FINANCE COMMITTEE

AGENDA

13th Meeting, 2006 (Session 2)

Tuesday 9 May 2006

The Committee will meet at 10.00 am in Committee Room 6 to consider the following agenda items:

1. **Items in private**: The Committee will decide whether to consider item 5 in private and its draft report on the Financial Memorandum of the Legal Profession and Legal Aid (Scotland) Bill in private at its next meeting.

2. **Adoption and Children (Scotland) Bill**: The Committee will take evidence on the Financial Memorandum from—
   
   Rachel Edgar, Head of Division, Young People and Looked After Children; and Peter Willman, Branch Head, Young People and Looked After Children Branch 2, Scottish Executive.

3. **Adult Support and Protection (Scotland) Bill**: The Committee will consider its approach to the Financial Memorandum of the Adult Support and Protection (Scotland) Bill.

4. **Committee annual report**: The Committee will consider its draft annual report.

5. **Tourist Boards (Scotland) Bill**: The Committee will consider its draft report on the Financial Memorandum of the Tourist Boards (Scotland) Bill.

6. **Criminal Proceedings etc. (Reform) (Scotland) Bill (in private)**: The Committee will consider its draft report on the Financial Memorandum of the Criminal Proceedings etc. (Reform) (Scotland) Bill.

Susan Duffy  
Clerk to the Committee  
Room T3.60  
Extn 85215
The papers for this meeting are:

**Agenda Item 2**

Submissions from:
- Scottish Legal Aid Board (SLAB);
- Fostering Network; and
- British Association for Adoption and Fostering.

PRIVATE PAPER

*Adoption and Children (Scotland) Bill* (previously circulated to Members in hardcopy only, copies available from Scottish Parliament website)

*SPICe Briefing* on Adoption and Children (Scotland) Bill (previously circulated to Members in hardcopy only, copies available from Scottish Parliament website)

**Agenda Item 3**

Paper from the Clerk

*Adult Support and Protection (Scotland) Bill* (circulated to members in hardcopy only; copies available from the Scottish Parliament website)

*SPICe briefings* on the Adult Support and Protection (Scotland) Bill (circulated to members in hardcopy only; copies available from the Scottish Parliament website)

**Agenda Item 4**

Finance Committee draft Annual Report

**Agenda Item 5**

Supplementary correspondence from VisitScotland

PRIVATE PAPER

**Agenda Item 6**

PRIVATE PAPER
Finance Committee

13th Meeting 2006 – Tuesday 9 May 2006

Scrutiny of Financial Memorandum – Evidence on the Adoption and Children (Scotland) Bill

1. The Adoption and Children (Scotland) Bill (“the Bill”) was introduced to Parliament on 28 March 2006. The Education Committee has been designated the lead committee for the Bill at Stage 1.

2. The Finance Committee agreed at its meeting on 18 April 2006 to adopt a level 2 approach to its scrutiny of the Bill. Specifically, the Committee agreed to issue its standard questionnaire to potentially affected organisations and take oral evidence from Scottish Executive officials at its meeting on 9 May 2006.

3. The following submissions have been received so far and these are attached:
   - Scottish Legal Aid Board
   - The Fostering Network
   - British Association for Adoption and Fostering (BAAF)

Rosalind Wheeler
Senior Assistant Clerk to the Finance Committee
SUBMISSION FROM THE SCOTTISH LEGAL AID BOARD

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.

Lindsay Montgomery  
Chief Executive  
Scottish Legal Aid Board
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.
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 every 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.

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.

368. Many of the Bill’s provisions extend and improve existing services, particularly those provided by local authorities. As such, local authorities already meet the costs of these services. It is likely that the Bill’s provisions will result in a moderate increase in these costs, which will be met within the portfolio budget. The Bill’s provisions are likely to bring about an increase in adoption applications: this will have a corresponding rise in costs, particularly for support services. However, the cost to local authorities of providing foster care should be noted and 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. The cost of fostering is discussed in greater detail at paragraphs 388 to 390 but at present local authorities pay an average of £106 per week per child in foster allowances while for child in non-secure residential care the average weekly cost is £1,467.

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. Around 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. 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. 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. Suffice 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 2005-06 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 earmarked 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.
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 represent 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 BRITISH ASSOCIATION FOR ADOPTION AND FOSTERING

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 lifelong. 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 lifelong 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.

**Barbara J Hudson**

**Director, BAAF Scotland**

4 May 2006
Background
1. The Adult Support and Protection (Scotland) Bill ("the Bill") was introduced to Parliament on 30 March 2006. The Health Committee has been designated the lead committee for the Bill at Stage 1.

2. This paper has been prepared to assist the Committee to determine its approach to considering the Financial Memorandum for the Bill.

The Bill
3. There are currently a range of powers to protect adults who are mentally disordered and at risk of harm. However, recent investigations have highlighted potential gaps in existing legislation and the need to enhance powers to protect those adults deemed to be vulnerable but who are not mentally disordered. For example, local authorities currently have no power to intervene to help those adults who have no apparent mental disorder or incapacity but who are subject to or at risk of harm.

4. The main objective of the Bill is to protect and benefit adults at risk of being abused. The Bill gives a definition of adults at risk, puts a duty on councils to make the necessary enquiries as to whether or not further action is needed to stop or prevent abuse and provides new powers to:
   - investigate suspected abuse;
   - carry out assessments of the person and their circumstances
   - intervene to remove the adult or manage the risk of abuse
   - if necessary and in the last resort, to exclude the perpetrator; and
   - if necessary and in the last resort, to force entry to perform the above functions

5. In addition, each local authority will be required to set up a multi-agency Adult Protection Committee which will have a strategic overview in managing adult protection policies, systems and procedures at local level. Finally, the Bill makes amendments to the Adults with Incapacity (Scotland) Act 2000, the Social Work (Scotland) Act 1968 and the Mental Health (Scotland) Act 2003. A summary of the main provisions can be found on page 2 of the Bill’s explanatory notes.

Costs
6. A summary of additional costs arising from the Bill is given on page 37 of the Explanatory Notes. The total specified one-off costs (falling on the Executive) are estimated to be £80,000. The total specified recurring costs (falling on local authorities and the police) are estimated as £13.75m. These costs are broken down as follows:
Scottish Executive
7. One-off costs of £80,000 for a programme of training and awareness raising.

Local Authorities
8. It is estimated that £96,000 per annum will be required nationally for the cost of having independent chairs of the Adult Protection Committees (however, the Financial Memorandum does suggest this figure is on the high side as some smaller authorities may decide to have a single Committee covering their area).

9. It is suggested that the costs of administration and professional advice for the Adult Protection Committee could be included in the costs of having an Adult Protection Unit. Although neither the Bill nor the Explanatory Notes make specific mention of such units, they are described in the Financial Memorandum as a bridge between the Committee and the operational level. The estimated costs of these units is £7.5m. The cost of such a unit which is currently operating in the Borders is shared by the NHS, local authority and police. However, the national cost of the units is shown as falling only on local authorities in the Financial Memorandum.

10. It is also suggested that additional staff will be required to undertake investigations and the national cost of this is estimated to be £5.1m per annum. Associated training and awareness raising is estimated at £394,500 per annum (including some one-off material costs). Finally, costs are given on a per person basis for staff training but there is no estimate of the number of staff who would require the various levels of training.

Police
11. Due to a projected increase in the number of referrals to the police, it is estimated that additional staffing will be required and this will cost £644,000 per annum. In addition, some forces (particularly in rural areas) may need additional transport and this could equate to £10,500 per annum.

Other
12. It is stated that there will be minimal or negligible costs for courts, health authorities, the private business and voluntary sector in respect of the new powers under the Bill and these are not specified. The amendments made to the Adults with Incapacity (Scotland) Act could incur some costs for the Office of the Public Guardian but it is presumed these will be met through an increase in fees. There will also be a likely increased fee for those applying for “intromission of funds” to £60 per application.
Conclusion
13. Given the potential costs involved in the Bill, it is suggested that the Committee adopts Level 3 scrutiny. This would involve seeking written evidence from organisations upon whom costs could fall and taking oral evidence sessions from the organisation or organisations most affected and from Executive officials. It is suggested that written evidence be sought from:

- COSLA
- Association of Chief Police Officers in Scotland (ACPOS)
- the Scottish NHS Confederation
- Mental Welfare Commission for Scotland
- Care Commission
- Office of the Public Guardian
- Scottish Courts Service
- Crown Office and Procurator Fiscal Service
- Scottish Council for Voluntary Organisations (SCVO)
- Scottish Care

14. It is then suggested that the Committee take oral evidence from COSLA and then from Executive Officials.

Susan Duffy
Clerk to the Committee
Finance Committee

13th Meeting 2006 – Tuesday 9 May 2006

Finance Committee Annual Report 2005-06

Background
1. The Committee is required to publish its annual report for the parliamentary year 7 May 2005 to 6 May 2006. The style and length of the report, with a maximum of 750 words, has been laid down by the Conveners’ Group in order to maintain consistency across committees.

2. The Committee is being asked to agree the report at this meeting in order to finalise the substance of the report and in order to make provisional arrangements for publication.

Recommendation
3. The Committee is invited to consider and agree the attached draft report.

Kristin Mitchell
Assistant Clerk to the Finance Committee
Finance Committee

Remit and membership

Remit:

1. The remit of the Finance Committee is to consider and report on-

   (a) any report or other document laid before the Parliament by members of the Scottish Executive containing proposals for, or budgets of, public expenditure or proposals for the making of a tax-varying resolution, taking into account any report or recommendations concerning such documents made to them by any other committee with power to consider such documents or any part of them;

   (b) any report made by a committee setting out proposals concerning public expenditure;

   (c) Budget Bills; and

   (d) any other matter relating to or affecting the expenditure of the Scottish Administration or other expenditure payable out of the Scottish Consolidated Fund.

2. The Committee may also consider and, where it sees fit, report to the Parliament on the timetable for the Stages of Budget Bills and on the handling of financial business.

3. In these Rules, "public expenditure" means expenditure of the Scottish Administration, other expenditure payable out of the Scottish Consolidated Fund and any other expenditure met out of taxes, charges and other public revenue.

*(Standing Orders of the Scottish Parliament, Rule 6.6)*

Membership:

Des McNulty (Convener)
Wendy Alexander
Mr Andrew Arbuckle
Mark Ballard (from 22 June 2005)
Mr Ted Brocklebank (to 21 July 2005)
Derek Brownlee (from 6 September 2005)
Jim Mather
Mr Frank McAveety
Alasdair Morgan (Deputy Convener to 14 September 2005)
Dr Elaine Murray
John Swinburne (to 22 June 2005)
Mr John Swinney (Deputy Convener from 20 September 2005)

Committee Clerking Team:

Clerk to the Committee
Susan Duffy

Senior Assistant Clerk
Judith Evans (to 7 October 2005)
Roz Wheeler (from 5 January 2006)

Assistant Clerk
Kristin Mitchell

Committee Assistant
Steven Bell (between 24 May 2005 and 3 March 2006)
Gareth Dixon (from 6 March 2006)
The Committee reports to the Parliament as follows—

**Introduction**

1. The Committee has had a busy work programme this year. The main element of the Committee’s work is the annual budget process. In addition, the Committee has scrutinised 21 Financial Memoranda, completed 2 inquiries, and launched a further inquiry.

**Inquiries and Reports**

2. The principal role of the Finance Committee is to co-ordinate the Parliament’s response to the Scottish Executive’s expenditure proposals throughout the annual Budget Process. The Committee went to Elgin as part of its Stage 2 considerations of the Budget Process, and published its report on 14 December 2005. This report was debated in Parliament on 21 December 2005.

**Civil Service Effectiveness**

3. The Committee completed its submission to the House of Commons Public Administration Select Committee’s inquiry into the Effectiveness of the Civil Service. The Committee’s submission was informed by evidence from John Elvidge, Permanent Secretary to the Scottish Executive, Professor Michael Barber, UK Cabinet Office, Richard Parry, Edinburgh University and Professor Robert Pyper, Glasgow Caledonian University.

**Single Status**

4. The Committee conducted a short inquiry into the financial implications of the local authority single status agreement. Three trade unions, three local authorities, COSLA and the Minister for Finance and Public Service Reform gave evidence. The Committee published its report on 14 March 2006.

**Deprivation**

5. The Committee also completed its Cross-cutting Expenditure Review of Deprivation. During its review, the Committee took oral evidence from 23
organisations/ individuals, including the Minister for Communities, and received 41 written submissions. The report was published on 13 April 2006.

**Accountability and Governance**

6. Following concerns raised in its 2006-07 Budget Report, the Committee began an inquiry relating to the statutory independence of parliamentary commissioners and ombudsmen versus their accountability for expenditure of public funds. This inquiry was launched on 1 March, and the Committee held an informal seminar on 24 April and it intends to take oral and written evidence in May and June.

**Efficient Government**

7. Following the publication of the Scottish Executive’s Efficient Government initiative on 29 November 2004, the Committee has periodically taken evidence, as part of its ongoing scrutiny.

8. The Committee undertook site visits in June 2005, to various organisations in Stirling, Glasgow and Edinburgh to discuss the implications of the Efficient Government initiative with those implementing the changes and savings required.

**Bills**

9. The Committee has three levels for scrutinising Financial Memoranda of Bills. Level 1 involves sending a standard questionnaire to affected bodies. Level 2 involves taking written evidence from affected bodies and oral evidence from the Scottish Executive. Level 3, involves the same steps as level 2, plus oral evidence from affected bodies. This year, 5 Financial Memoranda have been scrutinised at level 1, 13 at level 2, and 3 at level 3. This has resulted in 16 reports to lead committees at Stage 1. In addition, the Management of Offenders etc. (Scotland) Bill’s was further considered during Stage 2.

**Subordinate Legislation**

10. The Committee has considered four affirmative Scottish Statutory Instruments.

**Innovations/ Networks/ Miscellaneous**

11. A round-table discussion was held as part of the Committee’s cross-cutting inquiry into the expenditure on Deprivation, on 13 September 2005. Committee members also took part in a site visit to Glasgow on 14 November 2005, as part of this inquiry.

12. The Committee met with representatives from the Swedish Parliament’s Committee on Taxation, where they had an informal discussion about the differences in systems in the UK, Scotland and Sweden.

13. As part of the Committee’s Accountability and Governance inquiry, Members met with the House of Commons Public Administration Select Committee from Westminster, which is conducting a similar inquiry covering UK ‘constitutional watchdogs’ to discuss the UK wide perspective.
Mainstreaming Equality

14. In addition to ongoing discussions with the Scottish Executive on equality issues in the budget, the Committee’s Budget Adviser is part of a working group investigating ways to equality proof the annual budget.

15. Prior to the Committee’s meeting in Elgin, a workshop was held between local people and Committee members to discuss the clarity and transparency of the budget process.

Meetings

16. The Finance Committee met 31 times between 7 May 2005 and 6 May 2006. Of these, 10 were held entirely in public and 21 were held partly in private. The majority of private items were the considerations of draft reports.

17. All Committee meetings were held in Edinburgh, with the exception of its meeting in Elgin on 7 November 2005.
Finance Committee
13th Meeting 2006 – Tuesday 9 May 2006

Tourist Boards (Scotland) Bill – Supplementary information

1. During the evidence session on 25 April on the above Bill, John Brown, Head of Tourism Policy, Scottish Executive agreed to provide the Committee with a breakdown of the aggregate Area Tourist Board deficit. A response from VisitScotland is attached.

Susan Duffy
Clerk to the Finance Committee
Supplementary Information from VisitScotland

Mr Des McNulty MSP
Convener
Finance Committee
The Scottish Parliament
EH99 1SP

4 May 2006

Dear Mr McNulty

Tourist Boards (Scotland) Bill: Financial Memorandum

I have been asked by John Brown, Head of Tourism Policy in the Scottish Executive to provide a breakdown of the former Area Tourist Boards’ (ATBs) total overall deficit of £1.7million in the 2004-05 financial year. I would also like to take this opportunity to clarify a number of other issues that were raised in the recent evidence session on the Tourist (Boards) Scotland Bill.

A table summarising the final audited ATB accounts for the 2004-05 financial year is at Appendix A; this is drawn from information published by VisitScotland on www.scotexchange.net and does not represent the full accounts. For detailed information on each area’s full accounts, please visit the following link:

http://www.scotexchange.net/research_and_statistics/tourism_in_your_area.htm

The enclosed table shows that the total net operating deficit for ATBs in 2004-5 was £1.696 million and that ATBs had net reserves of £3.679 million.

I am aware that there was a focus in the evidence session on the final accounts of the former Perthshire and Kingdom of Fife ATBs. I am more than happy to clarify that although both Perthshire and Kingdom of Fife ATBs had substantial operating deficits in their final year, they had sufficient reserves to cover the deficits and that therefore they were not “in debt”. In relation to the article published in The Herald on 29 March and referred to by Mr John Swinney MSP, I would like to put on the record that the media statement we provided did not refer to individual ATBs as being in debt. However, in response to a subsequent request we did provide a breakdown by ATB area of the £1.7m deficit.

In addition, I would stress that we have made a commitment that all remaining assets in former ATB areas will be ring fenced for use specifically by the successor VisitScotland network office.

I would also like to take this opportunity to clarify that local authority funding for the former ATBs was sustained into the first year of transition, which was
2005-06. Therefore, the Financial Memorandum to the Bill is correct in stating that local authority funding levels were carried forward voluntarily into 2005-06. I would, however, like to take this opportunity to clarify that although total local authority funding was carried forward at the same levels, VisitScotland did not receive the same level of funding as the ATBs had received in previous years. The funding levels that were carried forward were split with other business tourism services.

I hope this information is helpful, however, please do not hesitate to contact me if you would like clarification on any points.

Yours sincerely

Philip Riddle
Chief Executive, VisitScotland
### Appendix A: Summary of ATB Final Accounts 2004-5

#### Summary of ATB Final Accounts 2004-5

<table>
<thead>
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<th>ATB</th>
<th>Surplus/Deficit</th>
<th>Reserves</th>
<th>Long Term Borrowings</th>
<th>TIC Stock</th>
<th>Cash</th>
<th>Total Debtors</th>
<th>Net Current Assets</th>
<th>Fixed Assets</th>
<th>Pension Liability</th>
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**Totals**:
- Surplus/Deficit: -1,695,881
- Reserves: 3,679,334
- Long Term Borrowings: 1,407,909
- TIC Stock: 1,432,993
- Cash: 1,553,306
- Total Debtors: 3,855,029
- Net Current Assets: 1,601,142
- Fixed Assets: 7,562,942
- Pension Liability: 6,370,000