland provides direct youth services, undertakes research and policy work, and delivers training to young people and professionals.
- **The Equality Network** is a network of lesbian, gay, bisexual and transgender (LGBT) organisations and individuals in Scotland working for LGBT equality.
- **Stonewall Scotland** campaigns for equality and justice for gay, lesbian, bisexual and transgender people living in Scotland. Stonewall Scotland works with businesses, the public sector, the Scottish Executive, Scottish Parliament and a range of partners to improve the 'lived experience' of LGBT people in Scotland
- **Gay Dads Scotland** is a social and support group for gay fathers across Scotland. Members come from a wide range of social, ethnic and religious backgrounds as well as various age groups.
- **Lesbian Mothers Scotland** is a charity established to offer help and support to lesbian parents and their children and to lesbians expecting or thinking about becoming parents. It also works for the recognition of lesbian families and supports local lesbian mother's groups in Scotland.

The respondents have been involved in the process that led to this Executive Bill in various ways and we have consulted with our partners who work with children and young people, parents, and in the field of adoption and fostering. We welcome the Adoption and Children (Scotland) Bill as a progressive and responsive piece of legislation that has the potential to make a real difference for Scotland’s most vulnerable children and young people.
The Changing Nature of Adoption

Since the Adoption (Scotland) Act 1978 service users and their needs have changed but to date the legal framework that governs the service has not. Similarly, social attitudes and realities have changed over time and the traditional idea of family is no longer the sole and exclusively accepted form of family relationship. The systems for looked after and accommodated children and young people are now charged to deliver for children and young people of a different age group, with different experiences, often from dysfunctional families and a history in local authority care. In the majority of cases children who are placed for adoption are between five and sixteen years old, the average age of adopted children being just under seven years of age; the share of new-born children fell from 26% in 1983 to 5% in 2003. Some looked after or accommodated children and young people come from difficult family backgrounds and may have been local authority care arrangements for a long time. In many of these cases, the child at the centre of the case will be placed with foster parents or in residential care prior to the consideration of more permanent arrangement, such as freeing the child for adoption.

The Adoption and Children (Scotland) Bill meets the demands of the changing nature of the adoption system in that it offers the permanence order as a more flexible care arrangement. In the absence of clear-cut distinctions in a child’s care requirements, the order reduces legal ambiguities as to parental rights and responsibilities in relation to the child. This is particularly important for older children who are not able to stay with their birth parents but may wish to stay in contact with them or their siblings. The proposed legislation removes the bar on taking out a contact order on the part of birth parents and relatives, and thus allows for the flexibility that children and young people in the adoption system may require.

The Adoption Policy Review Group’s judgment to retain adoption as a primary tool for the provision of permanent care arrangements for children and young people alongside the permanence order was informed by research and consultation. The children and young people consulted during the Group’s phase II unequivocally put forward a sense of belonging, love and support, and a notion of empowerment as the most important advantages of adoption over other more temporary care arrangements such as foster care and residential care.

Permanence and Life Chances

The Review Group stressed that the key task on which an adoption system has to deliver is to enable children to achieve a sense of permanence. ‘[S]tability, predictability, and the opportunity to form secure attachments’ were rated essential for children ‘to develop into healthy adults’. It is strongly suggested that in a range of indicators adopted children and young people fare better than children and young people who spend a long time in foster care or residential care; these indicators include self-esteem, mental health, intellectual development and school achievement.

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3 Adoption Policy Review Group, p. 3.
5 Section 100, Adoption and Children (Scotland) Bill.
7 Ibid, p. 8.
8 Department of Health, p. 7.
In stark contrast to these positive effects of permanence, boys who are failed to be provided with a stable surrogate family when taken away from their birth families are highly overrepresented among the prison population; 45% of young men held in custody in young offender institutions had been in residential care. Girls with a history in residential care are much more likely to become pregnant before leaving care than girls who have never been in local authority care. We are confident that the proposals of the Adoption and Children (Scotland) Bill have great potential to provide permanency to more children in local authority care, and thus ultimately improve Scotland’s most vulnerable children’s life chances.

According to Scottish Executive figures, the number of applications for adoption orders in Scotland in 2003 was just over one third of the number of applications in 1983. In 2005, over 12'000 children were looked after by local authorities for various statutory reasons. Just over half of looked after children lived at home with their parents, friends, or relatives, while 4’414 children (36%) lived in less than permanent care arrangements, such as foster care and residential care. Apart from introducing more flexibility in the provision of permanence, the Adoption and Children (Scotland) Bill includes proposals that are likely to increase the number of potential adopters by removing barriers that made adoption as an option appear rather unattractive.

A Progressive Adoption System for Vulnerable Children

The opening up of the adoption system to a more diverse range of families, including same-sex and unmarried mixed-sex couples who will be able to adopt jointly, is an element of the Bill that we strongly support. It not only recognises the fact that families come in different shapes and sizes but also that a range of different family relationships can be capable of and successful in providing a home to children and young people that improves their life chances. We agree on this aspect with some of the leading organisations in the fields of adoption and care for children and young people. Credible and methodologically sound research that we and our partners in the field build on strongly endorses our strong belief that a diverse range of families is capable of giving children and young people the loving, supportive and secure home they need to develop to their full potential.

The Bill provides for the courts to take important aspects of the child’s background as well as the child’s own wishes and feelings into consideration. This includes the child’s own cultural identity and religious beliefs as well as cultural and linguistic continuity. The child’s birth parents and other relatives must also be consulted under the Bill’s provisions and their views taken in to account. Section 9 (3) imposes a duty on courts and adoption agencies to ‘safeguard and promote the welfare of the child throughout the child’s life as the paramount consideration’, in agreement with the Convention on the Rights of the Child. We strongly agree with this requirement of the Bill and would like to see ensured that this and section 9 (4) will be interpreted to include a wider range of aspects of a child’s or young person’s identity, including their developing sexual orientation and gender identity.

We cannot, however, see how any exemptions for certain organisations and agencies involved in the adoption process and adoption support, which are based on ideological or doctrinal motives, could in any

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10Department of Health, p. 7.
13Ibid.
14For an impression of this see inter alia Gerald P Mallon & Bridget Betts, Recruiting, *Assessing and Supporting Lesbian and Gay Carers and Adopters*, British Association of Adoption & Fostering (BAAF), London 2005, ch. 4.
15Sections 9, 10 Adoption and Children (Scotland) Bill.
way promote the best interest of the child or young person as the one paramount concern of any system designed to deliver for the most vulnerable children and young people.

Conclusions

The proposed legislation equips adoption service providers with a more flexible set of tools to match the needs of those who use the adoption system today. It also has a great potential to make adoption and other forms of permanency more attractive to a larger range of suitable adopters. The obligation placed on all local authorities to provide adoption support services rectifies the unsatisfactory situation in which adopters used to find themselves subsequent to their obtaining an adoption order.

LGBT Youth Scotland, Equality Network, Stonewall Scotland, Gay Dads Scotland and Lesbian Mothers Scotland endorse the positive steps that the Scottish Executive has taken to improve the situation of Scotland’s most vulnerable children and young people. The provisions of the Bill have great potential to provide more children with a loving and secure home, which is the prerequisite for a happy and healthy upbringing and greater achievement and fulfilment in the future.

The five national LGBT organisations strongly support the Adoption and Children (Scotland) Bill as a whole as introduced. We welcome that the Bill finally gives recognition to the diversity of family relationships that are equally capable of providing a supportive surrogate home for children and young people who cannot for whatever reason stay with their birth families. This acknowledgement is long overdue and will be warmly welcomed by thousands of families with lesbian and gay parents and their children in Scotland who have been subjected to unfair pressures and discriminatory treatment for too long.

Adoption practice under the 1978 Act has left many adoptive families with lesbian or gay parents to deal with legal ambiguities, with only one parent legally having a full parental relationship with the adopted child despite the common practice to assess both partners during the process leading up to an adoption order. We are delighted that this unfair and systematic disadvantage that is detrimental to a child or young person’s development is now set to be removed and the system as a whole made fit for purpose in today’s Scotland.

We would very much like to see the fostering regulations overhauled in a manner that puts the system in a position to cater for the needs of Scotland’s children and young people of today and removes discriminatory policies and practices affecting lesbian and gay carers.