The Committee will meet at 10.00 am in Committee Room 6

1. Adoption and Children (Scotland) Bill (in private): The Committee will consider a draft Stage 1 Report.

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

The following papers are enclosed for the meeting:

Agenda item 1
Clerk’s note and draft report (private paper) ED/S2/06/16/1(P)

Letter from the Minister for Education and Young People to Convener of Education Committee ED/S2/06/16/2
When Robert Brown and I gave evidence before the Education Committee on 7 June 2006 there were a few points relating to the Bill on which we indicated that I would write further. In addition, I undertook to provide a further note on points raised by the Finance Committee, and a separate note summarising key current or prospective policy developments in relation to looked after children and fostering. Notes on these two subjects are annexed to this letter. In the main text here I will deal with the points raised that specifically relate to the Bill.

First, the issue of unmarried fathers without parental rights or responsibilities was raised. The Adoption Policy Review Group (APRG) recommended that unmarried fathers without parental responsibilities and rights should be informed about applications for Permanence Orders and adoption orders. However, their agreement should not be required to place children for adoption, or for an adoption order. Under the current legislation, the consent of unmarried fathers without parental responsibilities and rights is not required for a court to make an adoption or freeing order. The current situation is considered confusing: some provisions refer only to freeings while other refer both to freeings and adoption orders. Some provisions give a discretion to courts or adoption agencies. Provisions also apply after a decision has been taken to apply for a freeing order or adoption order, which could potentially delay a case.

In the case of both adoption orders and Permanence Order, under the Bill’s provisions such fathers will be notified of the date on which and the place where the application will be heard (s.97 (Permanence orders: rules of procedure) and s.106 (Rules of procedure)). Unmarried fathers without parental responsibilities and rights will not have a right to be heard on the application. There are other ways in which such fathers can acquire parental responsibilities and rights and make it necessary for their consent to be given (these methods include a s.11 order under the Children (Scotland) Act 1995 or a parental responsibilities agreement under section 4 of the same legislation). There is therefore no need for the Bill to contain such a provision. (The Second Division of the Court of Session has held that an unmarried father without parental responsibilities and rights is
Second, the grounds for dispensing with parental consent were raised. Section 33 sets out the grounds on which parental consent can be dispensed with. In accordance with the recommendations of the APRG, the Bill uses the same test as the Adoption and Children Act 2002. The APRG made reference to amending the precise 2002 wording to reflect the requirements of Article 8 of the European Convention on Human Rights (right to family life etc). After considering this carefully, we came to the conclusion that the 2002 Act wording did meet ECHR requirements. In applying the test and reaching any decision as to whether agreement should be dispensed with, it would be for the court to take into account case law on Article 8 and to ensure that the parties’ Article 8 rights had been afforded adequate consideration. Courts are “public authorities” for the purposes of the Human Rights Act 1998 and it is unlawful for them to act in any way which is incompatible with a Convention right. It is also worth noting that the UK Government had found the wording in the 2002 Act to be ECHR compatible.

Lastly, the issue of leave to apply for variation of Permanence Orders came up. Section 91(4) requires that anyone other than the local authority which first applied for the Permanence Order must obtain the leave of the court before they can apply for a variation. The purpose of this is to protect the child and his or her foster family from repeated or vexatious applications for variation. Section 86(2)(c) and (d) allow any person who has parental responsibilities or rights in relation to the child or any other person who can, in the opinion of the court, demonstrate an interest to make representations in any proceedings relating to the application for a Permanence Order. Through this section, people will be able to oppose the making of the order. [Some of those giving evidence have made the drafting point that it would be better if s.86 simply gave people a right to be a party to the court proceeding, rather than a right to make representations to the court, and we will look at this suggestion carefully, alongside a range of other drafting points raised.]

The Bill allows people who have lost parental responsibilities and rights to apply for a variation of the terms and conditions of the order after it has been made, to seek, for example, a contact order. This allows, for example, a parent with a substance dependency who was refused contact at the time of making the order to request contact at such point as they are no longer dependent. The use of leave to apply ensures that only applications that have merit will be heard: this will protect the child and his or her family from unwarranted or malicious applications.

We accept that there should be a similar leave to apply at s.100 and will address this through a Stage 2 amendment.

I hope that this is helpful to the Committee.

PETER J PEACOCK
ADOPTION AND CHILDREN (SCOTLAND) BILL

SUPPLEMENTARY NOTE TO EDUCATION COMMITTEE: POLICY DEVELOPMENTS

1. At the Education Committee’s meeting on 7 June 2006, the Minister for Education and Young People undertook to provide a supplementary note on the main current and prospective policy developments around adoption and fostering. This note is in fulfilment of that undertaking.

2. In addition to the very substantial policy developments contained within the Bill itself, Ministers have indicated an intention to bring forward a National Fostering Strategy. An additional £12 million has already been given to local authorities to enable improvement in recruitment and retention of foster carers. Although thinking on the Strategy is at an early stage, it would be expected to cover key issues such as

- Recruitment planning
- Placement of children
- Consideration of changes required to existing Regulations to remove unnecessary restrictions while ensuring that children are safe
- Fostering allowances and fees
- Training and support for foster carers
- Kinship care
- Support for foster children to become successful learners.

3. The last point above is already being considered as part of our wider review on Educational Outcomes for Looked After Children, which we expect to publish following the Parliamentary recess. In addition, the Social Work Inspection Agency is soon due to publish its review on looked after children and we will of course consider the implications of that review’s findings, including the research on kinship care by Professor Jane Aldgate.

4. Alongside these, the Getting it right for every child proposals envisage changes to children’s services and the Children’s Hearings system over the next few years with an increased focus on addressing children’s needs and improving their outcomes. There will be significant reductions in bureaucracy, a freeing up of front line staff to get on and help children, and greater authority to take action. New ways of working will help agencies identify what programmes or resources need to be available and should ensure more effective planning and funding processes at a local level. Agencies will need to ensure resources and activities are not duplicated.

5. The Cabinet Delivery Group on Children and Young People is coordinating implementation of the actions in Hidden Harm-Next Steps around children in substance-misusing households as well as additional actions agreed by the Group. This work will promote clear messages to parents and professionals that chaotic substance-misusing lifestyles are incompatible with good parenting and that the needs of children take priority over the needs of parents.
6. Key actions within the workplan include improved drugs education in schools, better links between addiction and sexual health services and potential contracts with parents in which in return for intensive support plans, parents commit to changing chaotic lifestyles and improving care for their children. Part of this scenario includes looking at drug testing of parents and powers of access and inspection of homes. These actions represent the merits or otherwise of a robust approach to the needs of children in substance-misusing households, and in consequence there is likely to be some rise in the number of cases where children are removed from the home. Decisions will be required on a case by case basis and it is not therefore possible to put a cost on this potential rise. The implications of the Hidden Harm-Next Steps will be taken into account in developing the National Fostering Strategy referred to above.

7. As the Committee have noted, these policy developments will have financial implications. While some, such as the Getting it right for every child proposals or any proposals to improve the educational outcomes of looked after children that emerge from the review, will have longer term savings attached to them, others will entail an initial increase in spending. These factors will be taken into account in the Spending Review as part of the wider exercise to prioritise the Department’s spending needs.
ADOPTION AND CHILDREN (SCOTLAND) BILL

SUPPLEMENTARY NOTE TO EDUCATION COMMITTEE: FINANCIAL ISSUES

1. At the Education Committee’s meeting on 7 June 2006, the Minister for Education and Young People undertook to provide supplementary evidence in response to points made to the Committee by the Finance Committee. This note is in fulfilment of that undertaking.

2. By way of introduction we would reiterate that in the Financial Memorandum and this note, emphasis has been given to the direct financial consequences of the Bill’s provisions as required by Standing Orders. The Financial Memorandum did not intend to convey any sense that an objective of the Bill was to achieve savings, but rather that some effects of the Bill in encouraging more fostering (and on a more stable basis) and adoption, which are sought because of the better outcomes for children associated with them, will not only cause cost increases but in some respects may also bring savings. The Executive accepts that there will be increases in costs in areas such as support after adoption and legal aid and has provided for such increases.

Summary of points made by the Finance Committee

3. Points made by the Finance Committee included:

- Education Committee should seek assurances from the Minister as to the specific level of funding that will be provided to local authorities in implementing this Bill;

- Finance Committee concerned that the savings which the Executive suggests will offset the cost of the Bill to a large extent are not based on anything beyond anecdotal evidence;

- Finance 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;

- Education Committee should seek information from the Minister on a timetable for discussions with relevant parties;

- Executive should make every effort to ensure that revised figures in relation to the provision of adoption allowances are provided to the Parliament as soon as is practicable;

- Executive should proved revised figures in relation to post-adoption support as soon as is practicable;

- Executive should monitor the use of the independent sector by local authorities for the provision of post-adoption support once the Bill has been implemented;

- Executive should provide revised figures in relation to costs on the Scottish Legal Aid Board;
• Education Committee should scrutinise the adequacy of existing local authority funding, seek assurances that sufficient additional funding will be made available for the implementation of the Bill and examine the credence of assumed savings suggested in the Financial Memorandum.

Savings in residential accommodation costs

4. The Finance Committee has expressed misgivings over claims that the provisions of the Bill will help to move children from residential care into adoption. We do not claim this, but do suggest that some children may be able to move from non-secure residential care into foster care because of increased fostering allowances. If improved allowances attract more foster carers, that may permit more such moves. [Similarly, if children move from foster care into adoption, this may free up foster care places, although in some instances adopters may previously have been foster carers.] The table at paragraph 399 of the Financial Memorandum suggested a range of potential savings associated with this. We are now able to offer updated information, based on new average fostering allowances which have become available since the submission of the Financial Memorandum. The most recent figures (for the 2003-04 financial year) show that local authorities pay an average of £119 per week for fostering allowances, while the average weekly cost of non-secure residential care is £1,647. The potential saving of moving one child from non-secure residential care to foster care is £1,528 per week (£79,456 per annum). Potential savings would be based on this saving for every child who moves from non-secure residential care to foster care. Table 1 indicates the range of potential savings based on moving children from non-secure residential care to foster care.

Table 1: Potential savings in non-secure residential care costs

<table>
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<th>Number of children</th>
<th>Potential saving</th>
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<tbody>
<tr>
<td>1</td>
<td>£79,456</td>
</tr>
<tr>
<td>10</td>
<td>£794,560</td>
</tr>
<tr>
<td>15</td>
<td>£1,191,840</td>
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<td>25</td>
<td>£1,986,400</td>
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<td>30</td>
<td>£2,383,680</td>
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<td>40</td>
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<tr>
<td>50</td>
<td>£3,972,800</td>
</tr>
<tr>
<td>100</td>
<td>£7,945,600</td>
</tr>
</tbody>
</table>

5. It is difficult to predict the exact number of children who will move from non-secure residential care to foster care. This information is currently not collected by local authorities. (Local authorities collect information about looked after children on a yearly basis, but provide an overall picture, rather than tracking an individual child’s movement through the system. For example, statistics provide a snapshot of how many children are subject to a particular type of statutory order on 31 March of each year, but not what the previous status of a particular child was.) Anecdotal evidence suggests, however, that there are children who currently are placed in non-secure residential care, at least temporarily, because no foster placements are available. We are working to establish if it is possible to collect this information. We believe that the Bill will help to bring about conditions which will allow such children to move into foster care.
6. There will, then, be savings directly associated with the Bill insofar as it leads to children moving from residential to foster care. This is not to say that there may not be other pressures, extraneous to the Bill, that lead to any residential care vacancies being filled by other children.

**Fostering and fostering allowances**

7. In 2005-06 £1.9 billion was provided for social work within GAE. Spending priorities are decided by each local authority. In 2004-05, local authority net revenue expenditure on fostering across Scotland for 2004-05 was £55.67 million. The Scottish Executive has allocated an additional £12 million between October 2005 and September 2007 to enable them to improve recruitment and retention of foster carers and to increase placement choice. Additionally, we provide core funding to The Fostering Network (TFN) and the British Association for Adoption and Fostering (BAAF) and are funding TFN’s *Improving Fostering Services* e-magazine, which is for sharing best practice and information about how local authorities are developing their services in light of the additional £12 million funding.

8. As the Finance Committee correctly notes, the Financial Memorandum does not specify a proposed minimum rate for fostering allowances. We have not yet undertaken consultation on the level at which such rates would be set. We intend to do this as part of the development of the National Fostering Strategy. In addition, we are awaiting publication of research into current average costs across all thirty-two local authority areas being carried out by TFN, COSLA and BAAF.

9. Using information about existing rates we are able to present figures which indicate the potential increase in fostering allowances which would be required to fund particular increases. There are an estimated 3,500 children currently in foster care. Only TFN’s suggested rates are above those currently paid by local authorities. Moving to these rates would cost an additional £4,914,000 per year. This equates to an additional £27 per child per week. Notionally, moving from the average allowances paid by local authorities to suggested COSLA rates would result in a saving of £4,368,000 per year, while moving to suggested DfES rates would result in a saving of £2,184,000 per year. In practice, however, it is unlikely that those authorities paying above any new rate would be able to lower their existing rate.

10. The Financial Memorandum indicates that the Bill may help to increase the number of children who are adopted, with a consequent reduction on the number of children in foster care. In their evidence, BAAF noted that the number of children entering foster care is increasing. Nonetheless, through the Bill’s provisions, the increase in the number of children likely to be adopted will see an overall reduction in the number of children in foster care. While the Bill will not affect the number of children requiring care outside the parental home, it should make a positive contribution to increasing the number of children who leave fostering for adoption.
Adoption support services

11. The Financial Memorandum indicated that the Bill’s provisions for adoption support services would cost an additional £2.35 million per year. We believe that the Bill does not extend the range of post-adoption support measures which can be provided by a local authority. Currently, under s.1(2)(bb) of the Adoption (Scotland) Act 1978, local authorities have a duty to provide ‘counselling and assistance … to children who have been adopted and to persons who have adopted a child’ and, under s.1(2)(c), ‘counselling for other persons if they have problems relating to adoption’. In addition, the guidance advises that ‘Agencies should be flexible in considering how to meet the needs of adoptive families and a range of options needs to be developed’ and notes that support may be required on a long-term basis or at particular times and that birth parents may need support beyond the making of the adoption order. Thus, we consider that the Bill restates the existing range of support services, albeit more explicitly. The Bill does not contain any provision which extends the range of pre-adoption support services. We would expect the cost of providing this to rise in line with an increased number of adoption applications.

12. The Bill does widen the range of people who can potentially access adoption support. By doing so, and by placing a duty on local authorities to alert people involved in adoption to the availability of support, we expect there to be an increase in the take-up of support. Combined with a prospective increase in the number of children who are adopted, we would expect there to be an overall rise in the level of adoption support that is provided. Additionally, the Bill contains a provision which places a duty on a local authority to pay cash to a person in lieu of a service which it has a duty to provide or has decided should be provided but is unable to provide directly. We do not consider that this particular provision will result in additional costs over and above those associated with the provision of post-adoption support since the provision applies to services that a local authority has a duty to provide in any case. While the ability to provide funding direct to families is new, the local authority has always been able to ‘sub-contract’ an alternative provider in these circumstances.

13. We have proposed an additional £2.35m per year to meet this, but are continuing to research the current cost of post-adoption support. In 2004 – 05, Scottish local authorities spent £7.1 million on adoption services. This figure is not disaggregated and presumably includes all costs associated with providing an adoption service, including pre- and post-adoption support and the recruitment, assessment and training of prospective adopters. Local authorities do not collect information on the costs of individual elements of providing an adoption service and initial discussions indicate that it may be difficult to gather such disaggregated information. Although we have asked for further information on these costs, local authorities have not been able to provide it. Based on existing information, we believe that an extra £2.35 million to take account of any increase in the proportion of the work that relates to support after adoption or placement for adoption, because of an increase in numbers of adopters and greater uptake of post-adoption support especially, looks realistic. Between 1999 and 2003 there was an average of 226 adoptions by non-relatives each year. Adoptions by relatives tend to be by step-parents who already have the child living with them. While such adoptions still require to be assessed, there is often less need for post-adoption support since these children tend not to have the same needs as those who have been removed from their birth families. Adoptions by non-relatives account for the majority of support costs. Based on the average of the last five years, an additional £2.35 million would equate to £10,398.23 per case.
14. The Financial Memorandum suggests that the Bill may bring about savings in the costs of providing adoption support. Nothing in the Bill is intended to reduce the level of support available for those affected by an adoption. We recognise the importance of adoption support, both in the long-term and at particular points during an adoption (research suggests that support is particularly required when adopted children reach their mid-teens, when many express a desire to know about their birth family). We believe that it may be possible to reduce the need for long-term adoption support in some cases through better assessment and matching and greater support at the beginning of a placement. All children subject to a permanence order will remain looked after children and will thus be entitled to support from a local authority. Other people affected by an adoption will also be eligible to request an assessment of their need for support. Insofar as the Financial Memorandum indicated that there may some long-term savings as a result of the Bill, this was not intended to suggest a cost-cutting exercise, but rather to note the prospect in the longer term that improved support at an early stage will diminish the need for intervention later on.

Adoption allowances

15. The Financial Memorandum suggested that the cost of providing adoption allowances as per the Bill will be cost-neutral in relation to any particular child. What was intended here is that where a child is adopted, and an adoption allowance is paid, such a child will almost always already be fostered and thus already have be the subject of an allowance. While we intend to set a national standard for assessing a person’s need for adoption allowances, the power that is taken in the Bill is similar to the existing power in the Adoption (Scotland) Act 1978. It is not our intention to make the payment of adoption allowances mandatory, but to clarify the process by which decisions are made on whether allowances are to be paid, and, if so, how much should be paid. Since local authorities already have the power to pay adoption allowances, there will not be an increase in the cost of adoption allowances for a particular child as a result of the Bill. The cost of providing adoption allowances will increase overall if the number of children who are adopted increases. We believe that the level of adoption allowances paid should be determined by a child’s need, which will differ from child to child: the now rare, but not non-existent, cases where a single healthy baby is adopted shortly after birth are very different from the adoption of a sibling group, or a child who has mental or physical disabilities. Given the diversity of circumstances in which children are adopted, we believe that the best approach is not simply to replicate the fostering allowances regime.

Legal Aid

16. Since the submission of the Financial Memorandum, we have met representatives of the Scottish Legal Aid Board to discuss more fully costs associated with the Bill. This has helped to indicate a wider range of costs than originally thought and to create a better estimate of the cost of the Bill for legal aid. Since the Board’s expenditure is funded on a non-cash limited basis by the Executive, any expenditure associated with the Bill will automatically be met in full. We recognise, however, the need to produce as robust projections as possible for forecasting purposes.

17. It remains difficult to predict the number of applications for Permanence Orders and adoption orders that will be made under the new regime. In 2003 (the last year for which figures are available), there were 98 applications for freeing orders and 373 applications for adoption orders. We would expect the Bill to lead to an increase in the number of
applications for non-relative adoption orders with a consequent increase in Legal Aid costs. We have estimated a modest increase to 400 applications for adoption orders per year.

18. The main increase to Legal Aid costs is likely to come from Permanence Orders. The Bill will see the abolition of freeing orders; in many cases where a freeing order might have been sought a Permanence Order will be a likely alternative (although the Permanence Order should not be thought of as a direct replacement for the freeing order). We would estimate that there will be approximately the same number of applications for permanence orders as there are currently for freeing orders. The Bill will also abolish the existing Parental Responsibilities Order (PRO). At 31 March 2004 (the last year for which figures are available), there were 341 PROs in place: the number of PROs made per year is not collected. We would anticipate a greater number of applications for Permanence Orders than for PROs, which are rarely used because of their comparative inflexibility (all parental rights and responsibilities transfer to a local authority under a PRO).

19. Where a child for whom a Permanence Order is sought would previously have been the subject of an application for a Freeing Order or PRO, there will be no increase in numbers of court cases. Other children for whom a Permanence order might be sought will be subject to a supervision requirement from a Children's Hearing. Such supervision requirements would usually be reviewed and renewed annually. In addition, under existing regulations such a child would be a looked after child, whose position would be reviewed internally by the local authority every six months. Once a Permanence Order is made, there should not usually be a need for the child's position to be reviewed on such a regular basis by the Children’s Hearing, if at all, or (subject to amending regulations) the local authority. Overall, then, there will be reduction in review costs, but as this will be through the court based scrutiny of the Permanence Order obviating scrutiny by the Children’s Hearing, this will be a situation where expenditure in one system leads to savings in another. We will continue to engage with the Board to produce more accurate estimates of additional costs.

Consultation

20. The Finance Committee expressed its concern that sufficient consultation was not carried out, particularly in the context of adoption allowances. The policy underlying the Bill was developed in a consultative way: local authorities, COSLA, ADSW and TFN were involved in the Adoption Policy Review Group (APRG) from an early stage and all participated in the consultation that followed the publication of the APRG Phase II report. During the consultation, to which thirty local authorities responded, there was significant support for the proposals, particularly those on post-adoption support. Many local authorities indicated that this would require additional funding although no estimates of cost were suggested (although the consultation paper did not expressly ask this). That said, it is true that the timetable for drafting the Bill and its accompanying documents meant that we were unable to consult formally and methodically on these.

21. We have met with representatives of major stakeholders such as COSLA, ADSW and voluntary organisations in the adoption field to discuss the Bill and related documents. We now intend over the summer to engage more closely with them, both on the Bill, and on its financial implications. This is likely to be a continuing dialogue over the course of some months as we move towards the next Spending Review and towards detailed implementation of the Bill through eg regulations on fostering allowances.