Education Committee
15th Meeting, 2006

Wednesday 7 June 2006

The Committee will meet at 10.00 am in Committee Room 6

1. **Item in private:** The Committee will consider whether to take item 4 and all subsequent considerations of its draft report in private.

2. **Public Petition PE892:** The Committee will consider its approach to the petition.

3. **Adoption and Children (Scotland) Bill:** The Committee will take evidence at Stage 1 from—
   - Salah Beltagui, Muslim Association of Britain
   - Fr Daniel Fitzpatrick, Bishops' Conference of Scotland
   - Pramilla Kaur, Scottish Interfaith Council
   - Gordon Macdonald, CARE for Scotland
   - Morag Mylne, Church of Scotland

   and not before 11.30 am from—
   - Peter Peacock MSP, Minister for Education and Young People
   - Rachel Edgar, Head of Looked After Children and Youthwork Division
   - Peter Willman, Bill Team Leader

4. **Adoption and Children (Scotland) Bill:** The Committee will consider issues to raise in its Stage 1 report.

5. **Early years inquiry (in private):** The Committee will consider a revised draft report.
The following papers are enclosed for the meeting:

**Agenda item 2**
Clerk’s paper on Petition  
ED/S2/06/15/1

**Agenda item 3**
Submission from Bishops’ Conference of Scotland  
ED/S2/06/15/2
Submission from CARE for Scotland  
ED/S2/06/15/3
Submission from Church of Scotland  
ED/S2/06/15/4

**Agenda item 4**
Report from Finance Committee  
ED/S2/06/15/5
Report from Subordinate Legislation Committee  
ED/S2/06/15/6
Summary of written evidence  
ED/S2/06/15/7

**Agenda item 5**
Draft early years report (private paper)  
ED/S2/06/15/8(P)
Introduction

1. The Public Petitions Committee referred petition PE 892 to the Education Committee on 3 May 2006.

2. The petition, from Mr Ronnie Beaty, calls on the Scottish Parliament to urge the Scottish Executive to amend the Education (Scotland) Act 1980 to set down minimum safety standards for school buses, including the provision of certain safety signs. The petition also asks the Parliament to urge the Scottish Executive to make regulations, under the Road Traffic Regulation Act 1984, requiring the use of certain safety signs and lights on school buses; to make failure to comply with such signs an offence and to seek the necessary powers to require bus operators to remove such safety signs from school buses when they are not in school use.

3. The Public Petitions Committee took evidence from Mr Beaty at its meeting on 26 October 2005 (see Official Report in Annexe 1) and further considered the petition at its meeting on 3 May 2006 (see Official Report in Annexe 2).

4. The Education Committee has agreed to scrutinise the implementation of the Scottish Executive’s guidance on school transport on an annual basis. The Committee considered the implementation on guidance, together with a Scottish Consumer Council report on school transport and responses from local authorities at its meeting on 8 September 2005 and, discussed the issue with the Minister for Education and Young People on 26 October 2006.

5. It is proposed that the Committee invites Mr Beaty to give evidence to the Committee in the autumn to coincide with the annual review of implementation of guidance on school transport policy.

Action

6. The Committee is invited to AGREE with the approach proposed in paragraph 5.
Official Report of Public Petitions Committee, 26 October 2005

School Buses (Safety Measures) (PE892)

The Convener: Our next petition is PE892, by Ronnie Beaty, which calls on the Scottish Parliament to urge the Scottish Executive to amend the Education (Scotland) Act 1980 to set down minimum safety standards for school bus provision, including the provision of certain safety signs; to make regulations under the Road Traffic Regulation Act 1984 requiring the use of certain safety signs and lights on school buses and making failure to comply with such signs an offence; and to seek the necessary powers to require bus operators to remove such safety signs from school buses when they are not in school use.

Ronnie Beaty, who is accompanied by Janet Beaty, will make a brief statement in support of the petition. I welcome both of them to the meeting. After Ronnie Beaty has made his statement, we will discuss the petition.

10:30

Ronnie Beaty: Good morning. I thank the Parliament for giving our family an opportunity to speak. We do so on behalf of our family and other families.

I hope that members have read Erin's story, which has been provided. Following a year in hospitals, her on-going care costs will probably be horrendous and they will continue into old age—she is now nine. If those costs are multiplied by the number of children who are injured, the full costs that are involved will be appreciated. Erin's case is by no means rare.

Malcolm Bruce raised the same concerns in the House of Commons in 1998, but no action has yet been taken. People do not seem to have grasped the seriousness of the situation and children are still being killed and severely injured. Councils, parents and children are asking for change, so why are children being allowed to be placed in situations that endanger them?

On our journeys to and from Edinburgh over the months, we have seen buses on outings with no children aboard proudly displaying school signs. Some signs are riveted on, some are stuck on and some are inserted in destination boards. Such signs are a nonsense and defeat the whole purpose of encouraging safety.

Many health and safety signs have been upgraded over the years, but school transport signs appear to have stayed the same. There are more visible signs on building sites, lorries and refuse trucks than there are on school buses. There are double-deckers that are marked as school buses in our area and possibly in members' areas. They are painted yellow, but they do not even have seat belts and they carry twice as many children as single-decker buses do. Last year, many school buses were used as public transport in our area—I am sure that that happens in other rural areas. Such buses contain a mixture of children and fare-paying members of the public.
A law is needed to prevent vehicles from passing school buses as passengers are being loaded on to, or unloaded from, those buses. We all know about the distinctive American school buses. The American experience is probably not appropriate for the United Kingdom, but we can probably learn much from what happens there. Signs with a visible impact factor that give clear and adequate warning are needed, rather than signs that are high up on different places on buses and signs that can hardly be seen when it is dark. There could be flashing amber lights on each side of buses or flashing panels with words scrolling along the signs, similar to those that are used by the motorway police. There are similar panels on the television screen in the Parliament’s reception area—words scroll across the screen. Signs could be bought that are slim, inexpensive and easy to install, that are operated by the driver and that are designed so that they can be easily removed. Strobe light bars could be fitted internally to the front and back windows. I am sure that it is not beyond industry or the Parliament to find a solution.

We must explore urgently the possibilities for change. Costs would be involved, but they would not be excessive. Costs are normally associated with improvements, but how much is a child’s life worth?

Our ultimate aim is to have similar laws passed in this country to those that apply in America, so that cars cannot pass school buses when those buses are offloading passengers. That would be the most sensible approach.

Another option is having dedicated school transport. Buses could be bright yellow and there could be plenty of warning lights. Such buses should not be used as public transport. Signs on any vehicles that say that children are on board should be made illegal if no children are being carried—that is a crucial safety factor. Such signs have been used for a long time for the wrong purpose and people have come to see such signs simply as signs.

Erin has told us that she does not want other children on school buses to be hurt. My family appeals to members on behalf of our family and other families. The committee may think that we are asking a lot, but if members ask anybody whose child has been killed or severely injured, they will probably say that we are not asking for enough. Our family has spoken about the matter for so long that we have begun to talk about Erin’s law.

I tried to get figures from the national health service information and statistics division, but that does not come under the Freedom of Information (Scotland) Act 2002. The division supplies figures only at a cost of £250 for each set, which is grossly unfair. If no solution is found to the problem, children will continue to be killed and severely injured. We need to deal with the issue. If something is not done, I will come back before the committee, by God’s grace and if I am granted permission to do so. I will have sackloads of letters from every parent in Scotland who has had a child killed or injured, which will make sad but profound reading.

Thank you for listening and for giving my family the opportunity to speak for ourselves and for other families. We will leave the petition with you, but with the expectation that the law will be changed.
The Convener: Thank you for bringing a very important issue before us. I am sure that members will want to ask questions and to get more detail on the issue that you have raised with us, so that we can determine in the most positive light what to do with the petition.

Helen Eadie (Dunfermline East) (Lab): I offer my commiserations to Mr and Mrs Beaty. You are right to say that you speak on behalf of many families. I have personal friends whose daughter was badly injured and will have on-going problems for the rest of her life. What you say is absolutely correct.

I will not ask you a question, but I will give my strong support to your actions. I will do everything that I can to help you with the issue in the Parliament. When I was a spokesperson for roads and transportation on Fife Council, this was a matter of serious concern for parents. I never ceased to receive letters and presentations on the issue from parents at community council meetings all over Fife to which I was invited. I know that you speak for families all over Scotland. I wish you good luck and pledge support for you this morning.

Ronnie Beaty: Thank you.

Rosie Kane: I, too, pledge support for you. You are not asking for too much or even for a lot. Similar requests have led to the twenty's plenty regime being introduced in some communities on an advisory basis. In many areas, such as here in Edinburgh, it has been advanced to a mandatory limit, which has undoubtedly saved lives.

What you are asking for will not only save life and prevent injury. There is also intimidation by traffic when children get on and off buses, which leads to many difficulties for young people. I have looked into the issue a great deal over the years. The solution that you seek is really important. I do not know what it should be, but I can see the sense of having a light that flashes when children are getting on and off buses. Your petition has made me think a lot about signs becoming almost decorative—like an advert on a bus to which people no longer pay attention. When people do not pay attention to adverts, the companies that place the adverts do something drastic to ensure that people start to pay attention. That may be the way in which we need to approach the issue. I offer my regards to Erin and your whole family. Thank you for bringing the petition to us today. I will support it.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Good morning. As you heard from Rosie Kane, there is a great deal of sympathy and support for the petition that you have brought before the Parliament. The question that it falls to me to ask is, what can we in the Scottish Parliament do to change the legislation?

I suppose that it is all down to attitude. In your presentation, you suggested several simple modifications and improvements to the signage, and even the vehicle, that would help. I suppose that those measures would be resented by the operators. The system here is not the same as that in America, which you mentioned, where there is a dedicated fleet of buses for school transport. We have not reached that stage in Scotland. However, I know that many local authorities are considering the possibility of introducing a fleet of buses for
school transport, because for some school transport in local areas there is a limited choice of operator.

Another problem is that the operators will resent the idea of distinguishing the buses by using paint or some colour code. At some point, they may want to resell the vehicles and fluorescent or gaudy colours will be detrimental to the value.

You made some suggestions about signage. I have seen buses with the wee square thing at the back with a picture of a couple of kids on it, but, as you say, we see similar signs on many buses that are not on a school run and the signs are disregarded. How can we overcome that? You suggested some sort of illuminated sign that would be operated by the driver. How could such a sign be incorporated at the front and rear of the bus?

**Ronnie Beaty:** I will respond to the point about colourful vehicles first. That is the bus companies' problem; they are transporting children and safety should be paramount, regardless of the colour of the buses. I do not know about this part of Scotland, but where we come from—and probably in John Farquhar Munro's area too—the school transport is old, old transport. We get the rejects from central Scotland. The yellow double-deckers are—believe me—very old. I do not know what is done with them later, but they are probably past the point of resale.

Orange flashing lights could be placed on panels anywhere. In this day and age, there are so many innovations that nothing is impossible as long as it is on a sensible scale. It would not be hard to have soup-plate-size orange flashing lights or to have strobe lighting. I think that we have all seen the strobe strips on emergency vehicles, which are really effective.

None of these things is expensive and none of them needs to be fixed to the bus. If the bus is being used for another purpose, the signs can be taken down. There would be a cost element, but there is a cost element to everything. There is a cost element to our coming here, but we wanted to put forward a case that we felt could save children's lives. Everything is relative.

I do not mean to be cheeky or rude, but many bus operators probably operate at the cheaper end of the market. Often, that is because councils give them limited funding—we return to the old story of funding. Funding responsibilities lie with the councils, the Scottish Executive or Westminster. That is not really my concern; my concern is to put my case on how I think children's lives can be saved and how children can be less severely injured.

**John Farquhar Munro:** I am sure that there is a lot of support for you and a lot of sympathy for your suggestions. However, an educational programme is needed as well.

**Ronnie Beaty:** Correct.

**John Farquhar Munro:** There must be an educational programme for pupils, bus operators and bus drivers, but, more particularly, for motorists. Motorists often disregard the little signs on buses. Legislation would have to be introduced to make it quite a serious offence for a motorist to disregard a strobe light, a flashing light or even a stationary bus that had school pupils aboard. All those things have to be considered.
As I wondered at the outset, what can we do in the Scottish Parliament? We do not have the authority to advise the Department for Transport on what should happen.

10:45

**Ronnie Beaty:** I think that you can put a forceful case to Westminster for legislation. The issue has already been raised in Westminster, in 1997, but I am not sure whether it has come up since then. During the seven years since 1997, a horrendous number of children have been killed. I do not know how you take the matter to Westminster; I leave that to the experts. All I know is that it really has to be done. If I have to go to my elected Westminster representative and take the matter forward through him, I will do that. If I have to go to Westminster, I will do that, but it would be really nice to know that the Scottish Parliament backs us on the issue, and I am sure that your support would carry a lot of weight in taking the matter to Westminster.

**Ms White:** My sympathies to you and to your granddaughter, Erin. School transport has always been an issue, even when my kids were small. In the west of the central belt, we used to get the old buses, so I know that something has to be done. Three kids being shoved on to one seat with no seatbelts is something that has to be dealt with, and I know that the situation has never been rectified. However, I know that the Parliament’s Education Committee is examining various issues to do with school transport. The big problem, which John Farquhar Munro highlighted, is the sad fact that, although we are responsible for child welfare in education, we are not responsible for the transport part of it. That is nonsense, but we must consider the practicalities and see exactly what we can do.

I shall list what I think are the priorities, and perhaps you can say what you think could easily be attained through the Parliament and what your priorities are. You have mentioned that Aberdeenshire Council no longer has monitors on buses. When my kids were small, that was mandatory; there had to be a parent on the bus who could take the kids off and on. That is a practical measure that we could reintroduce and which might help in some way. You also mentioned flashing lights, but we do not have dedicated transport for schools. That is a big problem, and the reality is that we probably will not get such transport.

However, your suggestion about flashing lights and, more important, about motorists not being allowed to overtake a school bus would benefit not just school kids but everyone who uses the transport system. I would like such a measure to be extended, because a lot of elderly pensioners need to use buses and motorists can cause problems for them, too. It is not simply a case of protecting school kids; the field is much bigger than that. You are to be congratulated on mentioning that motorists should not be allowed to pass a bus when it is stationary at a bus stop. That carries a lot of weight; it is not just about school kids, but about everyone who is travelling. I am sure that it would be quite easy to use strobe lights, or whatever they may be, on the buses, and the bus companies must be persuaded to do something.

Having said that, however, I would like to hear your views on what would be the most practical and easiest things for the Scottish Parliament to do, even within a couple of months, such as introducing monitors, and on what would be the hardest things to do. What priorities would you want the Public Petitions Committee to highlight if we were to
send the petition to the Education Committee with our comments, so that it did not look impossible to achieve?

Col 2066

**Ronnie Beaty:** The most important thing that we can do now is probably to make it illegal for the signs to be displayed when there are no children on board the buses. That is of paramount importance, because when those signs are left in place safety arrangements are made to look ridiculous and the system just does not work. Warning lights are a necessity. There must be an additional visible element to the yellow and black sign showing two children crossing, which can be stuck at the top or bottom of a bus or in a window. There have to be alternatives. As I said, it cannot be beyond the wit of Parliament and industry to come up with a costing for such measures.

Like Sandra White, I would like the ultimate rule to be that, when a bus stops to offload or pick up children, cars simply cannot pass it. Erin was almost on the pavement on the other side of the road when she was hit. She was not just getting off the school bus; she was well across the road when she was hit. Somebody who specialises in health and safety would probably need to examine the matter, because it is complicated. I do not know whether the Parliament has a health and safety committee. Perhaps such a committee could be instructed to take a fresh look at the situation, considering the figures on children who are killed or injured. It might produce other suggestions. The question is open.

**Rosie Kane:** While you talked, different reasons occurred to me why buses are used to transport school children in rural and urban areas on outings or to go to and from school. When councils introduced the twenty's plenty scheme, it was advisory. Some areas—unfortunately not all—have made the scheme mandatory. The situation is fragmented and there is no expectation of a safe road in a built-up area.

I am concerned that, although you said that Malcolm Bruce raised the issue at Westminster in 1998, nothing has happened. Erin might never have been involved in that terrible accident if something had been done.

**Ronnie Beaty:** Erin and probably thousands of others might not have been affected, including dozens of kids who have been killed needlessly since 1997.

**Rosie Kane:** What did Malcolm Bruce do and what was the result at Westminster?

**Ronnie Beaty:** I do not know too much about that. I know that the proposal was introduced as a bill and left. As far as I can see, no one has acted on it. Malcolm Bruce mentioned virtually the same points as I did. I found his proposal on the *Hansard* website only by chance. He described the same ideas, such as flashing lights, American-style buses and other safety features.

**Rosie Kane:** I will try to find out what happened to Malcolm Bruce's proposal. If the Scottish Parliament can do nothing about the matter, that concerns me greatly. The Scottish Parliament can build motorways, so it is a shame that we cannot slow traffic to save lives. I do not know why that is the position. I will try to find out what gives us the power to do one thing but not the other when one would benefit what you ask for whereas the other would be detrimental and would speed up traffic. I will try to get back to you on whether any loopholes or Swiss cheese holes exist. I can imagine a strip on the back of a
bus with words appearing. Stopping for a short time to allow children safely to cross the road, as when a lollipop man or woman is present, would be a helpful similar solution.

**Ronnie Beaty:** Erin's mum was one minute late in collecting her. Members know what it is like for housewives. Nine times out of 10, parents are present to collect their children from the bus, but if something happens and a parent is a second late, that can be the result.

**The Convener:** I will answer the question that Rosie Kane discussed. The petition is admissible because it raises issues that relate to the Scottish Parliament's powers. The Education (Scotland) Act 1980 set out the minimum safety standards for school bus provision and it would be legitimate for the Scottish Parliament to change those provisions. Some transport issues might be reserved, but the Scottish Executive also has powers in relation to transport, which could be tested. That is how the Scottish Parliament's powers relate to the petition.

**Helen Eadie:** I agree with the convener that the committee could take some steps. Our papers suggest that, in the first instance, the committee could write to ask the Scottish Executive's Minister for Education and Young People for his views.

My understanding is that Scottish ministers have the power to give further guidance to local authorities. I note from our papers that ministers have not given guidance on the provision of school transport since 2003. One step in the right direction would be for ministers to give the issue higher priority by renewing the guidance on the provision of school transport.

We could invite the Royal Society for the Prevention of Accidents to give a view on PE892. Recently, I was at a conference in Crieff—I think that Stewart Stevenson was also there, as were other colleagues. We were very impressed—

**Stewart Stevenson (Banff and Buchan) (SNP):** The conference was not organised by ROSPA.

**Helen Eadie:** That is right. The conference was organised not by ROSPA, but by the other accident prevention body. We could write to all the accident prevention bodies in Scotland to seek their views on the issue. All the local authority officers who were at the conference view the prevention of accidents as a very high priority. We could give a bit of an impetus to the accident prevention bodies' campaigning arm—they want to campaign to protect children in Scotland, as do members of the Scottish Parliament.

I thought that I knew of only one child from my constituency who was injured, but I now remember another child from the same town in my constituency who was killed as a consequence of stepping off a bus and walking out from the back of the bus. That is just one other example of many—we read the newspapers every week, after all.

I note from the papers that it may be possible to make law by regulations on matters that are reserved to the United Kingdom Parliament. If we can get the blessing of Westminster to amend some of the regulations, we could make a difference. When we have received all the responses, we could send them with the petition to the Education Committee. That
would give renewed impetus to the issue. For the sake of the children who are to come, it is imperative that we get something done on the issue.

Nowadays, when we are driving along the road, we see signage that uses technology in a way that we never dreamt of before. For example, if someone is about to drive through a village, new technology is being used to prompt them to slow down—a message flashes up, "Slow down, you are going too fast". Solar panels can be used to energise signage in remote and rural areas. That technology could be put in place at every bus stop at which children alight from school buses. The signage could be switched on by a special tag that is fitted to all school buses. There is a lot that we could attempt to do that would help to make a difference.

The Convener: Stewart Stevenson has joined the meeting because of his interest in PE892. He has indicated that he wants to speak to the petition and perhaps to ask the committee questions on it.

Stewart Stevenson: Thank you, convener. I will make only one or two very brief comments. Much of what I may have said has been said already and the committee has made a very positive response to the petition. I am therefore optimistic that members will find a way of bringing forward the issue.

I have one or two suggestions to make. The committee may not be aware that Aberdeenshire is the most rural county in Scotland; 2 per cent more people live in rural areas in Aberdeenshire than is the case even in the Highlands. That is the result of the influence of Inverness—I see that John Farquhar Munro is interested in that point.

I draw to the committee’s attention the recently closed consultation at Westminster on the Road Safety Bill. After my meeting with Mr Beaty in August, I made a late submission on the use of yellow signage to indicate that a bus is transporting school children.

It would appear to be possible for the Executive, and hence the Parliament, to change the guidance that is issued to local authorities. For example, the contracts that local authorities have with school transport providers could require certain standards to be set for the use of signage on the back of their buses. In other words, a provider would lose a contract if they did not take down the signs when its drivers were not transporting kids. That measure would be much easier to implement than one in which the police would be involved, because it concerns a contractual matter that would come under the civil law and could be acted on quite quickly.

11:00

Another possibility is the idea of having mobile 20mph limits. I am not certain whether that is within the powers of the Scottish Parliament and local authorities, but I believe that it would be possible to require, through regulations, school buses to have a flashing 20mph limit sign on the back that would come on when they stopped.
A range of issues is involved. I have no monopoly on ideas in relation to this matter and I am sure that the Education Committee and the Local Government and Transport Committee will have further ideas.

I reinforce the point that the continual use, in inappropriate circumstances, of school bus signage leads to the psychological phenomena of desensitisation—the fact that one sees something all the time means that one no longer sees it at all. In the short term, if the Scottish Parliament were to achieve only a situation in which the school bus signage only appeared when the bus was in use as a school bus, we would have gone some way towards addressing the concerns that Ronnie and Janet Beaty have brought to us.

I will listen with interest to your disposition of this petition and will follow its progress, should there be any, in subsequent committees.

The Convener: Thank you.

Before we go any further, we will go back to agenda item 1. We have been joined by Charlie Gordon, who is the new member of the committee.

Welcome to the committee, Charlie. Do you have any interests to declare?

Col 2070

Mr Charlie Gordon (Glasgow Cathcart) (Lab): I apologise for my late arrival. I declare that I am a director of Hampden Park Ltd and a fellow of the Institute of Contemporary Scotland.

The Convener: We can now, with the full membership of the committee, discuss the recommendations on the petition.

Helen Eadie made some sensible suggestions, which I agree with. We can take the issue to the Executive and ROSPA on the basis that the responses that we get back will go to the Education Committee. We cannot contact that committee at the moment but we can set down a marker to the effect that the petition should go to it. As a member of the Local Government and Transport Committee, I think that that committee should consider some aspects of the petition as well.

Stewart Stevenson: I think that the relevant body would be the Scottish Accident Prevention Council, rather than ROSPA. I have just looked it up.

The Convener: Thanks. It is always helpful if we can write to the right people.

Rosie Kane: I suggest that we seek the views of the Scottish Parent Teacher Council, the Educational Institute of Scotland and Transport 2000, which is a road safety organisation.

Ms White: I think that we should write to the bus companies, as they would have to provide the signage. Would it be within our remit to do so?

The Convener: Many companies are involved. If we write to one company, we will have to write to them all.
Helen Eadie: We could seek their views by writing to the Confederation of Passenger Transport.

The Convener: That might be the correct organisation to write to.

Ms White: I think that we should do that.

Paragraph 11 of the clerks' covering paper says:

"Requiring buses to remove safety signs when not in school use goes beyond the powers executively devolved to the Scottish Ministers".

Could we get round that by following Stewart Stevenson's suggestion relating to contracts?

The Convener: I think that, under the provisions of the Education (Scotland) Act 1980, it is for the local authorities to determine what is required of a bus operator in relation to the transportation of students to and from school. Because of that, it might be worth our writing to the Convention of Scottish Local Authorities to ask for its perspective on the issue.

Col 2071

Do we agree to write to the organisations that have been mentioned?

Members indicated agreement.

Ronnie Beaty: For the first time, Aberdeenshire Council has just agreed to a bus contract for five years instead of three years. If you decide that it would be best to implement the changes that we have been discussing by means of a contract, you should be aware that it will be four years before that contract would come into effect. I am not sure whether it would be possible to incorporate such a change into a contract that has already been signed.

The situation needs to change. I do not think that there is one person sitting at this table who does not represent a place in which a child has been injured or killed on the road.

The Convener: You are absolutely right. We will develop those recommendations and write to the identified organisations. Two parliamentary committees might have a legitimate interest in considering the petition further when we return to it. I thank the petitioners for bringing their petition to us this morning.
The Convener: Our next petition is PE892, by Ronnie Beaty. It calls on the Scottish Parliament to urge the Scottish Executive to amend the Education (Scotland) Act 1980 to set down minimum safety standards for school bus provision, including the provision of certain safety signs; to make regulations under the Road Traffic Regulation Act 1984 requiring the use of certain safety signs and lights on school buses; to make failure to comply with such signs an offence; and to seek the necessary powers to require bus operators to remove such safety signs from school buses when they are not in school use.

At its meeting on 26 October 2005, the committee agreed to seek the views of the Scottish Accident Prevention Council, the Scottish Parent Teacher Council, the Educational Institute of Scotland, Transform Scotland, the Confederation of Passenger Transport and COSLA. Responses have been received and circulated. The committee has received correspondence from John Swinney MSP and Jim Wallace MSP, which has also been circulated. We are joined by Stewart Stevenson, who wants to comment on the petition.

Stewart Stevenson (Banff and Buchan) (SNP): Thank you for your courtesy in allowing me to be present. I know that Mr Beaty and his family are here, although Mr Beaty appears to have popped out for a moment.

In considering whether there was a problem, I was particularly struck by the response from the Scottish Accident Prevention Council, which states:

"there were 431 children killed or seriously injured in road accidents and approximately two thirds of these were pedestrians. 20% of all child road casualties happen on the school journey and the peak time for these accidents is between 3 and 4pm on weekdays."

It is clear from the statistics provided that Mr Beaty's petition relates to an area in which there is definitely a problem.

The minister acknowledges in his comprehensive reply that existing regulations do not create requirements but are merely enabling. COSLA highlights the fact that there are no legislative requirements; the Scottish Accident Prevention Council suggests that there should be requirements; and the EIS supports the petition.

It appears from where I am sitting—members might take a different view—that there is considerable support for what Mr Beaty is trying to do among people with an interest in education and children's safety, and that some, although not all, of his objectives can be delivered by the Parliament. I hope that the committee will look favourably on the responses that have come in and find a way for the Parliament to take the petition forward.
**John Scott:** I welcome Stewart Stevenson to the meeting; I also welcome his comments. We should consider referring the petition to the Education Committee. I was particularly struck by

Col 2556

the comment from the Scottish Accident Prevention Council that

"there should be a more consistent national approach to school transport and attendants on school buses",

which the committee might wish to address—that might be the best way forward.

I am aware of the minister's response that this is a local authority issue. I have to say that that is an entirely reasonable position for him to take. I hope that local authorities will take note of that, because ultimately the buck stops with them. It seems to me that the minister has done all that he reasonably can do.

**Rosie Kane:** There is outstanding support for the petition among the responses, most of which Stewart Stevenson mentioned. The Scottish Parent Teacher Council quite rightly pointed out that, unfortunately,

"action only appears ... to be taken when children have been seriously injured or killed."

We have to pay heed to the various submissions that have been made. I agree that it would be best for the petition to go to the Education Committee so that it can see how powerful the petition and the responses to it are.

**Jackie Baillie:** I do not dissent from anything that has been said. Standards vary among local authorities for no apparent reason. I am pleased that the minister has drawn to local authorities' attention the recommendations from the Scottish Consumer Council's recent study. However, as we saw with our previous petition, implementation is always an issue. We should send the petition to the Education Committee and ask it specifically to consider how regulations are being implemented and whether they need to be changed.

**Ms White:** I echo everything that has been said. All the responses are positive—even the one from the Minister for Education and Young People. I disagree with him in only one regard. He says that the recommendations should be commended to local authorities, but I think that they should be mandatory. The issue is an important one throughout Scotland, not only in certain regions. I agree that we should send the petition to the Education Committee, drawing special attention to the paragraph that John Scott mentioned.

Has the petitioner seen the responses that we have received?

**The Convener:** If that has not happened, we will make all the responses available to the petitioner. If he wants to provide any additional information, we will give that to the Education Committee as well.

**Stewart Stevenson:** I welcome the remarks of the committee members. Might members be
prepared to suggest to the Education Committee that, if it identifies any actions that could be taken by another Parliament, it should express a desire that that happen, so that that can add weight to deliberations that might take place elsewhere?

The Convener: If we were to tell a committee of this Parliament to tell another Parliament what it should do, we would be getting into dangerous territory.

Jackie Baillie: If I may be helpful, convener, I would just point out that the Education Committee will be able to read the entirety of our discussion in the Official Report. Therefore, the point has already been made.

The Convener: That is a good way around it. Do we agree to follow the action that has been suggested?

Members indicated agreement.
THE BISHOPS’ CONFERENCE OF SCOTLAND

We are grateful for the opportunity to comment on the Adoption and Children (Scotland) Bill presently before the Education Committee. We are encouraged that it contains many positive proposals which will make a positive impact on the lives of the children who are unfortunately unable to remain with their natural family.

Our support for the positive proposals is, however, overshadowed by our deep concern over the intention to extend joint adoption to include unmarried and same-sex couples. Although it is argued that this is not a considerable change because single people who are cohabiting or in same-sex relationships are already adopting, there is little evidence that this is widespread. Only around 10% of placements are with single adopters and the majority of these are likely to be genuinely single. With adoptions at around 200 per year this leaves a tiny number of cases being used to justify a serious change in the perception of family composition.

We wish however to repeat the Church’s views on the importance of the family and its stability founded on marriage between a man and woman. We do so in the belief that the suggestion to extend the opportunity to adopt jointly to unmarried and same-sex couples is not in the best interests of children.

Marriage is a fundamental human relationship that is reflected in all cultures. Man and woman united in marriage together with their children form the family. The well-being of the individual person and of society is closely bound up with the healthy state of conjugal and family life. The marital union also provides the best conditions for raising children: namely, the stable, loving relationship of a mother and father present only in marriage.

These principles of marriage and the family, as the best conditions for raising children, should, we feel, guide the decision-making process in adoption. The Bill justly centres on the needs of the child and the need for “security, stability and permanence.” We would state that these conditions are best secured in a family built on marriage.

The Bill proposes to extend the categories of those eligible to adopt to include unmarried couples who are, “living as partners in an enduring family relationship”. Marriage by which a man and a woman declare themselves as a couple before the law is the proven enduring family relationship. Other relationships lack the permanency of marital commitment. It seems odd that, wishing permanence and stability for children, the Bill intends to extend consideration to couples of the opposite sex who have not chosen to declare themselves legally to be a stable family unit.

We wish specifically to highlight the finding indicated in Appendix B of the adoption review group report. It is noted that some studies suggest harmful outcomes in the lives of some children cared for by same sex couples. While not wishing to overstate these small studies, if the Bill is truly intended to act in the best interests of the child, it would not at this stage, without further research, seem opportune to extend consideration to same sex unmarried couples. The burden of proof lies with those who want to change the existing categories. This particular proposal is therefore irresponsible due to the lack of evidence, as well as a lack of support from consultation respondents, that it is not harmful to children. An evidence based approach informed by a precautionary
attitude due to the vulnerability of the children who are subject to adoption is the only justifiable position in such an important area.

One also wonders what the impact of extending the duty to consider parental views and those of older children would be if such a view was that they did not wish to be placed with a same sex couple.

We note the level of opposition among respondents to the Executive’s proposals on permitting same-sex and unmarried couples to jointly adopt, 89% and 83% respectively. In light of the lack of evidence in support of the proposals, the failure of this opposition to effect change in the proposals raises concerns over the benefit or validity of having a consultation process at all. We therefore urge the committee to use its powers of scrutiny wisely and to give due regard to the views expressed in submitted evidence.

We wish to raise our concerns as to the extension of the understanding of family beyond that of a married man and woman. We have, elsewhere, expressed our concern over the attempted re-shaping of family life through legislation and public policy. Much to our disappointment this bill continues that trend. We remind the parliament of its duty to uphold marriage, in that the social evidence in regard to stability and endurance of married relationships and the benefits to children are broadly known. We therefore urge the Committee to maintain the present restrictions on prospective adoptive parents.

The issue of conscientious objection on the part of individuals and agencies who will be involved in adoption under the new regime should the proposals be carried forward unchanged need also to be considered. We sincerely hope that the proposals discussed above will be dropped due to the lack of evidence in support of change.
CARE FOR SCOTLAND

CARE for Scotland is generally supportive of the Scottish Executive’s proposals to renew the law on adoption and fostering. We do, however, have a number of serious reservations regarding specific proposals contained in the Bill.

In our view it is in the best interests of children to be raised in a loving and secure family context and this is most often found within the context of lifelong committed marriages. It is important to recognise that adoption by same-sex and unmarried couples is unlikely to provide the same security and stability as adoption by a married couple and as such will not be in the best interests of children. We argue that the Scottish Executive should engage in dialogue with the faith communities to consider how more married couples might be encouraged to offer themselves as adoptive parents or foster carers and what barriers to married couples doing so might be removed.

We can confidently say that married couples provide the securest homes for children. Some single carers do very positive work in the field of fostering and adoption, but the best interests of the child is still likely to be realised within the family context of a stable male/female married relationship. Indeed, research consistently confirms that families underpinned by lifelong, committed marriages provide the most stable and enduring environment in which children can grow physically, emotionally and mentally. Marriage is recognised throughout many cultures and countries to be the bedrock of a stable society and the best context for raising children.

When comparing the long-term stability of cohabiting heterosexual and same-sex couples with married couples, we believe it is important to note that research evidence shows that cohabiting heterosexual and homosexual couples are more likely to break up than those that are married. Obviously not all married couples will stay together but there is a proven higher chance that they will than is the case with cohabiting couples.¹ This is an important issue for adopted children who are in desperate need of stability in family life.

Individuals (heterosexual and homosexual) are already entitled to adopt children under the law. However, only married couples can adopt jointly. Currently, in a situation where an individual in a cohabiting relationship adopts, a child is protected against the worst effects of separation (e.g. custody disputes) in the event of a relationship breaking down. Given the relative instability of cohabiting relationships, CARE does not think that it is in the interests of already vulnerable children to be jointly adopted by couples who have not made the lifelong, public commitment of marriage. Moreover, an evidence-based approach makes it clear that outcomes for children born into cohabiting unions are not, on average, as positive as those for children born into married union:

“…the instability of these [cohabiting] unions means that more British children will spend significant parts of their childhood in families with only one parent and this appears to have long-term negative consequences for children.”²

Only 8% of married couples split up in the five years after the birth of a child: the comparable figures for couples that cohabit and then marry and couples who never

marry at all are 25% and 52% respectively. These figures do not improve in the longer term – only 35% of children born into a cohabiting union will live with both parents throughout their childhood compared to 70% of children born within marriage. Indeed, children parented by a cohabiting couple ‘are much more likely to see their parents split up and much more likely to experience a period in a one parent family than children born within marriage.’

Thus, having a child within a cohabiting union is not indicative of stability in a partnership and, in fact, is more similar to single parent families than to childbearing within marriage. While marriage has a publicly declared presumption of permanence, heterosexual people who cohabit have consciously, if temporarily, rejected the legal and public ties of marriage. The statistics clearly reflect the outcome of these choices. We support the argument that:

“....government must be prepared to discriminate positively in favour of marriage, and take more vigorous action to uphold marriage...What is needed above all is a cultural change at grass roots level, which acknowledges that the traditional family is the very foundation of a stable, prosperous and caring society”.7

We also believe that a child should have, where possible, both a male and female parental role model and would oppose the extension of joint adoption to same-sex couples. We affirm that the very best for the child is adoption into a marriage-based family. To extend the right of joint adoption to same-sex couples places these relationships on an equal footing with marriages in terms of ‘social worth’. Moreover, in launching the Scottish Executive’s Consultation on civil partnerships the Justice Minister, Cathy Jamieson MSP, made clear that the Executive does not equate same-sex relationships with marriage, but rather believes that strong and stable families are best provided through marriage. We agree with the Minister’s comment on 10th Sept 2003 when she said:

“As an Executive, we want to provide children and young people with the best possible start in life so they can take advantage of the opportunities available to them. Central to that is a belief in strong and stable families. And the pillar around which such families are built is marriage.”

We would ask the Committee to reflect this view by amending the Bill to limit joint adoption to married couples only. Evidence shows the long-term benefits of marriage over cohabitation as an environment in which to raise children. We are concerned by the proposal to extend joint adoption to cohabiting heterosexual and same-sex couples would prioritise an adult-orientated rights agenda over the welfare of the child. With this in mind, CARE believes that a change in the law to allow cohabiting heterosexual and same-sex couples to adopt jointly will be to the detriment of children’s rights and welfare.

---

3 Childbearing Outside Marriage in Western Europe, Kiernan, K., Population Trends 98, ONS, 1999, p19.
5 Seven Years in the Lives of British Families, Ed Berthoud and Gershuny, Policy Press, 2000, p.221
CHURCH OF SCOTLAND

The Church of Scotland (through its Church and Society Council) welcomes the opportunity to give evidence to the Education Committee on the Adoption and Children Bill. This evidence largely reflects the response we submitted to the consultation on "Safe and Secure Homes for our Most Vulnerable Children"; we have also been glad to be involved in conversations with Ministers and with other faith communities on the issues contained in the Bill.

We believe a review of adoption law is appropriate in the context of major changes in the circumstances of adoption, and we recognise as the driving force for change a dramatic change in patterns since the 1978 Act was passed: growing numbers of looked after children, falling numbers of adoptions, and the rising age profile of children seeking adoptive parents (with the number of babies being placed for adoption in Scotland now under 20 annually, from nearly 300 20 years ago). As Cardinal O'Brien has said, "There is no doubt that the current system fails to meet children's needs. According to official figures, adoption applications (from prospective adopters) in the past 20 years have fallen from 1,000 a year to less than 400, while 6,500 children are in the care of local authorities. Many are in care for long periods."

In light of this situation, we strongly support the principle that the best interests of children are paramount here. We also welcome the emphasis on the needs and interests of the children in seeking an environment of care; there is no right to adopt. We therefore welcome the Executive's reassurance, in presenting the Bill, that "No one has a right to adopt under our proposals and the selection process of who can adopt is tough. Only those couples who can demonstrate they are in an enduring family relationship and can make a positive difference to a child's life will be successful". We would also reaffirm the Church's view that the stable environment of care which children need is best provided in the context of marriage.

Appreciating the realities of what options are available, we were disappointed that other non-legislative proposals for seeking to recruit more adoptive parents (which were contained in the first phase of the review) do not appear to have been effectively prioritised. We recognise that much needs to be done in building a national recruitment strategy and we recognise that churches can play a significant part in this. Foster care is sometimes not properly valued, and more foster carers are also needed. Indeed, the commitment to children that is involved in short-term fostering often leads those involved as carers on to long-term fostering – yet this contributes to the shortage of short-term carers as the placements get ‘blocked’ by carers ‘converting’ to long-term care.

We were also disappointed that there seems little research basis for some of the proposals in the Bill, particularly in some of the more controversial areas. For example, analysis of what holds people back from offering as prospective
adopters or foster carers (and what might encourage others to offer) could inform a more focussed national approach to recruitment; we would hope that more work will be done on this, and in monitoring the outcome of the proposed changes if and when enacted.

However, we do want to express our broad support for the urgency of finding new solutions which serve the best interests of the vulnerable children for whom at present we seem unable to provide the safe and secure nurture they need. We therefore agree that adoption should remain an option, and hope that Permanence Orders can provide extra stability where adoption is not an available or appropriate option.

Recognising the need to recruit more potential adoptive parents (while retaining robust selection processes) and the reality that children are currently being adopted by individuals who are living in (opposite or same sex) relationships that are considered as relevant to the adoption by the agencies involved, we can see some force in giving legal recognition to the realities of these situations, which might also enhance their stability, to the long-term benefit of adopted children.

However, there are many within the Church who see these proposals as giving equality of status to different relationships which are not equivalent. As a signal, therefore, they may be seen as undermining marriage, at a time when supporting the long-term mutual commitment which marriage best embodies (with a generally higher "success rate" of stability than other relationships) would clearly serve the interests of children. There are also research findings which suggest significant problems faced by children brought up by gay couples.

However, given that the alternatives for many children under the present legislation are far from ideal, often involving successive short-term fostering, we would, on balance, support the proposals to allow unmarried or unregistered couples (of different sexes or of the same sex) to adopt jointly.

While we therefore do not believe that the status of the relationship between adult potential adopters should be an absolute bar to them adopting jointly, we welcome the fact that the "enduring family nature" of the relationship between potential adoptive parents is vital for the wellbeing of the child. It is in the interests of the child to become part of an "enduring family relationship" and, on the basis outlined above, we support this as a helpful definition.

The stability of that relationship should also be part of a robust selection process which recognises the dangers for children if adoption is not by those in a stable and strong relationship; we therefore welcome the statement in the Policy Memorandum that "The intention is that unmarried couples who apply to adopt would be subject to the same assessment process as married couples to ensure that they are able to offer a child a stable and nurturing environment. Detailed provisions will be contained in regulations for adoption agencies to be made
under the Bill. This will allow courts to make decisions which are in the best interests of a child”. Similar considerations should, we believe, apply to fostering.

The social trends which impact on the adoption statistics reflect the costs of family and relationship breakdown. As with the Family Law Bill, while recognising the need for legislation to address changed patterns, we believe that these costs – especially to vulnerable children – demand more strategic action by the Executive and others to look at the causes of relationship breakdown and how a wide range of policies impact on families for good or ill.

Since no right to adopt is created by the legislation, there may be no need for any "exceptions or special rules" applicable to faith-based adoption agencies. However, it should be clear that adoption agencies may make judgments as to the suitability of adoptive parents which reflect their own values, and these should not detract from their funding by local or national government; otherwise, adoption agencies, if forced to go against their principles, may go out of business, achieving the opposite of the intended effect by taking from the currently available options agencies currently recognised as offering a high standard of care.

While there are circumstances in which the views of birth parents may not be conclusive, we believe that their views on adoption by an unmarried couple should be considered. Where birth parents feel their views are taken into account, adoption is less likely to be an acrimonious issue. We welcome the weight given to the child's views on issues in adoption, as appropriate to her/his age.

We support the retention of the existing provision for the religious persuasion and the racial origin, cultural and linguistic background of the child to be given due weight, in the context of the basic principle that the child's interests are paramount. We note (from the Explanatory Notes) that "This does not mean that adoption agencies must only place children with adopters of similar religious, racial, cultural and linguistic origins and backgrounds. However, in practice, adopters must have regard to any such origin and background that the child may have.

We also welcome the provision for account to be taken of the views of relatives of the child, with the proviso (in the Explanatory Memorandum) that "any such wishes should not be applied when to do so would be contrary to the best interests of the child".

**Adoption Support Services**
We believe strongly that better resourced pre- and post-adoption support could encourage more adoptive parents to come forward. We supported the Review Group recommendation that adoption support services should be "counselling, advice, information and financial support, as well as other services prescribed by
regulation", and welcome provisions in the Bill to this end. However, we are concerned that the annual figure of only £2.35m in the financial memorandum may be inadequate for proper provision of the support services envisaged in the Bill.

**Permanence Orders**
So long as Permanence Orders are not seen as an alternative to adoption, we believe that they may offer stability in situations where adoption might not be possible, but we would be concerned if they were to encourage less urgency in seeking adoptive parents.

**Fostering**
Much valuable work is done by skilled short-term carers and they do provide a needed resource, coping with distressed and traumatised children and supporting families in ways that help them stay together or help the children return home. We therefore believe that resources should be put into recruiting more foster carers and training them for their task; adequate allowances are also part of the strategy necessary for an effective fostering service, and we welcome provision in the Bill for a national system of fostering allowances, which we believe should be set to pay for the cost of caring for a child).
Finance Committee

Report on Adoption and Children (Scotland) Bill

The Committee reports to the Education Committee as follows—

Introduction

1. Under Standing Orders, Rule 9.6, the lead Committee in relation to a Bill must consider and report on the Bill’s Financial Memorandum at Stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

2. This report sets out the views of the Finance Committee on the Financial Memorandum of the Adoption and Children (Scotland) Bill, for which the Education Committee has been designated by the Parliamentary Bureau as the lead committee at Stage 1.

3. The Committee agreed to adopt level 2 scrutiny in considering the Bill, which involved seeking written evidence from organisations financially affected by the Bill, then taking oral evidence from the Executive Bill Team.

4. The Committee took evidence from the Executive on 9 May 2006, and this can be viewed by clicking here.

5. The Committee received submissions from the Scottish Legal Aid Board the Fostering Network, the British Association for Adoption and Fostering (BAAF), Association of Directors of Social Work (ADSW) and COSLA. This evidence is set out in the Annex to this report.

Objectives and the Financial Memorandum

6. The Bill seeks to modernise and improve the legal framework of adoption in Scotland. The Executive anticipates that the implementation of the Bill’s provisions will bring about improved arrangements for adoption and, in turn, that this will lead to an increase in the number of adoption applications. The Bill also seeks to improve stability for children who cannot live with their original families but for whom adoption is not an option. Many of the Bill’s provisions extend existing services, particularly those provided by local authorities.
7. The key provisions of the Bill include:

- unmarried couples will be able to adopt jointly;
- local authorities will be able to provide additional adoption support services (to be detailed in subordinate legislation);
- the Executive will be able to set minimum levels of fostering allowances (also to be detailed within subordinate legislation);
- people directly affected by adoption will have the right to pre-adoption services and, if they have an assessed need, post-adoption services;
- clarification as to who is able to receive what type of pre-adoption and post-adoption support service; and
- permanence orders will be introduced (replacing existing adoption orders) to allow parental responsibilities and rights to be granted to appropriate people whilst granting rights relating to residence and guidance to local authorities.

Costs

8. The anticipated additional costs and savings as a result of the Bill, as detailed in the FM are detailed below:

<table>
<thead>
<tr>
<th>Element</th>
<th>Cost</th>
<th>Saving</th>
<th>Net Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>One-off costs (Executive)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Implementation and associated training</td>
<td>380,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Recurrent costs – per annum (local authorities)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adoption support services</td>
<td>2,350,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fostering allowances (lowest rate)</td>
<td>1,170,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fostering allowances (highest rate)</td>
<td>8,140,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Aid</td>
<td>50,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intercountry Adoption</td>
<td></td>
<td>15,000</td>
<td></td>
</tr>
<tr>
<td>Residential accommodation (lowest rate)</td>
<td></td>
<td>580,000</td>
<td></td>
</tr>
<tr>
<td>Residential accommodation (highest rate)</td>
<td></td>
<td>5,700,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total recurrent (lowest rate)</strong></td>
<td>3,570,000</td>
<td>595,000</td>
<td>2,085,000</td>
</tr>
<tr>
<td><strong>Total recurrent (highest rate)</strong></td>
<td>10,540,000</td>
<td>5,715,000</td>
<td>4,835,000</td>
</tr>
</tbody>
</table>

9. Following the evidence session on 16 May, the Executive Bill team provided revised figures and these are reflected in the body of this report and are
reproduced in the Annex. The Committee appreciates the provision of this supplementary information.

Scottish Administration
10. The FM estimates minor costs for the Scottish Executive relating to the implementation of the policies and associated training totalling between £330k and £380k.

Local authorities
11. The FM estimates that the Bill’s provisions will result in an increase in costs to local authorities and states that such costs will be met from current funding.

12. In relation to the provision of adoption support services, the Executive has based its estimate on the fact that the UK Government set aside £70 million over 2003 - 04 to 2005 – 06 for the provision of support services and has suggested approximate expenditure in Scotland of £2.35m.

13. The FM notes that the increase in the level of successful adoptions as a result of the Bill is difficult to estimate but notes that, should adoption levels increase, the cost of the Bill’s provisions will be offset in part by a reduction in costs for supporting children currently in foster care or in residential care. The FM sets out what the Executive considers to be the lowest and the highest levels of savings from a reduction in the need for residential care (between £580k and £5.7m p.a). This range is based on between 10 and 100 children moving from foster care and residential care following successful adoption. It should be noted that, based on the updated figures provided by the Executive, savings based on the same range of children would be between £727k and £7.27m (approximately)

14. In relation to fostering allowances, at present there is no single agreed rate and the average weekly rate is below the rates suggested by COSLA, UK Department of Education and Skills and the Fostering Network. The Bill includes provision which would enable the Executive to set minimum levels of fostering allowances, either on an indicative or a mandatory basis. The Executive has not yet committed itself to setting rates at a particular level. The FM therefore provides a range of annual costs based on the COSLA rate (£1.17m p.a) and the Fostering Network rate (£8.14m p.a).

Legal aid
15. The FM also estimates a small increase in legal aid costs ‘likely to be no greater than £50,000 per year’.

Summary of evidence

Local authority funding
16. BAAF’s submission cites a report which concluded that existing foster care services are underfunded by £65.5m and suggests that ‘a major investment is
required to meet existing statutory duties, before the increased duties can be addressed'.

17. When asked whether the Executive would provide the additional funding required to address existing underfunding, Executive officials stated:

   All that we can say is that we are trying to quantify things as accurately as possible so that ministers can discuss those matters during the spending round.¹

18. The FM states that the Executive will contribute to the increased costs incurred by local authorities as a result of the Bill’s provisions, either through general funding or through more direct funding (or both). However, it goes on to say that local authorities will need to fund costs either from core funding or specific funding particularly from the Changing Children’s Services Fund. Concerns were raised that unless extra money is invested in the Changing Children’s Services Fund then other services might suffer to pay for the provisions of this Bill.

19. When asked what form this contribution would take, Executive officials stated that:

   We are conscious that debates will take place during the spending review process. Our objective is to quantify the additional costs that will arise as a result of the bill. My team is separately trying to quantify other underlying factors that might make a case for increasing budgets in the area².

20. The Committee is deeply concerned that it is being asked to consider a proposal for which there is no specific funding provision, despite the FM detailing significant additional costs which will fall on local authorities. The Committee considers this to be bad practice.

21. The Committee appreciates that Executive officials were not in a position to confirm in oral evidence that adequate funding will be provided in the next Spending Review but would urge the Education Committee to seek assurances from the Minister as to the specific level of funding that will be provided to local authorities in implementing this Bill.

Potential savings

22. The FM states that, in considering the cost of the Bill, the cost to local authorities of providing foster care and residential care should be noted suggesting that an increase in the number of children being adopted would result in a reduction in costs for children who would otherwise be fostered or in residential care.

23. The original figures provided within the Financial Memorandum suggested savings of between £580k and £5.7m from residential accommodation. It became apparent following a request for supplementary information and questioning in oral

¹ Rachel Edgar, Official Report, 9 May 2006, Col 3562
² Rachel Edgar, Official Report, 9 May 2006, Col 3563
evidence that this range is based on between 10 and 100 children moving from residential care following successful adoption. **The Committee considers that it would have been useful for figures reflecting the basis for such substantial suggested savings to have been provided within the Financial Memorandum.**

24. The supplementary revised figures provided by the Executive suggest savings between £727k and £7.27m (approximately). When asked what these figures were based upon, Executive officials stated:

> We do not have a mechanism for finding out exactly how many children move. We have anecdotal evidence of people telling us that children have been placed in residential care because they could not find foster placements or that children are waiting to leave residential care and go into foster placements…To be honest, we do not know what the number will be, but we hope that it will be higher.³

25. **The Committee is concerned that the savings which the Executive suggests will off-set the cost of the Bill to a large extent are not based on anything beyond anecdotal evidence.**

26. BAAF’s submission states that:

> increasing the number of adoption applications will not in itself reduce the number of children in foster care, this number is in fact increasing.

27. In addition, the Committee notes the comments contained within the submission to the Education Committee by the City of Edinburgh Council on this issue:

> 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…we find the suggestion that any costs will be saved in provision of residential care very unlikely.

28. When asked for their view on concerns that the assumed savings in the FM in relation to foster care or residential care will not be realised due to the demand for these services, Executive officials stated:

> That is why it is important to separate out the factors relating to the bill from those that relate to other policy developments and underlying trends. We accept that there is an underlying trend that an increasing number of children are going into foster care because an increasing number of children come from families where alcohol and drugs are misused. Those numbers are likely to increase.⁴

³ Rachel Edgar, Official Report, 9 May 2006, Col 3549
⁴ Rachel Edgar, Official Report, 9 May 2006, Col 3556
29. The Committee acknowledges the difficulty in estimating the extent to which spaces made available in residential care and foster care freed up by successful adoptions will be filled. In addition, the Committee acknowledges that the Bill team is not in a position to ensure that the FM takes into account developing trends, including policy developments which have occurred since the introduction of the Bill, such as the outcome of the *Hidden Harm* report. However, the Committee must consider the financial implications of proposed legislation in context. **The Committee is extremely doubtful that the substantial savings anticipated in relation to the movement of children from foster care and residential care following adoption will be realised as it appears that demand for these services exceeds supply.**

**Fostering allowances**

30. The Bill includes provision which would enable Scottish Ministers to set minimum levels of fostering allowances, either on an indicative or a mandatory basis.

31. The FM does not specify a proposed minimum level, it gives a range of potential costs for fostering allowances (between £1.17m and £8.14m) and states that the best figures available are those published by COSLA and the Fostering Network. Clearly there is a wide difference between these rates and the FM states that both rates are currently used by different local authorities. In their submission, the Fostering Network states that seven local authorities are currently paying or are about to pay Fostering Network rates and two large city authorities are aspiring to pay that rate. Additionally, all seventeen independent and voluntary providers already pay allowances at or above the Fostering Network rate.

32. In relation to the difference in rates from COSLA and the Fostering Network, the Convener noted the value of a process of negotiation to establish broad agreement on a rate which the Executive could potentially set. Executive officials responded to this suggestion stating that:

> That might be helpful, although I think that discussions on those issues are already taking place between the Fostering Network and some local authorities. We might be able to take a role in trying to facilitate those. However, I think that the rates will get closer as we update the information because several local authorities have jumped over the COSLA rate and moved towards the Fostering Network rate.⁵

33. The Committee appreciates that the process for agreeing a standard rate may be easier than the range of figures in the FM suggest as local authorities may be moving towards a similar rate. However, the Committee is concerned to learn that a more systematic process for negotiation and agreement of a rate has not been initiated by the Executive thus far. Had the Executive collated information in this area earlier and ensured negotiations were entered into, the Committee could have been in a position to consider much more specific figures in relation to fostering allowances.

---

⁵ *Rachel Edgar, Official Report, 9 May 2006, Col. 3554*
34. The Committee has previously highlighted its dissatisfaction at having to scrutinise the financial implications of bills where consultation and negotiation has not been completed or indeed, undertaken and therefore there is still considerable uncertainty over the figures. The Committee repeats its concerns in the context of this Bill and recommends that the lead Committee seeks information from the Minister on a timetable for discussions with the relevant parties.

Adoption allowances

35. The FM states that the intention is that a national standard should be set for assessing a person’s need for adoption allowances. It also states that:

legislative provision on this is anticipated to be cost neutral in relation to any particular child, although there may be a slight increase in overall costs if increased numbers of children are adopted.\(^6\)

36. The ADSW’s submission states that:

the children who are set to benefit from this Bill—children who would not otherwise be adopted—are exactly the children who do have 'special circumstances' and therefore are increasingly likely to require the payment of adoption allowances.

37. When asked to comment on the likelihood that there will be an increased number of children requiring adoption allowances under the Bill, Executive officials stated that:

The ADSW comment that the children that we are considering are more likely to require adoption allowances is probably correct. We have asked the ADSW if it can provide more detailed information about the present costs of adoption support, including adoption allowances, so that we can make a better projection\(^7\).

38. On the basis of ADSW’s submission and the comments from Executive officials, the Committee is of the view that this provision is unlikely to be ‘cost-neutral’. The Committee would wish to suggest that, had the Executive engaged with ADSW earlier, more accurate costs in relation to this policy could have been factored into the FM. The Committee would urge the Executive to make every effort to ensure that revised figures in relation to this policy are provided to the Parliament as soon as is practicable.

Adoption support services

39. In addition to extending the range of available support services, the Bill allows adoption agencies to make cash payments to adopted people or families where a service to which they are entitled cannot be provided. The FM states that:

---

\(^6\) Financial Memorandum, Paragraph 388  
\(^7\) Rachel Edgar, Official Report, 9 May 2006, Col. 3557
this provision should have no added cost implications: such payments will be made in lieu of a service and so the cost should already be accounted for.\footnote{Financial Memorandum, Paragraph 387.}

40. However, given concerns in relation to limited funding for the provision of existing services, the Committee presumed that a potential reason for a lack of the provision of services is a lack of funding. The Committee questioned Executive officials on the basis for the assumption that the provision of cash in lieu of services which local authorities are not in a position to provide will be cost neutral.

41. Executive officials responded to this issue in oral evidence stating that:

Local authorities can either provide a service at their own hand, contract it out or make a payment to the individual to purchase that service themselves. The point is that there is a range of ways in which one can provide and pay for a service, but that does not necessarily mean that the cost is any different. That said, it could be argued that where a local authority feels unable to provide a service that it is possible for the individual to purchase elsewhere, a cash payment made for that might result in a modest increase in costs.\footnote{Peter Willman, Official Report, 9 May 2006, Col 3558}

42. Members of the Committee then asked to what extent the extension of services, which local authorities could potentially be asked to make cash payments for, would suggest that this provision would be more expensive than envisaged. Officials responded stating that:

That extension of services would be included within the £2.35 million. Whether local authorities provide the services themselves or provide cash in lieu is the element that we are suggesting is cost neutral, but to the extent that those are additional services, we would include that within the £2.35 million.\footnote{Rachel Edgar, Official Report, 9 May 2006, Col 3558}

43. The Committee does not consider this provision to be ‘cost neutral’ as local authorities are being asked to provide additional support services under the Bill, or cash payments in lieu of these services. The Committee therefore considers the wording of the FM to be somewhat misleading. Set in the context of BAAF’s submission, which suggests local authorities are considerably underfunded for the provision of existing services, the Committee is concerned that local authorities will find it extremely challenging to meet this additional statutory requirement. The Committee would urge the Executive to consider this ‘cost-neutral’ claim in context and to provide revised figures in relation to the financial impact of this provision as soon as is practicable.

44. The Committee also raised an issue during oral evidence in relation to the provision of adoption support services by the independent sector. Specifically, members questioned officials on the potential for local authorities to increase their use of the independent sector for the provision of adoption support services on the
basis of the increased requirements to provide such services at a specific standard under the provisions of the Bill. Executive officials responded stating that:

The ADSW flagged that up as an issue at a recent meeting with us, and it has flagged that up to the committee in terms of counselling services. We are looking into that in more detail...At the moment, however, we do not see any private sector players coming into the game. We do not have profit-making providers in the foster care sector in Scotland—as there are in England—because of a legal restriction on that.11

45. Given the additional responsibilities placed on local authorities by the provisions of the Bill, in conjunction with the potential cost of providing cash In lieu of these services, the Committee considers it likely that there will be an increase in the use of the independent sector by local authorities and would invite the Executive to monitor this situation should the Bill be passed by Parliament.

Legal Aid

46. The FM assumes a small increase in legal aid – likely to be no greater than £50,000 per annum. However, the submission from the Scottish Legal Aid Board states it is unclear as to how the figure of £50,000 has been arrived at and believes that the costs have been "significantly understated". SLAB’s submission identifies a number of provisions which they say were not directly proposed within the original consultation document and the costs of which they say do not appear to have been taken account of in the Financial Memorandum.

47. When asked about the concerns raised by SLAB that the legal aid costs have been 'significantly understated', Executive officials stated:

The Scottish Legal Aid Board raised a number of points, as you say, and we are setting up a meeting with it to discuss them further.12

48. The supplementary written evidence provided by Executive officials following the meeting elaborated further on this stating that:

We accept that there were costs which we did not consider, but which will, as SLAB have indicated, have an impact on costs.

49. The Committee is concerned that SLAB does not consider that it was consulted on all of the aspects of the Bill which will impact upon them and, as a result, the Executive appears to have only become aware of SLAB’s concerns at this late stage as a result of parliamentary scrutiny. The Committee considers that more proactive consultation with SLAB at an earlier stage could have reassured the Committee that the figures provided within the FM are accurate, as opposed to an underestimate, as SLAB’s evidence appears to suggest. The Committee would urge the Executive to make every effort to ensure that revised figures

12 Peter Willman, Official Report, 9 May 2006, Col 3566
in relation to this policy are provided to the Parliament as soon as is practicable.

Conclusion

50. The Committee appreciates that the overarching policy objective of the Bill, to increase the number of successful adoptions, is undoubtedly worthwhile. The Committee is deeply concerned, however, that it is not in a position to effectively scrutinise the potential financial impact of the Bill on the basis of the standard of the information provided in the FM. A recurring concern is the apparent lack of consultation with the relevant parties over the costs of the Bill and the fact that the costs of many of its provisions (notably fostering allowances) are uncertain due to the relevant discussion and/or negotiation not having taken place.

51. It is clear that there is considerable disagreement between the Executive and the relevant bodies over the level of current funding and on the costs associated with the Bill and the Committee believes those disagreements should have been more fully discussed before the FM was published.

52. The Committee also has deep concerns as to whether there will be sufficient funding to realise the intentions of the Bill. Whilst it appreciates that the next Spending Review will not take place until next year and therefore, it cannot be stated with any certainty the level of funding that will be available from this, it is extremely concerned that there is no estimate at all of the specific funding provision in the FM. The FM states that the Executive will contribute to the cost of the Bill but nowhere in the FM or indeed in evidence was an indication given of the level of that contribution.

53. The Committee is also concerned that the projected savings which the Executive suggest are based on a finite number of children moving from foster care or residential care following a successful adoption are unrealistic. The Committee is of the view that these savings, which the Executive suggest will offset a large proportion of the costs of the Bill, are unlikely to be realised due to what appear to be developing demands for foster care and residential care. If this is the case, the lack of apparent savings realised by the Bill will increase the need for additional funding for local authorities.

54. The Committee recommends to the lead Committee that the issues highlighted in this report, particularly in relation to the adequacy of existing local authority funding, securing additional funding for implementation of the Bill, and the credence of the assumed savings detailed in the FM be raised with the Minister.
Submission from the Association of Directors of Social Work (ADSW)

ADSW has serious misgivings about the underlying assumptions in the Financial Memorandum. We are unaware of any local authority, acting as a fostering and adoption agency, which is managing to provide for current needs within allocated budgets. Many local authorities are incurring significant overspends, particularly in relation to fostering but adoption costs are also rising. Detailed comments are made in relation to individual paragraphs.

367. ADSW believes that the numbers of children requiring to be accommodated across Scotland is rising. There would have to be huge increases in the number of children placed for adoption to relieve pressure in fostering and residential group care. Even a modest increase in the number of children placed for adoption is difficult to predict because we do not know whether the increased eligibility to adopt will translate into more children becoming attractive to adopters. Are the new adopters going to want older children, children with disabilities and sibling groups? If they do not want these children, it follows that no more children will be adopted.

368. ADSW does not accept that the Bill’s provisions will lead to a “moderate” increase in costs because the number of children in public care is growing. We are accommodating more younger children for longer.

369. We do not accept that the cost of adoption is automatically “much lower” than fostering and residential care. Children who go on to become adopted by their temporary foster carers (a rich source of recruitment for adopters although this drains the pool of temporary carers) often costs local authorities the same amount of money because carers cannot afford to lose the allowances and fees. Furthermore it is unlikely that any savings accrued in education or health are going to be handed over to Family Placement.

370. As more children with more difficulties are placed for adoption, the costs increase. This point does not seem to be recognised within the Financial Memorandum.

371. ADSW agrees that the costs of actually providing services to people affected by adoption need to be calculated, not just the costs of assessing people. As the nature of adoption changes, so do the associated costs. Closed adoption was much cheaper than adoption involving contact with birth family members. We estimate there are approximately 1,000 adoptions in Scotland where contact – in some instances direct contact with siblings and other family members – is a feature. Most adoptions in the future will involve on-going work of this nature.

379. Again ADSW disputes the assumption that there will be savings associated with the introduction of this Bill.

380. Any savings from permanence orders are likely to be marginal at best – the costs of writing a report (in a context where requests for reports are increasing substantially) and attendance at Children’s Hearings in respect of the children subject to the new order.

382. Domestic adoption is much more expensive to public authorities than inter-country adoption. Included in the costs are often legal fees, recruitment (including costly advertising – possibly £400,000 plus is spent in Scotland on recruitment campaigns), introductions, and equipment/adaptations. This latter cost will increase significantly if more children with disabilities become attractive to adopters.

385. This paragraph appears to contradict the essential premise of the Bill, namely that more children should be adopted. It surely follows that if more children are adopted, more people will seek support services. ADSW believe that support services are under-used due to lack of available funded services, rather than any consumer disinterest.

387. ADSW is concerned that adopters may seek payment of cash in lieu of services for therapeutic services not available from statutory agencies but obtainable at great cost from the private sector – the associated costs could be huge.
388. ADSW wishes to stress that the children who are set to benefit from this Bill – children who would not otherwise be adopted – are exactly the children who do have “special circumstances” and therefore are increasing likely to require the payment of adoption allowances.

389. ADSW supports the BAAF/TFN position on the costs of fostering. We believe these are the actual costs and that local authorities should be funded to meet them.

391. We categorically reject the idea that few birth parents contest freeing and adoption orders. Our experience is that not only are families contesting, they are hiring counsel to do it, pushing local authority legal advisers to hire counsel as well.
Submission from the British Association for Adoption and Fostering (BAAF Scotland)

The British Association for Adoption and Fostering is the leading UK membership organisation and charity for all those concerned with adoption, fostering and childcare social work, and operates on an inter-disciplinary basis. In Scotland, all adoption and fostering agencies are members and BAAF Scotland works closely with member agencies and other voluntary organisations, groups and individuals to:

- promote and develop high standards in adoption, fostering and child placement services;
- promote public and professional understanding of adoption, fostering, and the life-long needs of children separated from their birth families;
- ensure that the developmental and identity needs of looked after children are respected and addressed by social work, health, legal and educational services;
- inform and influence policy makers and legislators, and all those responsible for the welfare of children and young people.

CONSULTATION

BAAF Scotland participated in the Adoption Policy Review Group and the subsequent consultations. BAAF Scotland welcomes the Adoption & Children (Scotland) Bill and believes that its implementation, if properly resourced, has the capacity to make a significant difference to the lives of some extremely vulnerable children.

COSTS

BAAF welcomes the financial memorandum as an initial approach to estimating the costs of implementing this important piece of legislation. BAAF believes however that the financial memorandum does not fully address the likely costs of the legislation.

Our colleague organisation TFN (The Fostering Network) has submitted evidence to the committee and BAAF would wish to endorse their comments and share their concerns behind them. We have had indications from COSLA and ADSW that they too will be submitting their evidence and that they also share BAAF’s concerns about the apparent under resourcing of this legislation.

Reference has been made to the very short notice given for submission of evidence and it has only been possible to meet this deadline by commenting in general terms on the proposals, rather than by submitting detailed financial information. BAAF will however continue work on these matters and would be happy to collaborate with any other organisation and the Executive in order to produce more detailed proposals.

SUMMARY OF CONCERNS

- Increasing the number of adoption applications will not in itself reduce the number of children in foster care, this number is in fact increasing.
- Placement of children in adoptive families does not represent any financial savings as such placements need to be supported financially and through the provision of services.
- The needs of children being placed for adoption are complex and life long. Many of these needs are currently unmet either by social work or health authorities. A major investment is required to meet existing statutory duties, before the increased duties can be addressed.
- Extending the range of people who can apply for support services will increase the costs.
- The creation of a ‘permanence order’ will not reduce the need for children subject to this order, to receive services, as they will remain looked after. There will be no savings therefore from this.
- Foster care services in Scotland are currently under funded by £65.5 million (The Cost of Foster Care – Investing in our Children’s Future. BAAF & The Fostering Network 2005).
- Any consideration of the implications of this legislation must take place within this context and the proposed national strategy for fostering announced by the Education Minister earlier this year.
• Regulation of minimum allowance for fostering will only assist if the funding is available to achieve this.
• Adoption allowances must be more widely available not as an exception. Minimum standards for this would assist, together with transparency of process. Adoption allowances should be able to have a 'reward' element for a limited period (up to 2 years) in order to assist fee paid foster carers to adopt a child they are caring for.

DETAILED OBSERVATIONS

The introduction (paras 366-369) suggests that the Bill will have the impact of increasing the number of adoptions and thereby reducing the financial burden on local authorities. This statement fails to take account of the following factors:

1) The overall number of children accommodated is rising not falling. Securing placements for some children through adoption is unlikely to ‘keep pace’ with the number of children entering the looked after system.
2) The care population as a whole (and children to be placed for adoption are no exception) is made up of youngsters who have experienced adversity and abuse and require intensive and in some cases life long support and therapeutic intervention. It is therefore both unrealistic and undesirable to expect that children placed for adoption and their families (both birth and adoptive) will not require the ongoing support of some kind.
3) At the current time the unmet needs of such children and families are considerable. Investing in adoption support services does not simply require an addition to existing services, but a step change to ensure that a basic service is being provided across Scotland.
4) Many children currently accommodated and likely to be placed for adoption will have experienced neglect and abuse and are likely to have been affected by inutero exposure to drugs or alcohol. All these factors combine to create both physical and emotional difficulties for the children. Poor concentration, developmental delay, attachment difficulties and trauma require help from health professionals (including psychological, speech, language and educational assistance to name but a few). It is important to recognise the need for joint working and provision of such services. It is not just social work which would be involved. Currently many of these needs are not met, other services are provided by voluntary organisations that are either not charging or subsidising the services.

COSTS ON LOCAL AUTHORITIES

Para 380. It is assumed that the introduction of permanence order will be cost neutral and may result in some savings. This appears to arise from a misunderstanding as to the purpose of the order, which is to change the legal status of the child, but not the quality of care provision. A child subject to a permanence order will still have the status of a looked after child with all the duties that flow from that. Greater legal involvement of foster carers should not be associated with a lessening of support (and its associated costs) from the local authority.

Para 385 indicates that new legal provisions will probably increase the number of requests for post adoption services. This is undoubtedly the case. Because this area of service provision is currently under resourced, and in some situations scarcely provided the need to both organise and administer the service as well as the actual costs of the service to be delivered must be taken into account.

Para 388. The provisions for payment of an adoption allowance are based on a principle that they should be paid only in special circumstances. This runs counter to the aspirations of practitioners and families who are involved in this work and who informed the work of the adoption policy review group. The complexity of children to be placed for adoption is such that in order for them to receive ‘optimum’ parenting, major adjustments will have to be made by families and the availability of an allowance to support these arrangements is critical. (See example below) The financial requirements are therefore likely to be the same as those currently paid in respect of fostering allowances for these children.
We would also suggest that for a limited period of time (up to 2 years) fee paid foster carers who adopt should continue to receive the reward element of the fostering allowance.

Example

John, aged 5, was subject to physical neglect, emotional and physical abuse while living at home. Since being accommodated he has had 3 fostering placements before placement within an adoptive family. As a result of these experiences he is delayed in his development. He becomes anxious when separated from carers, has difficulty in socialising with other children and has a very poor attention span – a consequence of his mother's use of alcohol when pregnant.

Caring for John is not straightforward. At school he makes heavy demands on the classroom assistant and would benefit from more time to support his learning. His early experiences make him prone to nightmares as well as wetting himself – he requires some therapeutic service from a psychologist to help with these issues. For these services he has to travel to a nearby town. John is uncaring of clothes and belongings so laundry/clothing costs are high.

The parents find it hard to have time away from John; even for a few hours he can only be left with trusted members of family who have to travel and stay overnight to do this. They cannot make use of local babysitters. John is in contact with two of his older brothers who are placed in a foster care home some distance away and he travels to meet them on a monthly basis. His adoptive parents have to be there to support him and although the contact is important, it leaves him very high and at times distressed. John’s early experiences make it difficult for him to socialize with other children, so his parents have to provide lots of stimulation. Caring for John is exhausting and incompatible with both parents working outside the home.

It is likely that as John gets older he will be asking more questions about his adoption and in middle childhood experience feelings of loss and anger – needing some additional therapeutic support from social work on CAMHS services. As an adolescent he may 'reject' the adoptive parents and seek out members of his original family, all concerned will need advice, information and support at the time.

Approaching independence is likely to present difficulties for John who will require the ongoing support of his adopted family and perhaps adult mental health service. John’s birth family are likely to continue to have feelings of loss and grief about his separation which will result in requests to support service from health and social work.

Likewise the adoptive parents will require advice and encouragement to continue to support their adult son.
Submission from the Fostering Network

BACKGROUND

The Fostering Network is the largest fostering charity in the United Kingdom. It is a membership organisation with over 37,000 foster carers in membership. Its aim is to bring social workers, foster carers, and other professionals together to improve the outcomes for children in foster care.

We have been operational in Scotland for nearly 30 years and we have a number of projects working with carers and social workers in every local authority and independent and voluntary agency. We collect the views, aspirations, and concerns of the foster care service by a variety of means including Focus Groups, Membership Meetings, surveys, our e-mail rapid response group, Advisory Groups, and our Scottish Committee.

Therefore, the views expressed in this paper are grounded in both a history of consultation with the foster care service but also an ongoing consultation with the foster care service in Scotland.

INTRODUCTION

The Fostering Network were involved in the Adoption Policy Working Party and, in particular, were closely involved in the generation of Chapters 10 and 11 of the Working Party Report “Better Choices for our Children”. In addition, and of particular relevance with regards to this Bill, we have recently completed research on behalf of the Scottish Executive in terms of an Audit of the foster care service in Scotland producing a report called “Caring for our Children.”

This is a particularly, detailed and timely report.

It is of regret that many of the proposed improvements suggested in this report are not to be found in the Bill, in fact only one of these suggested improvements has appeared within the Bill.

REPORT

For ease of use the Financial Memorandum is alluded to in linear fashion paragraph by paragraph.

367. To put current trends in adoption and fostering in context, over the last twenty years the number of adoption applications has fallen from around 1,000 a year to less than 400, just over half from adopters not related to the child. At the same time around 6,500 children are in the care of local authorities away from their homes. Of these, around 3,500 are in foster care, 1,500 with friends or relatives and 1,500 children live in residential homes. It is expected that improved arrangements for adoption as a result of the Bill will lead to an increase in adoption applications. This is difficult to forecast precisely. The decision to apply to adopt is not one that is taken lightly, and is dependent on a wider range of factors than the efficiency of the adoption process. Given the starting position, however, in the short to medium term even a large percentage increase in numbers of children adopted will have a relatively modest effect on numbers in foster or residential care.

Whilst we welcome the Bill, and the improvements for the adoption services in Scotland, it is as the Financial Memorandum states, uncertain at this stage as to whether or not we will see a relatively large increase in the number of adoptions resulting from the Bill. In addition, the number of children in foster care is growing by an average of 3% per annum which equates to 100 more children in foster care ever year. It would, therefore, require a massive increase in the number of adoptions in comparative terms to offset this ongoing annual increase of children and young people in foster care.
It seems unlikely to us that the increase in post adoption support now legislatively required will in any way be offset by a decrease in the number of children in foster care and thus savings be accrued. In addition, the costs used are rather crude in terms of using of only allowances as regards foster care whilst quoting the full cost of a non-secure residential placement. This is an area, which we will return to in details when we refer to Chapters 388 to 390.

By seeking to increase the number of adoption applications, the Bill will also improve educational and social outcomes for children who cannot live with their birth families. Educational attainment for looked after children is poor: 19.2% of children looked after away from home leave school with no qualifications; 39.6% of children looked after at home (eg, subject to a supervision order) leave school with no qualifications at SCQF level 3 or higher. This compares to 3.7% of children who are not looked after. About 60% of children receiving aftercare (eg, who ceased to be looked after beyond minimum school leaving age and are under age 19) are not in education, employment or training, compared with 13.2% for all 16-19 year olds.1 Adopted children do considerably better in a range of indicators (such as forming relationships with family and friends; intellectual development; social adjustment; and finding and keeping a job in adulthood, than children who remain in long-term foster care or in residential care) and, in some cases, as well as or better than children who live with their birth families. Adoption can help to overcome behavioural problems caused by disruptions in the birth family or in previous placements.2 An increase in the number of adoption applications will thus have positive benefits for children who cannot live with their birth families. As well as the immediately much lower cost of adoption compared to fostering and residential care, then, there should be considerably reduced longer term costs in eg state benefits, although this is difficult to quantify exactly.

This Chapter seems to be arguing that adopted children do better educationally than children who remain in the looked after system. This is an extremely complex area and not one that we can fully explore within the context of this paper. Sufficient to say that there is ample evidence to suggest that children in a well-resourced long term foster home would do as well both socially and educationally as those within an adoptive home.

Local authorities receive funding from the Scottish Executive to assist in the provision of services. In 2003-04 the total revenue funding for core services will be £8.1 billion, rising to £8.5 billion in 2007-08. In 2003-04, local authorities spent £1.9 billion on social work, an increase of 8.4% on the previous financial year. In addition to core funding for social work and children's services, local authorities also receive additional specific funding and, in particular, have access to the Changing Children's Services Fund, which amounted to £60.5 million in 2004-2005 and £65.6 million in 2005-2006. Any such costs would need to be met from this funding. As set out above, however, increased costs of adoption will have associated savings as well as costs.

In our discussions with local authorities, it seems clear that social work as well as other local authority services is under severe financial pressure at this moment in time.

With regards to the Changing Children's Services Fund, our concern is that this fund will have been ear marked for existing services and as such local authorities will face having to reduce services in one area in order to pay for the additional duties required under this Act.
Permanence orders

380. The introduction of permanence orders will be cost neutral for local authorities and may, in fact, result in savings. Permanence orders will be used in place of existing freeing orders and parental responsibilities orders. While permanence orders will result in better outcomes for looked after children, the number of children for whom orders would require to be made would not change. Increasing the number of children who are adopted would result in savings associated with the cost of caring for looked after children. For children who are not adopted and who remain as looked after children, the conditions of each permanence order will vary to take account of the specific needs of an individual child. Therefore, the cost to local authorities of each permanence order will differ. On balance, however, the cost of a child subject to a permanence order is likely to be similar to costs for children subject to freeing orders and parental responsibilities orders.

The opening sentence remains anomalous to us in that Permanence Orders will either be cost neutral or will attract savings, it is unlikely that they will do both.

It is our view that the process by which local authorities acquire Permanence Orders will attract additional costs. The Bill seems to be suggesting that they will be on a par with Freeing Orders and Parental Rights Orders. Both these Orders were only available to local authorities via applications to the Courts. As is the case, with a Permanency Order.

The ethos behind the Permanence Order is to increase the number of children who are subject to Permanency Orders as opposed to the number of children who are subject to Freeing and Parental Responsibility Orders. It is the central tenant of the Permanency Order argument that they are more “user friendly” in that they will be a means by which children and young people in local authority care can be “secured”.

Implicit within the argument is the notion that Permanency Orders will be relatively easy to obtain and straightforward to administer. Whilst we have some concerns with regards to this notion, if this is the case then, as is implied elsewhere, they are more popular, there will be more Permanency Orders applied for and as such, there will be a growth in costs associated with the numbers of applications being made by local authorities throughout Scotland. This will attract increased costs. To put it bluntly, if we are replacing two orders that have not proven particularly beneficial i.e. the Parental Rights Order and the Freeing Order with an Order that is more user friendly, then we must expect an increase in the use of the new order. Increased use of Permanency Orders by local authorities throughout Scotland will in simple terms cost more money. Our concern would be that Permanency Orders are not seen as cheaper options by local authorities, but rather as a better option for children. In addition, we would not want to see a lack of finance preclude authorities from pursuing Permanency Orders in respect of children and young people in their care.
Introduction of national fostering allowances

389. Fostering allowances are paid for every child who is in foster care. There is currently single agreed rate at which fostering allowances are paid: COSLA and the Fostering Network both publish suggested rates, but local authorities are under no compulsion to pay these rates. They may pay entirely different rates. Research carried out across 10 local authorities by the Foster Network shows that the average amount of fostering allowances paid per week was £101, below both the COSLA and Fostering Network rates. These figures, along with indicative figures used by the Department for Education and Skills in a current consultation paper on national minimum fostering allowances, can be seen in Table 2.

Table 2: Average rates of fostering allowances

<table>
<thead>
<tr>
<th>Age range</th>
<th>Average local authority rate (£)</th>
<th>COSLA (£)</th>
<th>The Fostering Network (£)</th>
<th>DfES figures (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-4 years</td>
<td>72</td>
<td>75</td>
<td>112</td>
<td>106</td>
</tr>
<tr>
<td>5-10 years</td>
<td>87</td>
<td>92</td>
<td>128</td>
<td>106</td>
</tr>
<tr>
<td>11-15 years</td>
<td>108</td>
<td>116</td>
<td>159</td>
<td>106</td>
</tr>
<tr>
<td>16+ years</td>
<td>139</td>
<td>150</td>
<td>193</td>
<td>118</td>
</tr>
<tr>
<td>Average rate</td>
<td>101</td>
<td>108</td>
<td>148</td>
<td>109</td>
</tr>
</tbody>
</table>

This paragraph is erroneous in a number of different ways. First of all any sample based on 10 out of 32 local authorities is too small a sample size. In addition, it ignores the voluntary and independent providers who currently look after approximately ten per cent of all children looked after and accommodated in foster care. At this moment in time, the Fostering Network, ADSW, and COSLA are working to produce a more accurate figure reflecting all fostering agencies in terms of a minimum fostering allowance being set at the Fostering Network rate.

In addition, by the end of this year, some 1500 children and young people will be living in placements where the Fostering Network rate is already paid by the local authority. This represents seven local authorities in Scotland who are already paying or are about to pay their carers the Fostering Network recommended rate in terms of allowances to be spent on the children and young people in their care.

In addition to this figure, a further two large city authorities have aspirations to move from paying 75 per cent as they currently do of the Fostering Network rate to 100 per cent of the Fostering Network rate within the next eighteen months to two years. If this were to happen then all four of the larger cities in Scotland in terms of local authorities would be paying at Fostering Network rate or above.

In addition, the paragraph precludes the fact that all seventeen independent and voluntary providers already pay allowances at or above the Fostering Network rate.

Finally, in terms of local authority finance, and in particular in terms of fostering allowances, we are in the fortunate position in Scotland, of being some three years behind our colleagues in England whose main concern at this moment in time is the commissioning of independent and voluntary placements for children and local authority care. The Social Services Performance Assessment Framework Indicators Report 2004 gives a weekly unit cost for foster care in England of £234 for local authorities own foster care service and a figure of £765 for foster care services purchased from independent providers. In the period 2001-2003, English local authorities placed 800 fewer children with their own foster carers excluding family and friends foster carers, and well over 2500
more children were placed with foster carers in the independent sector. The associated huge costs to local authorities of using independent as opposed to local authority foster carers is to do with a number of factors which have been alluded to previously within this report in terms of the recent study completed by the Fostering Network entitled “Caring for our Children”. This research concluded that the vast majority of foster carers are not convinced that the allowances that they receive reflect the whole costs of looking after the children in their care. This is clearly one of the issues that precludes more people coming forward to be local authority foster carers, and at the same time, acts as an incentive to would-be foster carers to foster for the independent and voluntary providers.

In Fostering Network’s opinion, the Government is faced with a stark choice at this moment in time. If it does not take powers to set recommended allowances at Fostering Network rate, the market forces will probably come into play and will eventually push local authorities into paying carers at or above the Fostering Network rate in an attempt to compete with the independent and voluntary sector.

Alternatively, the Government may by taking a lead in this matter, set a national rate, which will allow local authorities to operate from a firmer base in their negotiations with the independent and voluntary providers. The establishment of appropriate allowances on a consistent basis, by the Government would be welcomed by local authorities throughout Scotland. It would also, in our opinion, prove beneficial to the independent and voluntary providers in terms of allowing them to function within a prescribed manner providing much needed placements perhaps on the basis of special needs, disability, or other typologies.
Submission from the Scottish Legal Aid Board (SLAB)

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

In response to the Scottish Executive's Consultation Paper entitled “Secure and Safe Homes for our most Vulnerable Children” concerning proposals for action in relation to the Adoption Policy Review Group Report Phase II, the Board produced a detailed response pertaining to the specific legal aid implications of the proposals contained therein. The response was submitted to the Executive on 13 October 2005 and is available on the Scottish Executive’s website at www.scotland.gov.uk/Publications/2005/11/22131250/12510. The Board’s response is referred to for its terms and adhered to.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

It is clear from paragraphs 391 to 395 of the Memorandum that the Board’s response has been considered and reflected albeit in a slightly simplified and, in places, somewhat confused manner (see response to question 4). The Board did not have any input into the drafting of the Memorandum itself. However, we understand that the Education Department is willing to meet with the Board to discuss any legal aid financial implications further.

3. Did you have sufficient time to contribute to the consultation exercise?

The Board was given sufficient time to provide a written response to the Consultation Paper.

Costs

4. If the Bill has any financial implications for your organisation do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Paragraph 395 of the Financial Memorandum (the Memorandum) concludes that there is likely to be a small increase in legal aid costs which will vary from year to year but it is likely to be no greater than £50,000 per year.

The Board is unclear as to how this figure of £50,000 has been arrived at and believes that this figure may be significantly understated because:

- The Memorandum assumes that there are only a small number of contested cases. However, civil legal aid is sought and obtained for contested cases and it is these contested cases that require to be considered when predicting future costs.

- The number of Freeing and Parental Responsibilities Orders actually granted by a court is not necessarily the most accurate way of predicting increased legal aid costs. The Memorandum assumes that the number of final court orders granted is the starting point for calculating legal aid costs. Not all applications will in fact be granted by the courts (although it is acknowledged that a high proportion are). An application that is refused by a court could still result in significant legal aid expenditure if the parties opposing the action were in receipt of civil legal aid.

- The Memorandum assumes that there will ordinarily only be a single legal aid cost for each case. The Board disagrees with this assumption. A range of parties can already receive civil advice and assistance and legal aid within current proceedings and that range of parties will increase in terms of the Bill’s provisions.

In particular, foster parents and all other persons claiming an interest (see S86(2) of the Bill) can become parties to the court action. This will undoubtedly increase the number of applications for civil legal aid and increase the cost to the Fund.
• In 2004/05 the average case cost of an adoption action in the sheriff court to each party was approximately £6,380 which is significantly higher than the average case cost of a family action in the sheriff court which, in the same year, amounted to £1,875.

If the proceedings become lengthier, especially due to the increased number of parties, then the average case cost of £6,380 is likely to rise.

Moreover, there may well be a greater call by solicitors to use counsel in the anticipated sheriff court cases which would significantly increase an individual case cost.

• The ability to raise proceedings in the Court of Session could also result in a significant increase in costs. In 2004/05 the average case cost of a family action within the Court of Session was £7,855 being approximately £1,000 higher than the average sheriff court adoption case.

Additional costs arise in the Court of Session from the use of a local and Edinburgh solicitor and the requirement to instruct an advocate or solicitor advocate to conduct the case.

• The Board disagrees with the assumption that the number of Permanence Orders will be similar to the present number of adoption cases. The Board believes that the number of Permanence Orders will be greater.

In light of the more flexible nature of the Permanence Order it is envisaged that a number of cases currently dealt with by the Children’s Hearing System will move to the civil courts. Thus, a new class of applicant for civil legal aid will be created as there is no legal aid available for representation in Children’s Hearings.

• In addition to civil legal aid costs, there will be additional costs where advice and assistance has been granted in relation to matters under this Bill. In 2004/05 469 final civil advice and assistance accounts for adoption cases were paid out of the Fund with an average case cost per person of £180.15.

• The Board is concerned that the Bill does not replicate S101 (3) of the Children (Scotland) Act 1995 in respect of responsibility for payment of curators/reporting officers in Permanence cases. In cases subject to S101(3), there is a clear direction for the local authorities to bear the reporters’ and curators’ costs. By failing to make similar provision in this Bill, certainty as to responsibility for payment will be lost. This could result in attempts to shift the cost burden to the Legal Aid Fund and result in significant additional expenditure to the Fund. The Board is disappointed that the recommendation (supported by it and others) to create a centralised, cost effective solution, has not been implemented in the Bill.

• There are several provisions contained within the Bill which were not directly proposed within the Consultation Document and accordingly the Board was unable to comment within its written response upon any of these further legal aid cost implications. The Memorandum also does not appear to address these further potential costs.

In short, in relation to the provisions of the Bill, additional costs have been identified by the Board concerning:-

➢ The creation of a number of new statutory criminal offences within the Bill

There appears to be a significant number of proposed offences created by this Bill (see for example S20(3), S21(7), S27(8), S29, S66, S67 and S71).

Most anticipated offences are at summary level although it is noted that S67(2) (b) and S71(5) (b) introduces solemn offences with a possible 12 month imprisonment sentence period.
Criminal advice and assistance, Assistance by Way of Representation (ABWOR) and criminal legal aid, assuming a person is eligible, will be available to a person prosecuted with any of these statutory offences.

By creating new statutory offences, criminal legal aid costs will be likely to increase although it is acknowledged that the number of such offences prosecuted may well be few. The amount of increased costs is difficult to predict.

A summary criminal case which would normally be subject to the fixed feeing regime may well result in “exceptional status” applications being made by solicitors to the Board.

Ordinarily, if such an offence proceeded in the sheriff court and legal aid was granted then a fixed core fee of £500 would be paid to the solicitor to prepare and conduct the case. Where it can be shown, however, that this fixed fee would deny the client the right to a fair trial a solicitor can apply to the Board to be paid on a “time and line” basis (i.e. to be paid at a specified hourly rate for all work reasonably carried out). Such cases may well require a more than average level of preparation and may well involve child witnesses and accordingly could fall when “exceptional status” increasing criminal legal aid expenditure.

Sanction for counsel to conduct these criminal cases may also be sought by a solicitor which would again give rise to increased case costs.

Payment of cases prosecuted on indictment will be on a time and line basis and again sanction for senior counsel may be sought here due to the “novelty” of the offence and this would again give rise to possible increased criminal legal aid costs.

- **S26 – Return of Children**

This section of the Bill introduces a new type of civil court hearing where a child has been removed or where a person has reasonable grounds for believing that the child will be removed. Civil advice and assistance and civil legal aid would be available for such hearings.

Again, it is anticipated that the number of hearings will be few but these hearings could be lengthy and may be conducted by counsel and therefore this may well result in increased civil legal aid costs.

- **S65 – Preliminary Order where child to be adopted abroad**

This section allows a Scottish court, on receiving an application from prospective adopters who intend to adopt a child outwith the UK, to make an order vesting parental responsibilities and rights in relation to the child in those prospective adopters.

Again civil advice and assistance and civil legal aid will be available to such persons if eligible. It also appears that such proceedings could take place in the Court of Session with higher associated civil legal aid costs including counsel’s fees.

- **S72 – Power to Charge and S79 - Payments in Lieu of Services**

These two sections clearly concern expenditure. Paragraph 387 assumes that adoption agencies will make these cash payments and that this would not result in increased costs. However, the Board has concerns regarding the reference in S79(3) and (5) to the local authority having regard to the person’s eligibility for assistance from any other body. The Board has concerns that “any other body” could be construed as including the Legal Aid Board. The Board does not consider that such payments would be appropriate payments from the Legal Aid Fund.

- **S74 – Annulment etc. of overseas adoption**
Again, civil advice and assistance and civil legal aid would be available for such hearings. It should be noted that such hearings will take place in the Court of Session, and not the sheriff court, with associated higher legal aid costs including fees of counsel. Again the number of such hearings anticipated is expected to be low but such hearings could be lengthy and require senior counsel.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The anticipated increase in costs to the Legal Aid Fund will be met by the Scottish Executive.

No significant increase to internal administrative/staffing costs within the Board are anticipated.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The Memorandum does not appear to address these issues in relation to legal aid costs. The Board acknowledges, however, that it is difficult to be precise regarding the actual level of future expenditure as the number of contested hearings that the Bill will introduce cannot be accurately predicted and it is difficult to fully assess how such hearings will actually operate in practice.

Wider Issues

7. If the Bill is part of a wider policy initiative do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The Board is not in a position to comment on wider policy initiatives other than it would support the establishment of a national body for curators, safeguarders and reporting officers for adoption and other court proceedings.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

There may well be amendments to subordinate legal aid regulations such as amendment of Regulation 18 of the Civil Legal Aid (Scotland) Regulations 2002 (legal aid in matters of special urgency). The Board will continue to liaise with the Executive in this respect and consider if there will be any additional costs beyond those identified.
INTRODUCTION

COSLA welcomes the Adoption and Children (Scotland) Bill. We support the twin aims of the Executive to increase the number of adopters and to improve stability for children who cannot live with their original families but for whom adoption is not an option.

Our biggest concern is that the Bill appears to assume that all is well in fostering care services, except for allowances for fostering and the lack of adequate arrangements in planning for permanence. This is not the case. If the Bill is to realise its contribution, further developments are required to improve fostering services. There seems to be an assumption that the number of looked after children, the complexity of their histories, and the consequences that these have, are all static parts of the adoption, fostering and residential care world. This is not borne out by our members experience, where complexity of need is increasing as is the number of children requiring care. The absence of the anticipated National Fostering Strategy, the range of outstanding issues from the Adoption Policy Review Group, and to a lesser extent the unpublished kinship fostering report, provide the Bill with an opportunity to address these matters. While regulation and guidance can fill some of the gaps, professionals suggest some primary legislation may be required.

COSLA appreciates that the Executive sees the content of the Financial Memorandum as likely to evolve. This is welcomed as its description of where we are, and what we attribute the pressures within the system to, lack robustness. Our concerns about the content of the Financial Memorandum could have been reduced, had more time been made available to respond to it, or even better, had member authorities been actively involved in its preparation, including the assumptions that have been made. We appreciate that to some extent the new modelling work that the Executive has indicated it is embarking on will add to both the evolving nature of the financial assessment of the Bill’s impact, as well as to a broader description of where we are. We are hopeful that pressures not addressed in the financial memorandum will be addressed through the spending review process, but would wish to have a firm statement of intent in this regard.

GENERAL PRINCIPLES

The underlying theme of the Bill is to modernise the adoption and fostering framework, and to increase the number of adoptive parents. Section 66 of the Policy Memorandum makes clear the new duty to provide a wider range of adoption support services (our preferred term) to a wider range of people, with an expectation that this will lead to an increase in the services provided. COSLA agrees that both these objectives are necessary. However, COSLA is not able to comment on whether the projected £2.35m will be adequate in meeting the additional costs likely to result from the right to request assessment, the need to respond to the political pressure that will result from the increased expectations from such assessments, the provision of cash in lieu of services, the possibility of adoption allowances, and so forth. While the Bill should mean that more children are placed for adoption, the suggestion that this will result in significant savings elsewhere is stretching the point.

It is important that the degree of support envisaged for families that could, and do, adopt children is similarly available to children who are in foster care and the families that provide it. COSLA welcomes the proposed permanence order as a means of achieving security and stability for children in long term fostering care. While permanence orders will stabilise arrangements in one part of the foster care field it will make even clearer the need to recruit more families able to offer shorter term foster care, as families who currently provide the short term care are no longer available. In Scottish local government the children’s placement system is under considerable stress. There are already cases where children who have been assessed as needing foster care are without placements, and families providing fostering care have more than the number of children we would normally be happy with. The Bill is likely to add to the pressure on fostering arrangements that are already an area of under resourced social work.
Section 39 of the Policy Memorandum raises two needs that adoption serves. The first is unarguable and shared with fostering arrangements, to meet the needs of children to be looked after outside the original parental home. However, the second, to meet “the desire for a parental experience on the part of those people who for whatever reason are unable to produce children naturally”, appears dated and unnecessarily complicates the primary purpose of social work children’s services. It is not easy to see why it was included as there is no follow through of this in the Bill.

FINANCIAL MEMORANDUM

COSLA is concerned about the assumptions of the Financial Memorandum. The pressure on current budgets has been a longstanding concern of our members, and has featured prominently in our previous spending review submissions. Budgetary constraints make it difficult to meet current need in the context of the rising costs. The Executive’s acknowledgement that existing children’s services are benefiting from additional funding from the Executive illustrates the case. As you already have comments from ADSW on sections 380 – 388 of the Financial Memorandum, these will not be replicated here. Instead, the remainder of this response concentrates on the opening comments of the financial memorandum, and the fostering rates.

VOLUME AND TRENDS (367 – 374)

While it is true that COSLA and its member authorities have been closely involved in the development of the policies (372) included in the Bill, it was always going to be difficult, if not impossible, to provide detailed estimates of costs for these new policies. A lot depends on the detail. In a complex area, such as adoption, fostering and residential child-care, we are clear that trying to produce a robust methodology to arrive at the cost of the Bill is extremely difficult. Had the Executive engaged us in discussions over their assumptions and forward projections of the number of children in care it may have been easier to produce better estimates of costs. Unfortunately, COSLA has had very limited time to consider the financial memorandum, let alone canvass our members for their own estimates.

In the absence of a detailed canvas, COSLA is surprised to see that the “Cost of Foster Care” report produced by BAAF and The Fostering Network (TFN) in 2005, was not used. The report has been considered and endorsed by COSLA’s members. It provides a comprehensive approach over the resources that are needed to provide a fostering service that can meet current needs of all stakeholders.

COSLA understands from its member authorities and from ADSW that the numbers of children needing to be accommodated across Scotland is rising at a significant rate. We support TFN’s point where it estimates the growth in children in foster homes at roughly 3% or 100 extra children a year. It can therefore be seen that any estimated savings from the Financial Memorandum are likely to be more than offset by the increase in numbers. If there is to be a decrease in the use of residential care it will be achieved primarily as a result of our members developing greater support to children directly and through the development of fostering arrangements. It will not be unambiguously the result of the provisions of the Bill.

It consequently follows that we view sceptically the suggestion that the Bill’s objective of improving and extending existing services will in any material way be offset by a reduction in costs for fostering and residential care (368). While it is a truisms to say that the costs of adoption are much lower compared to fostering and residential care, COSLA is sceptical over the use of this fact in the financial memorandum to claim that the Bill will result in savings to the child care sector. While a loving and stable family relationship undoubtedly boosts the life chances of fostered and adopted children, the children who are cared for in the three different groups do not have an equal share of older children, children with disabilities and sibling groups. The different weekly costs between adoption allowances, fostering allowances and fees and the cost of residential care can be taken as reflecting broad differences in the services required and level of need being met (369).
Furthermore, while admittedly generalising, a plausible explanation over the different levels of attainment achieved by the different care arrangements is that it reflects the starting point at which the children come into the relevant arrangements, and the broad differences in their need at that point. It is clear that further work is merited on outcomes, levels of need and the beneficial effects of the different types of care so as to avoid confusing correlation with cause. In the longer term, if more children with complex needs are placed for adoption, the initial differences in costs between fostering and adoption are likely to decrease.

When long-term foster carers adopt children, financial planning should make room for a significant transition period in which adoption support allowances replace the family income previously supplemented by fostering allowances and fees. It is likely that the need for this form of compensation, in lieu of lost earnings, may be required for a number of years as the new relationships settle in and the non waged parents reintegrate into the employment market. COSLA members are trying to arrive at arrangements that deliver both quality and timely support, and by so doing reduce the need for costly long term services. As said above, where the longer term costs of meeting need are achieved, the contribution of the Bill is likely to be secondary to councils’ forward planning and investment in foster arrangements.

**INTRODUCTION OF NATIONAL FOSTERING ALLOWANCES**

COSLA accepts that the wide variation in fostering allowances needs to be addressed. Competition for fostering families, resulting from the increasing presence of private companies, and the need to acknowledge the effect of fostering on family income has meant that an increasing proportion of our members have decided to use the Fostering Network recommended rates. Because of this, the rates being paid by member councils have developed quite independently of what we were recommending, at the expense of other budgets. The financial year 2004/2005 was the last year that COSLA recommended foster allowance rates to our members. What had been a simple arithmetical process, of increasing the old rates by the annual public sector inflation rate, was becoming increasingly difficult to justify without a thorough review of what the rates themselves were intended to support.

COSLA acknowledges the research carried out across 10 local authorities. However, given the diversity in rates being paid, and the more comprehensive material available from the joint work between BAAF and the TFN, if an updated baseline is to be used to assess the financial impact of the Bill, it is only appropriate that this material is used or a new full survey is undertaken. COSLA is also critical of the table in its use of a simple arithmetical mean of all the values for the different rates recommended by ourselves, the Fostering Network, and the DfES. It is not justified. Children are unlikely to be distributed evenly across these age groups. To arrive at real costs, the values need to be weighted with actual numbers of children in each age grouping.

COSLA is also concerned that the investment of councils who have moved towards meeting the Fostering network rates might not be recognised in any arrangements to meet the additional burdens arising from the Bill. We believe that the fairer way of estimating the costs of the Bill, and any minimum rate that may be set by Ministers, would be to use the last recommended COSLA rate (sent in January 2005 for the following financial year), with an annual increase of 2% as a baseline. This would have given the following weekly figures for this year, £67 for 0 – 4 years, £83 for 5 – 10 years, £103 for 11 – 15 years, and £134 for 16 plus. These are all well below the rates attributed to COSLA by the SE in the financial memorandum. The incorrect data throws out the subsequent calculations in the SE table. The revision to the table supports COSLA’s contention that councils pay above what would have been the suggested COSLA rate. It provides evidence of the cost pressures in the system, as well as our members’ desire to pay something more in line with the cost of care. COSLA is working with the Fostering Network and ADSW to get more up to date figures. Unfortunately, we do not expect to have these until mid to late June.

A further burden on local authorities may arise from the Executive’s approach to Kinship care. If the Executive is to require payments of allowances to grand parents and other members of the extended family, using the powers contained in the Bill, this will be a major policy shift, with considerable on costs. COSLA is hopeful that both the Finance Committee’s consideration of the
Bill and the anticipated spending review will provide opportunities to address the financial implications of the chronic underfunding of social care services for young people and children.
Supplementary submission from the Scottish Executive

We were grateful for the opportunity to give evidence to the Finance Committee on the Adoption and Children (Scotland) Bill at its meeting on Tuesday 9 May 2006. At that meeting the Convener indicated that it would be helpful if we wrote with any supplementary evidence and this letter meets that request.

Before addressing some of the detailed points that were raised, it may be worth reiterating two of the general points that we made at the meeting.

First, in drawing up the Financial Memorandum we focused on the financial consequences of the Bill itself. This not to say that overall financial requirements for residential care, fostering and adoption will not be affected by other social, economic and policy developments such as the Hidden Harm report to which the Convener referred. Obviously this will be an issue of considerable interest to us in working towards the next Spending Review and we will be looking to refine our understanding of the financial factors further, in partnership with local authorities and other stake-holders, to inform our thinking in that context and in relation to the Bill.

Second, where in the Financial Memorandum we have used phrases such as ‘cost-neutral’ this is not meant to imply ‘cost-free’ as some submissions to the Committee might be read as implying. In essence what we had in mind was that there is a certain number of children for whom it is necessary for the state to intervene so that they are looked after away from their birth parents, whether in residential care, foster care or through adoption. The Bill will not affect the number of such children. Insofar as it encourages any move of children from residential care into foster care, or from foster care into adoption, or increases the stability of foster care placements through Permanence Orders, the results in any particular case should at worst be cost-neutral. This is not to say, for example, that children with disabilities for whom a Permanence or Adoption Order is made will cease to need support but that need for support will not increase. In some cases the stability marked by a Permanence Order may justify a less frequent approach to reviewing the child’s position (at present regulations require that the position of looked after children is reviewed three months after placement, and every six months thereafter, which can be disruptive where a stable placement is achieved). Similarly for some adopted children there will be a prospect of a diminished requirement for financial support: on average this is the case at present although we would accept that the average differential between foster care and adoption may diminish if more challenging children are adopted.

Turning to more specific points raised in Committee, it seems appropriate to say more about court proceedings (raised particularly in the submission from the Scottish Legal Aid Board (SLAB)), costs associated with support for adoption, and the implications for costs if children from residential care into foster care, or from foster care into adoption.

COURT PROCEEDINGS

We have considered the written evidence submitted by the Scottish Legal Aid Board (SLAB), and have found this to be helpful. In particular, SLAB’s comments about the different elements of the court process which may attract Legal Aid funding were useful in identifying costs as a result of the Bill than identified in the Financial Memorandum.

It may be helpful to differentiate between civil and criminal proceedings.

CIVIL PROCEEDINGS

As regards civil proceedings, our estimate of an additional cost of £50,000 per year was based on the assumption that the Bill’s main impact would be in the number of applications for permanence orders and s.11 orders. The Bill allows joint adoption by unmarried couples, which we argue will reduce the number of applications overall (one application from the couple rather than one application from one partner for the adoption order and a second application from the other partner
for a s.11 order). Against that the greater simplicity of going for a single order rather than two may make adoption a more attractive option for some unmarried couples than at present.

While the permanence order may be a more attractive option for some children, we do not believe that there will be a significant overall increase in the number of applications being made for orders relating to child protection. It is important to note that the Permanence Order replaces existing orders, rather than complementing them. The reduction in costs associated with the abolition of the Freeing Order and Parental Responsibilities Order will be balanced against the costs of the Permanence Order. The Permanence Order may also see a reduction in the number of applications for section 11 orders, since parental responsibilities and rights and contact arrangements for all interested parties can be encapsulated in the Permanence Order and it will not be possible to seek a section 11 order for matters that can be covered in the Permanence Order.

We stated in the Financial Memorandum that only a small number of adoption cases are contested; this statement was questioned by several organisations who provided evidence. In our suggestion that contested cases are comparatively rare, we drew on the response to our consultation from retired Sheriff Peter G. B. McNeill QC, the leading expert on legal aspects of adoption in Scotland. Sheriff McNeill suggests that around 5 – 10% of adoption cases in Scotland are contested, which equates to between 10 and 20 cases each year. Sheriff McNeill makes the point that, while small in number, contested cases can take considerably longer to dispose of than uncontested cases. We agree with this, and accept that contested cases have increased financial costs for local authorities and SLAB. Nonetheless, the small proportion of contested cases means that the financial burden of this should not be overstated.

We concluded that although the introduction of the Permanence Order may lead to an increase in applications, there would be a downturn in other applications. In that we expect that the Permanence Order will prove a more useful, flexible legal instrument than the orders that it replaces, we would expect that overall there would be some increase. Therefore, our estimated increased costs was based on there being a small net increase in the number of applications. Our suggested increase of £50,000 per year was based on the figures quoted in SLAB’s consultation response, but was an extrapolation based on the predicted impact of the permanence order and partial knowledge of the range of elements which could attract Legal Aid support. We accept that there were other costs that we did not consider, but which will, as SLAB have indicated, have an impact on costs. We are arranging to meet SLAB to further discuss costs.

CRIMINAL PROCEEDINGS

Turning to criminal proceedings, SLAB suggests that the Bill contains some provisions which will introduce new legal costs which were not discussed in the Financial Memorandum. In fact, most of the offences contained in the Bill are restatements of existing offences contained in the Adoption (Scotland) Act 1978, as outlined in Appendix A. This, of course, is not evident from reading the Bill itself and we can readily see why SLAB interpreted the Bill as implying greater changes in relation to criminal law than is, we believe, the case. The explanatory notes which accompanied the bill detailed the effect of these offences, but did not make clear that these were restatements of existing provisions rather than new offences.

There will be potential new costs associated only with two sections: 29 and 71. Section 29 relates to offences relating to sections 30 to 36 of the Adoption and Children Act 2002, which concern the removal of children and are similar to sections 20 to 25 of the bill. Section 71 relates to regulations which may be made by Scottish Ministers in relation to preventing overseas adoptions from particular countries (should adoptions from that country be halted). It is unlikely that either of these sections will have significant financial implications for SLAB.

Other provisions cited by SLAB as being new are actually existing provisions in the 1978 Act. Section 26 replicates s.29 of the 1978 Act; s.65 replicates s.49(1) of the 1978 Act; and s.74

replicates s.47. There are two new sections. Section 72 relates to the power for Scottish Ministers to charge for handling overseas adoption casework and will have no impact on SLAB. Section 79 relates to the provision of adoption services and is intended to allow a local authority to provide a payment where it is unable to provide a service. The policy intention is that this will enable a local authority to pay money to a family to obtain a service (for example, counselling or therapeutic care) that the local authority is unable to provide. This is unlikely to affect SLAB.

ADOPTION SUPPORT

We have indicated that there may be only a small increase associated with improved support for adoption and fostering, and that, in some circumstances, it may lead to savings. This was rejected by some organisations who provided evidence. Our position was based on the argument that improved support at an early stage in a placement (whether adoption or fostering) may help to prevent the placement from breaking down and may reduce the need for continued support for the placement's duration. We accept that adopted and fostered children (and their families) require support and are likely to do so for some years after a placement has been made. The bill contains provisions which will ensure that such support is always available, and we are not seeking to place time constraints on the availability of support. However, in seeking to provide greater security and stability for children, we hope that early intervention may reduce the need for long-term support.

It should be noted that under section 1(2)(bb) and (c) of the Adoption (Scotland) Act, local authorities currently have a duty to provide counselling and assistance to children who have been adopted and to persons who have adopted a child and counselling for other persons if they have problems relating to adoption. The Children (Scotland) Act 1997 Regulations and Guidance (vol. 3, Adoption and Parental Responsibilities Orders) provide further information on post-adoption support. Guidance advises that ‘long-term support may be required in some cases,’ and notes that ‘Agencies should be flexible in considering how to meet the needs of adoptive families and a range of options needs to be developed.’ The guidance also notes that ‘Birth parents may also require support at various times after the adoption order is granted.’

We consider that the existing legislation provides sufficient scope for local authorities to provide any support that is considered necessary. In this way, the bill does not introduce any new support services which cannot already be provided, although it does widen the field of people who can apply for support or an assessment of their need for support. Research conducted by the Scottish Adoption Association indicates that many adoptive families are unaware of what support they are entitled to, how they can access support and are unsatisfied with local authority responses to requests for services and information. We intend to issue guidance to ensure that local authorities make prospective adopters aware of the services that are available to adoptive families.

We acknowledge that the more explicitly stated eligibility of a wider range of people, coupled with increased awareness of support services, is likely to see an increased demand on local authorities, with a commensurate increase in costs. We have calculated that an additional £2.35 million per year should be sufficient to meet this increased demand for support. This figure is based on the £70 million DfES made available over three years to support the implementation of the Adoption and Children Act 2002. This equates to around £23 million per year. We have scaled this down by a factor of 10 to represent the approximate difference in population size between England and Scotland.

Another approach is to look at numbers of looked after children and adoptions in England and Scotland. In 2004-05, 3,800 looked after children were adopted in England, which represents

6.24% of the total number of looked after children (60,900 at 31 March 2005).\textsuperscript{16} In Scotland, 117 looked after children were adopted in 2004-05 which is 0.96% of all looked after children (12,185 at 31 March 2005).\textsuperscript{17} The fact that a child has been looked after prior to adoption particularly indicates a need for support, which is not to say that adopted children not previously looked after, or their birth or adoptive families, will not need support. Based on these figures, we believe that an additional £2.35 million per year should meet the increased costs brought about by the bill.

**COMPARATIVE COSTS**

There was some discussion of levels of costs for fostering allowances and other costs associated with foster care, and the comparison with costs for residential care. As discussed during the meeting, the presentation of ‘highest rate’ and ‘lowest rate’ savings in relation to residential care in the table at the end of the Financial Memorandum was less clear than it might have been. They were simply meant to provide illustrative figures if 10 or 100 children respectively moved from residential care into foster care. Although it is difficult accurately to predict the number of children who may move from residential accommodation to a foster placement, we wished to illustrate possible savings for different numbers of children. In practice we would hope that improved fostering allowances, in the context of a wider fostering strategy, might provide opportunities for more than 100 children to move from residential to foster care. We have provided an updated table at Appendix B. This shows the different data available on levels of fostering allowances, on overall costs of fostering, and on costs of residential care, and where we have derived them. These indicate a current average fostering allowance of £121 and an overall fostering cost of £249 per child per week, set against an average cost in non-secure residential accommodation of £1,647, a difference of £1,398 per child per week (or £72,696 per year). Even if, for example, fostering more challenging children who had previously been in non-secure residential care meant that fostering costs for them were above average, it seems unlikely that they would be anywhere close to the costs of residential care.

**CONCLUSION**

I hope that this supplementary evidence is of assistance to the Committee.


## APPENDIX A: OFFENCES CONTAINED IN THE BILL

<table>
<thead>
<tr>
<th>Bill section</th>
<th>1978 Act section</th>
<th>Commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>20(3)</td>
<td>27</td>
<td>Same penalty</td>
</tr>
<tr>
<td>21(7)</td>
<td>28</td>
<td>Same penalty</td>
</tr>
<tr>
<td>27(8)</td>
<td>30</td>
<td>Same penalty</td>
</tr>
<tr>
<td>29</td>
<td>New</td>
<td>Contravention of ss.30-36 of 2002 Act: imprisonment for not more than 3 months, fine not exceeding level 5 or both</td>
</tr>
<tr>
<td>66</td>
<td>50</td>
<td>Same penalty</td>
</tr>
<tr>
<td>67</td>
<td>50A(1)</td>
<td>Increases penalty from imprisonment not exceeding 3 months or a fine not exceeding level 5 or both to (for a summary conviction) imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum or both, or (for a conviction on indictment) imprisonment not exceeding 12 months or a fine or both</td>
</tr>
<tr>
<td>71</td>
<td>New</td>
<td>Bringing a child into the UK in contravention of regulations which may be imposed by Scottish Ministers: (for a summary conviction) imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum or both, or (for a conviction on indictment) imprisonment not exceeding 12 months or a fine or both</td>
</tr>
</tbody>
</table>
APPENDIX B: FOSTERING ALLOWANCES AND RESIDENTIAL CARE COSTS

FOSTERING ALLOWANCES

<table>
<thead>
<tr>
<th>Age Range</th>
<th>Average local authority rate (£)</th>
<th>COSLA (£)</th>
<th>The Fostering Network (£)</th>
<th>DfES (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-4 years</td>
<td>86</td>
<td>67</td>
<td>112</td>
<td>106</td>
</tr>
<tr>
<td>5-10 years</td>
<td>101</td>
<td>83</td>
<td>128</td>
<td>106</td>
</tr>
<tr>
<td>11-15 years</td>
<td>128</td>
<td>103</td>
<td>159</td>
<td>106</td>
</tr>
<tr>
<td>16+</td>
<td>162</td>
<td>134</td>
<td>193</td>
<td>118</td>
</tr>
<tr>
<td>Average Rate</td>
<td>121</td>
<td>97</td>
<td>148</td>
<td>109</td>
</tr>
</tbody>
</table>

In terms of the estimates of costs of fostering allowances set out in paragraph 390 of the Financial Memorandum, and in the table after paragraph 399, the fact the latest data on fostering allowances indicate that average rates paid by local authorities are above those suggested by COSLA and consulted on by DfES indicates that there would be a saving rather than costs if these were used (the Financial Memorandum suggested that moving to the COSLA rate might cost an additional £1.17m, and to the DfES rate an additional £2.5m). In practice it would be impractical to expect rates to diminish. Multiplying the number of children in non-respite foster care (3,493) by the difference between the local authority average of £121 and the Fostering Network rate of £148 would suggest additional costs over a year of £4,904,172 (against £8.14m in the Financial Memorandum).

In addition to these figures, local authorities spent £45.292 million on non-respite foster care in 2004-05. This includes all foster carers fees, expenses and allowances and staff and other costs for foster carer recruitment, training and support. This amounts to approximately £871,000 per week or to £249 per week, per child (dividing by 3,493). This is an approximate cost, which assumes that the number of children in foster care stays the same throughout the year. The figure of 3,493 children in non-respite foster care is a snapshot as at 31 March 2005. These figures do not take into account the total number of children in foster care throughout the year, nor their changing situation. These figures are gathered from local authority returns to the Scottish Executive.

RESIDENTIAL CARE COSTS

Secure residential accommodation cost £3,408 per week per child in 2004-05. Non-secure residential accommodation costs £1,647 per week per child in 2003-04. (These are the most recent figures available.) Thus, the potential saving that would result by moving one child from non-secure residential care to fostering would be £1,398 per week (£72,696 per year). In terms of the ‘lowest rate (£0.58m)’ and ‘highest rate (£5.7m)’ in the table after paragraph 399, the corresponding figures would be £726,960 and £7,269,600 although with hindsight using the terms ‘lowest rate’ and ‘highest rate’ may give a misleading impression that we expect an absolute minimum of 10 children to move from residential to foster care and an absolute maximum of 100. The intention was more to give illustrative figures for savings if certain numbers of children did move in this way, rather than to claim a greater precision about the extent of such a trend than we possess.

---

18 These are updated figures provided by TFN, based on rates paid in all 32 local authorities.
19 These figures are based on recommended COSLA rates for 2005-06. We have calculated these to include an increase of 2% for 2006-07. These are lower than the figures quoted in the Financial Memorandum. COSLA advised us that the figures in the financial memorandum were incorrect.
Subordinate Legislation Committee

Adoption and Children (Scotland) Bill at Stage 1

The Committee reports to the lead Committee as follows—

Introduction

1. At its meetings on 2 May and 16 May, the Subordinate Legislation Committee considered the delegated powers provisions in the Adoption and Children (Scotland) Bill at Stage 1. The Committee submits this report to the Education Committee, as the lead Committee for the Bill, under Rule 9.6.2 of Standing Orders.

2. The Executive provided the Parliament with a delegated powers memorandum1.

3. The Committee’s correspondence with the Executive is reproduced in Annexes 1 and 2.

Delegated Powers Provisions

4. The Committee considered each of the delegated powers provisions in the Bill. The Committee approves without further comment provisions in the following: sections 2, 5, 6, 7, 20, 39, 47, 48, 55, 58, 68, 69, 70, 71, 73, 77, 78, 97, 98, 99, 101, 103, 104, 106, 108, 113, Schedule 2 (Minor and Consequential Amendments paragraphs 1(4)(b) and 1(4)(f)); and Rules of Court in Sections 97, 101, 104 and 106.

Section 3 – Assistance in carrying out functions in section 1 and 2

5. The Committee noted that the power in section 3 would permit Ministers to make regulations to add bodies to the list of those with statutory obligations to assist local authorities in providing adoption services. The Committee therefore asked the Executive to confirm its plans in relation to consulting on any such regulations.

1 Delegated Powers Memorandum
6. The Executive, in its response, confirmed that it does intend to consult on regulations made under this power in line with its general practice. The Committee is content with the Executive's response. It is also content with the power and that it is subject to negative procedure.

Section 23 - Scottish Ministers’ power to amend period of time in sections 21 and 22

7. The Committee noted that the power in section 23 allows Ministers to amend the 5 year period set out in sections 21(1)(b) and 22(1)(b) of the bill in relation to the unauthorised removal of a child from the care of prospective adopters. Although subject to affirmative procedure, the Committee expressed reservations about the appropriateness in principle of delegating a power to make subordinate legislation to alter what is an integral part of the description of a criminal offence. The Committee asked the Executive for further justification for the delegation and for clarification of the circumstances in which it anticipated exercising the power.

8. The Executive, in a helpful response, stated that section 23 was a restatement of section 28(10) of the Adoption (Scotland) Act 1978 but also conceded that the provision is different from the parallel provision in the Adoption and Children Act 2002 which contains no delegated power. The Executive has undertaken to consider this issue further at Stage 2. The Committee notes the Executive's response and will reconsider the provision at Stage 2. The Committee agreed to draw the attention of the lead Committee to the correspondence, and in particular the Executive’s undertaking, and to its concerns about this provision.

Section 40 – Disclosure of information kept under section 39

9. The Committee expressed reservations about the power in this provision which enables Ministers to make regulations, subject to negative procedure, to provide for the disclosure of information kept by adoption agencies under section 39 to adopted persons and other persons specified in the regulations.

10. The Committee was also concerned about the Executive’s characterisation of these regulations as being likely to be “uncontroversial” and “administrative”. It asked the Executive to confirm the likely scope of the regulations given the sensitivities around the nature of the information disclosed and why only negative procedure had been provided for. The Executive was also asked about its consultation plans given the potential obligations imposed by the regulations on adoption agencies.

11. The Executive, in its response, said that its intention is broadly to restate the regulations which currently govern the area of disclosure of adoption information; namely the Adoption Agencies (Scotland) Regulations 1996, which are subject to negative procedure. The Executive also confirmed that it intends to consult on the regulations made under this provision.

12. The Committee remains concerned about the scope of the power in that it would allow Ministers to prescribe in regulations “other persons”, without apparent limit, to whom information would be disclosed. It does recognise however that the
regulations will, by virtue of section 57(2) of the Scotland Act, require to comply with ECHR requirements in relation to Article 8 confidentiality and protection of private life issues.

13. The Committee also notes that the power in section 40 is to disclose information “kept by virtue of section 39” and that the information to be kept pursuant to section 39 is itself to be prescribed in regulations. It is not yet clear what information will be covered in these regulations, and therefore what type of information will be susceptible to disclosure under section 40. The Committee is accordingly also concerned about the lack of certainty in relation to the nature of the information that can be disclosed.

14. The Committee draws these concerns to the attention of the lead Committee and to the correspondence between it and the Executive. The Committee does not feel able, on the information currently before it, to reach a definitive view on the appropriateness of subjecting this delegated power to negative procedure and agreed to consider this matter again at Stage 2. The lead Committee is invited to pursue these concerns if practicable.

Section 56 - Care plans: directions

15. The Committee observed that, while not a power to make subordinate legislation, this provision appeared to confer a power on Ministers to issue directions which arguably have a legislative character given that the directions can be of a “general nature”. The Committee therefore asked the Executive why such directions will not be subject to any parliamentary scrutiny.

16. The Executive, in its response, explained that the care plan, to which such directions will relate, is a local authority administrative practice which is not currently in legislation and, accordingly, directions were considered the appropriate vehicle. The Committee accepted that directions under this provision are likely to be administrative in character given that the power to issue directions relates to the practical implementation of care plans rather than to their substance. The Committee is therefore content with the Executive’s clarification of this matter.

Section 60 – Searches and extracts

17. The Committee asked the Executive to clarify the meaning of this provision as it was not clear whether the effect of the drafting is to extend the existing regulation making power in the Registration of Births, Deaths and marriages (Scotland) Act 1965.

18. The Executive, in its response, indicated that the provision simply applies the current regulations made under the existing power in the 1965 Act to the newly created Adopted Children Register. The Committee is content with the Executive’s response.
Section 64 – Restriction on bringing children into the United Kingdom

19. The Committee asked why the power in subsection (8) of section 64 is subject to affirmative procedure only on the occasion of its first exercise. The power allows Ministers to make regulations disapplying the safeguards in section 64 restricting the bringing of children into the UK for adoption where the adopters or prospective adopters are parents, guardians or relatives of the child.

20. The Executive, in its response, explained that it would probably have been content to adopt negative as the default procedure but it felt constrained to follow the lead of the Delegated Powers Committee at Westminster which recommended affirmative procedure be applied to the first exercise of the equivalent power in the Adoption and Children Act 2002.

21. The Executive explained that it is intended that the first exercise of the power will be “substantive” and will prevent relatives and natural parents or guardians from being criminalised for bringing children into the UK for adoption in certain prescribed exceptional circumstances. It pointed out that subsequent exercises of the power would be likely to be administrative and procedural.

22. The Committee is broadly content with the Executive’s response, and that the provision is subject to affirmative procedure on the occasion of its first exercise. However, it notes that there is nothing to preclude subsequent exercises of the power making substantive amendments to subordinate legislation which would only be subject to negative procedure. The Committee draws this concern to the attention of the lead Committee.

Section 65 – Preliminary order where child to be adopted abroad

23. The Committee asked for further explanation of the power in subsection (3) of section 65 which relates to court orders vesting parental rights and responsibilities in prospective foreign adopters. In particular clarification was sought of the intended use of the power to prescribe further requirements on the granting of such orders. It was not clear to the Committee whether the further “requirements” mentioned in this provision were likely to be administrative or legally substantive and, if the latter, whether they ought to be set out on the face of the bill.

24. The Executive, in its response, has confirmed that its intention is to use the power to specify “administrative” preconditions on the granting of the order by the court. The Committee is content with the Executive’s response. It is also content that the power is subject to negative procedure.

Section 66 – Restriction on removal of children for adoption outside Great Britain

25. The same issue arises here as arose in relation to Section 64(8) above, except that this section deals with a child who is taken out of the United Kingdom for adoption rather than being brought into the UK.
26. **The Committee is broadly content with the Executive’s response, and that the provision is subject to affirmative procedure on the occasion of its first exercise. However, it notes that there is nothing to preclude subsequent exercises of the power making substantive amendments to subordinate legislation which would only be subject to negative procedure. The Committee draws this concern to the attention of the lead Committee.**

Section 67 – Regulations under section 64: offences

27. The Committee noted that this power allows Ministers to delay the time at which an offence under section 64 (the bringing of children into the UK for adoption without meeting the specified statutory requirements in section 64 of the bill) will deemed to have been committed. In the absence of any information in the DPM about the intended use of this power, the Committee asked the Executive for further information on its scope and intended use.

28. The Executive, in its response, explained that the power would be used to extend the time for compliance with the conditions and requirements set out in section 64 and would allow a prospective adopter in certain circumstances to bring a child into the UK without having met the usual conditions at the point of entry. The Committee recognised the practical utility and sense of such a power and is content with the Executive’s response. It is also content with the power and that it is subject to negative procedure.

Section 72 – Power to Charge

29. The Committee noted that this provision allows Ministers to charge a fee to adopters for services provided by them in relation to inter-country adoptions. However, the Executive was asked why the determination of fees was not to be provided in a statutory instrument to allow some form of parliamentary scrutiny.

30. The Executive response explained that the approach taken is in line with England and Wales, and that the intention is to take a unified approach to fees charged in the UK. The fees are also restricted to a cost-recovery basis only. The Executive expects to publish the fees on its website and to publicise these to adoption agencies.

31. The Committee observes, however, that there is nothing in the Executive’s response which would appear to preclude it from providing for fees to be prescribed in a statutory instrument and still maintain a unified approach. The Committee also noted, for example, that in the area of plant health law, fees which were previously determined non-statutorily are now prescribed by statutory instrument thus providing an extra degree of scrutiny and transparency. The Committee draws the attention of the lead Committee to the Executive’s response.

Section 75 – Section 74: supplementary provision

32. The Committee noted that this provision allows the Court of Session, on an application, to annul a Convention adoption or overseas adoption. Applications are to be made in the manner prescribed in regulations made by Ministers. The
Committee asked why this aspect of court procedure was to be determined by Ministers in regulations and not by the court itself (such as is provided for elsewhere in the bill).

33. The Executive, in its response, explained that the detail of the annulment applications is to be amalgamated with existing statutory provisions and with the new regulations on adoptions with a foreign element which Ministers plan to make. The Committee is content with the Executive’s response. It is also content with the power and that it is subject to negative procedure.

Section 78 – Disclosure of medical information about parents of a child

34. The Committee raised similar concerns in relation to this provision as it did in relation to section 40 (see paragraphs 9-14 above). The Committee asked the Executive to justify the delegation and the choice of annulment as the level of scrutiny.

35. The Executive, in its response, took on board the Committee’s comments on the potential controversial nature of regulations made under this provision given the obvious sensitivities involved in disclosing medical information. The Executive has accordingly undertaken to reconsider the matter further at Stage 2. The Committee draws the attention of the lead Committee to the commitment made by the Executive to consider this issue further; and agrees to consider this provision again at Stage 2.

Registrar General

36. The Committee noted that, despite assertions to the contrary in the DPM, the powers conferred on the Registrar General in schedule 1 to make regulations did not appear to be exercisable by statutory instrument. In particular, it noted that Section 109(1), which provides that orders and regulations made under the bill are exercisable by statutory instrument, only applies to powers conferred on Scottish Ministers.

37. The Executive, in its response, stated that its intention is to provide that regulations made by the Registrar General be made in the form of a statutory instrument. It accepted that the bill, as currently drafted, does not provide for this and has undertaken to bring forward an appropriate amendment at Stage 2. The Committee welcomes the Executive’s undertaking to rectify this drafting error and draws this to the attention of the lead Committee.
ANNEX 1

LETTER FROM THE SUBORDINATE LEGISLATION COMMITTEE TO THE SCOTTISH EXECUTIVE

Section 3 – Assistance in carrying out functions in section 1 and 2

1. The Committee notes that any bodies added to the list by the power in section 3(3)(c) will be subject to an obligation under section 3(1) of the bill to provide assistance to a local authority when required to do so (subject to the exceptions in section 3(2)). This raises the question whether such regulations ought to be the subject of prior consultation with those affected bodies. The Executive is asked to clarify its position with regard to consultation.

Section 23 – Scottish Ministers’ power to amend period of time in sections 21 and 22

2. The Committee notes that the 5 year time periods set down in sections 21(1)(b) and 22(1)(b) of the bill are an integral part of determining whether the removal of children under those provisions will constitute an offence. The Committee also notes that the Executive wishes to have the flexibility to amend this period without the need for primary legislation. The Committee queries whether it is appropriate in principle to delegate a power to amend the periods once they have been fixed in the Bill. It is also not clear to the Committee whether, and if so in what circumstances, the Executive would wish to exercise the power, and unfortunately the DPM does not give any explanation on this point. The Executive is therefore asked to justify the delegation of the power to amend the periods of 5 years and to clarify in what circumstances it is anticipated the power will be exercised.

3. The Committee also notes that there is no limit on the exercise of the power to increase or reduce the period of 5 years. The Executive is asked for its views on the desirability, or practicability, of imposing such a limit.

Section 40 – Disclosure of information kept under section 39

4. The Committee had some difficulty with the Executive’s characterisation of regulations made under this provision as being “administrative” and “uncontroversial”. It considers that the information which might be disclosed pursuant to regulations made under this provision is potentially very sensitive and that issues such as data protection and a person’s right to privacy would arise. In particular, it is noted that the power in section 40(1) would permit the disclosure of information to person other than the adopted person.

5. It also notes that the broadly equivalent provisions of the Adoption and Children Act 2002 (section 38(2)) contain much more detail on the face of the Act; for example a distinction is drawn between information relating to adults and children. The Executive is asked to provide clarification of its decision to
delegate this power to subordinate legislation; and why the power will be subject only to negative procedure given the potential sensitivities.

6. The Committee also considers that it is not clear from the DPM how Ministers envisage using this power, and in particular how wide the scope of such regulations is likely to be. The Executive is asked to clarify the scope of the regulations; and how it intends to use the power.

7. The Executive is also asked to comment on its plans with regard to consultation given that regulations made under this provision may impose duties and restrictions on adoption agencies.

Section 56 – Care plans: directions

8. The Committee notes that while this is not a power to make subordinate legislation, the provision appears to confer a power on Ministers to issue directions which arguably have legislative effect given that they can be of a “general nature”. The Executive is asked why the Bill does not provide for such directions to be subject to parliamentary scrutiny of any sort.

Section 60 – Searches and extracts

9. The Committee is not clear whether the effect of this provision, where it refers to “regulations” in subsection (1), is to extend the regulation making powers in the 1965 Act or whether it simply applies existing regulations to the new Adopted Children Register. The Executive is asked to clarify its intention; and if it is extending the regulation making power, why the provision is not mentioned in the DPM.

Section 64 - Restriction on bringing children into the United Kingdom

10. In the DPM, the Executive explains that this section confers several powers on Ministers to make regulations which are subject to negative procedure, except in relation to the first exercise of the power in subsection (8) which is to be subject to affirmative procedure. The DPM also explains that the Executive had regard to comments made by this Committee’s Westminster counterpart in adopting this approach. Nevertheless, the Committee wondered why, if in principle it is considered that the first exercise of the power in subsection (8) ought to be subject to affirmative procedure, subsequent exercises of the power, which could be equally substantive or sensitive, ought to be subject only to negative procedure. The Executive is asked to clarify its position in this regard.

Section 65 – Preliminary order where child to be adopted abroad

11. The Committee considers that the power in subsection (3) requires further explanation. It notes that the discretion conferred on a court to make an order under subsection (1) vesting parental rights and responsibilities is subject to the test that the appropriate court is satisfied that the prospective adopters intend to adopt a child under the law of a country outside of the UK. It further notes that
Ministers have taken a power in subsection (3) to prescribe further requirements which must be satisfied before an order is made.

12. It is not clear to the Committee whether these further requirements are likely to be administrative or legally substantive in nature and accordingly why they have not been set out on the face of the Bill. **The Committee asks the Executive to clarify the intended use of the power, and why it has not set out the preconditions on the face of the Bill.**

**Section 66 – Restriction on removal of children for adoption outside Great Britain**

13. The Committee raises the same issue as it does for section 64(8) above. **The Executive is therefore asked to explain its reasoning why subsequent exercise of the power will be subject to negative procedure.**

**Section 67 – Regulations under section 64: offences**

14. The Committee always carefully scrutinises delegated powers which amend the nature of criminal offences. It notes that the power here is not to alter the nature or scope of the criminal offence *per se* but to delay the time at which such an offence will be deemed to have been committed.

15. The Committee notes that there is no background information on the need for this power or the circumstances in which it might be used. **The Executive is asked to explain why it has taken this power and how it envisages using it.**

**Section 72 – Power to Charge**

16. The Committee notes that this provision confers a power on Ministers to charge a fee to adopters for services provided by them in relation to adoptions. It further notes that this is not a delegated power, and wonders whether fees should be prescribed in an SI to allow some parliamentary scrutiny. **The Executive is asked to explain why it has not prescribed this power as being exercisable in the form of a statutory instrument.**

**Section 75 – Section 74: supplementary provision**

17. The Committee notes that this section allows the Court of Session, on an application, to annul a Convention adoption or an overseas adoption; and that applications for an order are to be made in the manner prescribed in regulations made by Ministers. The Committee wonders why a procedural matter such as this has not been delegated to the Court itself to regulate by means of court rules (especially given that there are other examples of this in the Bill in sections 97, 101, 104 and 106). **The Executive is asked to comment.**

**Section 78 – Disclosure of medical information about parents of a child**

18. The Committee has the same concerns in relation to the sensitivities surrounding the disclosure of information under this delegated power as are
outlined at section 40 above. **The Executive is asked to provide clarification of its decision to delegate the power to subordinate legislation; and why it will be subject only to negative procedure given the sensitivities.**

**Registrar General**

19. The Committee noted that Paragraphs 1, 6 and 7(4) of schedule 1 to the bill contain delegated powers conferred on the Registrar General to make regulations in relation to various aspects of the registration process.

20. The Committee noted that although the DPM states that these powers are exercisable by statutory instrument, the Bill does not appear to provide for this. In particular, it is noted that section 109(1) provides that a power conferred on "the Scottish Ministers" to make orders or regulations is exercisable by statutory instrument. The powers in paragraph 1, 6 and 7(4) of the schedule, by contrast, are exercisable by the Registrar General with the consent of the Scottish Ministers. This would appear to bring the powers conferred on the Registrar General outwith the scope of section 109(1). **The Executive is therefore asked to confirm whether it intends regulations made by the Registrar General to be exercisable by statutory instrument and, if so, why this has been omitted from section 109.**
ANNEX 2

LETTER FROM THE SCOTTISH EXECUTIVE TO THE SUBORDINATE LEGISLATION COMMITTEE

The Scottish Executive responds as follows:-

Section 3 – Assistance in carrying out functions in section 1 and 2

1. The Executive would intend to consult on any regulations under this section, in line with general practice on consultation on regulations.

Section 23 – Scottish Ministers’ power to amend period of time in sections 21 and 22

2. This provision is a restatement of s 28 of the Adoption (Scotland) Act 1978. The flexibility to alter the time period is given under subsection (10) of that section. This differs from the parallel provisions in the Adoption and Children Act 2002 which do not specify a particular time period and distinguish between agency and non-agency adoptions. Under that Act the adoption agency, local authority or a person with the court’s leave can remove a child under any circumstances.

3. Although the provision simply restates the 1978 Act provision, on further reflection it is fair to say that the fact that it has not been used in the intervening 28 years may suggest that it is unnecessary. In the light of the Committee’s comments we will therefore consider the matter further.

Section 40 – Disclosure of information kept under section 39

4. Disclosure of adoption information is currently covered in subordinate legislation, namely the Adoption Agencies (Scotland) Regulations 1996, regulation 25. This gives an adoption agency broad power to disclose information that it has relating to a person’s adoption to the adopted person (provided they are 16 years or over) and to other relevant bodies and persons. We envisage that the regulations to be made under section 40 of the Bill will be similar to the existing 1996 regulations in scope. The new provision is intended to clarify current procedure by defining the appropriate level of disclosure in specific conditions and circumstances. In particular we propose to take account of existing good practice on provision of information to adopted children before their 16th birthday. In that the existing regulation is made under negative procedure, and we intend to do little more than restate it our intention would be to retain negative procedure for this provision. Again we would intend to consult on any regulations in the normal way.

Section 56 – Care plans: directions

5. This was considered to be a matter for general direction rather than subordinate legislation as the care plan is a local authority administrative practice that is not currently enshrined in legislation. Given that the power applies to local authorities individually rather than necessarily collectively, directions seemed more appropriate than regulations.
Section 60 – Searches and extracts

6. The effect of this provision simply applies existing regulations to the new Adopted Children Register.

Section 64 - Restriction on bringing children into the United Kingdom

7. This approach is consistent with that taken in England and Wales. As was mentioned in the Delegated Powers Memorandum, it may be that negative procedure would be appropriate for all exercises of the power but it was noted that following comment by the Committee on Delegated Powers and Regulatory Reform in its 28th Report affirmative procedure was applied to the first exercise of the power under the Adoption and Children Act 2002. In other words we saw the ‘default’ position as being negative procedure, but given the position in England and Wales thought it right to adopt the approach in the Bill as introduced.

8. It is intended that the first use of the power will be substantive, preventing relatives, natural parents and guardians from being criminalised for bringing children into the UK for the purposes of adoption in exceptional situations such as the sudden death of the child’s natural parents or guardians. Subsequent amendments, if any, would be administrative and procedural in nature, relating to provisions such as the evaluation of an ‘exceptional’ situation, the postponement of the social work assessment process until a specified later date or the criteria for a cut-down assessment process.

Section 65 – Preliminary order where child to be adopted abroad

9. Preconditions which would be made under this power would be administrative in nature, likely relating to basic assessment criteria (police/immigration status checks etc) which can alter due to international and policy developments. They would feature a level of detail inappropriate for primary legislation.

10. The intended use of the power would be in cases such as when prospective adopters were unable to use UK adoption assessment processes due to their domicile or habitual residence being abroad. The order would facilitate their moving a child from the UK to their foreign residence in order to use the foreign assessment process for the purposes of full adoption.

Section 66 – Restriction on removal of children for adoption outside Great Britain

11. The rationale for this is the same as that for section 64, except the situation envisaged is that children resident in the UK could be removed by relatives resident abroad for adoption without commission of a criminal offence, in exceptional circumstances such as the sudden death of their parents or guardians. Again, the level of parliamentary scrutiny is consistent with the approach taken in England and Wales.
Section 67 – Regulations under section 64: offences

12. The power is intended to extend the time for compliance with conditions and requirements. The breaching of the specified period will be deemed an offence. The power could be used to prescribe criteria under which prospective adopters may be allowed to bring a child into the UK for the purposes of adoption without having met all of the usual conditions at the point of application for entry clearance, in exceptional circumstances such as a relative adoption in the event of the sudden death of a child’s parents of guardians. In order to prevent a child entering the care system of a foreign country the regulations could allow for them to be brought into the UK provided that the required assessment processes are completed by a specified later date.

Section 72 – Power to Charge

13. This provision is in line with the approach taken in England and Wales. The intention is to take a unified approach to fees charged in the UK for the processing of intercountry adoption applications (a function that has arisen due to necessity as foreign governments require government approval before they are willing to consider intercountry adoption applications). This is not a core central government function and Scottish Ministers currently have the power to charge for it on a non-profit, cost-recovery basis under the Scottish Public Finance manual. As stated at sub-section (4), fees will be on a cost-recovery basis only, and mirror the fees currently charged by local authorities for the intercountry adoption assessment process. We would expect to publish fees levels on our web-site and to publicise these to adoption agencies. In practice intercountry adoption is a long process, with the Scottish Executive being involved towards the end of this and the adoption agency with which the prospective adopter(s) deals will make available information about fees.

Section 75 – Section 74: supplementary provision

14. As an annulment will be due to a foreign authority’s contravention of the principles and detailed procedures contained in the Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003 and our planned Adoptions with a Foreign Element Regulations, the detail of the annulment application is entwined with specific provisions within these regulations. Due to this fact it makes sense to amalgamate annulment procedure into the relevant regulations. This is consistent with the approach taken in England and Wales.

Section 78 – Disclosure of medical information about parents of a child

15. We provided for negative procedure in the Bill as introduced on the grounds that the power simply allowed Scottish Ministers to flesh out further how the section would work in practice, rather than being a provision modifying primary legislation. That said we recognise the force of the Committee’s comments to the effect that this a sensitive area and in addition in these regulations, unlike the general regulations on provision of information, we will be breaking new ground. Against that background we will consider the matter further.
Registrar General

16. The intention is that regulations made by the Registrar General will be exercisable by statutory instrument. We are grateful to the Committee for raising this matter, which we would anticipate addressing through an amendment at Stage 2.
1. The Adoption and Children (Scotland) Bill was introduced to the Parliament on 27 March 2006. The Committee issued a call for evidence on 3 April 2006 with a closing date for responses of 12 May 2006. A total of 33 responses were received; 11 from local authorities (one in their capacity as an adoption agency), 6 from individuals and 16 from other organisations. A full list is given in Appendix 1. NB This summary does not include written evidence that was provided in support of oral evidence.

2. Responses varied in the depth and detail of their comments. The main areas where comments were made were on the proposed permanence order and the proposals to extend joint adoption to unmarried couples (including same-sex couples). Comments were also made about the lack of provisions in the Bill relating to fostering and the interaction of permanence orders with the children’s hearing system.

3. Additionally, many comments were made about drafting and the terminology used in the Bill. It is proposed that these are included as annexe to the Committee’s Stage 1 report, along with similar comments made in the written evidence from witnesses in the oral evidence sessions.

4. Overall, respondents were supportive of the general principle of modernising and strengthening the legal framework of adoption. The remainder of this paper summarises the key themes arising, to assist the Committee in preparing its Stage 1 report. It does not provide a comprehensive overview of the evidence received but rather draws out broad themes.

Local Authority Duties

5. The Bill proposes giving local authorities new duties to draw up adoption service plans, provide post-adoption support and hold information, with regulated disclosure. The majority of comments made on the proposed local authority duties were in relation to the post-adoption support proposals.

6. A few local authorities commented on the resource implications of the proposals to extend post-adoption support services. Dundee City Council stated that provision of post-adoption support services “will lead to significantly increased costs to the agencies required to provide such services”. Renfrewshire Council made a similar point and stressed that “if an assessment highlights a need for a service, resource and financial restrictions may be the determining factor on whether is a service is provided.”

7. The Bill proposes that where an individual is being provided with post-adoption support services, a care plan should be drawn up. It is proposed that care plans will last for 3 years. A couple of respondents thought that some families will need help for much longer than 3 years.

8. This issue of which local authority should provide post adoption support services in situations where families have moved was raised by a few more respondents. Inverclyde Council commented on the “lack of specificity about which local authority
(placing authority or authority in which service user resides) has responsibility for the establishment and implementation of post-adoption care plans”.

9. The Law Society of Scotland argued that that Bill should include provisions for a review of local authority decisions not to provide adoption support services, where needs have been established.

The Adoption Process - Grounds for Dispensing with Parental Consent

10. The Bill proposes to simplify the grounds on which parental consent for an adoption order can be dispensed with. The proposed new grounds are that the parent or guardian cannot be found or is incapable of giving consent, or the welfare of the child requires the consent to be dispensed with. There were relatively few comments made about this aspect of the Bill.

11. The Adoption Policy Review Group (APRG) recommended that the grounds for dispensing with parental agreement should be changed to reflect provisions in the Adoption and Children Act 2002 (relating to England and Wales), but should be amended to reflect article 8 of the ECHR. The Bill proposes the same grounds as the 2002 Act but with no amendments. Three responses all commented that this had not been taken into account in the Bill. Scotland’s Commissioner for Children and Young People thought that this would be appropriate, “especially as the child is equally entitled to benefit from its protection”.

12. On a different note, Aberdeen City Council commented that, “Our concerns are that it leaves this open to interpretation and although it appears more child focussed it could potentially be used by agents representing birth parents to delay proceedings. Additionally, courts may find themselves embroiled in arguments about what constitutes the ‘welfare of the child’”.

Increasing the Pool of Adopters

13. Section 31 of the Bill provides that applications may be made by married couples, (as current legislation allows) couples who are civil partners or couples who are neither married nor civil partners but who are living together “in an enduring family relationship”.

14. Where comment was made the majority of respondents were supportive of these proposals. Six respondents were specifically against the proposals.

15. Many respondents who supported the proposals welcomed the fact that they reflected the changing nature of family structures in Scotland. The Scottish Episcopal Church commented that the proposals reflected “the now widespread acceptance that the stability of family life (in its various manifestations) is what is crucial to the well being of the child rather than whether the child’s biological mother and father are both present in the ‘family home’ nor whether they are married or not”. Supporters of the proposals also argued that it may help to increase the potential pool of adopters.

16. A number of respondents felt the proposals supported the child-orientated nature of the Bill, and would give children within the fostering and adoption system more stability. Scotland’s Commissioner for Children and Young People argued “the UNCRC’s insistence on the paramountcy of the child’s interests argues against any unnecessary
restrictions on the kind of people who can adopt. In all cases, the focus should be very much on what is best for the child concerned”.

17. A key theme arising from the submissions of those who disagreed with these proposals was the perception that unmarried couples were less likely to provide the same degree of security and stability to children as might be provided by married couples. One individual commented, “the evidence of the records of adoptions is that a partnership of man and wife as adoptive parents, increases the likelihood of the child growing up happy and secure”. Another individual thought that “the extension of joint adoption would prioritise an adult orientated agenda over the right of the child to have their best interests taken into consideration”.

18. A few comments were made about the use of the term “enduring family nature” in the context of couples who are neither married nor civil partners. The Law Society of Scotland thought this term “required to be defined”. Similarly Renfrewshire Council thought that “guidance or regulations under the Act would require to clarify the definition and reduce the potential for inconsistency.”

Permanence Orders

19. The Bill proposes to abolish freeing orders and parental responsibilities orders and replace them with a permanence order. Generally the principles of the permanence order were welcomed. There was a general perception that the proposals would be more flexible, allowing individual circumstances to be taken into account. Comments also suggested that they would provide more stability for children. Angus Council anticipated that permanence orders “will reduce the time taken to legally secure the future of children in need of permanent placements and create more flexibility within the legal framework for dealing with these children”.

20. Despite the overall support for the concept of a new permanence order, many of the submissions highlighted issues about the way the provisions have been drafted in the Bill. There was also some lack of clarity about how the orders would work in practice. Detailed comments about drafting issues will be contained in the summary accompanying the Stage 1 Report. Some examples of the types of comments include:

- Implications for 16-18 year olds are not clear
- They should be applied for by local authorities, rather than adoption agencies
- Unclear as to whether parents of a child retain the right to withhold their consent to the adoption of their child where their child is the subject of a permanence order granting the child to be adopted
- The circumstances for revocation of an order require to be more closely defined
- Lack of clarity around the meaning of s91 and s92 (provisions relating to variation and revocation of permanence order).

21. Both the Scottish Children's Reporter Administration (SCRA) and the Law Society of Scotland commented on the fact that the Bill does not set out the two grounds on which a permanence order should be sought, as recommended by the APRG. The SCRA stated that the Bill’s provisions “offer a much less onerous test than that proposed in the Review and one which, as currently framed, is uncertain whether it is a test at all or merely something which the court is to have regard to.”
Contact Orders

22. Section 100 of the Bill allows a natural parent to seek a contact order under the s11 of the Children’s Scotland Act 1995, after an adoption order has been made.

23. **A number of respondents**, including South Lanarkshire Council, Renfrewshire Council and the Law Society of Scotland **argued that leave of court should be sought before an order under s11 could be made**. This was recommended by the APRG. The Law Society of Scotland argued that “it is inconsistent to give greater protection against harmful applications to children subject to Permanence Orders than to adopted children”.

24. The Law Society also questioned limiting the s11 order to contact only. They thought there may be justification for other orders, for example, if an adoptive parent dies, a birth parent may seek to have the child return to live with him or her.

25. **A couple of respondents did not support the principle of allowing a natural parent to seek a contact order at all**. Aberdeen City Council thought that the proposal “undermines the finality of an adoption order. Similarly, Inverclyde Council thought that the proposal was “potentially destabilising and undermines the security afforded by adoption”. They asked, “In whose interests is this section included, birth relatives or the child?”

Fostering

26. In relation to fostering, two main themes emerged. One was the financing of fostering, particularly in relation to rates for fostering allowances. Secondly there were comments about the general lack of provisions in the Bill regarding fostering.

27. The Bill gives Scottish Ministers powers to make regulations about fostering allowances. Generally these proposals were welcomed. COSLA accepted “that the wide variation in fostering allowances needs to be addressed.” However, there were a number of comments about the information contained in the Financial Memorandum regarding this particular aspect. Some responses cited the costs estimated in the 2005 report *The Cost of Foster Care* by BAAF and the Fostering Network as being a realistic assessment of the costs involved for foster carers.

28. Although the provisions regarding fostering allowances were welcomed a number of respondents thought that the Bill could contain further provisions to improve fostering.

29. The Association of Directors of Education Scotland (ADES) noted that “we are advised that many of the recommendation from the Adoption Policy Review Group on fostering are likely to be agreed and introduced via regulations but as fostering is far more significant, complex and costly area of work than adoption and given the strong link between fostering and adoption, this appears to be a missed opportunity to introduce a comprehensive legislative and support framework for the care and welfare of children.” The Association of Directors of Social Work also argued that “it seems that the opportunity has been missed to bring together the different dimensions of family placement including kinship care, unrelated fostering, private fostering, domestic adoption and inter-country adoption.”
Access to medical information

30. The Bill proposes to give Ministers powers to make regulations in connection with disclosure of information about the health of the birth parents of a child who is to be, may be, or has been adopted. Regulations may allow information to be disclosed to the relevant child or the adopters. They may also prescribe the circumstances in which such disclosure may take place without the consent of birth parents.

31. **There were a few comments in support of these provisions.** Aberdeen City Council thought it was “child focussed and necessary in a world where medical advances can helpfully be taken advantage of, when this information is available.”

32. The Scottish Council of Jewish Communities supported the sharing of information without consent of birth parent as “this is of particular importance where there may be a particular genetic predisposition to certain conditions in particular communities (for example Tay-Sachs disease in the Ashkenazi Jewish community”).

33. **There was some acknowledgment, for example, by Angus Council, that the provision “needs to be managed sensitively.”** Similarly the GMC were “concerned that issues of confidentiality are properly addressed to ensure that the correct balance is struck between the requirements of the adopted person and adoptive parents and the rights of the birth parents to confidentiality”.

34. On the other hand, the BMA argued that legislative change was “not necessary or justified” and that “Any information that can be accessed and passed to children or their adoptive parents should be restricted to that which can be shown to be relevant and for which there are consent or public interest justifications. Any difficulties that are perceived to exist at present, where access is denied, could be resolved, in part, by the development and dissemination of guidance for medical and other clinical professionals”. They suggested that if the Bill remains as it currently stands they would prefer the regulations be subject to consultation and approved by Parliament.

The Children’s Hearings System

35. **A few respondents highlighted the fact that the Bill does not contain any detail about the how the proposed permanence order fits in with the children’s hearing system and children on supervision requirements.**

36. This issue was subject to discussion in the APRG report, which made a number of recommendations. The SCRA stated that “not all of these recommendations can be reflected in secondary legislation or good practice guidance and reference in the Bill will be required.”

The Financial Memorandum

37. **Many responses, particularly from local authorities, made comments about the Financial Memorandum.** Comments suggested that some of the estimates made were not realistic and that costs had been underestimated. COSLA’s response appreciated that the Executive “sees the content of the Financial Memorandum as likely to evolve. This is welcomed as it is a description of where we are, and what we attribute the pressures within the system, to lack robustness.”
38. In relation to adoption support services, Dundee City Council Social Work Department argued that “overall we would argue that the proposals for the proposed extension of adoption support services are significantly under-resourced and funded”.

39. Furthermore, some responses argued that it would be unlikely, as suggested by the Financial Memorandum, that any savings would be made from children moving from residential accommodation to be adopted. ADES noted that “this seems unlikely as the children in these placements are usually older, with more complex problems and for whom family life is less likely to work”.

40. ADSW argued that “as more children with more difficulties are placed for adoption, the costs increase. This point does not seem to be recognised in the Financial Memorandum”. They estimated that there are approximately 1,000 adoptions in Scotland where contact is a feature and that “most adoptions in the future will involve on-going work of this nature”.

41. The Scottish Legal Aid Board disagreed with the estimated £50,000 cost per annum of legal aid and though that this figure “may well be significantly higher”.

Other Issues

42. A range of other specific comments were raised by respondents. The following is an example of the types of comments made:

- The Bill should include provision for the remuneration of curators ad litem and reporting officers
- Consideration should be given to the creation of a family court to ensure that specialist sheriffs hear childcare cases.
- Consideration should be given to how relative carers can be better supported in the context of the Bill
- There should be a national rate for adoption allowances

Consultation

43. Where comments were made about the Executive’s consultation process these were generally positive, suggesting that the Executive had consulted effectively.
Appendix 1: List of respondents submitting written evidence only

Aberdeen City Council
Aberdeenshire Council
Association of Directors of Social Work
Angus Council
Anne Black
Association of Directors of Education Scotland
British Medical Association Scotland
Cameron McLarty
COSLA
Donald Fleming
Dundee City Council
East Ayrshire Council
Equal Opportunities Commission
General Register Office for Scotland
Hilda Jones
Inverclyde Council
Janys Scott
John Hallett
Law Society of Scotland
NCH Scotland
New Fossils Group
North Lanarkshire Council
Parents For Consultation
Renfrewshire Council
Royal College of Paediatrics and Child Health (Scotland)
Scotland’s Commissioner for Children and Young People
Scottish Borders Council
Scottish Children’s Reporters Administration
Scottish Council of Jewish Communities
Scottish Episcopal Church
Scottish Legal Aid Board
South Lanarkshire Council
UNISON