



SCOTTISH EXECUTIVE

# Safe and Secure Homes for Our Most Vulnerable Children

## Analysis of the Consultation on the Adoption Bill

Education



social  
research

**SAFE AND SECURE HOMES FOR OUR MOST  
VULNERABLE CHILDREN**

**ANALYSIS OF THE CONSULTATION ON THE  
ADOPTION BILL**

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## EXECUTIVE SUMMARY

### BACKGROUND OVERVIEW

A Scottish Executive consultation, “*Safe and secure homes for our most vulnerable children*” took place between 30 June 2005 and 31 October 2005. A total of 496 responses were received to the consultation and these came from a wide range of organisations and individuals with an interest in the adoption process in Scotland. The consultation document was also available on the Scottish Executive website.

The consultation document set out the background to the consultation and asked for views on a range of issues; including permanence orders, support for adoption, improving court rules and avoiding delays and access to information. This report provides a robust analysis of all responses to the consultation using both quantitative and qualitative analytical approaches. These findings will feed into legislation.

A programme of public consultation events was also conducted by the Scottish Civic Forum on behalf of the Scottish Executive and a series of qualitative discussions were undertaken by George Street Research. The findings from these additional elements have been incorporated into this report.

### OVERVIEW OF RESPONDENTS

The majority (77%) responded as individuals and 23% responded on behalf of organisations. The largest number of organisational responses was received from local authorities (n = 35) and religious and faith groups (n = 27).

Those responding as individuals primarily focused on a single issue – that of joint adoption by same-sex and / or unmarried couples. The majority of these individuals were resistant to the introduction of joint adoption by same-sex and / or unmarried couples.

**Respondents commenting on each question posed in the consultation were broadly in agreement with recommendations, with the exception of recommendation 61.** This recommended that there should be a centralised national system to appoint and train curators, reporting officers and safeguarders from which individual case appointments are made locally and that remuneration be paid centrally and should take account of the varying amounts of work required in individual cases.

The aim of a consultation exercise is to enable anyone who wishes to, to express their views. This final report is intended to reflect these views and responses as accurately as possible, even if they are founded on inaccurate perceptions or misinterpretations.

In our reporting we distinguish between professionals / organisations and individuals. The former generally commented from the viewpoint of those working in a professional capacity within the adoption sector; the latter from the viewpoint of individuals within the general public, some of whom had been affected by the adoption process. Responses from individuals tended to focus very much on the issue of joint adoption by unmarried or same-

sex couples. Often the views of professionals / organisations and individuals were in opposition to each other on this specific subject.

### **WHO SHOULD ADOPT? WHAT SHOULD BE THE CRITERIA FOR ADOPTION? WHOSE VIEWS SHOULD BE CONSIDERED IN THE ADOPTION PROCESS?**

Across professionals / organisations responding to this consultation, there was a general view that adoption needs to reflect society and law. So, for example, if the law recognises unmarried couples in the same light as married couples, adoption legislation should follow this.

**Overall, views were that the welfare of the child to be adopted should be placed above all other factors in the decision making process.** A greater proportion of professionals / organisations responding on this specific subject supported the need to introduce legislation that will allow for a couple to jointly adopt, and for the range of those able to adopt to be extended to include same-sex couples and unmarried couples. However, the large majority of individuals responding to this consultation were of the view that same-sex and unmarried couples should not be allowed to adopt. Furthermore, there was significant support from individuals for a conscience clause if adoption was opened up to same-sex and unmarried couples.

A wide variety of criteria was cited as being important for any adoptive parents to meet and these included:

- a capacity to offer a loving, stimulating and supportive home
- demonstrating that a relationship is stable, responsible and loving
- a demonstration of permanence in the relationship

**Criteria of importance focused less on the financial status of adoptive parents and more on their capacity to offer emotional support and a stable family environment.**

There were some calls for guidance to be issued by the Scottish Executive on the criteria to be examined in determining the best interests of the child, particularly as there is a current lack of consistency in adoption practice.

### **PERMANENCE ORDERS AND THE ROLE OF HEARINGS SYSTEMS IN PERMANENCE ORDERS**

The introduction of a Permanence Order was welcomed by the majority of those responding to the consultation, and those who had little or no understanding of the range of alternatives to adoption were broadly supportive of anything that would serve to simplify the adoption process. However, there were concerns that clear procedures, guidance and training are needed and that the introduction of a Permanence Order could serve to increase the complexity of the system. Furthermore, there was also a degree of concern that if Permanence Orders are too flexible they may be counter-productive.

While a higher number of consultees preferred to have the Court take the lead in Permanence Orders, others cited the need for ongoing involvement by Children's Hearings, although the role of the Children's Hearings needs to be clearly explained.

## **SUPPORT FOR ADOPTION**

There was widespread support for adoption support services to be extended to all parties involved in adoption, and for the range of these support services to be extended. However, a number of respondents commented on the issue of staffing resources and funding that would be required to introduce this range of services.

Of those commenting in the consultation on a national scheme of adoption allowances, the majority were in favour of this being introduced. However, respondents participating in the qualitative research were relatively split as to whether or not they supported this scheme and most of those attending Scottish Civic Forum events did not think that adoptive parents should be paid an allowance. Those who were supportive of an allowance being paid to adoptive parents felt that these should only be considered on a case-by-case basis.

In terms of the range of services that could be offered, respondents focused more on emotional and therapeutic counselling support than financial support.

A range of individuals – including grandparents, siblings and other family members – were considered to have entitlement to adoption support, although once again respondents highlighted resource and funding implications of extending these services. Some respondents noted the need for a national agency to provide support services.

There were also calls for any services to be publicised widely in order to ensure that all individuals are aware of services that can be accessed.

There was general agreement that there was a need for local authorities to have an adoption support officer within the senior management team, although the issue of funding for this post was raised by a small number of respondents. The key advantages to this role were that it would aid consistency across all local authorities and help with the dissemination and sharing of good practice and guidance across Scotland.

A majority of respondents agreed that a local authority placing a child for adoption should have responsibility for providing adoption support services to the child and adoptive family for three years after the adoption order. However, there were comments that, regardless of which local authority has responsibility for providing adoption support services, these services need to be delivered at a local level. Additionally, there need to be clear lines of communication between local authorities involved in a specific adoption case.

## **IMPROVING COURT RULES AND AVOIDING DELAYS**

There were concerns that the existing court rules serve to prolong the adoption process and that this is to nobody's advantage. The majority of those responding to the consultation question agreed with the need for a system of leave to apply to court. Similarly, a majority

supported legislation that would require the applicant to produce new evidence or evidence of a significant change in circumstances to support an application for leave.

Again, the majority of those commenting supported the suggestion for legislation to limit the circumstances in which an applicant could seek information about an adopted child in support of an application to court.

## **CURATORS, REPORTING OFFICERS AND SAFEGUARDERS**

The Scottish Executive has rejected recommendation 61 of the APRG report. This recommended that there should be a centralised national system to appoint and train curators, reporting officers and safeguarders from which individual case appointments are made locally and that remuneration be paid centrally and should take account of the varying amounts of work required in individual cases. The majority of respondents commenting on this specific item noted that the Executive should reconsider its decision to reject this recommendation.

The key reason for backing this recommendation related to the issue of training and the need for a national approach to training to help ensure consistency in practice across Scotland as a whole.

## **ROLE OF THE CHILDREN'S HEARINGS SYSTEM IN PERMANENCE CASES**

There was broad support for ongoing inclusion of the Children's Hearings System in permanence cases. The key issue raised for a number of these recommendations was in relation to the need for additional training for individuals involved with the Children's Hearings System.

There were also calls to ensure clarity in understanding the role of the Children's Hearings System and some suggestions of the need to promote consistency by having one member of the panel who is continuous throughout a specific case.

There were also some calls to put the findings from this consultation alongside that undertaken on the Children's Hearings System and the 21<sup>st</sup> Century Social Work Review. This, it was felt, would help to provide a framework for permanency planning.

## **FOSTERING ISSUES**

There was broad agreement on the need for a national scale of fostering allowances and none of the consultees responding to this specific issue opposed this proposal. References were also made with regards to including kinship care as a need.

Some queries were raised over the need for funding to support this specific recommendation and some respondents (primarily professionals / organisations) suggested a minimum allowance should be set that also offers a degree of flexibility to meet the needs of different circumstances. There was support for the Scottish Executive issuing guidance containing

national scales of allowances, although there were some concerns that independent providers would not agree to a national scale.

Views on the proposed working group on private fostering were largely supportive, with some organisations perceiving a need for more work on the private fostering system and a need for legislative reform.

However, some organisations perceived a need to clarify the role of local authorities and other government bodies. The need for standardised assessment, support and safeguards was raised by some consultees, along with a need to develop guidelines and procedures.

## **PROCEDURES WITHIN LOCAL AUTHORITIES AND AGENCIES**

A number of organisations stated their support for the recommendations covered in this section of the consultation document.

There was agreement that procedures within local authorities and agencies could be changed with a number of suggestions being made for this. Additionally, there were requests that whatever changes are introduced, training coupled with clear guidance needs to be provided.

While there was general support for an independent review body to consider appeals and for fostering panels to be involved in reviews of foster carers at regular intervals, some consultees focused on the need to have clear guidance and a clear process for appeals rather than independent panels.

There was a call for communication between different local authorities and agencies to improve and also for services to be delivered at a local level across Scotland.

## **ACCESS TO INFORMATION**

There was general agreement that medical information should be available either directly to adoptive parents or via a third party such as a GP, and that this should then be made available to an adopted child once they reach a certain age. While there were some concerns over confidentiality and data protection, the interests of an adopted child were generally felt to be paramount. As such, in instances where birth parents were not willing to have information passed on, most respondents considered that these views should be disregarded.

While medical information was perceived to be essential information, there were also some requests for more general information on family history to be made available.

# CHAPTER 1 : BACKGROUND

## 1.1 BACKGROUND

Local authorities have a responsibility to provide support to certain vulnerable young people known as “looked after children”. The numbers of looked after children represent around 1% of the child population in Scotland. A greater proportion of children that are looked after now are more likely to have had significant disturbances in their past care. As such, planning and providing for their immediate and long term needs is likely to be increasingly difficult.

While there are specific issues with children that are looked after, there is also an allied need to recruit more adopters to provide families for the thousands of children waiting to be adopted from care. Although national campaigns and local advertising are successful in generating an interest in adoption along with breaking down false perceptions about who is able to adopt and the children waiting for families, the majority of people expressing initial interest do not then go on to adopt. In addition, there is a need to recruit adopters who are able to meet the needs of children with disabilities and behavioural and emotional difficulties; and also to encourage people from black and minority ethnic communities to consider adoption.

The Scottish Executive is conscious of these issues and, in 2001, the Adoption Policy Review Group (APRG) started an extensive review of the system of adoption and permanence in Scotland. The first phase examined adoption services from a number of different viewpoints, including :

- the spectrum of services considered on behalf of young people
- the quality of recruitment
- selection and assessment procedures designed for prospective adopters
- the extent and quality of post-adoption support
- the case for Scotland joining the proposed UK National Adoption Register.

These issues were examined by a group of independent members under the chair of Sheriff Principal Graham Cox and they reported their findings to Scottish Ministers in December 2001. One key issue emerging from this review was the need to raise the profile and scope of existing services across Scotland for:

- all “looked after” children and any others affected by adoption
- all adopted individuals
- all those adopting or considering adopting
- all members of birth families who have had a relative adopted.

The report emerging from Phase 1 was published in early 2002.

The Scottish Executive accepted the Group’s findings and took forward a number of the report’s recommendations. For example, the Executive has already taken action to implement the recommendation that Scotland should join the planned UK Adoption and Children Act Register. National Care Standards for adoption agencies also came into force in March 2002.

While a number of the recommendations have already been adopted, it was felt that most of the recommendations needed further work and consultation on how best to be taken forward. The subsequent phase of the review examined the legal framework of adoption and permanence<sup>1</sup>. This phase of the review was initiated by a discussion document – Choices for Children – published in September 2003. This paper asked for responses to 74 questions. There were in the region of 350 responses from non-professional bodies which focused on the issue of adoption by unmarried couples, (and particularly same-sex couples) with most responses being strongly opposed to this. Additionally, there were around 70 responses received on a range of other topics.

The recommendations represented a comprehensive review of the adoption and permanence system and the response of the Scottish Executive was that it agreed with the overall conclusions of the report. The report contained 107 recommendations, 99 of which were accepted and 3 were rejected. No commitment was made to another recommendation and 4 were accepted in principle.

The recommendations of the group will require a combination of primary and secondary legislation, guidance from the Scottish Executive and administrative action by various bodies. The Executive intends to focus on implementing the recommendations requiring legislation, and this legislation is expected to replace the Adoption (Scotland) Act 1978.

## 1.2 COMPONENTS OF THE CONSULTATION

### 1.2.1 *The Consultation Document*

**As part of the legislative process, the Executive was keen to obtain views from individuals and organisations to comment in a structured way on aspects of the Executive's response to the APRG.** A consultation document – *Secure and safe homes for our vulnerable children* – was issued by the Adoption Policy Review Group. This set out the policy background; was structured around a series of key recommendations and asked for views on the recommendations made by APRG.

The consultation was widely marketed and consultation papers were distributed to a wide range of individuals and organisations. The consultation was available on the Scottish Executive website.

A series of 21 questions were posed in the consultation in relation to the recommendations made by APRG, although consultees were also welcome to provide views on any related issues if they wished. The list of questions was not intended to restrict responses, rather to stimulate responses across a number of specific areas.

### 1.2.2 *Public Consultation Events*

A programme of public consultation events was organised by the Scottish Civic Forum during the consultation period to support the consultation process, with the aim of bringing

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<sup>1</sup> Permanence relates to other arrangements for children who cannot live with their family but for whom adoption is not suitable

the issue to the public eye and encouraging a wider range of individuals and general public members to respond to the consultation.

The public consultation events consisted of a series of four public meetings<sup>2</sup> in different parts of Scotland which were run by the Scottish Civic Forum and convened by representatives of the Scottish Civic Forum. At each meeting personnel from the Scottish Civic Forum gave a presentation introducing the issues at stake, and outlining the key questions of concern within the consultation. Break out group discussions were then run by Scottish Civic Forum representatives, followed by a plenary feedback, and question and answer session. The principal findings from the discussion sessions were summarised in reports produced by the Scottish Civic Forum and have been incorporated into this report where relevant.

The events aimed to:

- target a broad range of individuals who have an interest, or have had any form of involvement in the adoption process in Scotland
- be “participant friendly” and focus on the information provided in the consultation document
- obtain informal soundings of the main themes arising in relation to the proposals contained in the consultation document.

The events were attended by a range of different individuals, including adoptees, adopters, birth parents, other family members affected by adoption, and professionals.

A total of 63 participants attended events (25 in Glasgow, 9 in Fort William, 20 in Edinburgh and 9 in Aberdeen).

A copy of the briefing paper prepared by the Scottish Civic Forum and presented at each event is provided in Appendix 2. A summary report detailing the main findings from these events and written by the Scottish Civic Forum who facilitated the discussions and recorded the key points emerging at each is provided in Appendix 3.

The key issues raised at the events reflected the main points that emerged during the consultation and have been taken into account during the larger analysis. The pertinent findings from the information events have been identified throughout the analysis in the relevant sections.

### *1.2.3 Qualitative Discussions*

The information events were intended to ensure broad access for the public to the consultation process, while the qualitative discussions were intended to be more deliberative in nature and concentrate on accessing the views of particular groups of interest, including individuals who had:

- been adopted during their lifetime in Scotland
- adopted someone during their lifetime in Scotland
- placed someone for adoption during their lifetime in Scotland

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<sup>2</sup> These were held in Glasgow, Aberdeen, Edinburgh and Fort William

- experience of a close family member going through the adoption process, either placing someone for adoption or trying to adopt someone in Scotland
- professional experience of delivery of adoption services in Scotland (e.g. social workers)

Due to potential sensitivities of the issues under discussion, respondents were offered the opportunity of either attending a focus group discussion or participating in a one-to-one in-depth interview.

A total of 34 respondents participated in the qualitative discussions and their profile is provided in the following table.

**Table 1.1**

**Respondent Profile**

(Base: All respondents participating in qualitative discussions)

<b>Respondent Type</b>	<b>Number of Respondents</b>
Individuals who had been adopted during their lifetime in Scotland	7
Individuals who had adopted someone during their lifetime in Scotland	7
Individuals who had placed someone for adoption during their lifetime in Scotland	4
Individuals with experience of a close family member going through the adoption process, either placing someone for adoption or trying to adopt someone, in Scotland	6
Individuals with professional experience of delivery of adoption services in Scotland (e.g. social workers)	10
<b>Total</b>	<b>34</b>

### 1.3 AIMS OF THE OVERALL CONSULTATION

There were two key elements to this study:

1. **A programme of information events and focus groups.** These provided different groups of individuals and organisations with information on the Executive’s response to the recommendations, providing them with an opportunity to give their views. These ran alongside the consultation process. This ensured that all relevant parties throughout Scotland were given an opportunity to explore the issues covered by the consultation.
2. **Public consultation.** This was intended to produce an analysis and summary of written responses to the consultation document, alongside a database of responses.

**It was intended that the results of these two elements would feed into the final form of the legislation.**

George Street Research were commissioned to conduct an analysis of the consultation responses, the information events and the qualitative discussions. This document constitutes the final report of the findings from all components of the consultation, including both quantitative and qualitative analysis.

Where respondents to the consultation have agreed to have their response made public, these responses have been made available in the Scottish Executive Library as well as on the Scottish Executive web site, alongside a copy of this report which provides an analysis of all responses.

### *1.3.1 Specific Objectives of the Information Events And Focus Groups*

Information events included a broad range of individuals and others with an interest, across a range of different locations and from a range of different backgrounds. The Scottish Civic Forum produced a briefing paper (see Appendix 2).

Each event was “participant friendly” and focused on the information provided in the consultation document and the briefing paper. The main element of each event was discussion groups to encourage maximum participation. However, there were also opportunities for people to submit views outside the discussion groups in order to protect their identity from the wider audience at the event.

### *1.3.2 Specific objectives of the qualitative discussions*

The aim of the qualitative discussions was to capture the views of specific groups involved in adoption. They explored particular concerns or issues for people in those particular groups and provided a less threatening environment than the more public discussion groups at the Scottish Civic Forum events.

### *1.3.3 Specific objectives of the consultation component:*

- Provide an analysis of responses (written and electronic) to the consultation grouped under the consultation themes, questions and respondent group
- Produce a database of responses that will enable analysis by theme, question or group
- Identify the main interest groups responding to the consultation and their views about the consultation themes
- Present the full range of views emerging
- Identify queries raised, potential problems that are highlighted and suggested recommendations
- Identify and highlight contradictions and anomalies that emerge in the analysis
- Provide an analysis of the responses that do not fit within the consultation themes
- Identify variations in responses of different groups
- Identify groups where the response rate has been poor and indicate which voices remain silent in the consultation
- Incorporate any comments specifically regarding the consultation process
- Produce a summary digest of responses to be posted on the Scottish Executive website

**The overarching aim of the work undertaken for this consultation was to produce a robust analysis of all responses to the consultation paper using both quantitative and**

**qualitative analytical approaches, and to incorporate findings from the information events and qualitative discussions.**

## CHAPTER 2: THE CONSULTATION PROCESS

### 2.1 Timing of the Consultation

The consultation ran from 30 June 2005 to 28 October 2005. In total 496 responses were received, providing a wide range of views and information for consideration.

### 2.2 Nature of the Consultation

The consultation document (Appendix 1) set out the background to the consultation, highlighted the key aspects for consideration and posed a series of questions around the range of proposals contained within the consultation to which respondents were invited to respond.

There were 21 questions posed in the consultation paper and these focused around 10 broad topic areas. The questions were intended to focus on the key issues which were raised in the consultation paper. The lists of questions were not intended to restrict responses and all comments and views, whether or not they related directly to a specific question, have been taken into consideration.

**Table 2.1**  
**Questions Contained in the Consultation Document**

Section 1	<b>General</b>
Consultation questions	<p>Question 1: The Executive welcomes general comments on the recommendations of the Group and the Executive's proposed responses. Views on those recommendations requiring legislation are particularly welcome.</p> <p>Question 2: The Executive welcomes views on any aspects of adoption and permanence law not covered in the Group's report which should be reflected in future legislation.</p>
Section 2	<b>Adoption</b>
Consultation questions	<p>Question 3: The Executive would welcome views on the appropriate definition of an unmarried (or unregistered) couple for a Scottish court to apply in deciding whether to make a joint adoption order, bearing in mind the Executive's intention that the court should consider the enduring nature of the relationship. (Recommendations 6 and 7)</p> <p>Question 4: The Executive would welcome views on whether there should be a power for Ministers to make regulations to ensure that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship. (Recommendations 6 and 7)</p> <p>Question 5: The Executive would welcome views on:</p> <p>There are other issues raised by the proposal on which the Executive would welcome views:</p> <ul style="list-style-type: none"> <li>• What other factors should the court take into account in deciding whether an unmarried couple should adopt a child? For example, should the views of birth parents of the child be considered?</li> <li>• Should there be any exceptions or special rules, for example for faith-based adoption agencies?</li> </ul>

	<ul style="list-style-type: none"> <li>Should the Executive issue guidance on considerations to be examined in determining the best interests of the child, and what might such considerations be? (Recommendations 6 and 7)</li> </ul> <p>Question 6: The Executive would welcome views on the issues on which parental views should be sought in placing a child for adoption. (Recommendation 11)</p>
Section 3	<b>Permanence Order</b>
	<p>Question 7: The Executive would welcome views on the principle and details of the Permanence Order, in particular any practical or procedural issues that might arise from use of the Orders, and how these can best be addressed. (Recommendations 19-25)</p> <p>Question 8: The Executive would welcome views on the role of the hearings system in Permanence Orders, in particular any practical difficulties that would be raised by the recommendations and further suggestions on how the special arrangements that have been made for children on permanence orders can be recognised by the hearings system. (Recommendations 28 and 29)</p>
Section 4	<b>Support for Adoption</b>
Consultation questions	<p>Question 9: The Executive would welcome views on what additional adoption support services might be prescribed. (Recommendations 33-36)</p> <p>Question 10: The Executive would welcome views on the recommendation that local authorities should have an adoption support officer within the senior management team. (Recommendation 38)</p> <p>Question 11: The Executive would welcome views on the recommendation that a local authority placing a child for adoption should have responsibility for providing adoption support services to the child and the adoptive family for three years after the adoption order, in particular whether the period of three years is appropriate. (Recommendation 41)</p> <p>Question 12: The Executive would welcome views on how widespread any entitlement to adoption support should be – for example, should grandparents and siblings have a right to support – and on what services different groups of people should receive, for example should birth relatives have a right to any services beyond counselling? (Recommendation 42)</p>
Section 5	<b>Improving court rules and avoiding delays</b>
Consultation questions	<p>Question 13: The Executive would welcome views on whether a system of leave to apply to court would be effective in providing the protection from repeated or vexatious applications for children and adoptive families. (Recommendations 26, 51 and 52)</p> <p>Question 14: The Executive would also welcome views on whether other statutory measures would make the system of leave a more effective safeguard. For example:</p> <ul style="list-style-type: none"> <li>Should the legislation require the applicant to produce new evidence, or evidence of a significant change in circumstances to support an application for leave?</li> <li>Should there be a minimum period between new applications for leave in respect of the same child? (Recommendations 26, 51 and 52)</li> </ul> <p>Question 15: The Executive would welcome views on whether legislation should limit the circumstances in which an applicant could seek information about an adopted child in support of an application to court. (Recommendations 26, 51 and 52)</p>

Section 6	<b>Curators, reporting officers and safeguarders</b>
Consultation questions	Question 16: The Executive would welcome views on the recommendation that there should be a centralised national system to appoint and train curators, reporting officers and safeguarders from which individual case appointments are made locally. (Recommendation 61)
Section 7	<b>Role of the children’s hearings system in permanence cases</b>
Consultation questions	Question 17: The Executive would welcome views on the stage in permanence planning at which there should be a statutory requirement on the local authority to inform the children’s hearings of its intention. The Executive would also welcome views on the steps to be followed after the hearing is informed of the local authority’s intention, for example the model currently used when a decision is taken to place a child for adoption. (Recommendations 62-71)
Section 8	<b>Fostering issues</b>
Consultation questions	Question 18: The Executive would welcome views on the options for a national scale of fostering allowances. (Recommendation 76)  Question 19: The Executive would welcome views on the proposed working group on private fostering, and what the remit of such a group might be. (Recommendation 85)
Section 9	<b>Procedures within local authorities and agencies</b>
Consultation questions	Question 20: The Executive would welcome views on the detailed proposals of the Group on local authority and adoption agency procedures, particularly on the issue of independent appeals and complaints. (Recommendations 88-99)
Section 10	<b>Access to information</b>
	Question 21: The Executive would welcome views on the proposal that medical information about birth parents and families should be shared, without consent, to plan properly for a child. Particular issues include: what sort of information could be shared; who could have access to the information; and whether any information should be communicated to the adopted person or the adoptive parents. (Recommendations 103-106)

Respondents were invited to respond freely to each question in the consultation document. Some respondents answered each question while others chose to comment on a limited number of questions. Most chose to provide comments in a free-flowing format rather than follow the question structure.

### **2.3 Distribution and Advertising of Consultation Document**

A key concern was to develop a consultation document that encouraged a wide range of individuals, groups and organisations to submit their views. The consultation paper was also on the Scottish Executive website for any interested individuals.

Consultation papers were distributed to a wide range of organisations and bodies with a professional interest.

These included:

- Local authorities
- Adoption agencies
- Voluntary organisations
- Equality groups (gender, race, age, sexuality, disability)
- Religious and Faith groups
- Bodies within the Legal profession
- Bodies within the Medical profession
- Public Bodies
- Charitable Organisations
- Trade Unions
- Educational Organisations

In order to stimulate greater awareness of the consultation, the Scottish Civic Forum was commissioned to organise a series of four events across Scotland on behalf of the Scottish Executive.

## **2.4 Responses and Respondents**

**A total of 496 responses to the consultation were received.** The consultation documentation did not include a structured response form and so respondents chose to present their comments in a variety of formats. While a small number of responses followed the structure of the questions asked in the consultation, the majority of responses were presented in the form of a letter. Although some letters, mostly those from organisations, were lengthy and detailed, the majority focused only on a small area of interest.

A small number of responses followed the structure of the recommendations, either point by point or focusing on specific recommendations; some responses followed chapter headings from the consultation and others referred to paragraphs from the original report.

Where comments were relevant to a specific consultation question, these were highlighted and transferred into the relevant question heading in a bespoke database designed specifically for this element of the public consultation paper; either with additional text to provide context or as stand alone comments. Where comments were not relevant to specific consultation questions, these were recorded in the database as general comments under Question 1.

Quantitative analysis was carried out on responses from individuals – over 90% of these responses focused on a single issue, namely, the issue of joint, same-sex or unmarried couple adoption. These responses have been recorded in the database within the general comments section. Summary codes were utilised by grouping together the responses that were essentially making the same or broadly similar point on the issue.

Responses to specific consultation questions were analysed using the Access database, which enabled comments on each question to be grouped together, compared and, where possible, quantified. Responses from sectors with particular expertise in or experience of an issue raised at a particular question have been highlighted.

As table 2.2 illustrates, the largest number of responses (381), representing 77% of the total number was received from those responding as Individuals. There were 115 responses from professionals/ organisations and these respondents were able to base their views on their professional and/or personal experience and insight into the issues.

The professional/ organisational respondents were grouped into broad categories as shown in table 2.2. As the table shows, the largest number of organisational responses was received from Local Authorities – 35 responses were received in this category, constituting 30% of the total number of organisations and 7% of the total number of responses. A proportionately large number of organisational responses (27) were received from Religious and Faith groups.

**Table 2.2**  
**Total number of Respondents by Category**  
 (Base: All Respondents)

Respondent Type	Number of respondents	Percentage of respondents (%)
Responding as an individual with experience of fostering/adoption	31	6
Responding as an individual	350	71
Responding on behalf of an organisation or group	115	23
<b>TOTAL</b>	<b>496</b>	<b>100</b>
<b>Breakdown of Organisation Type:</b>		
Adoption agencies	5	4
Adoption or fostering related organisations	7	6
Associations	3	3
Charitable organisations	4	4
Education organisations	1	1
Equality groups	11	10
Legal Profession	6	5
Local Authority*	35	30
Medical profession	6	5
Voluntary organisations	1	1
Public Bodies	5	4
Religious and Faith groups	27	24
Trade Union	3	3
Umbrella Group	1	1
		figures are rounded
<b>TOTAL</b>	<b>115</b>	<b>101</b>

\* Following advice from the Scottish Executive, the response from the Children's Panel Chairmen's Group has been included in the count of Local Authorities

### ***Gaps in Respondent Type***

A scan of the respondent list along with a review of the respondent organisations revealed no obvious gaps, although the three types of organisation least well represented were education organisations, voluntary organisations and umbrella groups.

## **CHAPTER 3: APPROACH TO ANALYSIS OF CONSULTATION RESPONSES**

In addition to deploying an organised and robust framework for identifying and collating relevant comments from respondents, the exercise also required a number of ground-rules to be set to ensure responses to the consultation were prepared for analysis in a consistent and sensible fashion.

### **3.1 Analytical Framework**

The analytical framework used in our analysis of the consultation responses was an electronic ACCESS database specifically written for this consultation. This enabled a combination of quantitative and qualitative analysis to be undertaken.

The electronic ACCESS database was used to store and assist analysis of all responses, including those that were lengthier or free flowing and which did not follow the structured questionnaire format. This database enabled the storage of free text in a systematic manner. The method of data entry could also be controlled via careful design of data entry forms to minimise the likelihood of any erroneous entries.

The fields used to record the material in the ACCESS database were based on the questions set out in the consultation document.

The text from free flowing responses, by far the largest number of responses, was where possible, assigned to a specific question and stored in the relevant field.

A copy of the database has been provided to the Scottish Executive under separate cover.

### **3.2 Publication of Written Responses**

Where respondents have agreed to publication these responses are available in the Scottish Executive library. After discussion with the consultation team, the convention adopted for this consultation has been to preserve anonymity of individual respondents and organisations, but to attribute their comments and quotes to the grouped respondent category to which they fit. In this way, a further depth is added to the analysis by providing some contextual information about the respondent type.

### **3.3 Ground Rules**

#### ***Separate Responses from the Same Individual/Organisation***

On occasions, a respondent may send in more than one response. The consultation team at the Scottish Executive were primarily responsible for identifying and removing any such duplicates. The research team at George Street Research were also prepared for the possibility of double entries in that they ensured that any identical or duplicate responses that had been missed were picked up and removed from the exercise. This was done by hand searching or electronic screening.

### ***Quality Control***

In order to minimise any inconsistencies in approach the research team at George Street Research was kept to a minimum size with all working to a well tested set of rules for data examination and entry. In accordance with our standard practice members of the research team verified 10% of coding and data entry and highlighted areas where a second opinion was required.

### ***Factual Accuracy***

The views presented in this analysis have not been vetted in any way for factual accuracy. The opinions and comments submitted to the consultation may be based on fact or may, indeed, be based on what respondents perceive to be accurate, but which others may interpret differently. It is important for the analysis to represent views from all perspectives. The report may, therefore, contain analysis of responses which may be factually inaccurate or based on misunderstanding or misinformation on the actual proposals but nevertheless reflect strongly held views. In some instances, such inaccuracies and misunderstandings will be relevant findings in themselves.

### ***Interpretation of Findings***

Those participating in the consultation exercise were self selecting and each had their particular motivation to take part. The exercise was not intended to gain views that were representative of the Scottish population, but was intended to give all those who wished to comment an opportunity to do so. This has to be borne in mind in interpreting the findings presented here in this report.

**Given the self-selecting nature of any consultation exercise, it should be noted that any statistics quoted here cannot be extrapolated to a wider population outwith the consultation population.**

## **3.4 Reporting**

The following chapters document the substance of the analysis, presenting the main issues, arguments and views expressed in the responses. These follow broadly the ordering of issues raised in the consultation document. Verbatim quotations have been taken from the database for illustrative purposes. The themes and issues that emerged during the Scottish Civic Forum events have been incorporated into the relevant chapters of the analysis.

### ***Report Structure***

Our analysis along with this report has been structured to follow the sections as laid out in the questions that were posed in the consultation document. The findings are presented for each of these questions in chapters 4 to 12. Chapter 13 then provides the views emerging to questions 1 and 2 of the consultation which asked for general comments on the recommendations of the Group and the Executive's proposed responses or on any aspects of adoption and permanence law not covered in the Group's report that should be reflected in future legislation.

## CHAPTER 4: ADOPTION

### 4.1 Introduction

*The traditional concept of adoption is a child being voluntarily given up for adoption and being adopted by a couple who want a child of their own. However, this is happening on a less frequent basis and today, most children who need new homes are older and have come into the system after being taken away from their birth parents. Furthermore, the number of people who apply to adopt or foster children is also falling. The Scottish Executive is concerned that the present system and laws do not meet the needs of those being adopted or those adopting and has highlighted a number of questions in relation to this.*

*This chapter presents responses to the “adoption” section of the consultation (questions 3-6) and focuses on who should be allowed to adopt, the criteria that should be taken into account during the adoption process and the views that should be considered during the adoption process. Questions 3-6 in the consultation document were as follows :*

3. *The Executive would welcome views on the appropriate definition of an unmarried (or unregistered) couple for a Scottish court to apply in deciding whether to make a joint adoption order, bearing in mind the Executive’s intention that the court should consider the enduring nature of the relationship. (Recommendations 6 and 7)*

4. *The Executive would welcome views on whether there should be a power for Ministers to make regulations to ensure that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship. (Recommendations 6 and 7)*

5. *There are other issues raised by the proposal on which the Executive would welcome views:*

- What other factors should the court take into account in deciding whether an unmarried couple should adopt a child? For example, should the views of birth parents of the child be considered?*
- Should there be any exceptions of special rules, for example for faith-based adoption agencies?*
- Should the Executive issue guidance on considerations to be examined in determining the best interests of the child, and what might such considerations be?*

*(Recommendations 6 and 7)*

6. *The Executive would welcome views on the issues on which parental views should be sought in placing a child for adoption. (Recommendation 11)*

### 4.2 Definition of an Unmarried Couple

In terms of responses to question 3, there were over 50 direct answers or comments directly relevant and these came predominantly from organisations. Two key points were raised by respondents.

The first, mentioned by 16 organisations and 1 individual, agreed that the Adoption and Children Act 2002 should be used as a basis for Scottish legislation and that the wording used; “two people living as partners in an enduring family relationship” was an appropriate definition.

A similar number of respondents raised comments in relation to the need to ensure that a detailed assessment process should be used to assess unmarried couples in the same way that married couples are assessed at present; 3 of these did not see the need to legislate on an action that they perceived was already being carried out. This assessment, it was felt, would take into account the fact that all situations are different.

Five respondents asked that clear guidance and training be given to those involved in the assessment process. The following quotation from a Charitable Organisation illustrates this view:

*“The adoption assessment process will itself explore the nature of that strength and stability as part of the focus of its enquiry. That information could be presented to the court to assist them in deciding whether the relationship is sufficiently stable and permanent to take on the potential challenge of adoption.”*

Eight respondents felt that it would be difficult to phrase a standard definition and that a loose definition could cause inconsistencies if interpreted differently across local authority areas.

Across the qualitative discussions and at the Scottish Civic Forum meetings, there were preferences from many for adoption by “traditional, conventional couples” (i.e. married male and female couples) but comments also focused on the needs of the child and that these should be paramount in the adoption process. While some respondents participating in the qualitative discussions were opposed to the concept of adoption by couples other than a married male and female couple, those who were not opposed to joint adoption by unmarried couples were primarily of the view that the same criteria should be imposed for any couple looking to adopt a child. That said, most of these respondents were unaware of what criteria is currently levied on potential adopters.

Generally, where participants thought it acceptable that unmarried couples should adopt, they were accepting of same-sex couples also adopting, although there were concerns that the sexuality of the adoptive parents could add another factor of discrimination to the adopted child’s life. A view was expressed at one of the Scottish Civic Forum meetings that a child who had suffered from abuse could find it difficult to form a relationship with an adopter of the same sex and that this might be a relevant issue to take into account. It was suggested that older children’s views could be sought on being placed with a same-sex couple.

One or two respondents participating in the qualitative discussions offered anecdotal evidence that some married male and female couples had been turned down for adoption and queried the reason for this at a time when the numbers of potential adopters were decreasing. There were also some comments from these respondents that there should be nationally agreed criteria for an appropriate definition of adults able to adopt and that different local authorities needed to be consistent in their application of this.

Those responding to the consultation made a variety of suggestions as to criteria that could be used to aid the definition. The need to set some sort of minimum term requirement was mentioned by 12 respondents, some of whom made specific suggestions; 2 years (7 respondents), 3 years (2 respondents), 5 years (1 respondent). One respondent expressed the view that there was no need to set a minimum term and another thought that there should be a mechanism for recording the start of a relationship.

Four respondents felt that marriage was the only suitable definition of a couple; 1 respondent felt there should be a firm plan to marry and a further individual thought there should be some form of legal arrangement in place. Three respondents asked that the issue of the commitment of the couple, including exclusivity, be addressed and three respondents felt that there should be proof of joint financial arrangements.

Four respondents felt that, wherever possible, the child should have a say on the suitability of the couple.

Views expressed by those participating in the qualitative discussions mirrored those expressed by individuals responding to the consultation paper and a number cited the overall importance of the vetting process and the need for this to be fair and just. Similarly, there were also acknowledgements from a small number of respondents on the low numbers of couples coming forward to adopt a child and comments that there needs to be wider access to adoption generally. Three individuals who had been adopted in Scotland noted that any child is better within a family environment (whether based on a married or unmarried couple) than in care.

A number of criteria were cited by those at Scottish Civic Forum meetings as being important and these included the ability to offer a loving, stimulating, supportive home: that the relationship was stable, responsible, loving, had some degree of demonstrable permanence (commitments of three to five years were suggested) and had joint financial commitments, such as a mortgage in joint names; one or both of the partners should be working; how a couple interact and cope with stress. Screening could include interviews with former partners, colleagues and neighbours as well as friends and family. Some thought that a Civil Partnership could be a bonus factor in any assessment, while others thought that the ability to offer a loving home was the most important factor as well as couples being given training in childcare. Whatever criteria were laid down, these should be consistently applied across Scotland, with professionals not bringing in their own personal values.

In the words of one adoptive parent talking about unmarried couples jointly adopting, attending a qualitative discussion,

*“Stability is the issue and their ability to cope with the child. The key question is probably “will they be as stable as a married couple?” but then lots of married couples split up. They shouldn’t take kids out of families to put with more affluent families simply because of affluence. The key thing is can they cope with the kid and can they provide stability?”*

Some participants also noted that single people should not be excluded from adopting children and there was divided opinion about whether same-sex couples should be allowed to foster children.

In terms of the appropriate definition of an unmarried (or unregistered couple) for a Scottish court to apply in deciding whether to make a joint adoption order, the minimum suggested time period for any adoptive couple (married or unmarried; same-sex or not) was 2 years with some suggesting that 5 years or longer was more appropriate. However, there were also some comments that a higher proportion of those in unmarried relationships split up with their partners. The converse of this position showed that (and as noted in the following verbatim quotation), there were also some comments that the divorce rate among married couples is high and that it cannot be assumed that marriage implies greater longevity to a relationship.

*“It (adoption by married couples only) sends out the message that same-sex couples are of less value than conventional couples. It says that the relationship is less likely to last and with the divorce rate being what it is, that isn’t really the case.”*

(Adoptee)

In the case of unmarried couples, there were some comments that proof of the enduring nature of the relationship could be evidenced by joint financial commitments such as a joint mortgage or joint bank account and / or commitment under a civil law partnership agreement. There were also comments from some that we live in a society where relationships break down and that protecting the interests of the child is paramount. As such, they focused less on the enduring nature of the relationship and more on the protection of the child in the event of a relationship break down.

### **4.3 Stability and Permanence in a Relationship**

*Question 4 of the consultation asked for views on whether there should be a power for Ministers to make regulations to ensure that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship.*

Twenty-six organisations expressed a view with regard to this question. Thirteen of these organisations thought that there should be a power for Ministers or some form of regulation, although 9 did not give any supporting reason for their view. One thought that by avoiding primary legislation there would be a degree of flexibility should it be needed in the future. Two respondents felt this would be beneficial in standardising criteria and one expressed the view that stability was an important factor.

Ten organisations disagreed or were not convinced of the need for a power for Ministers. Eight of these respondents felt that assessment was necessary on a case by case basis. One disagreed with the need for a power but with the possible exception of there being a set minimum term for a relationship. One organisation from the legal profession felt that following the example in English law would suffice.

Of the remaining organisations who commented at question 4, one felt there should be national guidance standards set, another commented on the need to ensure the best interests of the child are adhered to in the event of a relationship break-down, while the third commented on the difficulty of defining a relationship.

Views expressed during the qualitative research also followed the same considerations, although some respondents expressed the view that adoption should be open to all wanting to adopt, including both unmarried couples and single individuals. For example,

*“As long as the guidelines and screening happens then I don’t see any problem with single people adopting. There are plenty of one parent families.”*

(Adoptee)

In general, there was **agreement that there should be a power for Ministers to make regulations to ensure that proper regard is had to the need for stability and permanence**. That said, almost all respondents participating in the qualitative research noted that **the needs of the child should be paramount and central to any decisions being taken**. Some noted that in order to meet the needs of the child, a degree of flexibility will be needed. The focus of what is important in selection of adoptive parents focused less on available finances and much more on provision of a loving and stable family environment.

The Scottish Executive has noted its support for Recommendations 6 and 7 of the APRG report. However, these two recommendations in particular received comment from almost all of the 381 Individuals responding to the consultation. Only 8 Individuals did not comment on either of these recommendations. Given the large number of comments in relation to these recommendations, we conducted quantitative analysis to identify key themes emerging.

As can be seen in table 4.1 overleaf, the key points respondents focused on were that they were against same-sex couple adoption (cited by 89%) or that they were against unmarried couple adoption (cited by 83%). Most of these respondents (305) were against both issues.

Just over two in five (43%) noted that children need a mother and father as role models. The issue of marriage was clearly important to some respondents, with 37% mentioning that marriage provides the most secure framework for raising children and 34% stating that co-habitation is less stable than marriage.

Smaller proportions of consultees also noted that it should be easier for married couples to adopt / stop political correctness (24%). One in five (20%) noted that they should do what is best for the children / in the child’s best interest. A similar proportion (20%) also noted that children who are to be adopted are vulnerable and need a stable family environment to grow up in. A minority of consultees specifically noted that they were against same-sex or unmarried adoption on moral or religious grounds (18%) while 13% noted that the European Court of Human Rights has ruled against homosexual couples having the right to adopt.

A variety of other comments were made by less than 10% of consultees and these are also shown in table 4.1 overleaf.

**Table 4.1**  
**Quantitative Views on Recommendations 6 and 7**

	<b>Total Sample</b>		<b>Individuals with Experience of Adoption *</b>	
	No	%	No	%
Against same-sex couple adoption	338	89	21	68
Against unmarried couple adoption	316	83	16	52
Children need a mother and father as role models	165	43	9	29
Marriage provides the securest framework for raising children	140	37	8	26
Co-habitation is far less stable than marriage	129	34	5	16
Make it easier for married couples to adopt/stop political correctness	92	24	4	13
Do what is best for the children/in the children's best interest / for benefit of child not adult	77	20	6	19
Children who are up for adoption are very vulnerable and need a stable family environment to grow up in.	75	20	6	19
Against same-sex couple adoption on moral / religious grounds	68	18	1	3
Children brought up in a traditional family are less likely to be society drop-outs	56	15	2	6
European Court of Human Rights has ruled against homosexual couples having the right to adopt	51	13	1	3
Homosexual relationships are far more unstable than heterosexual/married ones	37	10	2	6
No proof that law changes in England and Wales have led to extra adoptions	36	9	1	3
We should not try to undermine the special and positive place of marriage in society	35	9	-	-
Majority of population in favour of "status quo" / Scottish Executive should listen to majority's view	34	9	1	3
If couples can't be bothered to commit to marriage, how will they be able to commit to bringing children up?	32	8	3	10
Political correctness has gone too far	28	7	2	6
Homosexuality is not natural	25	7	3	10

\* This number count is based on those responding to the consultation who noted that they had experience of the adoption process. In reality, this number may be higher.

Among individuals responding to the consultation, only 21 (6%) expressed their support for same-sex couple adoptions and 12 (3%) expressed their support for adoption by unmarried couples.

A higher proportion of organisations specifically supported adoption by same-sex couples (32%) and 30% were in favour of adoption by unmarried couples. That said, 22% of these organisations were opposed to adoption by same-sex couples while 18% were opposed to adoption by unmarried couples.

#### **4.4 Other Issues for Consideration**

Within this section of the consultation paper, question 5 received the greatest number of comments (164 respondents; 105 individuals and 59 organisations), although the majority of these responses dealt with the question relating to whether there should be any exceptions or special rules, for example, for faith-based adoption agencies.

In assessing what other factors the court should take into account in deciding whether an unmarried couple should adopt a child, of those responding to the consultation, twenty-three organisations and 4 individuals felt that the wishes of the child should be considered. A further 8 organisations pointed out that this was already best practice and should continue. The question of the child's age and understanding was raised by 9 respondents. The following quotation from a Local Authority was typical of those made.

*“The weight given to these views requires to be assessed on the basis of the child's age and stage of development.”*

Thirty organisations and 3 individuals agreed that the views of birth parents should be heard; 10 organisations and 1 individual pointed out that this already takes place. Twenty of these respondents commented that while the birth parents should be allowed to express a view, this should not take precedence over the welfare of the child:

*“The birth parent's wishes should also be taken into consideration however the needs of the child are paramount and should override the parents views. Guidance would be welcomed.”*

(Local Authority)

Four local authorities requested guidance on what weight should be given to the views of birth parents.

Again, the views of those participating in the qualitative discussions tended to focus on what was considered best for a child and again cited the need for flexibility in the adoption process to allow for this to be fully taken into account. Many felt that the older the child, the more emphasis had to be given to their views in order to ensure full acceptance with the family they are about to join.

The issue over whether or not birth parents should be given a say in deciding whether an unmarried couple should adopt a child was relatively polarised. Perhaps not surprisingly, birth parents participating in discussions felt that their views should be taken into consideration, so that, for example, if they are opposed to adoption by unmarried couples,

then their child should automatically only be considered for adoption by a married couple. However, those individuals who had been adopted or who had adopted felt that the views of the birth parent – who was giving up the child for adoption – were of less importance than those of the child and the adoptive parents.

That said, the extent to which the views of birth parents should be considered often varied according to the age at which a child is adopted. For example, where a baby or very young child is being adopted and is likely to have no recall of a previous family life, it was felt that although the views of the birth parent should be considered, they should have little impact on the adoption. Conversely, the views of a birth parent were considered more important where a child could remember its birth family and who had developed attitudes and perceptions based on their life with their birth family. The following quotation from an adopted individual demonstrates the need to offer flexibility during the adoption process.

*“Well I think if somebody feels that strongly about it then yes it might be (important) because you don’t know at what point in the future those family members may be reconciled and if you know that is a really big important issue .... I mean it depends what it’s for. If it’s purely just a purely bigoted kind of reaction to it then .... But it may be for religious reasons they have particularly strong views about something in which case then that should be taken into account because you don’t know how much influence that’s going to have had on the child.”*

Some of the family members we spoke to also cited the need to consider the views of other family members, particularly in the case of older children who would be able to recall birth family members. For example, there were suggestions that the views of grandparents or siblings should be taken into account and some also cited a need to allow for ongoing contact with birth family members if this was in the best interests of the child.

Finally, one professional referred to the need to relate these issues to the law, so that if the law says that relationships of unmarried couples are equal to that of married couples then the same tests will need to apply to all.

#### **4.5 Exceptions or Special Rules**

The question regarding whether there should be any exceptions or special rules, for example for faith-based adoption agencies, received a great deal of comment from those responding to the consultation, with 132 respondents commenting on whether there should be a “conscience clause” for faith-based adoption agencies.

**Ninety-three individuals and 22 organisations (including 10 Religious and Faith based organisations) felt that there should be a conscience clause.** Two main reasons for this were highlighted; first, the need to avoid litigation when the selection process has declined an adoption application; and, second, the need for agencies to be independent of pressure from local authorities. For example,

*[We] “strongly support an opt-out clause for faith based adoption agencies which have a conscientious objection to placing a child with either an unmarried or same-sex couple. It would represent a serious infringement of*

*religious liberty and freedom of conscience if faith based adoption agencies found that they were being pressurised by social work departments to place children with unmarried and same-sex couples against their better judgement and conscience. In our view the local authority concerned and the new legislation could become the subject of legal challenge under the European Convention of Human Rights in this scenario. It is important that the Executive not only includes an opt-out clause, but also issues guidance to social work departments which emphasises that faith based adoption agencies should not be discriminated against when decisions are made to refer children for placement with adoption agencies. This would also apply to decisions regarding local authority funding of voluntary sector organisations, the drafting of service level agreements and the identification of approved provider organisations.”*

(Religious and Faith groups)

A much smaller number of respondents (1 individual and 16 organisations) were against inclusion of a conscience clause. However, as demonstrated in the following quotation, some respondents would be prepared to argue exemptions on a case-by-case basis.

*“Although, in our view, faith based agencies should not have a collective opt-out clause from equalities legislation, we do think there should be provision for agencies - of any sort, and not necessarily those based on a faith - to apply for exemptions and argue them on a case-by-case basis. We recommend that any adoption agency that has applied for and won an exemption to the adoption and fostering legislation should make this immediately clear on their promotional literature and websites.”*

(Religious and Faith group)

The professionals participating in qualitative discussions, and many of the individuals, also expressed concern that the inclusion of a conscience clause would, in effect, allow for an adoption agency to be placed above the law and cited concerns over the “narrowness” of a process that allowed this to happen. Again, there were some acknowledgements that each adoption case needs to be considered on an individual basis and that there may well be reasons as to why a particular child should not be placed in a specific family environment. That said, some of these respondents cited a recent television programme regarding adoption in England and noted that one of the adopting couples was same-sex and that the child being adopted (a boy of around 7 years of age) was perfectly happy in his new family environment. However, one individual responding to the consultation noted that the programme had been biased and showed the married couple in the worst possible light.

The important issue here was perceived to be whether or not the child was happy. While one or two respondents commented that children can be cruel to each other and that being part of a family with same-sex parents would lead to teasing in the playground, others noted that children will always tease each other about some aspect of their life.

#### **4.6 The issuing of guidance**

While this issue was of less concern than that of exemptions or special rules, 15 organisations and 8 individuals responding to the consultation welcomed guidance from the Scottish

Executive on considerations to be examined in determining the best interests of the child. As demonstrated by the following quotation from an Association, a number of different issues need to be taken into consideration.

*“It would be helpful to have guidance on best interest but they should take into account the long term interest of the emerging adult, the cultural and racial background of the child and their rights in terms of the UN Convention on the Rights of the Child.”*

Professionals participating in the group discussion also noted that given the relatively small number of adoptions in any local authority and the inconsistent approach adopted across different local authorities, that any guidance would be welcomed. This guidance was perceived to be useful for all individuals involved in the adoption process, including local authority staff, adoption agencies and court based staff. While there were acknowledgements that different circumstances mean that each case has to be treated on an individual basis, examples of good practice and guidance would help in the decision making process. There were some suggestions that there is already a sharing of information across some agencies, albeit on an informal basis.

Responses to this specific question from individuals responding to the consultation focused on the need for the Executive to reconsider their support for recommendations 6 and 7, as this support is not perceived to be in the best interests of children. One individual expressed the view that the Executive should take more steps to prevent the break-down of relationships and 1 or 2 respondents participating in the qualitative discussions suggested that intervention should be made at an earlier stage in a child’s life in order to avoid adoption altogether.

Three organisations disagreed with the need for guidance; two local authorities expressed the view that this is already a core skill for their staff, one organisation from the Legal Profession commented:

*“In our view the issuance of such guidance could be liable to result in a narrowing of the scope of matters which might properly be taken into account. The better course is to continue to enable a broad consideration of the best interest of the child.”*

(Legal Profession)

The qualitative discussions suggested that there is a **need for guidance to all individuals involved in the adoption process** because there is inconsistency in terms of what practice is currently followed and the training offered to individuals working within the adoption arena. These issues will be discussed in greater detail later in this report.

#### **4.7 On which issues should parental views be sought?**

This final section in this chapter deals with the issues on which parental views should be sought in placing a child for adoption and is based on recommendation 11 of the consultation *“that there should be a duty on agencies to consider parental views on a wider range of matters than religious upbringing when placing for adoption.”*

**A total of 35 organisations expressed their views on this subject, and 32 of these agreed that parental views should be sought.** One Religious and Faith Group disagreed. One local authority commented solely on the importance of the child's welfare. One adoption agency had canvassed opinion and reported mixed views.

Of the 32 organisations who expressed the view that parental opinion should be taken into consideration, there were a variety of aspects which it was felt should be considered:

- Culture / ethnicity / national identity (17 respondents)
- Religion (14 respondents)
- Language (12 respondents)
- Composition of the family (4 respondents)
- All opinions (3 respondents)
- Information which the child may want in the future (2 respondents)

Lifestyle, geographical issues, interests and talents were each mentioned by 1 respondent. One charitable organisation felt that the views of the extended family should be considered and proposed the use of the Family Group Conference.

Eighteen of these respondents highlighted the fact that, although the views of the birth parent should be taken into consideration, the welfare of the child should remain the paramount consideration. With the exception of two birth parents, this view that the welfare of the child is all-important was also expressed by most of the respondents participating in the qualitative discussions.

The issue of training for staff was raised by two respondents who highlighted the need for local authority staff to be given full training in the understanding of the importance of cultural or religious issues. One respondent also felt that guidance was needed on the weight which should be given to the views of birth parents. Another respondent requested guidance on whether the views of the birth father should be considered. When considering this issue during the qualitative discussions, most respondents focused on the views of the birth mother. Some did not consider the views of the birth father, albeit that others noted that, particularly for older children, the views of their birth father need to be included alongside those of the birth mother. As demonstrated by the following quotation, there were some views that birth parents should be allowed a say (especially on the grounds of religion) but that there should be no automatic right to a birth parent to dictate who adopts their child.

*"I am not saying those demands should be met but if they have got wishes I think they should try and take that into account."*

(Adoptee)

There were some concerns from those participating in qualitative discussions that if birth parents (usually the birth mother) are allowed a say in who adopts a child or can put stipulations on adoption, it may put off some potential adoptive parents.

**In summary, there were acknowledgements of the intricacies involved in the adoption process and the wide range of views that could be taken into account when placing a child for adoption.** That said, a number of respondents participating in the qualitative discussions emphasised that **the child to be adopted has to be central to any decisions made and that their welfare should be placed above all others.**

There were also some comments that there is a need to introduce legislation that will allow for both individuals within a relationship to jointly adopt and that the range of those able to adopt needs to be extended.

While there was a view expressed by many respondents that the “ideal” adoption scenario for any child is within a married male and female couple offering a stable and loving environment, there were also acknowledgements that the circle of those able to adopt needs to be extended in order to ensure greater numbers of the children currently being looked after by local authorities are adopted.

**Most opposition to adoption was regarding same-sex adoption and many individuals responding to the consultation paper requested inclusion of a conscience clause for adoption agencies.** However, this was not welcomed by most of the professionals working within the adoption arena who participated in this study.

## CHAPTER 5: PERMANENCE ORDER

*There are currently a wide range of alternatives to adoption including a ‘Supervision Requirement’, a ‘Parental Responsibilities Order’, a ‘Freeing Order’ and a ‘Residence Order’. The Adoption Policy Review Group considered that these various alternatives do not give a clear, long-term legal security for children and carers and, in the worse scenario, can leave a child in a state of limbo about who has parental responsibilities for them.*

*The Group is proposing to introduce a new type of order – A Permanence Order – to replace ‘Parental Responsibilities Orders’ and ‘Freeing Orders’. This is perceived to have a number of advantages:*

- It would be flexible enough to take account of the different needs of children*
- It could allow for varying degrees of contact with birth families (where preferable)*
- It could allow for children’s circumstances to change*
- It would also mean that foster carers would keep their right to support, including financial support.*

*This chapter of the report covers Questions 7-8 of the consultation paper which was based on Recommendations 19 to 25, 28 and 29 of the APRG and presents the views of respondents on the introduction of a ‘Permanence Order’.*

*Question 7: The Executive would welcome views on the principle and details of the Permanence Order, in particular any practical or procedural issues that might arise from use of the Orders, and how these can best be addressed. (Recommendations 19-25)*

*Question 8: The Executive would welcome views on the role of the hearings system in Permanence Orders, in particular any practical difficulties that would be raised by the recommendations and further suggestions on how the special arrangements that have been made for children on permanence orders can be recognised by the hearings system. (Recommendations 28 and 29)*

### 5.1 Introduction of a Permanence Order

A total of 7 individuals and 59 organisations made comments in relation to question 7. **The introduction of Permanence Orders was welcomed by the majority (59) of consultees.** Only 1 respondent (an Equality Group) did not think Permanence Orders necessary. Seven respondents reserved judgement as they felt **guidance and clarification needed to be given as the system appears complicated and could lead to conflicts.** While the greater flexibility provided by Permanence Orders was welcomed by 14 respondents, a further 2 cautioned that this flexibility could prove problematic. For example,

*“We agree that, as a minimum, the Permanence Order should remove the right of the parent to determine the child’s residence or to have the child live with him/her. The corollary is that the Order would provide the local authority with the right to determine residence. Other rights and responsibilities require to be determined on a case by case basis. Otherwise, the desire for flexibility to meet the needs of each individual child would not be met.”*

(Legal Profession)

One local authority expressed the view that a Permanence Order may become the preferred option to avoid contested cases. Four organisations and 1 individual urged that adoption remain the preferred option.

The greater responsibility and clarity for foster carers was welcomed by 9 organisations but the need to detail their responsibilities was also raised.

*“We do think the child should continue to be looked after away from home which has the additional advantage of ensuring that the local authority has throughcare and aftercare responsibilities for the child when he/she is no longer looked after. There are a number of foster carers who would like additional parental responsibilities or rights, but do not pursue these as they are concerned that they would not then receive the levels of support which they have as foster carers. This may go some way to resolving some of these issues.”*

(Local Authority)

The **need for clear procedures, guidance and training** for those involved was commented on by 15 organisations and 2 individuals.

*“We feel it’s imperative that training programmes are developed and delivered across all agencies to ensure a universal understanding of all of the issues surrounding permanency.”*

(Local Authority)

One response from a legal profession advised that:

*“We agree that there should be scope for provisions attaching to a Permanence Order to allow the local authority to place the child for adoption. However, such a far reaching provision for the child within the Permanence Order requires that careful scrutiny be given to the procedural implications and the provision of accurate information to parents.”*

This was seen as being of particular use for cases involving older children (3 individuals and 1 organisation).

One local authority suggested *“that there be an option for the Court to opt not to apply looked after and accommodated status e.g. in the occasional situation where a grandparent has care of a child but does not wish to pursue a Residence Order.”*

The word “Permanence” was seen as misleading by one Religious and Faith Group, who suggested replacing it with “long term.”

The probability of increased legal aid costs was raised by an organisation from the legal profession, along with the need for an amendment to regulation 18 of the Civil Legal Aid (Scotland) Regulations 2002 concerning special urgency. That said, one or two respondents taking part in the qualitative discussions commented that it might reduce the need for legal aid in line with the reduced options for a birth parent to delay decisions by making appeals.

14 organisations highlighted or asked for clarification on areas which they felt the procedures were unclear. These included: explicit, tight timescales (3), leave of court requests, appeals or reviews (5), pre-court procedures and pre-adoption orders (2). Two organisations requested clarity regarding situations in which there exists joint parental rights between local authorities and foster carers; one adoption or fostering related organisations commented *“There may also be some practical difficulties where there is shared parental responsibility and clear guidance is essential.”* A response from a legal profession mentioned *“If it is envisaged that the foster parents would be given parental responsibilities and rights as part of the new Permanence Order, would they then be a party with the Council to the application, or will parental responsibilities and rights be delegated by the Council once the Permanence Order has been made in its favour?”*

There were no spontaneous comments concerning the issue of Permanence Orders from individuals participating in the qualitative discussions and most were unaware of the variety of orders that currently exist within the adoption framework. When prompted, almost all respondents agreed that the system should prioritise the child and some adoptive parents did comment on the often lengthy procedure to adoption and the need to reduce this for the benefit of all concerned but particularly from the viewpoint of the child being adopted. Two adoptive parents who had relatively recently gone through the adoption process commented on the capacity of a birth parent to delay the adoption at various points in the process and the emotional damage that this can cause to a child.

Some of the professionals were critical of the adoption process as it stands, and, in theory, welcomed the concept of a Permanence Order if this offers flexibility that is not currently available. There was a general view that there was a need for varying degrees of contact with birth families and that there needs to be something that takes this into account. That said, two parents who had adopted older children commented that the capacity to offer contact with birth families needs to be considered very carefully as this can sometimes increase the level of chaotic behaviour exhibited by an adopted child. Another respondent – an adoptive parent – noted that if a Permanence Order helped to simplify things, that would be beneficial but also had a concern that if this was too flexible this could lead to future problems.

*“It is good if it helps to simplify things but in my experience sometimes something that is aimed to be flexible, doesn’t always help to simplify things. A child needs stability and you need to be able to be legal parents forever once you have adopted. You don’t want things changing every few years.”*

(Adoptive Parent)

There were also some comments that whatever approach is taken, there is a need for training so that any professionals involved in the adoption process have a clear understanding of the implications of a Permanence Order and what they are allowed to agree under this.

## **5.2 Role of the Children’s Hearings system in Permanence Orders**

*Question 8 asked about the role of the hearings system in Permanence Orders, and in particular any practical difficulties that would be raised by the recommendations as well as further suggestions on how the special arrangements that have been made for children on permanence orders can be recognised by the hearings system. (Recommendations 28 and 29)*

A total of 2 individuals and 44 organisations commented on this question.

The view that it was preferable to have the Court take the lead in Permanence Orders was expressed by 20 organisations:

*“There is value in one Court having control over decisions about the child rather than allow possible conflict between the Court and the Children's Hearing system.”*

(Individual)

However, the need for ongoing involvement by Children's Hearings was expressed by 11 respondents.

*“Children's Hearings do not lightly interfere with children's residence or contact arrangements, however these arrangements arise, but should be able to do so if this is necessary to secure the welfare of the child. The welfare of the child is paramount. If, for example, a child discloses to a Children's Hearings that they are being abused at the Permanence address or during contact, is it really intended that the hearing be unable to act?”*

(Local Authority)

**The issues of training and funding for those involved in the system were highlighted** by 6 respondents and these specific issues were also commented on by professionals participating in the qualitative discussions. As well as ensuring adequate training for those who sit on these Hearings, one Professional respondent also noted that there should be consistency in the individuals who sit on Children's Hearings given that one case may be presented to more than one hearing during the course of an adoption.

**The need for clarity in the role of the Children's Hearings** was raised by 5 organisations and 1 individual, with one Religious and Faith group remarking on the long history of Children's Hearings in giving advice; this, it was felt, should continue.

*“It is suggested that at the point a Looked After and Accommodated Review makes a recommendation of permanence for a child, a standard letter be sent to the Children's Hearings System to inform them of this. A formal request for advice from the Children's Hearings should be made following the decision of the Adoption Panel. This means the role of the Children's Hearings is clearer; they are offering advice, not becoming involved in planning. The important issue in permanency planning is that one forum either the Courts or the Children's Hearings System deals with it. Currently there is confusion of roles, and this needs to be resolved.”*

(Local Authority)

Seven respondents thought that the proposals would lead to a system which was contradictory or complex; two of these respondents felt this could be confusing for the child.

Again, most respondents participating in the qualitative discussions had little awareness, knowledge or experience of the Children's Hearings systems and, as such, provided little comment on this aspect of the consultation (other than to reiterate that whatever system is used should prioritise the needs of the child). The professionals who did comment reiterated

the comments already noted in the previous paragraphs. One respondent noted that *“the Children’s Hearings system wasn’t designed to look at long-term permanent care needs of children; I mean, it hasn’t changed its structure at all to take that into account.”*

At the Scottish Civic Forum meetings, some participants felt unable to fully address this question as they did not have enough detailed knowledge of the processes currently in use. Nevertheless, there was an overall wish for a system that would work in the best interests of the child. Many thought that a system that avoided delays for the child, was flexible and was applied across Scotland consistently would be helpful – there were concerns that deliberate delays by others were detrimental to the child, so a simpler, quicker system was generally welcomed. The importance of trained professionals making decisions was emphasised by some, rather than lay people making decisions – there were concerns about Children’s Panels; this may also tie into the desire by many for any system to be applied across Scotland consistently.

There were also some concerns that not enough is being done to involve the extended birth family, such as grandparents, in potentially caring for/adopting the child and more efforts should be made to support birth parents/families in caring for their children. If Permanence Orders could make it easier for birth family members to adopt then this was welcomed. There was support for flexibility over contact arrangements yet also concern that there needed to be discretion over this and a worry that a child having contact with a birth family may be off-putting for potential adoptive parents – what level of responsibility would the adoptive family have for the child where the birth family was still involved? There was great concern that grandparents lost contact with their grandchildren through the actions of their children who gave up their own children for adoption.

Mention of guardianship arrangements was made – this found more favour with those who had given up children for adoption and less with those who had adopted children.

In summary, most respondents agreed on the need for a more coherent system to be put in place to ensure that the adoption process is less lengthy than at present and adoption of a Permanence Order is seen to go some way to addressing this issue.

However, some individuals working within the adoption sector noted that there needs to be training for individuals working within the adoption system and consistency in the understanding and approach of Children’s Hearings.

There were also calls for clarity in the role of Children’s Hearings and a need to ensure that individuals involved in these have a proper understanding and training on the issues impacting on adoption in Scotland.

## CHAPTER 6: SUPPORT FOR ADOPTION

*Current support services for adopted children and adoptive parents include counselling and assistance. Counselling is also available for other people affected by adoption, such as birth parents of adopted children. Children in long-term foster placements remain 'looked after' children and the local authority supports them under other legislation. The Adoption Policy Review Group recommended that adoption support services should be: counselling, advice, information and financial support, as well as other services prescribed by regulation. They also recommended that the services should be available to all parties involved in adoption.*

*This chapter of the report covers questions 9-12 of the consultation paper which was based on Recommendations 33-36, 38, 41 and 42 of the APRG report and presents the views of consultees and respondents on support for adoption.*

*Question 9: The Executive would welcome views on what additional adoption support services might be prescribed. (Recommendations 33-36)*

*Question 10. The Executive would welcome views on the recommendation that local authorities should have an adoption support officer within the senior management team. (Recommendation 38)*

*Question 11. The Executive would welcome views on the recommendation that a local authority placing a child for adoption should have responsibility for providing adoption support services to the child and the adoptive family for three years after the adoption order, in particular whether the period of three years is appropriate. (Recommendation 41)*

*Question 12. The Executive would welcome views on how widespread any entitlement to adoption support should be – for example, should grandparents and siblings have a right to support – and on what services different groups of people should receive, for example should birth relatives have a right to any services beyond counselling. (Recommendation 42)*

### 6.1 Additional Adoption Support Services that might be prescribed

Eight individuals and 58 organisations responding to the consultation document commented on this specific issue.

While there was widespread support for these recommendations, the **issue of staffing resources and funding implications** was raised by 28 organisations responding to the consultation (including 19 local authorities) and 1 individual. This was also a concern mentioned by professional respondents participating in the qualitative discussions who noted that **more staff would be needed if a greater level of support services were to be offered.**

The recommendation that there should be a **national scheme of adoption allowances was supported by 17 organisations and 1 individual responding to the consultation.** Only 1 (an adoption or fostering organisation) expressed a view that there should not be any payments made to adopters.

However, there were a number of views put forward by respondents participating in the qualitative discussions on the issue of adoption allowances. Many adoptive parents

considered that they were no different to any other parents and should not be offered allowances that would not be offered to any parent seeking support or advice for a child of theirs. Most of these respondents felt that allowances should be made to foster parents who could have short term support needs, although they did not see a need to differentiate an adoptive parent from any other. However, there were comments that many older adopted children demonstrate higher levels of chaotic behaviour and, as such, their adoptive parents are more likely to need counselling and support services than their counterparts in the general population. Overall, qualitative respondents who were supportive of allowances being paid to adoptive parents felt that they needed to be offered on a case by case basis.

One adoptive parent – who had been a foster parent for a number of years – noted that allowances should be offered to adoptive parents in the same way as for fostering, although they noted that fostering allowances were minimal. They had concerns that many potential adoptive parents might be put off adopting due to a lack of financial payment, particularly if one of a couple had to give up work to be at home with the adopted child.

The key issue on which the professionals attending qualitative discussions agreed was that if adoption allowances are to be paid, there should be a national set level for these across all local authorities. It was also noted by these respondents that fostering allowances were inconsistent across local authorities and that this should be addressed.

At the Scottish Civic Forum meetings, many participants thought that adoptive parents should not receive additional financial support although foster carers should. That said, those who had adopted noted that adopted children could have additional support needs that entailed a greater financial burden and that financial support should be available. It was also noted that any financial support should also be available to extended birth family members, where they had adopted the child. These respondents also wanted to see national guidelines for financial support.

Those responding to the consultation referred to a wide range of additional adoption support services which might be prescribed, including:

- Counselling services, including those for birth parents – cited by 1 religious or faith group, 1 local authority, 1 adoption or fostering organisation and 1 medical profession
- A choice of services, not just provided by local authorities – cited by 1 adoption agency
- Services responding to therapeutic needs – cited by 3 local authorities, 1 umbrella group, 1 adoption or fostering organisation and 1 adoption agency
- A lifelong mentor or regulator – cited by 1 individual and 1 adoption or fostering organisation
- Support for adoptees when they reach adulthood – cited by 1 adoption or fostering organisation
- The need to make families aware of support on offer / provide information – cited by 1 religious or faith group, 1 adoption agency and 1 umbrella group
- Communication – cited by 1 medical profession
- Parenting skills or training for adopters – cited by 1 local authority, 1 medical profession and 1 adoption agency
- A Safeguarder – cited by 1 medical profession
- A Curator – cited by 1 medical profession
- Advocacy or mediation services – cited by 3 local authorities, 1 adoption or fostering organisation and 1 medical profession

- Finance – cited by 1 religious or faith group, 1 medical profession, 1 public body, 1 adoption or fostering organisation and 1 adoption agency
- Self-help groups – cited by 1 umbrella organisation
- Legal support – cited by 1 adoption or fostering organisation

Most of these additional services were also cited by respondents participating in the qualitative discussions where, overall, it was felt that **there should be a wide range of services available to any individual who has been affected by adoption in Scotland**. This included those who had been adopted, those who had adopted, birth parents and other birth family members such as grandparents or siblings.

One adoptive parent noted that they received more financial and emotional support when they had been a foster parent. When they first applied to be an adoptive parent, they had been provided with some intensive training but then noted that *“once we actually adopted, all help disappeared. Help isn’t very forthcoming (from the local authority). They seem to wash their hands of you once you have actually adopted.”*

At the Scottish Civic Forum meetings, respondents felt that **therapeutic and psychological support should be available to all parties involved in adoption**. That said, self-help/support groups should also be available but not as a substitute for professional assistance. Many participants thought that **there should be dedicated social workers for each party in any one adoption**, though some participants disagreed with this. There was also a suggestion that respite care could be offered to adoptive parents and that adopted children may require additional support at school, with schools being better informed about an adopted child’s needs and circumstances.

However, there were some questions raised as to the length of time for which services would be available to individuals. Some respondents participating in the qualitative discussions noted that adoptive children might not want access to any counselling services until a point in time – possibly some years later – when trying to contact original birth family members; conversely, some adoptive parents might need counselling services prior to, and immediately after, adoption of an older child; birth parents might need counselling for a number of years after giving a child up for adoption, or, in the case of those giving up older children, to help treat the reason for losing their child in the first instance.

The way in which these **services could be publicised** also received a degree of comment. **Many** of those participating in qualitative discussions (including birth parents, adopted children, adoptive parents and other family members) **were unaware of what support or advice services might currently be available**. A number noted that at a time when they had wanted support services of some kind, they had been unaware of which organisations or individuals they could approach for help. If any new or additional support services are introduced, those involved in adoption in Scotland in any way need to ensure that these are fully publicised and that information is provided to all relevant individuals. A few respondents noted that introduction of a national adoption register might help resolve issues around accessing support services or details of organisations providing support services. Two respondents suggested that birth parents should be given counselling to see if adoption can be prevented in the first instance and this suggestion also emerged during the SCF meetings.

Two respondents noted that a system such as that recently introduced in Ireland should be introduced in Scotland.

Overall, the qualitative discussions demonstrated a **greater preference for emotional / counselling support rather than financial support**. There were also concerns from some respondents that financial support should only be offered to a limited extent and there were concerns that financial support might encourage adoption for money.

The way in which any of these services might be delivered should be given careful consideration. Two adoptive parents noted that, whilst the concept of being able to access support services would be welcomed, they had concerns that they did not want to be “singled out as bad or incompetent parents”. One had experience of accessing support for an adopted child via the local primary school and a local health visitor and felt that this removed any potential for stigma to be attached either to themselves or the adopted child.

Among individuals responding to the consultation there were a number of issues raised on the availability of services including support to assist both adoptive and birth parents through the complex process of adoption; facilitated peer groups for adoptees (including the use of internet facilities for those in rural areas); and the need for support services to be synchronised:

*“Scotland lags badly behind England which has about 11 post adoption centres, and there are none here. There is an urgent need to establish a post adoption centre in Scotland as a central point and resource for information, training, research, advice and support and linking with local support services. As a part-time coordinator of a post adoption service I feel isolated, despite my efforts to make contact for example with Adoption UK Scottish co-ordinators. The Scottish Executive decision not to recommend that there should be a duty on a local authority to meet any assessed need is to put it mildly a cop out. In the 1976 and 1978 Adoption Acts in Scotland a duty was specified to provide post adoption services. But they are patchy, under-developed and not equally distributed.”*

(Individual)

One respondent attending a group suggested the **introduction of a mentor system** where, for example, a birth parent in the process of giving up a child could get support from another birth parent who had given up a child a number of years previously; or an adoptive parent could talk to other adoptive parents to see how they dealt with specific situations that might emerge. Another respondent said that this was already available from one or two existing adoption agencies.

## **6.2 Should Local Authorities have an Adoption Support Officer within the Senior Management Team?**

A total of 3 individuals and 39 organisations responded to the consultation on this specific issue.

While there was **general agreement** from those responding to this consultation question that **there was a need for local authorities to have an adoption support officer within the**

**senior management team**, 15 respondents felt that, especially in the case of small local authorities, a dedicated post may not be necessary:

*“We appreciate this will generate substantial work in larger local authorities but will be a narrower, although important, role for a senior manager in a small authority where adoptions will be fewer.”*

(Adoption agency)

Three local authorities commented that this function already exists. One individual also commented that a team may be better than a single person.

One local authority suggested that it might only be appropriate during the establishment of the scheme and another felt *“each authority should determine how this is managed.”*

The **issue of funding** for such a post was raised by 2 local authorities.

The **need for a training scheme with a formal qualification for those involved in social work** was highlighted by one adoption or fostering related organisation, while the need for a specialist to fill such a post was raised by an adoption agency.

Respondents participating in the qualitative study also agreed that it would be beneficial for all to have an adoption support officer within the senior management team and some had assumed that this was already the case. The **two key advantages to this were that it would help continuity and consistency** within each local authority as well as across local authorities and **the dissemination and sharing of good practice and guidance** with individuals involved in adoption in Scotland.

A number of the professional qualitative respondents noted a need for the introduction of an adoption support officer who would have a clear understanding of all issues relating to adoption and, importantly, a background in adoption services. However, again there were concerns over the funding of such a post.

### **6.3 Should a Local Authority placing a child for adoption have responsibility for providing adoption support services to the child and the adoptive family for three years after the adoption order?**

In total, 46 organisations responding to the consultation commented on this recommendation.

Twenty-eight of these organisations felt that 3 years was an appropriate time period, although some qualified their support for this. Of the 28 organisations agreeing, 3 felt that 3 years should be a minimum term.

One local authority raised the issue of funding requirements if their current support is to be extended while another mentioned the need for reciprocal arrangements between local authorities. Another local authority stated that they would welcome clarification on their responsibilities in this area and 1 religious or faith group considered that *“The best interests of the child should determine which local authority provides support; this might suggest that the local authority in which the child is living might assume responsibility at an earlier stage than three years!”*

Thirteen organisations disagreed with this recommendation. Among those disagreeing, 5 organisations felt that the responsibility for providing adoption support services to the child and the adoptive family should always rest with the placing authority. Two organisations thought that 3 years was too long and one thought it too short a time period. One local authority thought it difficult to decide an appropriate timescale.

One local authority felt responsibility for providing adoption support services should rest with whichever local authority area the child was resident in.

One local authority commented that they:

*“agree [on] the principle of post adoption support, and acknowledge the need in this area. However, the rules governing this need to be clear e.g. legislation is required to clarify if the placing local authority is responsible for support on an ongoing basis, or for three years, and thereafter the area in which the adoptive couple reside takes over. We would support the view that responsibility lies with the placing authority for three years, then transfers, as this brings Scotland into line with England and Wales, and therefore simplifies cross-border placements.”*

(Local Authority)

Views emerging from the qualitative discussions on this issue were relatively limited, although there were some queries as to why the local authority area into which a child is placed is not responsible for that adoption immediately. Whatever route was taken comments were that there would need to be **clear lines of communication between any local authorities** involved in a specific adoption case.

One further comment in relation to local authority processes was highlighted by a small number of respondents attending qualitative discussions. While it was accepted that the interests of a child to be adopted should be central to the adoption process, one respondent noted that

*“Local authorities look at adoption purely from the point of view of the child to be adopted. This is good but it can mean that adoptive parents who have been approved are left wondering what is going on. It all went okay until we were approved but then nothing happened.”*

The same respondent also noted that there was a lack of communication between different local authorities and that they had problems when they asked why they could not adopt a child from another local authority area.

*“Councils aren’t prepared to talk to each other. They should be utilising the resources that are available, so if one local authority has no children available for adoption, they should be able to go to another area where there are children needing to be adopted.”*

(Adoptive Parent)

## 6.4 How widespread should any entitlement to Adoption Support be?

*A total of 1 individual and 40 organisations responding to the consultation expressed their views on entitlement to support. The following sections examine different categories of those who could be involved in the adoption process and what their entitlement should be.*

### 6.4.1 Grandparents and siblings

Sixteen respondents agreed that grandparents and siblings should have a right to support with a further 2 respondents (1 local authority and 1 individual) expressing the view that siblings should have free, indefinite support. Another local authority commented that support should be restricted to grandparents and siblings.

A total of 4 respondents felt there should be support for continued contact between grandparents or siblings and the child, if this were deemed in the child's best interests. One local authority felt that they should only have the right to information on what support is available.

### 6.4.2 Wider family

Overall, 21 respondents felt support should be extended beyond siblings and grandparents to other family members, while one local authority and one religious or faith group felt members of the birth family should have the right to request support. Five respondents expressed the view that support should be limited to counselling. One adoption agency thought that there should be a grading of service depending on closeness to the child.

### 6.4.3 Other issues

Four respondents highlighted the **resource implications for providing support services**. Four respondents felt that there should be a national standard with the duty on local authorities to maintain the services. One adoption or fostering related organisation and one charitable organisation recommended the use of family group conferencing; *"The Family Group Conference process seeks to involve the widest possible network of parties and to problem-solve mutually agreed solutions relevant to the particular issues of concern."*

Individuals and Professionals participating in the qualitative discussions tended to place their focus on what was best for the adopted child. While there was broad agreement that adoption support in the form of counselling services should be available for a broad range of individuals involved in the adoption process, there were concerns over the **cost implications of providing this level of counselling services and also concerns about the small number of individuals with experience of adoption who would be in a position to deliver counselling services**.

Rather than counselling services, a number of comments made by these respondents focused on the **issue of contact between different family members**.

Some respondents felt that there should be no contact with any family member for a child given up for adoption at birth or shortly afterwards as they would have no recall of a previous family life and contact could serve to cause distress.

Many respondents also felt that ongoing contact can cause distress to both an adopted child and adoptive parents and focused primarily on the need to provide a stable and loving environment for any adopted child. For example, one child adopted at birth commented that there should be no contact in a child's formative years.

*“There can't be any middle ground. You can't give your child up and then turn up for its third birthday or whatever. You give your child up for adoption, you are severing all ties.”*

Another noted that,

*“If the mother gives the child up for adoption then she almost forfeits any right to have a say.”*

This issue of contact, however, was less clear cut in instances where a child had been adopted at an older age and would have memories of their previous family life. For some, contact between siblings – rather than birth parents or other family members – was felt to be a priority, although some adoptive parents noted that contact had served to exacerbate existing problems such as chaotic behaviour of an adopted child. The professionals attending the focus group also noted that the frequency of contact needed careful consideration – while they acknowledged that it was important to maintain some form of contact, there were concerns – as with adoptive parents – that contact could do more harm than good. They also suggested that they should listen to a child's requests but have the final say on whether or not these are acceded to *“but it shouldn't be to the detriment of the child, who waits and waits. I think both parents have a right to be heard, but these views should not predominate over the needs of the child.”*

It was also noted that in instances where there is any form of ongoing contact it can be damaging to a child if birth parents are anti the adoptive parents for any reason and that this was perhaps why, when there would be some form of ongoing contact, that the views of the birth parent on potential adoptive parents should be considered. That said, there was a suggestion from the SCF meetings that letterbox contact with the birth family should be encouraged.

At the SCF meetings, some respondents noted that there was a **need for a national agency and proper resourcing for support services**. There was also the suggestion that intermediate agencies between birth and adoptive families might be appropriate and an intermediate agency for birth parents seeking to trace children they had given up for adoption. It was also noted that it could be unworkable to state that support should be offered by the originating local authority of the adopted child as in many parts of Scotland there were huge distances to travel – **support should be given locally**.

In summary, respondents were broadly in favour of the recommendation that additional support services should be prescribed and a wide range of alternative services were suggested. These focused on emotional and counselling support rather than financial support. Similarly, there was broad agreement for local authorities to have an adoption support officer with the senior management team. There were some concerns as to the resource and cost implications for providing a wide range of support services.

Respondents perceived a need for support services to be offered to a range of individuals involved in adoption in Scotland. Support for the local authority placing the child for adoption to have responsibility for providing support services for three years after the adoption order received differing and sometimes qualified views. In general, the key view was that there needs to be clear lines of communication between local authorities involved in a specific adoption case. Furthermore, there were some comments that, regardless of who has responsibility for delivery of support services, these have to be delivered on a local basis.

The issue of ongoing contact for birth family members or the provision of information to birth family members received some polarised views. Again, respondents reiterated the need to treat each on a case-by-case basis and to place the interests of the child firmly at the centre of any decisions.

## CHAPTER 7: IMPROVING COURT RULES AND AVOIDING DELAYS

*The Executive supports the aim of the APRG in reducing the time taken by courts to handle permanence cases as it is clearly not in the best interests of a child for these cases to take too long. Additionally, there could be cases in which the current bar on applications following an adoption could lead to injustice, for example if voluntary contact arrangements are stopped by the adopters.*

*This chapter of the report covers questions 13-15 of the consultation paper which was based on Recommendations 26, 51 and 52 and presents the views of consultees and respondents on ways in which court rules could be improved and delays avoided.*

13. *The Executive would welcome views on whether a system of leave to apply to court would be effective in providing the protection from repeated or vexatious applications for children and adoptive families. (Recommendations 26, 51 and 52)*

14. *The Executive would also welcome views on whether other statutory measures would make the system of leave a more effective safeguard. For example:*

- Should the legislation require the applicant to produce new evidence, or evidence of a significant change in circumstances to support an application for leave?*
- Should there be a minimum period between new applications for leave in respect of the same child?*

*(Recommendations 26, 51 and 52)*

15. *The Executive would welcome views on whether legislation should limit the circumstances in which an applicant could seek information about an adopted child in support of an application to court. (Recommendations 26, 51 and 52)*

### **7.1 Whether a system of leave to apply to court would be effective in providing the protection from repeated or vexatious applications for children and adoptive families.**

Of those responding to the consultation paper, two individuals and 47 organisations made comments relevant to questions 13 and 14.

**Thirty-six respondents agreed with the need for a system of leave to apply to court,** although one local authority felt this should be restricted and only allowed in exceptional circumstances as, they felt, the ban on applications should not be removed.

Three organisations disagreed, including 2 from the legal profession – one of whom felt that it was unnecessary,

*“It is our view that a system of leave to apply would be neither appropriate nor effective. If an application was without merit, it would be open to parties to indicate this to the court at an early opportunity. Need for leave is unnecessary. The merit of any application would require to be tested anyway. In Scots Child Law it is only exceptionally that leave is required to apply at first instance.”*

The other representative body of the legal profession felt that it was unduly restrictive,

*“The Sub-Committee would query the extent of the problem in respect of ‘repeated or vexatious applications’? It would suggest that a system of leave to appeal might be unduly restrictive and might place obstacles in the way of a child seeking to make such an application.”*

The third, a charitable organisation, suggested the use of a family group conference. One individual and one local authority commented that an adopted child should have the right to apply to court once they had reached adulthood.

One individual expressed the view that courts fail to meet the needs of children. One organisation felt guidance was needed on which court should be approached and how the costs would be met.

## **7.2 Views on whether other statutory measures would make the system of leave a more effective safeguard.**

*In the first instance, respondents were asked to say whether the legislation should require the applicant to produce new evidence, or evidence of a significant change in circumstances to support an application for leave?*

A total of 31 organisations supported this requirement with one local authority and one legal profession organisation proposing that the applicant show “material change”. Furthermore, another local authority felt they should show what has changed. One local authority remarked that a similar situation exists in the Children’s Hearings system. One organisation from the legal profession gave examples of various Acts that contain examples of a similar test.

One local authority felt that the new application should meet the Legal Aid standard before consideration and one organisation from the legal profession asked that guidance be given on how to interpret “new evidence” and asked that it be specified in statute what constitutes “material”.

*In the second instance, respondents were asked to consider if there should be a minimum period between new applications for leave in respect of the same child* and 13 organisations supported the proposal for a minimum time period between applications. Three of these suggested that 6 months may be suitable. One local authority had considered suggesting two years but felt that this was a long time in a child’s term; an adoption or fostering organisation also mentioned the quick passage of time in a child’s life.

Eleven organisations did not see the need for a minimum period of time between applications. Ten of these felt that if the new evidence test was applied successfully then there would be no need for this.

One organisation from the legal profession did not support either suggestion as they disagreed with the system of leave as a whole.

### **7.3 Whether legislation should limit the circumstances in which an applicant could seek information about an adopted child in support of an application to court.**

Twenty-six organisations commented on this specific question and, of these, 15 supported limiting the circumstances while 5 did not.

One response from the legal profession commented,

*“We are concerned that if legislation attempts to limit the circumstances where applicants can seek information, there would have to be exceptions. It would have to be within the discretion of the court to decide what information may be disclosed. It would therefore be more helpful to proceed upon that basis and rely upon the court’s discretion. Issues under ECHR may arise. It would be difficult to draft legislation that was Convention compatible.”*

Thirteen organisations commented that the best interests of the child should be paramount in deciding whether information should be made available. One adoption agency thought that an informal approach was preferable.

Individuals participating in the qualitative discussions had little to say about improving court rules and avoiding delays, although there was a perception that anything involving the court can take far too long and there were comments that this can be damaging to those involved in the process, particularly any children.

Professionals tended to comment jointly on court procedures and the Children’s Hearings System, with all noting that the length of time for the process to complete is far too lengthy. As the following quotation suggests, there were also concerns about the level of importance given to the court.

*“I think the court and the hearing systems – both of them – there are incredible drawbacks there. I suppose normally I .... one of my concerns about the Review is the increasing kind of significance of the court and the whole process. I mean if social workers behaved in the way the courts behave up and down Scotland, they would have appointed a legal representative to investigate what was wrong with the social work! The court has failed Scotland’s children very very badly, so I have a problem with putting them in the forefront.”*

Another professional respondent commented that the attitude of the courts can be adversarial and aggressive and that this can cause problems.

*“I think going through that process from the practical point of view of the parent, both the hearing and the courts seem to have got odds against each other, two separate processes in that they both oversee. Some are similar and they overlap but it doesn’t overlap very well and there’s a lot of delays in the system, and I think people just have to mention ‘human rights’ and suddenly everybody jumps to the adults in the situation and you do lose sight of the children.”*

They then noted that in instances where the courts are considering the views of birth and adoptive parents, it can be unpleasant for both parties to have to provide comment on each

other. Additionally, they had concerns that defining the interests of a child aged only 2 or 3 years old can be difficult.

The **issue of training** for professionals involved in the adoption process has been noted in earlier chapters and the professionals attending the group discussion also focused on a **lack of training for sheriffs and other court staff involved in adoption cases**. It was felt that some sheriffs have very few adoption cases to deal with and that training on this could lead to a greater consistency across Scotland as a whole.

There were also some concerns that solicitors sometimes advise clients badly and this can serve to string things out.

*“In fact there’s so many legal challenges in the middle part of that process, it means that yes, people waiting a few months to gather evidence or present it in a different setting, whether it’s a panel or court hearing but all the time the child is either in foster-placement with a view to adoption or in foster-placement and you don’t know what the long term plans are for that child, and it’s a long time a couple months for a two year old, that matters! It maybe doesn’t matter so much when they are quite a bit older but when you’re younger, it really does make a big difference.”*

One respondent noted that the capacity to challenge within the existing system serves to delay the grief for the birth-parent as well as prolong the process for the child. Another respondent noted that children’s attachments are formed by the age of 9 months and that a process taking longer than this serves no purpose.

In summary, there were concerns that the existing court rules can serve to prolong the adoption process and that this is to nobody’s advantage. Those who were able to comment on this issue felt that the existing processes are far too lengthy and do not serve any useful purpose.

## CHAPTER 8: CURATORS, REPORTING OFFICERS AND SAFEGUARDERS

*The APRG recommended that there should be a centralised national system to appoint and train curators, reporting officers, and safeguarders from which individual case appointments are made locally and that remuneration should be paid centrally and should take account of the varying amounts of work required in individual cases. This relates to Recommendation 61 of the report of the APRG.*

The specific question posed in the consultation paper was:

*Question 16 The Executive would welcome views on the recommendation that there should be a centralised national system to appoint and train curators, reporting officers, and safeguarders from which individual case appointments are made locally. (Recommendation 61)*

Of those responding to the consultation, 3 individuals and 52 organisations commented on this specific recommendation.

**Forty-five organisations and 2 individuals felt that the Executive should reconsider its decision to reject recommendation 61.** Only 3 organisations and 1 individual agreed with the Executive.

*“We agree with the Review group and not the Executive on this matter, believing that a centralised national system would be of real value where dealing with widespread concern about the lack of training for safeguarders, curators and reporting officers.”*

(Religious and Faith Group)

*“We agree with this recommendation, as it’s our belief that it would improve the quality of the service and also provide a greater uniformity of approach.”*

(Local Authority)

*“We do not accept the need for a centralised system of appointment from a central list and consider that appointment at local level would be more likely to create a system in which confidence in the abilities of those appointed would develop.”*

(Legal Profession)

The issue of the payment system was only commented on by 1 individual; who remarked on the inadequacy of the current system. However, 13 organisations also commented on the **need for a change to the payment system.**

*“The proposal which has been rejected by the Executive that remuneration should be paid centrally would certainly address all of the concerning and complex payment issues raised and it is suggested that this proposal be reconsidered by the Executive. Such a proposal would result in clarity and uniformity of appropriate and reasonable payments in respect of work carried out by these officers.”*

(Legal Profession)

Another response from the legal profession proposed:

*“The remuneration should be fixed at the same level as paid by SLAB to Reporters who prepare reports for the court in contested contact and residence cases: these are charged on a time and line basis and take into account the time spent, both in meeting parties and travelling and preparing the report.”*

In addition, a local authority commented that they do:

*“not have a view as to whether there should be a centralised national system to appoint and train curators, reporting officers, and safeguarders other than to suggest that there needs to be an appropriately funded payment system in place.”*

Two local authorities mentioned the **need for a national approach to training** while one respondent from the legal profession thought there should be some form of appropriate training given. One association saw the need for some form of quality assurance.

While there was very little comment from qualitative respondents regarding this issue specifically, once again, where comments were made, they tended to be in relation to a need for training for curators, reporting officers and safeguarders. They also noted that this training should be provided on a nationwide basis in order to ensure consistency in the process across Scotland.

Two adoptive parents noted that when they had been going through the adoption process, an individual (whose title they could not remember) had visited them in order to “*check them out clarify the home situation*” and that they had found this very difficult. They felt they had been provided with inadequate information as to the purpose of the home visit and found the attitude adversarial rather than constructive. They were aware that this visit could have repercussions on whether or not the adoption process went through to their benefit. Clarification of the role of these individuals should be provided to those involved in the adoption process.

In summary, there was broad agreement from respondents that there should be a centralised national system to appoint and train curators, reporting officers and safeguarders. There was also broad agreement that remuneration should be paid centrally and should take account of the varying amounts of work required in individual cases.

## **CHAPTER 9: ROLE OF THE CHILDREN’S HEARINGS SYSTEM IN PERMANENCE CASES**

*The Children’s Hearings System is for children and young people who are experiencing difficulties in their lives and it is designed to take decisions which will be in the best interests of the child. The Children’s Hearings System was, from its start, underpinned by principles set out in the Kilbrandon Report. These brought together the law, expertise in providing child care and informed lay judgement in order to reach decisions on what care was needed in the best interests of individual children.*

*This chapter of the report provides an analysis of question 17 of the consultation paper which was based on recommendations 62-71.*

*Question 17: The Executive would welcome views on the stage in permanence planning at which there should be a statutory requirement on the local authority to inform the children’s hearings of its intention. The Executive would also welcome views on the steps to be followed after the hearing is informed of the local authority’s intention, for example the model currently used when a decision is taken to place a child for adoption.*

A total of 62 Individuals and Organisations responded to this consultation question, with 32 of these being from local authorities. Many organisations made comments on specific recommendations and these are dealt with on a recommendation by recommendation basis below.

In addition, 13 respondents expressed their support for recommendations 62 to 71 as a whole; 3 individuals, 5 local authorities, 2 public bodies, 1 adoption agency, 1 religious or faith body and 1 charitable organisation expressed support for all recommendations at question 17.

### **9.1 Recommendation 62**

*(The hearings system should continue to be involved in permanence planning and decision making for children, and this role should be improved)*

One local authority described the involvement of the children’s hearings as ‘helpful’ as it provides external scrutiny of local authority decisions.

Two local authorities and 1 trade union agreed that hearings need to be involved but felt that training and guidance for panel members should be addressed, and another two local authorities expressed reservations about the involvement of children’s hearings due to a lack of training. One adoption or fostering related organisation also commented on the lack of training and awareness.

One public body commented that it “welcomes and strongly endorses the proposals to develop national and quality assured training and guidance material for all key agencies involved in permanence issues.”

One individual felt that the involvement of the children’s hearings in permanence planning should end once a Permanence Order has been made. This could recommence should there be subsequent grounds for a new referral and 1 local authority also agreed with this view.

One local authority commented that *“The role of the Children’s Hearings System is important, but dependent to a large extent on capacity of panels to meet demand for hearings.”*

## **9.2 Recommendation 63**

*(There should be a formal requirement to inform the hearings system of permanence planning by the local authority at an earlier stage)*

**This recommendation was generally supported by organisations commenting on question 17. Three local authorities commented that this already happens or is already good practice, although there are variations across local authorities.** While one cautioned against review hearings *“for the sake of it”* they saw no other way for parents to get involved. Another detailed present practice of hearings being notified within 7 days of a decision being made with a hearing convened up to 21 days after and hoped for a similar system to be implemented. One Association and one Umbrella group agreed that it would bring consistency or clarity to the process. One adoption or fostering related organisation felt that the advice should be given within 2 months or at the next hearing; whichever came soonest.

One local authority was *“also in favour of the Panel being involved as early as possible although this would have to be judged on an individual basis, depending on how much work had been done with the child and family about the proposed plan and also allowing for internal scrutiny of what is proposed and the legal basis for it.”*

Another local authority asked for clarification on what is meant by *“deciding to proceed towards permanence”* while another commented that it was unclear as to what was meant by *“an earlier stage”*. One local authority wondered whether this should take place after the decision to seek legal advice or after the advice had been given.

One adoption or fostering related organisation felt *“that Hearings should be informed at an early stage in the proceedings and could make submissions but do not have the power to intervene or circumvent. If they have strong grounds for their point or issues then they should express these in a formal submission to the court.”* Two local authorities expressed the opinion that this should happen after a Looked After Children review had decided on a Permanence Order.

One organisation from the legal profession felt that the hearing should be informed as soon as either the child is placed or an order is made, and one local authority felt that early notification would form a good basis for decision making.

One adoption agency who agreed with the recommendation noted that they use the recommendation from the local authority to indicate when permanence becomes the firm option.

Two local authorities expressed the view that panel members may find this difficult and one expressed the hope that it would not lead to further delays. Another believed this recommendation would be helpful to make sure that all involved in supporting the child are pulling in the same direction.

### 9.3 Recommendation 64

*(If a child has been looked after away from home for a year, the hearing should consider asking the local authority about permanence planning at the next review of the child's case)*

**There was general support among those commenting on recommendation 64;** with 1 local authority calling it “*particularly welcomed*”; although 3 organisations commented on the timescale given. Two organisations (1 adoption or fostering related organisation and 1 local authority) felt that a year was too long and that 6 months would be more appropriate. An adoption agency, while welcoming the recommendation, also thought that permanency should be considered earlier. Two local authorities felt that it would depend on the individual case as this may or may not be suitable; they also requested guidance notes for panel members. One public body felt it was too prescriptive.

Another local authority felt that this might become distressing for parents but agreed it would help to avoid “drift”.

One local authority commented that “*reports for such Review Children's Hearings would require to contain disposal options and evidence.*”

One local authority commented that this already happens while another reported that they would be asking questions earlier through their review process but that a year seemed appropriate.

A further 7 respondents (4 local authorities, one trade union, an adoption or fostering related organisation and an individual with experience of adoption) also expressed their support for the recommendation and 2 further local authorities also expressed support as they felt that plans should be made to secure the future for the child in question.

### 9.4 Recommendation 65

*(The roles of both the local authority adoption or permanence panel and the children's hearings in permanence cases should be preserved as they are valuable and distinctive)*

**Seven organisations specifically mentioned recommendation 65 and they all voiced their support.**

Three local authorities agreed with the recommendation while a trade union “strongly agreed”. A further local authority agreed, commenting “*Local authority needs to be making recommendations and decisions and the Children's Hearings can be independent balance.*” and another mentioned the “*essential role*” that hearings play.

An Association agreed “*Although there may be some overlap in the respective roles regarding adoption, Children's Panels have a specific remit to consider the child holistically and therefore the two panels should retain independent roles. Children's Panels could also provide 'another pair of eyes' to examine the issue.*”

## 9.5 Recommendation 66

*(Reports from the adoption/permanence panel to the hearing in considering permanence cases should be improved and standardised)*

**Comments** were expressed by 11 local authorities and 4 other organisations on recommendation 66 and these **mostly expressed support for improvement and standardisation**. Three local authorities suggested using the Panel Minute while another felt that a pro-forma would be useful and that the LAAC review recommendation should be sent to the Reporter; *“As regards the provision of better information for the Children's Hearings it is suggested that the Children's Hearings should obtain, not only a Social Background Report, as at present, but should have sight of the Adoption Panel's minuted recommendation.”* Another local authority thought that the recommendation would promote consistency.

Two local authorities requested further information on which improvements are required, what the standardised format would look like or how the recommendation would be implemented.

One local authority commented *“We are also in favour of some way of formally representing the views of the adoption/permanence panel to the Children's Hearings as a way of confirming that there has been careful scrutiny of the situation and of the alternatives to the plan proposed.”* And three other local authorities voiced their support.

One local authority felt that there was already a process in place.

An adoption or fostering related organisation thought it advisable to standardise reporting methods. An association and a trade union also agreed with the recommendation.

One equality group felt that standardisation was not always possible but that guidelines would be welcomed.

## 9.6 Recommendation 67

*(The provisions on providing advice from the hearing to the court should be reviewed in regard to who has responsibility for each step, and to allow the court to ask for updated advice from the hearing)*

Again, most comments came from local authorities, some of whom provided comments and suggestions.

One local authority who supported the recommendation felt that there was a difficulty in ‘dovetailing’ the process, although they agreed that updated advice was important if there was not a tight timescale.

One further local authority welcomed the recommendation, as did one association and a trade union.

Two local authorities were unclear as to the purpose of this recommendation; one commented that it *“seems to be complicating it and what are the benefits to the child.”* One local authority felt that *“Currently there is confusion of roles, and this needs to be resolved.”*

### **9.7 Recommendation 68**

*(The review and advice hearing should remain one process but that better information for all parties involved would address the concerns that have been expressed)*

A small number of comments were relevant to recommendation 68, with 4 local authorities and 3 other organisations expressing a view.

Two local authorities reported that this was already the practice while another simply agreed with the recommendation. One other local authority commented on *the “Need for more clarity of purpose - would not want two Hearings.”*

One association and 1 trade union also supported the recommendation. The association felt that *“the number of hearings for child and family should be kept to a minimum. Improved flow of information between agencies would facilitate this.”*

However one adoption or fostering related organisation did not support the continuance of review and advice hearings as they felt that the review element could potentially alter plans and cause confusion or upset for children. They felt that the hearing should be for advice only.

### **9.8 Recommendation 69**

*(There should be a standardised form for the hearing to provide advice to the court)*

Four local authorities supported this recommendation with one commenting that this is already in practice.

One trade union supported the recommendation while an association also voiced their support but felt that there should be *“room for additional notes or expansion of points where necessary and that any proposed form is first issued to panel members for comment.”*

One organisation from the legal profession disagreed with the recommendation; *“there should be no standard forms for advice. Panels should be required to give reasons for their advice.”*

### **9.9 Recommendation 70**

*(There should be nationally developed and quality assured joint training between key agencies, the hearing, social work departments, safeguarders and others)*

This recommendation received a higher number of comments, with **3 individuals and 28 organisations mentioning training issues.**

Seven local authorities supported or welcomed recommendation 70, with a further 8 consultees agreeing. A number of suggestions were put forward including:

- The need to address the training needs of Sheriffs and Court staff
- The benefits that such training would bring in light of the complex decisions which lay people and others have to make
- That *“ongoing support and training is required to maintain good professional standards.”*
- To address any discrepancies in current practice
- To increase the understanding of panel members, especially about the importance of permanency for children and on issues such as contact

One local authority asked *“who would quality assure this?”*, while a further two expressed concern that it would not be feasible or possible to give the sort of training to volunteers that enables them to deal with complex issues.

Three individuals agreed that training issues should be addressed, as did 5 organisations. A trade union thought it very important, while an umbrella group said it was essential and an equality group described it as crucial.

Comments made by other organisations included:

- *“Welcomes and strongly endorses the proposals to develop national and quality assured training and guidance material for all key agencies involved in permanence issues.”* (Public Body)
- *“It can only be positive that key agencies should receive clear training and guidance on permanency matters”* (Adoption Agency)
- A suggestion from an adoption or fostering related organisation that permanency training be undertaken before a person can sit on a panel and that training for panel members be multi-disciplinary
- One association agreed but added *“since panel members will probably not deal with permanency cases very often there will be a need for guidelines to be issued and training to be updated as and when required”*
- One adoption or fostering related organisation thought it necessary to make panel members aware of the complexities involved

One adoption agency supported the recommendation and commented:

*“Our experience of delivering such training has been that it has the potential to develop good professional relationships based on a shared understanding of the needs of children and the significance of research and practice. The lifelong impact of decisions made by all concerned is daunting and without sufficient training and development, individuals, whether social workers, hearing members or safeguarders incline to delay in making decisions until they are “sure” or “hope that matters will improve”. The application of relevant research, exploration of values and robust child development*

*knowledge is critical to this process and can only be provided through comprehensive training.”*

### **9.10 Recommendation 71**

*(Each hearing should, if possible, contain one member from a previous hearing throughout the progress through the system of a permanence case)*

Ten local authorities and 5 other organisations welcomed recommendation 71; “*we fully agree that consistency in membership of the Hearing is important. Delays have occurred where Panel membership has totally changed from previous Panels where the substantive decision has been made*” (Local Authority). One of these local authorities felt that two continuing members would be preferable.

One other local authority suggested the need for specialist panels or specialist training for panel members dealing with permanence.

Two local authorities expressed concern that there could be human rights issues as the panel may be seen to be ‘hand-picked’; one of these authorities saw the use of consistency; the other also saw problems for the management of hearing rotas and procedural issues.

One association disagreed “*There is no apparent reason for there being continuity of panel members unless the case is particularly complex in which event a panel should be asking for this anyway.*”

### **9.11 Additional comments**

A number of other comments were also made at question 17. These included a local authority who commented, “*It is felt that there is not sufficient cross-referencing between the recommendations of the Adoption Policy Review Group and the ‘Getting It Right’ consultation paper on the Children’s Hearings System. There is a tension in the recommendations of these groups. ‘Getting It Right’ is recommending that fewer cases will go to a Children’s Hearing, at a much later stage after comprehensive assessment, while the Adoption Policy Review Group recommends that adoption cases be taken earlier*”. One association also mentioned the issues contained in ‘Getting it Right’ regarding integrated assessment and joint planning.

Another association stressed the need for clear information for parents and children on the functions and responsibilities of each panel.

One charitable organisation recommended the use of the family group conference:

*“The Family Group Conference process can be used before a child is accommodated and there is a risk of accommodation; and when a child has been accommodated. It can be used after a looked after child review decision to pursue permanence; and as part of parallel planning for a child. It can also be used once the decision to move towards adoption has been taken. The issues to be addressed will relate to when the process is used. However in all*

*instances, the mutually agreed plan can inform other decision-making processes. Starting to use the process at the earliest possible stage is the most beneficial approach for the child, the family and the professionals.”*

One organisation from the legal profession mentioned the increase in costs which will occur for advice and assistance; they felt that *“As the number of advice hearings in relation to applications for POs may well increase then the advice and assistance costs will also increase.”*

Finally, a public body commented *“Taking the proposals in the context of the recommendations in the Children’s Hearings Review and the emerging findings in the 21st Century Social Work Review, there is now a significant opportunity to develop permanency planning in the framework of the child and family’s action plan. The result should be a more transparent, responsive and coherent framework for permanency.”*

## **9.12 The qualitative view**

Most of the individuals participating in the qualitative element of this consultation had little recent direct experience or recall of the Children’s Hearings System. However, many made general comments in relation to the delays that can be caused to the adoption process by the use of the Children’s Hearings System.

However, a number of respondents noted a need for more training to be available to all individuals involved in the adoption process, not least because of the infrequency of dealing with adoption cases for some individuals. A side benefit of increased training would also be a wider dissemination of good practice and guidance on how to deal with specific issues or problems.

One respondent also noted that there is no continuity in children’s panels and that there can be different people at each sitting. This was not felt to benefit the child in the long run and could also serve to cause delays in the process.

In summary, **there was broad agreement for each of the recommendations** feeding into this question. The key issue raised for a number of these recommendations was in relation to the **need for additional training for individuals involved in the Children’s Hearings System** and this was a theme emerging throughout responses to this consultation.

There is a need to ensure there is clarity in understanding the role of the Children’s Hearings System and some suggestions of the need to promote consistency by having one member of the panel who is continuous throughout a specific case.

There were also some calls to **put the findings from this consultation alongside that undertaken on the Children’s Hearings System and the 21<sup>st</sup> Century Social Work Review**. This, it was felt, would provide a framework for permanency planning.

## CHAPTER 10: FOSTERING ISSUES

*While the key focus of the consultation paper was that of issues in relation to the adoption process, two questions focused on fostering issues specifically.*

*This chapter examines responses to questions 18-19 of the consultation paper, based on recommendation 76 & 85 of the report.*

*Question 18: The Executive would welcome views on the options for a national scale of fostering allowances.*

*Question 19: The Executive would welcome views on the proposed working group on private fostering, and what the remit of such a group might be.*

Comments to these specific questions came largely from those responding to the consultation paper.

### 10.1 Views on a national scale of fostering allowances

Five individuals and 57 organisations responding to the consultation put forward their views on the options for a national scale of fostering allowances.

**Nearly all of these consultees** (5 individuals and 54 of the organisations) **were supportive of this recommendation.** None of the respondents opposed the proposal, although one equality group only commented that *“Different areas have different living costs.”*

One local authority questioned why this was supported when the recommendation on adoption allowances was not.

An association asked that *“this has to be given some priority alongside that of kinship carers.”* Of the 54 organisations supporting the recommendation, 3 organisations and 1 individual also mentioned the need to include kinship care.

A total of 12 organisations mentioned that **funding would be needed.** A further 9 organisations and 1 individual felt that a minimum should be set, but with flexibility to allow for increases to cover the local cost of living or other circumstances. One religious and faith group pointed out that *“There may sometimes be cost implications attached to religious observance, and we urge that this should be taken into account when setting guidelines and scales for fostering allowances.”*

Six organisations were **supportive of the Executive annually issuing guidance containing national scales of allowances.** Four organisations felt that these should be mandatory and that the Executive sets a mandatory national scale of fostering allowances. Four organisations supported the third bullet point; that legislation requires local authorities to publish their fostering allowances and explain any variations from national scales.

Other points raised by consultees included the element of competition that can exist between independent providers who are able to pay more; one local authority questioned whether independent providers would agree to a national scale:

*“There has also been a significant growth in independent providers of foster placements. The financial schemes for foster carers operated by these providers varies considerably from most local authorities and is not linked to the current COSLA rate. It is difficult to envisage these providers agreeing to operate within a national scale as they are in effect in competition with local authorities to recruit carers. It should also be noted that some of the independent providers have rolled together their fee and maintenance elements to provide carers with a fixed weekly payment per placement.”*

Five organisations mentioned the allowances recommended by the Fostering Network.

One qualitative respondent who themselves had been a foster parent noted that while foster allowances should be paid, those presently paid are “pitiful”.

*“I know they are supposed to cover meals and clothing but they don’t really pay you anything to foster a child. The foster allowance is only for the child. I don’t know how they expect people to manage on these, particularly if you have to give up work to be at home to deal with the child.”*

(Adoptive Parent)

## **10.2 Views on the proposed working group on private fostering and what the remit of such a group might be.**

The proposed working group on private fostering was referred to by 1 individual and 43 organisations responding to the consultation. The **need for more work on the private fostering system** was commented on by 8 organisations with 4 of these mentioning that it was overdue. A further 3 organisations saw the **need for legislative reform**, 4 organisations felt there **needed to be more awareness of private fostering** and 3 organisations and 1 individual felt that the awareness campaign and the inspection being carried out by the Care Commission would be helpful to the working party.

Suggestions for the remit of the group included the need to clarify the extent to which private fostering occurs and to gain a picture of the national situation (cited by 6 consultees) as it was felt that private fostering is often under reported.

The **need to clarify the role of local authorities and other government bodies** was mentioned by 6 respondents, while the **need to develop guidelines and procedures** was commented on by 5 organisations. **Standardised assessment, support and safeguards were seen as important** by 6 organisations. The current lack of checks or regulations was mentioned by 3 organisations.

Again, there were a small number of references to kinship care, with 4 respondents mentioning the need to include kinship care in the remit. Two asked that child protection issues be included and 1 organisation saw the need to review police checks.

Two organisations thought that the working party should investigate the extent to which different cultures in Scotland use private fostering as some ethnic communities make more use of this.

Two organisations thought that the working party should examine the possibility of registration, with one proposing a similar system to that used for childminders.

Seven organisations gave brief answers; stating their support for the “welcome” or “helpful” recommendation.

In summary, there was **broad agreement on the need for a national scale of fostering allowances** and none of the consultees responding to this specific issue opposed this proposal.

A need for standardised assessment, support and safeguards was raised by some consultees along with a need to develop guidelines and procedures.

## **CHAPTER 11: PROCEDURES WITHIN LOCAL AUTHORITIES AND AGENCIES**

*The APRG proposed a number of detailed improvements to local authority and adoption agency procedures and these were supported by the Executive. Question 20 of the consultation, based on recommendations 88-99 put forward by APRG asked: The Executive would welcome views on the detailed proposals of the Group on local authority and adoption agency procedures, particularly on the issue of independent appeals and complaints.*

Two individuals and 47 organisations commented on these recommendations. In the majority of responses, points were raised on some or all of the 12 recommendations and so the following sections look at each in turn. Twenty-five organisations voiced their general support for all of the recommendations; comments made by these organisations are also included in the section relevant to the specific recommendation.

### **11.1 Recommendation 88**

*(All plans for permanence for children, including adoption, should be looked at by one advisory panel within each local authority)*

The question of legal aid was raised by one legal profession organisation; this would not be available to pay a solicitor to attend the Permanence Panel but could be available for payment for advice.

### **11.2 Recommendation 89**

*(Adoption/permanence panels should be attended and/or hear representations from:*

- *children and young people, taking into account their age and maturity.*
- *birth parents (unmarried fathers at the discretion of the local authority/adoption agency).*
- *adopters.*

One individual commented on the need for an independent assessor.

Two local authorities felt that children may be intimidated and that perhaps they should be allowed to make written representations, while one local authority mentioned the need for separate waiting facilities for birth-parents and adopters to ensure anonymity. Two local authorities cautioned that care would be needed in implementing this part of the recommendation while another pointed out that there were sensitivities and potential difficulties.

Two local authorities felt that birth-parents should make written representations or attend the panel only to give their views, while two others felt there needed to be a clear limit on the extent of parental involvement in panels. Another questioned the need for birth-parents to attend.

One charitable organisation recommended the use of a Family Group Conference. An adoption or fostering related organisation asked for clarification on the role of birth-fathers.

The need for training was mentioned by one local authority.

### **11.3 Recommendation 90**

*(There should be statutory timetables for the procedures between adoption/permanence panels and court applications and clear guidance from the Scottish Executive (or the Care Commission) about other parts of the process)*

One individual felt this was a vital part of the recommendations. A local authority agreed in principle but felt that the reality may make this difficult. One adoption or fostering related organisation felt that this should also apply to the court system.

### **11.4 Recommendation 91**

*(The authority/agency decision-making role on permanence and adoption cases should be exercised by senior managers and every organisation should have more than one agency decision maker)*

One adoption agency voiced the need for clear guidance for decision makers along with the option for some flexibility to meet the needs of various agencies.

One local authority agreed the need to involve other senior managers, as did one adoption or fostering related organisation. However they pointed out that there would be resourcing and training needs related to implementation of this. Two local authorities commented that this would be difficult in small local authorities.

### **11.5 Recommendation 92**

*(Additional written or oral representations should be made to agency decision makers after an adoption panel's recommendations only if new information comes to light)*

One organisation from the legal profession again pointed out that legal aid would not be available for representation; only for advice.

One local authority felt that representations should be submitted in writing.

One adoption or fostering related organisation felt that new information should be referred back to the panel; one local authority commented that this is what happens at present.

### **11.6 Recommendation 93**

*(There should be an independent review body (external to agencies) to consider appeals against the decisions of agency decision makers on adopters and adoptions but there should be no automatic review of cases where the decision maker disagrees with the adoption panel)*

One local authority disagreed with this recommendation, *“To have the right of review at an earlier stage by an independent body would automatically result in almost every recommendation of the Adoption Panel being reviewed in a contested adoption situation and this would not be in the child's best interests.”* Two local authorities reported that they already had an appeals process in place, while another felt that while there should be a process, it should not be external.

However one local authority and one religious or faith group welcomed the introduction of an independent review body. One adoption or fostering related organisation felt each it was important for each organisation to have a clear process for appeals but had no view on the independent review body.

An equality group also disagreed; they felt that there should be an automatic review.

One local authority asked whether this role could be covered by the social work complaints review committee. Another local authority asked for a clear definition of “independent”, while a charitable organisation and an adoption agency asked for clarification on its form and how it would work.

One adoption agency raised the issue of costs associated with this recommendation; namely who would fund the body.

Two local authorities and an adoption or fostering related organisation felt that an inter-authority arrangement may be beneficial due to the need to access suitably experienced people.

While supporting the recommendation, one local authority cautioned that this process should not lead to any delays.

#### **11.7 Recommendation 94**

*(Fostering applicants and existing carers on review should have the right to make oral or written representations to fostering panels, including the right to attend the panel)*

One adoption agency and a local authority commented that this is already their practice.

#### **11.8 Recommendation 95**

*(Fostering panels should be involved in reviews of foster carers every three to five years)*

One local authority recommended a period of 3 years, another queried the need for panel involvement and another reported that their carers are reviewed by panel every year.

One local authority felt a smaller panel would be preferable and one adoption agency commented that *“Foster carers attending their approval panels is currently our practice and we are open to looking at how the panel members can be involved in annual reviews. It would be cumbersome and logistically impossible to have every review at a full panel but we would be open to the idea of reviews happening on a 3 to 5 year cycle at panels. We currently have a panel member at a carer’s review and this works well.”*

One adoption or fostering organisation felt that the 3-5 years could lead to some authorities opting for a review every 5 years and felt that a definite timescale would be more useful.

#### **11.9 Recommendation 96**

*(Fostering applicants should be given a right to receive a copy of their assessment report, excluding confidential third party information)*

One adoption agency commented that this recommendation is already good practice.

### **11.10 Recommendation 97**

*(There should be an independent system for appeals by prospective foster carers and existing foster carers)*

As with recommendation 93, one adoption or fostering organisation felt that it was important for each organisation to have a clear process for appeals but had no view on the independent review body while one charitable organisation and an adoption agency asked for clarification on its form or how it would work; one trade union felt that this may be hard to set up.

Again the possibility of inter-authority arrangements was raised by two local authorities and an adoption or fostering related organisation.

One adoption or fostering related organisation did not support the recommendation as *“We are strongly of the opinion that any independent system of appeals will be hamstrung if there is no system in place to investigate allegations on a consistent basis. The Scottish Executive’s proposal that local panels of independent people would consider appeals and complaints is a step in the right direction but it is fundamentally flawed in that a local system of panels of independent people would be tasked with investigating the process without anything against which the process could be judged. They would be left with having to judge whether or not carers were dealt with fairly on only a ‘natural justice’ basis. This goes against trends across the United Kingdom where national protocols are being formulated that will guide agencies in how they deal with allegations.”*

And again, one local authority, while supporting the recommendation, cautioned that this process should not lead to any delays.

### **11.11 Recommendation 98**

*(There should be general guidance from the Scottish Executive on fostering and adoption/permanence panels covering:*

- *the composition of panel meetings (man and woman wherever practicable; reflect child's ethnicity and related matters);*
- *qualifications of panel members;*
- *the format of panel minutes; and*
- *the meaning of "panel" and "panel meeting")*

One equality group asked that qualifications include “common sense” and one adoption or fostering organisation asked that adult adoptees be included in the panel composition. One local authority commented on the need to try to ensure that people with experience of ethnic and/or religious matters be included wherever possible. One adoption or fostering organisation wondered whether children or young people should also be included in the panel composition. This organisation felt that all guidance needed to be detailed, although a local authority asked that it not be too prescriptive.

One local authority and one adoption agency welcomed the increased consistency that, they felt, these recommendations would bring about.

One adoption or fostering organisation felt that the list provided was not comprehensive and that duties and responsibilities needed to be included.

One local authority requested that it *“should include qualifications, experience, annual Enhanced Disclosure checks, contract, letter of appointment with timescales and regular updated training.”*

An adoption agency asked that consultation be held to produce a format for panel minutes; an adoption or fostering organisation also requested guidance on this matter.

### **11.12 Recommendation 99**

*(There should not be a list of prescribed offences that prevent a person from adopting or fostering. However, enhanced criminal record certificates should be sought for all applicants)*

One local authority disagreed with this recommendation and felt that there should be a list of prescribed offences; this would provide consistency across agencies but an adoption agency felt that judgements should be made on a case-by-case basis and an adoption or fostering organisation agreed provided the welfare of the child remains paramount.

One local authority commented that this is current practice. Another adoption or fostering organisation supported the use of enhanced criminal record certificates.

### **11.13 The Qualitative Viewpoint**

Views emerging from qualitative participants covered a number of issues in relation to adoption and fostering and were made primarily by professionals participating in the group discussion. One key point made by some respondents was that many resources tend to be central and this was not considered beneficial for individuals based outwith Central Scotland.

One respondent suggested the need for a Centre of Excellence to be set up. This was seen as providing a framework in place that people can use when necessary. This was also felt to overcome the issue that if you ask for help, it will be assumed that you are not coping and may be a bad adoptive parent.

The issue of communication and information arose again, with some comments that individuals are often unaware of services that might be available. In the words of one respondent,

*“People need to be aware of the resources, like adopters and the child. So even if they’re not needing it now, they can come back. So I think that might be one step. And certainly our adopters felt that new adoptive couples should be given a range of information of what is actually out there.”*

There were one or two suggestions that it would be useful to run follow up interviews in order to ensure that issues affecting individuals were being dealt with.

One of the final suggestions was for the potential that could be offered by a mentoring system, say with parents who adopted in the past helping potential or new adopters.

In summary, there was agreement that procedures within local authorities and agencies could be changed and a number of suggestions were made for this. Whatever changes are introduced, there needs to be clear guidance on these and their implications.

## CHAPTER 12: ACCESS TO INFORMATION

*Individuals who are 16 or over and are adopted have an automatic right to information about their own adoption. Other individuals, such as birth parents, other birth relatives or relatives of adopted people do not have this automatic right.*

*This chapter outlines views on this question (21) of the consultation paper, which is based on recommendations 103-106 of the APRG report.*

*Question 21: The Executive would welcome views on the proposal that medical information about birth parents and families should be shared, without consent, to plan properly for a child. Particular issues include: what sort of information could be shared; who could have access to the information; and whether any information should be communicated to the adopted person or the adoptive parents.*

### 12.1 Provision of medical information

A total of 46 organisations and 4 individuals, including two with experience of adoption, made comments relevant to this question and the **recommendations were broadly welcomed** by all those who commented.

**Thirty-seven respondents agreed with the need for medical information about birth-parents to be shared.** It was generally felt that this should only happen where necessary; for example in cases where there is the possibility of hereditary conditions. Those agreeing with the need for medical information to be made available in instances where there could be inherited hereditary conditions were largely from within organisations responding to the consultation.

However, there were a variety of opinions on who should have access to the information. Eleven organisations and 2 individuals felt that the child should be given access to the information at an appropriate age. However, one religious or faith group and one organisation from the medical profession disagreed and pointed out that **no** children have the right to their parents' medical information.

Eighteen respondents thought that adoptive parents should have access to this information, but again it was generally felt that this should only be available where necessary for the wellbeing of the child.

Eight respondents thought that the information should be available to the child's doctor, while 7 thought that it could be held by the medical advisor to the panel who could, if necessary, pass on any necessary information. One adoption agency thought that information should be dealt with through a medical intermediary. One local authority, one adoption or fostering organisation and an organisation from the legal profession thought that the courts should decide what information should be made available, while 2 organisations from the medical profession and one local authority felt that doctors should decide whether information needed to be shared.

One medical profession stated that *“It is not clear why a legislative change is regarded as necessary to allow disclosure of birth parents records without consent but not those of the wider birth family”*.

The need to ensure confidentiality was mentioned by 5 organisations including the following:

*“The reference to GMC guidance at paragraph 12.17 of the full report is circular; our guidance on confidentiality allows disclosures required to satisfy statutory requirements, but that does not mean that we can support changes to the law that would undermine both professionalism and confidentiality.”*

Eight organisations asked that clear guidance be given about what information could be shared and with whom.

Three organisations thought that birth-parents or other members of the birth family should be informed if and when their information was shared.

Four organisations commented that information on adopters should not be disclosed to the birth-family; it was felt that this would not be relevant.

On the subject of nurse practitioners, two local authorities and two organisations from the medical profession disagreed with this specific recommendation:

*“Regulations to include nurse practitioners within the term ‘registered medical practitioner’ would cause confusion (recommendation 106). The term is used in the Medical Act 1983 as the only legal definition of General Medical Council registrants. A more reasonable solution would be to amend the regulations to refer to nurse practitioners in addition to registered medical practitioners, if that is considered necessary.”*

(Medical profession)

One local authority thought that further debate was needed, while an adoption or fostering organisation wondered whether this legislation would include children who have already been adopted.

Respondents (individuals and professionals) participating in the qualitative interviews were largely of the opinion that **birth family medical information should be available**, although their views on who should have access to this information varied slightly. **Most adoptive parents would like to have access to the medical records of birth family members, particularly in instances where there may be an inherited condition.** However, at a more basic level, there were also examples cited of problems caused by a lack of background information; such as, what inoculations were had by an adopted child when living with their birth family, whether or not they had experienced a number of childhood illnesses such as chicken pox or measles.

**The adoptive children we spoke to, as with adoptive parents, agreed that they should have access to medical information.** There was acceptance that at an early age it might not be suitable for them to have information but that this should be available to their adoptive parents. They then felt they should have access to this information once they were old enough to understand it or at the age of 16 or 18. Two adopted children cited examples

where they knew that there was a history of mental illness with at least one birth parent but neither knew the extent of this or whether this might be something that could be inherited. In both instances, this lack of information had caused a degree of concern.

One respondent, while acknowledging that there might be issues in relation to confidentiality, noted that at the very least, information should be available to an adoptive child's family GP who could then be aware of any likely hereditary conditions.

It was also noted that while it may be difficult to obtain information from a reluctant birth parent, that there should be legislation to ensure that medical records were made available, regardless of the birth parent's approval.

*“The birth family weren't happy about the adoption and were very antagonistic. They weren't forthcoming with any information. It would be useful to have a medical history and a family history. We only knew general things. I think that adoptive parents need to know as much as possible. It can be difficult dealing with school when they ask about chicken pox and other things like that.”*

(Adoptive Parent)

One adoptive parent also noted that the lack of background information on an adopted child can also make use of counselling services very difficult.

*“Our adopted child has real behavioural problems and these are obviously related to her life before us but because we don't know about what caused these, it makes accessing counselling services a nonsense. We have to act in the dark which isn't helpful to anyone.”*

(Adoptive Parent)

## **12.2 Provision of other information**

While the provision of medical information was what most qualitative respondents focused on, there were a small number of suggestions of other information that could be made available, not just to adopted children but also to other family members.

One adoptive parent suggested that information should be available on birth family members to adoptive parents while an adopted child is under 16 or 18. One example cited was if a birth parent died, so that the adopted child could be told this at a point in time when they might want to search for their birth parent(s). Another example was that birth family members could be allowed to store information via a third party such as an adoption agency, so that this information could be passed onto the child when they reached a certain age. One birth mother noted that she had been allowed to leave a present for her child when given up for adoption and that this would be presented to the child on their 18<sup>th</sup> birthday but subsequent contact between the two revealed that this had never been passed onto the child. Another birth mother noted that she would have liked an opportunity to write a letter of explanation to her child as to the reasons for the adoption that would be given to the child on their 18<sup>th</sup> birthday.

One adoptive parent suggested that other birth family members such as siblings or grandparents might be allowed to have information confirming that their birth sibling or grandchild was alright, although it was felt that direct contact (face-to-face or in writing) could be detrimental to the adopted child. It was also acknowledged that there may well be instances where it would not be possible to pass on information to other birth family members if it was likely to place the child in danger.

In summary, there was general agreement that medical information should be available either directly to adoptive parents or via a third party such as a GP, and that this should then be made available to an adopted child once they reach a certain age (generally considered to be 16 or 18). Furthermore, it was felt that the interests of the adopted child should be a priority. As such, in instances where birth parents were not willing to have this information passed on, their views should be disregarded for the greater good of the child.

While medical information was perceived to be essential by most respondents, there were also some suggestions that more general information in relation to the family history should also be passed on, even if this were not available to an adopted child until they reach adulthood.

## CHAPTER 13: ADDITIONAL ISSUES

*Previous chapters of this report have examined responses and views on Questions 3-21 as posed in the consultation document. This chapter provides details on issues emerging to either Question 1 or Question 2.*

*1. The Executive welcomes general comments on the recommendations of the Group and the Executive's proposed responses. Views on those recommendations requiring legislation are particularly welcome.*

*2. The Executive welcomes views on any aspects of adoption and permanence law not covered in the Group's report that should be reflected in future legislation.*

A number of comments were provided in relation to question 1 specifically and, where possible, these were reattributed to other more specific questions posed in the consultation paper. So, for example, a comment made in relation to the issue of same-sex adoption has been noted in chapter 4 on Adoption. Only 4 organisations commented at question 2.

The points raised at question 2 were as follows:

- That accredited agencies working with birth-parents should have access to records - legislation would be needed for the release of this information (Adoption agencies)
- *“Disagrees with the Group’s proposal (recommendation 5) that there should be no extension of the statutory grounds for revocation of adoption orders. It is possible to envisage a number of circumstances where an adoption should be reconsidered.”* (Legal Profession)
- *“In the diversity of the Scottish population it would be helpful to have some acknowledgment of the different cultural solutions to looking after children and in particular where kafalah as accepted by Islamic law is accepted in Scots law. Finally there is a growing issue about contact with birth parents who are unable to offer consistent care through mental health or learning disability and the child’s right to know that parent whilst growing up and as an adult where it is appropriate that contact is maintained.”* (Associations)
- *“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.”* (Religious and Faith groups)

## **CHAPTER 14: CONCLUSIONS**

The consultation analysis, aligned with the findings of the focus group discussions and the information events, has demonstrated the significance of the consultation in stimulating and enabling a huge breadth of views to be aired on the Adoption Bill. No obvious gaps in respondent type were identified in the consultation and a wide range of stakeholders were represented among organisations responding to the consultation.

Responses from Professionals / Organisations tended to comment from the viewpoint of those working in a professional capacity within the adoption sector and provided a broad range of views across the questions posed. Individual responses tended to focus very much on the issue of joint adoption by unmarried or same-sex couples.

More Professionals / Organisations who addressed this subject were supportive of the need to introduce legislation to allow for joint adoption and for the range of adopters to be extended to include same-sex couples and unmarried couples than were opposed to the idea. The opposite was true for most Individuals responding to the consultation with 89% against same-sex adoption and 83% against unmarried couple adoption. Furthermore, there was significant support from Individuals for a conscience clause to be introduced if adoption is opened up to allow adoption by same-sex and unmarried couples.

Across those responding to the consultation and providing comment on specific questions, there was broad agreement with all the recommendations made with the exception of recommendation 61 (the Executive would welcome views on the recommendation that there should be a centralised national system to appoint and train curators, reporting officers, and safeguarders from which individual case appointments are made locally).

Across the consultation as a whole, a number of themes emerged and each of these is examined in brief in the following paragraphs.

### **The importance of the child**

For most audiences responding to the consultation or participating in discussion sessions or information events, there was agreement that the primary focus for any decisions should be the welfare of the child and what is best for that child.

### **Criteria for adoption**

For those in agreement with the concept of same-sex or unmarried couple joint adoption, a number of criteria were outlined as being of prime importance:

- Offering a loving, stimulating and supportive home
- Being able to demonstrate that a relationship is stable, responsible and loving
- Demonstrating permanence in a relationship (perhaps by the length of the relationship or by having joint financial arrangements)

Overall, these respondents focused more on the need to offer emotional support and a stable family environment rather than financial support per se.

While many of those opposing the concept of joint adoption by unmarried or same-sex couples were in agreement with the above criteria, they argued that joint adoption by unmarried or same-sex couples was not in the best interests of the child to be adopted.

### **Clarity in how the system works**

While many respondents did not have a clear understanding of the adoption process, there was a general view that it is currently too lengthy and can serve to cause distress to individuals involved in the process. The concept of anything that serves to simplify the process and offer flexibility was welcomed. As such, there was generally a positive view on the introduction of Permanence Orders, although some respondents cited a need for more information on the role of these in the adoption process. Similarly, most respondents also noted that Children's Hearings Systems should continue to be involved in the adoption process.

That said, many of those commenting noted that there was a need for the respective roles of the Permanence Order and the Children's Hearings System to be clearly defined and explained. Similarly, there were requests for clear procedures concerning guidance and training.

There was broad agreement for a national scheme of adoption allowances to be made available and consistency across Scotland was perceived as important by many Professionals / Organisations. A degree of criticism was levelled at the existing system due to inconsistency across local authorities and agencies.

### **Training**

Across the consultation as a whole, there were many requests for further training to be available to those involved in the adoption process. Training was perceived to be a necessity by a wide range of those involved in the adoption process, including professionals involved in placing children for adoption, those within local authorities, those within agencies and courts, and individuals involved in the Children's Hearings System. Furthermore, if an increased range of services are to be made available to a wider range of individuals involved in, or affected by, adoption, there were comments that those delivering these services also need to have appropriate training.

In the interests of introducing consistency across Scotland, there was support for a nationalised system to appoint and train curators, reporting officers and safeguarders. One or two respondents also noted that the introduction of a mentor scheme would be useful, providing that the mentors were objective in their approach and adequately trained. Similarly, there were one or two suggestions for a Centre of Excellence.

### **Resources**

Alongside requests for more training, there were requests for a wider range of resources to be offered to all those affected by the adoption process. This focus tended to be on counselling and therapeutic services rather than financial support, albeit that some respondents noted that financial support should be made available to adoptive parents or potential adoptive parents in the same way that foster parents obtain financial support. There was support for this to be offered on a national basis with levels of funding being agreed across all local authorities.

## **Funding**

While there were generally calls for a range of services to be made available to a wider range of individuals, there were comments that a greater degree of funding would need to be made available in order to support this.

## **Communication**

Respondents commented on the issue of communication in two distinct ways. First, that local authorities tend to have little communication with each other and that there is a need to ensure a consistent approach to adoption (and fostering) across Scotland.

Second, that many individuals who might wish to make use of support services are unaware of what might be currently available and / or how to access these services. There were requests from many respondents for increased publicity and marketing of available services.

## **Information**

The issue of what information is, could be or should be made available to those involved in adoption was raised by a number of respondents. While there was recognition of the need to ensure confidentiality to birth parents, many adopted individuals and adoptive parents placed more emphasis on the adopted child. The provision of medical information was seen to be of paramount importance, particularly in instances where there may be an inherited health problem that an individual should be alerted to. There were also some requests for more general information on family history to be made available where possible.

## **Linkage with other consultations**

Finally, there were some comments that the findings from this consultation need to be aligned with other evaluations that have been undertaken recently, namely, the Children's Hearing System evaluation and the 21<sup>st</sup> Century Social Work Review.

## **APPENDIX 1**

### **SCOTTISH EXECUTIVE CONSULTATION PAPER**

**TO BE APPENDED**

## **APPENDIX 2**

### **SCOTTISH CIVIC FORUM BRIEFING PAPER**

## Safe and secure homes for our most vulnerable children – a consultation on the Adoption Bill

Current adoption law in Scotland is contained in the Adoption (Scotland) Act 1978 and was last updated by the Children (Scotland) Act 1995. Since 2001, the independent Adoption Policy Review Group, commissioned by the Scottish Executive, has been looking at adoption law and processes in Scotland. It reported in June 2002 on the place of adoption services within the spectrum of services for children and young people, the quality of recruitment, selection and assessment procedures for prospective adopters and the extent and quality of post-adoption support. In June 2005 the Group reported on the legal framework for adoption and other issues. The Group made 107 recommendations and the Scottish Executive has accepted many of these - this consultation is on those recommendations. The Scottish Executive is interested in your responses to all the issues covered, and there are 21 questions in total (see pages 5 to 7), but it has outlined four key areas and these are explored here. The consultation is only one of many factors that decide whether or not the recommendations are carried through.

### Background

A traditional idea of adoption is of a baby being given up voluntarily by the birth parents and being adopted by a couple who want a child of their own, yet in the 21<sup>st</sup> century this doesn't happen very often. Nowadays, the children that need new homes are usually older and have come into the system after being taken away from their birth parents - the present system and laws don't meet so well the needs of these children. There are a number of problem areas, for example:

- Adoption is a legal arrangement that involves severing all existing legal bonds and making new ones. There is worry that this does not meet the range of circumstances of older children. There are alternatives to adoption but these do not offer long-term security.
- The number of people who apply to adopt or foster children is falling.
- Current adoption policy does not cope well when children need or want to keep in contact with their birth parents or other members of their birth family.
- If birth parents do not consent (do not agree) to the adoption then it becomes a contested case, which means that the process of adoption can take a very long time. The Group recommended that it ought to be simpler to dispense with consent (agreement), where it is in the best interests of the child.
- Same-sex couples living together are not allowed to foster and yet a person in a same-sex relationship can adopt a child.

## **Current alternatives to adoption**

Adoption is a legal process that gives parental rights and responsibilities for a child to the adopters and cancels any existing parental rights or responsibilities of a birth parent (who is not an adopter - a step-parent can apply to adopt a child individually or jointly *with* the birth parent). There can be conditions put on the adoption, like maintaining contact with a birth family, but these are made only “in exceptional circumstances”. At the moment, alternatives to adoption include a ‘supervision requirement’, a ‘Parental Responsibilities Order’, a ‘freeing order’, and a ‘residence order’.

A ‘supervision requirement’ is when a children’s hearing suspends, but does not remove, some of the birth parents’ rights (such as the right to regulate where the child lives or whom he or she has contact with) but it does not give the parental rights to foster carers or the local authority. It is meant to be reviewed at least once a year.

In a ‘Parental Responsibilities Order’, the local authority applies to remove most of the birth parents’ responsibilities but the responsibilities can only be transferred to the local authority and not to the carer of the child.

If birth parents contest an adoption, then the local authority can apply for a ‘freeing order’, which removes the birth parents’ rights and places them with the local authority; if the proposed adoption doesn’t then go through, the local authority has parental responsibility. It can be very difficult to undo such an order and the law doesn’t give any protection to continuing contact between the child and birth family members, such as brothers and sisters.

A ‘residence order’ is where foster carers apply to secure the child’s position in their care. This means, though, that the foster carers lose their fostering support and benefits.

The Adoption Policy Review Group thought that these various alternatives do not all give clear, long-term legal security for children and carers and can risk leaving children in a state of limbo about who cares for them. The Group proposed introducing a new type of order, called a ‘Permanence Order’, to replace the above orders. A Permanence Order would be flexible enough to take account of the different needs of children, it could allow for varying degrees of contact with birth families, where this was preferable, and it could allow for children’s circumstances to change. It would also mean that foster carers would keep their right to support, including financial support.

### **Questions:**

**Do you agree that existing orders should be replaced by a single, flexible order (a ‘Permanence Order’) that would secure children in a long-term placement? How should this work in practice?**

## **Birth family members other than the mother**

Some people think that other birth family members, such as grandparents, uncles and aunts, older siblings and birth fathers who are not married to the birth mother, should have formal rights with regard to a child (birth fathers who are married to the mother do have formal parental rights and responsibilities). The Adoption Policy Review Group had mixed views on these issues.

The Scottish Executive intends to give parental responsibilities and rights to unmarried fathers whose names are on their children's birth certificates. However, fathers who are not married to the birth mother and whose names are not on the child's birth certificate have no automatic parental rights and responsibilities - there are legal mechanisms for them to establish their parental rights and responsibilities and in those cases the father's consent *is* required for the adoption. The Group decided that unmarried fathers who do not have these parental rights and responsibilities should be kept informed of any adoption procedures or 'freeing orders' but that their consent was not required for an adoption order to be made.

With regard to other birth relatives the Group thought that there should be guidance on good practice so that local authorities and adoption agencies consider all alternatives to adoption, such as long-term care by relatives, but they recommended that the formal rights of other birth relatives should not be extended.

### **Who can adopt? Who can be a foster carer?**

At the moment, under Scots law, single people or married couples can adopt children. Unmarried opposite sex couples and same sex couples (whether they have a civil partnership or not) cannot *jointly* adopt a child; they can, however, be assessed together and one partner can adopt as a single person and the other partner can then apply for responsibilities and rights regarding the child. This has happened in the past and so, in effect, opposite and same sex unmarried couples have adopted.

In England and Wales, unmarried couples, whether of the same or opposite sex, will be allowed to jointly adopt from 30 December 2005, where the couple "live as partners in an enduring family relationship". The Adoption Policy Review Group thought that changing the current law to something similar to the new law in England and Wales might encourage more people to apply to be adopters. They also thought that unmarried couples might be put off adoption if only one of them could establish a full legal relationship with the child. Changing the law would also strengthen the position of the adopted child who would have the same legal relationship with both parents.

There is a debate about whether adoption by unmarried couples devalues marriage. Adoption by unregistered same sex couples might also be seen as devaluing civil partnerships (the Civil Partnership Act 2004 comes into force on 5 December 2005 – same sex couples will then be able to register their relationship as a civil partnership, which has the same legal effects, rights and obligations as marriage does for opposite sex couples). Some adoption agencies might be reluctant to take on cases where a couple is unmarried or does not have the possibility of marriage in the future, so there may be a question as to how any legislation might affect such an agency.

The Adoption Policy Review Group thought it was very important that a couple be assessed as to whether they could offer a stable and secure loving home to a child, regardless of whether the couple was married or unmarried, of the same sex or opposite sex.

**Question:**

**What criteria should an unmarried couple have to meet before they are allowed to adopt?**

## **Support during and after adoption**

Current support services for adopted children and adoptive parents include counselling and assistance (in certain circumstances this assistance can include allowances to meet a child's needs, such as from a mental or physical illness). Counselling is also available for other people affected by adoption, such as birth parents of adopted children. Children in long-term foster placements remain 'looked after' children and the local authority supports them under other legislation. The Adoption Policy Review Group recommended that adoption support services should be: counselling, advice, information and financial support, as well as other services prescribed by regulation. They also recommended that the services should be available to all parties involved in adoption.

Should the services be provided by the local authority where the adoption took place? What should happen if an adopted child or adoptive parents or birth parents move and they come under a different local authority? At the moment, the local authority where the person affected by adoption currently lives has a duty to provide support, irrespective of where the adoption took place. The Group recommended that the local authority that placed the child for adoption should have the responsibility for providing services to the adopted child and adopting family, for three years after the adoption order, after which the responsibility would be with the local authority where the adopted child and family live.

Across the country, there is variation in adoption allowances and these have to be arranged before an adoption takes place. The Group recommended that allowances should be paid under a national scheme and that adopters and adopted children should be able to receive financial support up to the child's 18<sup>th</sup> birthday, so that any carers who choose to adopt are not financially penalised.

### **Question:**

**What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

## **Who can get information about adoption and why?**

People who are 16 or over and are adopted have an automatic right to information about their own adoption. Other people, such as birth parents or other birth relatives or other relatives of adopted people, such as their spouse, children or adoptive parents, do not have that automatic right. The Group recommended that *only* adopted people aged 16 or over should have that automatic right and that there should be clearer guidelines on the rights of other people who might be affected by the adoption.

People who have not been adopted might take it for granted that they know the health circumstances of their family or any medical difficulties that happened when they were born. Although there is a full health assessment as part of any adoption procedure it can be difficult to obtain all the necessary information. Sometimes, the birth parent refuses to give consent to disclose (let other people know about) their own medical history – it is their right to have medical confidentiality - or the birth parent can't be found and so can't be asked for consent. The Group recommended that medical information should be released, with or without consent, where it is necessary to plan properly for children who cannot live with their birth

### **Questions:**

**Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

parents. Any legislation on this would have to meet the needs of the Data Protection Act and the European Convention on Human Rights and there would have to be clear guidelines on who could see the information and how it could be used.

Nowadays, people are more and more aware of the part that genes may play in health and an adopted person might want to get information about inherited conditions that exist in other members of their birth family. The Group recommended that there should not be an *automatic* right of access to such information.

## **SUMMARY OF KEY QUESTIONS**

Do you agree that existing orders should be replaced by a single, flexible order (a 'Permanence Order') that would secure children in a long-term placement? How should this work in practice?

What criteria should an unmarried couple have to meet before they are allowed to adopt?

What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?

Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?

## ***SUMMARY OF CONSULTATION QUESTIONS***

### **General**

1. The Executive welcomes general comments on the recommendations of the Group and the Executive's proposed responses. Views on those recommendations requiring legislation are particularly welcome.
2. The Executive welcomes views on any aspects of adoption and permanence law not covered in the Group's report that should be reflected in future legislation.

### **Adoption**

3. The Executive would welcome views on the appropriate definition of an unmarried (or unregistered) couple for a Scottish court to apply in deciding whether to make a joint adoption order, bearing in mind the Executive's intention that the court should consider the enduring nature of the relationship. (Recommendations 6 and 7)
4. The Executive would welcome views on whether there should be a power for Ministers to make regulations to ensure that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship. (Recommendations 6 and 7)
5. There are other issues raised by the proposal on which the Executive would welcome views (Recommendations 6 and 7):
  - What other factors should the court take into account in deciding whether an unmarried couple should adopt a child? For example, should the views of birth parents or the child be considered?

- Should there be any exceptions or special rules, for example for faith-based adoption agencies?
- Should the Executive issue guidance on considerations to be examined in determining the best interests of the child, and what might such considerations be?

6. The Executive would welcome views on the issues on which parental views should be sought in placing a child for adoption. (Recommendation 11)

### **Permanence Order**

7. The Executive would welcome views on the principle and details of the Permanence Order, in particular any practical or procedural issues that might arise from use of the Orders, and how these can best be addressed. (Recommendations 19 - 25)

8. The Executive would welcome views on the role of the hearing system in Permanence Orders, in particular any practical difficulties that would be raised by the recommendations and further suggestions on how the special arrangements that have been made for children on permanence orders can be recognised by the hearing system. (Recommendations 28 and 29)

### **Support for adoption**

9. The Executive would welcome views on what additional adoption support services might be prescribed. (Recommendations 33 - 36)

10. The Executive would welcome views on the recommendation that local authorities should have an adoption support officer within the senior management team. (Recommendation 38)

11. The Executive would welcome views on the recommendation that a local authority placing a child for adoption should have responsibility for providing adoption support services to the child and the adoptive family for three years after the adoption order, in particular whether the period of three years is appropriate. (Recommendation 41)

12. The Executive would welcome views on how widespread any entitlement to adoption support should be - for example, should grandparents and siblings have a right to support - and on what services different groups of people should receive, for example should birth relatives have a right to any services beyond counselling. (Recommendation 42)

### **Improving court rules and avoiding delays**

13. The Executive would welcome views on whether a system of leave to apply to court would be effective in providing the protection from repeated or vexatious applications for children and adoptive families. (Recommendations 26, 51 and 52)

14. The Executive would also welcome views on whether other statutory measures would make the system of leave a more effective safeguard. (Recommendations 26, 51 and 52) For example:

- Should the legislation require the applicant to produce new evidence, or evidence of a significant change in circumstances to support an application for leave?
- Should there be a minimum period between new applications for leave in respect of the same child?

15. The Executive would welcome views on whether legislation should limit the circumstances in which an applicant could seek information about an adopted child in support of an application to court. (Recommendations 26, 51 and 52)

### **Curators, reporting officers and safeguarders**

16. The Executive would welcome views on the recommendation that there should be a centralised national system to appoint and train curators, reporting officers, and safeguarders from which individual case appointments are made locally. (Recommendation 61)

### **Role of the children's hearings system in permanence cases**

17. The Executive would welcome views on the stage in permanence planning at which there should be a statutory requirement on the local authority to inform the children's hearing of its intention. The Executive would also welcome views on the steps to be followed after the hearing is informed of the local authority's intention, for example the model currently used when a decision is taken to place a child for adoption. (Recommendations 62 - 71)

### **Fostering issues**

18. The Executive would welcome views on the options for a national scale of fostering allowances. (Recommendation 76)

19. The Executive would welcome views on the proposed working group on private fostering, and what the remit of such a group might be. (Recommendation 85)

### **Procedures within local authorities and agencies**

20. The Executive would welcome views on the detailed proposals of the Group on local authority and adoption agency procedures, particularly on the issue of independent appeals and complaints. (Recommendations 88 - 99)

### **Access to information**

21. The Executive would welcome views on the proposal that medical information about birth parents and families should be shared, without consent, to plan properly for a child. Particular issues include: what sort of information could be shared; who could have access to the information; and whether any information should be communicated to the adopted person or the adoptive parents. (Recommendations 103 - 106)

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## **Submitting your views on the proposals**

The deadline for submitting comments to the Scottish Executive is **31 October 2005**. For a copy of the full text and accompanying papers, contact the Scottish Civic Forum (see contact details below), or visit the Scottish Executive website at:

[www.scotland.gov.uk/publications/2005/06/29170235/02372](http://www.scotland.gov.uk/publications/2005/06/29170235/02372)

The Scottish Executive team who are holding the consultation can be reached at:

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Scottish Executive Education Department  
Looked After Children and Youthwork Division  
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## **Scottish Civic Forum**

The Scottish Civic Forum is an organisation committed to building a new culture of active participation, in which the people of Scotland have a genuine opportunity to be involved in influencing the government policies that affect our lives.

If you are submitting views to this consultation, we would be grateful if you could also send a copy to the Scottish Civic Forum. As an organisation working to increase civic society's involvement in decision-making processes, we need to gather evidence of where and how we have effect. If this paper has helped you get involved, or if there are ways you think we could be doing it better, please let us know.

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**APPENDIX 3**

**REPORT OF FOUR CONSULTATION MEETINGS**

**SCOTTISH CIVIC FORUM**  
**FÒRAM CATHARRA NA H-ALBA**



**Safe and secure homes for our most vulnerable children  
– a consultation on the Adoption Bill**

**Report of four consultation meetings  
facilitated by the Scottish Civic Forum**

## **Introduction**

George Street Research and the Scottish Civic Forum were commissioned by the Scottish Executive to carry out work on the consultation *Safe and secure homes for our most vulnerable children – a consultation on the Adoption Bill*. The Forum's main role was to run four information/consultation meetings in Glasgow, Edinburgh, Fort William and Aberdeen. The meetings would also be used to assist in recruiting volunteers to participate in focus groups.

## **Mechanics**

Central, accessible venues were booked for the meetings: Renfield St Stephen's Church Centre, Bath Street, Glasgow; An Drochaid, Claggan Road, Fort William; Edinburgh City Chambers, Royal Mile, Edinburgh; and the Foyer, Marywell Place, Aberdeen. The timing of the meetings was scheduled to facilitate the attendance of those coming from work, in response to internal evaluations of previous Scottish Civic Forum events. A user-friendly briefing note on the proposals was produced and cleared with the Scottish Executive before issue, and issued with all invitations. Prior to the award of the contract the Forum had circulated information on the paper-based element of the consultation in its July and August eLEG bulletins about Scottish Executive consultations. Copies of the consultation paper were available at all meetings and those registering for a meeting were alerted as to where a copy of the proposals might be obtained in advance.

## **Recruitment activity**

The Forum issued an email invitation and then followed this up with a hard copy invitation, together with the briefing note, to all of its contacts, to the list of contacts provided by the Scottish Executive and to other adoption-specific contacts. The letter covered both an invitation to the information events and an invitation to focus groups. It was made clear that in-depth telephone interviews could be offered as a substitute for focus groups, recognising the sensitive and personal nature of the subject matter. In addition, former local co-ordinators of the Forum (a number of whom facilitated discussions at the meetings) were engaged to carry out recruitment by widely disseminating information in their areas. Dissemination included not only local groups and contacts but, as far as possible, libraries and community centres. The total number of contacts made numbered over 4,200. This advertising of the events was then followed up with targeted telephoning, with 5 days of staff time dedicated solely to this activity.

The numbers at the meetings were lower than had been hoped. We can provide some feedback as to why this might be. First of all, the number of people in the population who are directly affected by adoption is relatively small and therefore it was perhaps unrealistic to expect that there would be the same degree of interest as there might be in relation to an issue that directly affects a larger number of people.

Secondly, as highlighted in the original proposal submitted to the Executive, the lead-in time was very tight. The desirable lead-in time for public meetings is three months, taking into account the time needed to find and book venues, production of publicity information (fliers, etc), disseminating information in time for groups receiving the information to cascade it to their own membership/clients/service users. This is particularly relevant when using small organisations to help to disseminate information since they often do not have paid staff and rely on disseminating information through monthly or quarterly meetings. In those instances, one relies on the goodwill of particular individuals contacted in asking them to make some phone calls themselves to encourage attendance.

In addition, there was some feedback from those contacted through telephone targeting. A number of people said that it was simply too short notice. Some people commented that they felt they could not come and discuss these sensitive issues in an open forum. They were offered a copy of the consultation document and briefing note and encouraged to submit written comments. A few contacts from a lesbian group said that they might have had potential interest in the issue of joint adoption by same-sex couples but that they were not aware of lesbian couples in their area having problems adopting children. As they felt that this issue had not been a particular difficulty for their members, they were reluctant to come into a forum where there could be participants who were against adoption by gay people. Circumstances external to the meeting and its topic can also affect attendance - the weather in Aberdeen was very bad on the evening of the meeting there and this may have put some people off.

## **Format of meetings**

All of the meetings followed the same format apart from Aberdeen. At each meeting a postbox and paper for anonymous submission of comments was supplied and this was highlighted at each meeting. Only one person took advantage of this facility but then a duplicate comment was made during the group feedback session of the same meeting.

The programme for the meetings is shown below.

6.00pm Registration

6.30pm Opening remarks and introduction

6.35pm Background to the consultation and presentation of key themes

6.50pm Discussion groups

8.00pm Short break to allow facilitators to prepare for feedback session

8.10pm Feedback from each group facilitator

8.30pm Final remarks including invitation to volunteer for focus groups and close

At Aberdeen, the smaller number of participants meant that there was one discussion group and therefore it was not necessary to have a feedback session.

## Summary report of the four meetings

### **Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a 'Permanence Order') that should secure children in a long-term placement? How should this work in practice?**

Some participants felt unable to fully address this question as they did not have detailed enough knowledge of the processes currently in use. Nevertheless, there was an overall wish for a system that would work for the best interests of the child. Many thought that a system that avoided delays for the child, was flexible and was applied across Scotland consistently would be helpful – there were concerns that deliberate delays by others were detrimental to the child, so a simpler, quicker system was generally welcomed. The importance of trained professionals making decisions was emphasised by some, rather than lay people making decisions – there were concerns about Children's Panels; this may also tie into the desire by many for any system to be applied across Scotland consistently.

There were concerns that not enough is done to involve the extended birth family, such as grandparents, in potentially caring for/adopting the child and more efforts should be made to support birth parents/families in caring for their children. If Permanence Orders could make it easier for birth family members to adopt then this was welcomed. There was support for flexibility over contact arrangements yet also concern that there needed to be discretion over this and a worry that a child having contact with a birth family may be off-putting for potential adoptive parents – what level of responsibility would the adoptive family have for the child where the birth family was still involved? There was great concern that grandparents lost contact with their grandchildren through the actions of their children who gave up their own children for adoption.

Mention of guardianship arrangements was made – this found more favour with those who had given up children for adoption and less with those who had adopted children.

### **Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

There were mixed views on this topic, with some participants stating that unmarried couples should not adopt – it was preferable for couples to be married heterosexuals. Generally, where participants thought it acceptable that unmarried couples should adopt, they were accepting of same-sex couples also adopting, although there were concerns that the sexuality of the adoptive parents could add another factor of discrimination to the adopted child's life. A view was expressed at one of the meetings that a child who had suffered from abuse could find it difficult to form a relationship with an adopter of the same sex and that this might be a relevant issue to take into account. It was suggested that older children's views could be sought on being placed with a same-sex couple.

Criteria suggested were: the ability to offer a loving, stimulating, supportive home: that the relationship was stable, responsible, loving, had some degree of demonstrable permanence (commitments of three to five years were suggested) and had joint financial commitments, such as a mortgage in joint names; one or both of the partners should be working; how a couple interact and cope with stress. Screening could include interviews with former partners, colleagues and neighbours as well as friends and family. Some thought that a Civil Partnership could be a bonus factor in any assessment, others thought that the ability to offer a loving home was the most important factor. Couples could be given training in childcare.

Whatever criteria were laid down, these should be consistently applied across Scotland, with professionals not bringing in their own personal values

Some participants noted that single people should not be excluded from adopting children. There was divided opinion about whether same-sex couples should be allowed to foster children.

**Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

On the subject of financial support, many participants thought that adoptive parents should not receive additional financial support although foster carers should. Those who had adopted noted that adopted children could have additional support needs that entailed a greater financial burden and thus financial support should be available. It was noted that any financial support should also be available to extended birth family members, where they had adopted the child. There should be national guidelines for any financial support.

Therapeutic and psychological support should be available to all parties involved in adoption. Self-help/support groups should also be available but not as a substitute for professional assistance. Many participants thought that there should be dedicated social workers for each party in any one adoption, though some participants disagreed with this. Birth families should be supported to avoid the need for adoption. Childcare training should be available to adoptive parents. Respite care may need to be available to adoptive parents. Adopted children may require additional support at school with schools being better informed about an adopted child's needs and circumstances. Letterbox contact with the birth family should be encouraged. There were various suggestions as to how long support should be available – throughout the childhood of the adopted child to lifelong support.

Generally, it was thought that there was a need for a national agency and proper resourcing for support services. Intermediate agencies between birth and adoptive families might be appropriate and an intermediate agency for birth parents seeking to trace children they had given up for adoption.

It was noted that it could be unworkable to state that support should be offered by the originating local authority of the adopted child for in many parts of Scotland there were huge distances to travel – support should be given locally.

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

Most participants thought that medical information should be made available. Opinions differed as to who should be able to obtain the information: some thought it should be made available to adoptive parents or an adopted child's GP or the local authority or the adopted child at an appropriate age and level of understanding. It was agreed that where medical information about a child could affect the decision to adopt the child then prospective adopters should be given that information. Many participants raised the issue of the need for ongoing information on the health of birth parents, since certain conditions material to the child might develop in the birthparents only as they age. There were some reservations raised about privacy and in what circumstances information should/could be given out.

**Other issues**

There were concerns about children, especially older children, having to change their names when adopted and thereby losing their identity.

There was a concern that placing a child with a same-sex couple would influence the sexuality of the child.

There was a concern over the make-up of the Adoption Review Group.

Stringent background checks were required on parties involved in adoption and fostering.

The hearings process in Scotland is too complicated.

Adoptive parents should be honest with adopted children that they are adopted.

Contact arrangements should be agreed between adoptive and birth parents where possible.

Support should be available for private and international adoptions and extended family adoptions.

## Report on Glasgow meeting

The Glasgow meeting was held at Renfield St Stephen's Church Centre, a community centre in Bath Street, Glasgow on 4 October 2005. A total of [25] people participated which included: adoptees; adoptive parents; grandparents with adopted grandchildren; birth parents; and professionals. There was also an observer from the Scottish Executive.

### Summary

#### **Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a 'Permanence Order') that should secure children in a long-term placement? How should this work in practice?**

While many participants welcomed the idea of reforming the current system, there were mixed views as to the best mechanism to put in place; some of this could be related to uncertainty over the exact workings of the current system. Many thought that any new system should be flexible (but with consistency across Scotland and effective administration) and there was concern that the current system meant that there might be little stability in a child's life: the child could be pushed from "pillar-to-post" and a new system could help to avoid this.

Guardianship, rather than adoption, was raised as a possibility, with those who had given up children for adoption generally welcoming the idea and those who had adopted not welcoming the idea.

There was a concern that more should be done to avoid children having to be adopted and that the option of the child living with other birth family members, eg, grandparents, should be better explored. In an adoption, birth family grandparents can suffer because of their children's decisions.

#### **Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

Where participants agreed that unmarried couples should be allowed to adopt, it was generally agreed that some sort of assessment needed to be made to ascertain that the relationship was stable, loving and had some degree of demonstrable permanence, such as joint financial commitments; another suggestion was that screening could include interviews with previous partners. It was also suggested that adoption criteria should simply be the ability to offer a loving home, as there was no screening for becoming a birth parent.

It was also suggested that single people should not be excluded from adopting children, they too can offer loving environments and there are many single parent families already.

Some felt that children who had been abused might be better placed with an adoptive parent or couple who were not of the same sex as the abuser.

Some participants thought that only married people should be allowed to adopt a child. Some participants thought that same-sex couples should not be allowed to adopt. Some felt that a stable family unit was the married heterosexual couple and this provided children with

security. The needs of the children had to be paramount in the adoption process and there were concerns that a child who was adopted by a same-sex couple could suffer bullying at school.

**Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

With regard to financial support, there was a concern that it should not be seen as an incentive for adoption. One person suggested that grandparents could be given a salary to care for their grandchildren, in preference to adoption (by non-birth family members). Any financial support should be given under a fair national arrangement.

There was great concern that other forms of support should be available to all parties involved in adoption: birth families, adoptive families and adoptees. Counselling, therapeutic and psychological services should be available to all parties and there should be specialist social workers for each party, before, during and after the process of adoption, perhaps for up to forty years. Support needs for adoptive families may include issues such as respite care, discipline, housework and emotional issues. Adopted children may require specific school support. Birth parents should have more support to avoid the adoption of their children. There were concerns that support services were under-resourced and while there was a role for self-help groups they should not be a substitute.

There should be a national agency or a national centre of expertise and there may be a need for an intermediate agency between adoptive families and birth families.

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

It was generally agreed that medical information should be available to adoptees (at an appropriate age) and to adoptive families and that family behavioural information might also be appropriate to pass on. One group noted that information on the birth parents' medical histories should also be passed on as the birth parents age. It might be appropriate for GPs to hold the information and the NHS could cross-reference family information.

**Other issues**

There was a concern that children being adopted should not have to give up their birth names, especially older children.

## Group 1

There was a cross-section of people with different experiences in relation to adoption in this group.

**Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a ‘Permanence Order’) that should secure children in a long-term placement? How should this work in practice?**

Some people felt that this question required some knowledge and understanding of the existing formal process and that it was difficult to comment since not everyone involved in adoption has that knowledge and understanding.

There was a desire for a more flexible system to meet the needs of older children but it was felt that there also needed to be a degree of consistency across Scotland. There was a view that the system for making and removing care orders gives birth parents “repeated bites at the cherry”. Some people felt that Children’s Panels don’t have experience of adoption.

**Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

Although it was remarked that the average maximum period for cohabitation is 5-7 years and that this does not provide children with security, it was also recognised that marriage is not a guarantee of permanence either. One person wondered how many marriages break up because of the stress of adopting older children. Participants asked whether civil partnerships could serve the purpose of demonstrating permanence. It was felt that the relationship must be stable and loving and the most important factor was how couples are assessed.

Reservations were expressed by some participants about adoption by same-sex couples. In particular, it was suggested that their adoptees might be picked on at school. Given the fact that many of those needing adoptive homes are older, perhaps adolescent, it was felt that adolescence was often difficult enough without adding this factor into the equation. However, there was also a view that some children had been so badly abused they could not live with someone of the same sex as their abuser. Individual decisions need to be made on a case-by-case basis. Although this approach might be appropriate for older children it was felt it would not be for babies. A view was expressed that for some older boys, a single man might be the best adopter. The question was raised, however, as to whether all children with problems can really be ‘fixed’. It was also wondered, given the above points, how children could be educated on what constitutes a happy family.

**Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

There was some discussion of whether or not financial support should be available. It was generally felt that it was necessary to ensure that money should not be an incentive for adoption. It was also wondered whether money *could* become an incentive to adopt a partner’s child. Another participant wondered if anyone could *really* gain financially from adoption. It was suggested that financial support to families should be available under a fair national arrangement.

In relation to other support mechanisms, it was felt that **adoptive families** must be supported. It was felt that training for adoptive parents was important and that this needs to strike a

balance between warning about the realities of the commitment being taken on and providing information about the help available. It was felt that a quicker link-in to psychological services is needed. It is hard to go back to social workers if there are problems but there remains a need for flexible support, eg, if sibling groups are being adopted, support needs encompass such matters as respite care, housework, emotional support and advice on strategies for such issues as discipline. It was felt that existing services and resources for support are not sufficient.

There is a need for **traumatised children** to be supported. Therapeutic services focused on adoptees are important, particularly to help a child who needs a high degree of therapy. The available resources need to be substantially increased. It was felt that schools are also under-resourced to meet the needs of traumatised children, for whom school can be a huge problem in terms of the syllabus, playground interaction and teacher awareness. It was felt that more teacher/social worker/psychologist liaison is needed.

It was pointed out that there is no national centre of expertise in Scotland and it was suggested that councils are reluctant to seek support from outside Scotland.

It was felt that there is a huge hole in terms of support for **birth families**. It was suggested that grandparents could be or could have been a positive influence in keeping a child within the family and/or in keeping links if adoption goes ahead. It was suggested that adopters' openness in relation to birth families' contact seems to vary from area to area and that in some areas there is no support. It was felt to be important for a child to understand where he/she comes from. However, it was also commented that appropriate contact changes with age and circumstances. Adoption might involve a lot of family contacts and participants were undecided about how this should best be dealt with. It was generally agreed that support is needed but that guidance on all of these issues would be valuable.

It was felt that **adopters** make a huge input and also need support. An intermediate agency between adopters and birth parents was suggested.

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

It was generally agreed that medical information needs to be available. It was felt that disclosure in the interests of the child is a priority, even although there may be legal difficulties. It was felt that adoptive parents should have birth family background health information if they are to parent properly. Lack of medical information was also a problem for young women who had been adopted when they wanted to start their own families. It was also pointed out that family history information can also be relevant to behavioural problems, eg, past trauma which may be noted on police records.

There was less clarity about appropriate mechanisms for conveying medical information. It was felt that birth parents should be encouraged to pass on the information and that contact with grandparents could be useful in finding out about family health issues. It was also suggested that this should include feeding in information over time as birth parent health status changes/develops/ages. It might be appropriate for the information to be held in medical notes held by the GP, which the child could access when they become adult. One suggestion was that the NHS could cross-reference family medical information. It was felt

that practice is not currently consistent across Scotland and that steps had to be taken to secure greater consistency.

## Group 2

All of the group members had personal experience of adoption in Scotland: one woman had had a child adopted against her will (in the 1960s by arrangement with a religious adoption agency), her other daughter was there as a support/observer; a grandfather wanting specific rights; a father whose wife had given up a child in similar circumstances to the other woman in the group; and a woman who adopted two primary-age children.

Initially, the group did not feel that the four questions or the summary of twenty-one consultation questions were relevant to what they wished to discuss, but as the session evolved all said that they felt they had made the points they wanted to. Three members of the group intended to volunteer for focus groups and may also submit comments directly to the Executive, once they have considered the discussion more fully.

### **Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a ‘Permanence Order’) that should secure children in a long-term placement? How should this work in practice?**

It was generally agreed that a Permanence Order would help to avoid children being pushed from “pillar-to-post” and would aid the hearings system. It was wondered whether life-long Guardianship could be considered rather than full legal adoption but the group could not agree on this idea. Those who had given up children for adoption (ie, birth parents) generally liked the idea, whereas the woman who had adopted opposed it and said she may not have adopted if she had felt it was not permanent and that the responsibility did not lie wholly with the adoptive family.

### **Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

The group had split views on this question. Half of the group believed that couples must be married to be able to adopt and the remainder felt this was not necessary. There was a unanimous view that the relationship should be shown to be stable and responsible. There was a suggestion that a three-year commitment was sufficient to demonstrate this with one/both adults in secure, well-paid employment with shared financial commitments, eg, a mortgage in joint names.

Half of the group believed that adoptive parents must be married heterosexuals as that is “natural” – the others thought there should be a “live and let live” attitude and that “...anyone who is in a stable relationship and is willing to offer love to a child in need, should be able to adopt.”

### **Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

It was felt that counselling is needed for both the birth parents and adoptive parents before, during and after the adoption process and this should be available from professionals rather than from *ad hoc* self-help groups. Although there is a role for self-help groups as a support, they should not be used to substitute for a properly monitored system. It was felt that emotional obstacles should not be put in the way of birth parents. It was also thought there should be specialist social workers who would focus on the different parties involved – not

representing more than one interested party, ie, not birth parents and adoptive parents, as there is a potential for conflict.

One woman, who had not been allowed to see her baby daughter before she was taken for adoption, felt that birth parents should be allowed to see their baby. She had been searching for her daughter unsuccessfully since the 1960s. She said, “you were never supposed to find a child who is taken away...”

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child’s future? Who should be able to obtain such information and in what circumstances?**

There was a clear view that medical information should be passed on to adoptive parents and to adoptees (as appropriate to age and understanding). It should be released and not hidden.

**Group 3**

This group comprised over a dozen people and the majority of those present spoke strongly based on direct personal experience of the adoption process stretching back, in some cases, over forty years. People welcome the Scottish Executive review and believe that this gives an important opportunity for everyone to work together to improve a system that has destroyed many people's lives.

**Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a ‘Permanence Order’) that should secure children in a long-term placement? How should this work in practice?**

One person made a passionate plea for the position of the extended family. In particular, the role for grandparents was stressed and it was pointed out that although it was for the birth parent to decide on adoption, the decision can have a massive impact on grandparents of the child and the grandparents have no choice or rights in the matter. The child not only loses a birth parent but also loses direct links with their natural grandparents and extended family. It was argued that adoption should never be allowed except as a last resort and only after every extended family option had been ruled out.

At the point of adoption, the child can lose all rights to the assets of the parent, thus perhaps further disadvantaging the child.

It was suggested that there are five hundred children in care in Scotland at the moment, all awaiting adoption and matching to new parents. This is too large a figure and every effort should be made to reduce the figure and reduce the time that children wait. One way to reduce the figure is to make adoption harder and less desirable an option. One person argued strongly that adoption represented failure, not success, of a process. The person stated that it was a “fabrication and a lie” and pursued for social acceptability reasons rather than the good of the child. Adoption robs children of their identity. For older children, this causes severe trauma as they try to accept a new identity and family situation; they know that it is not their own natural identity. The situation might be different for babies but there are fewer babies being adopted now. It was noted that for babies it was easier in their younger years as they had no knowledge of the transaction; things become more difficult in later life as the child tries to understand the mystery of what has happened to him/her.

People agreed with a single flexible order but want it properly and effectively administered.

**Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

One Catholic gentleman who had adopted children asked that any new legislation should genuinely be focused on the needs of the child and not focused on a cheap option for government. If it costs more to avoid adoption yet it is better for the child, then the more expensive option should be pursued.

He argued that children should only be adopted into “stable family units”. He defined this as a traditionally married couple and was critical of single parents and same-sex couples as they could not offer the “stability” required for good parenthood. They may pass tests at the point of adoption but what happens to the child as it approaches puberty and may reject the sexuality of their adopted parents? He stated that same-sex couples could put children 'at risk'. The government were trying to be politically correct and in order to do this would now put children at risk. He also argued that the extended family should be invited to care for a child long before a child was offered out to a same-sex couple.

One single parent who is currently adopting a child vigorously argued against this and advised us of the strict screening process that she has gone through over the last thirteen months. She was confident that she could provide a good home to a child. Many children are already brought up by single parents. Why should it be different for adopted children?

Where couples are being considered for adoption the screening process should involve an interview with previous partners, for instance, if one of the potential parents had been divorced. Previous partners may have vital evidence that could prevent a tragedy.

One lady argued strongly that same-sex couples should not be excluded from the process. What matters is that they can provide a loving and caring environment for the child. If they can pass the screening process then they should be allowed to adopt. Perhaps the criteria for adoption are too high. After all, what criteria are there for natural parenthood? Virtually anyone can become a natural birth parent without any screening whatsoever.

**Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

One person noted that grandparents should be given a salary to look after the children of their sons or daughters and that this is preferable to adoption.

Most people agreed that there is a need for greater support at all levels. This support may have to be available for up to forty years to see parents and children through the whole process. Perhaps much more support is needed for birth parents to stay with their children and avoid adoption. Birth mothers need particular intensive support and this should include financial support where required.

A plea was made for one national agency to deal with adoption and for it not to be left to 32 different local authorities, which might lead to a postcode lottery for quality of service.

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

One young man who had been adopted and was currently trying to track down his history asked that this be made easier. It is a human right that he should be able to track down his basic information. He should have access to all medical information available on his birth parents. He was having extreme difficulty on these issues and felt that he could not fully learn about his own identity. He suspected that he might be living in a “medical time bomb” within his own body because of inherited genetic conditions yet he could not access this information to help protect and treat himself.

### **Other issues**

It was argued that even if a child is adopted that it should not give up its birth name. To do so, is for the child to lose its identity. Names are important and part of a child's identity. This is particularly important for older children as they would be faced with a change of name while still in a classroom or school. This causes major confusion to all children in the classroom and can lead to bullying and name-calling.

### **Anonymous postbox facility**

One participant used the anonymous postbox comment facility to highlight a view that it is undesirable to place children for adoption with same-sex couples on the basis that research carried out in America shows that in the early teens the percentage of young men thinking they are gay is higher than in their mid teens and reduces again by the time they reach their early twenties, the suggestion being that placement with a gay couple might influence their view of their sexuality at a formative time in their development. The same statistic was subsequently quoted by a participant during the feedback session.

## **Report on Fort William Meeting**

The meeting was held at An Drochaid, a community centre used by a wide range of groups in Fort William on 6 October 2005. A total of nine people participated including two people who had also attended the meeting in Glasgow. Participants included: a grandmother with an adopted grandchild; professional social workers; a man going through the process to adopt; and birth parents.

### **Summary**

#### **Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a 'Permanence Order') that should secure children in a long-term placement? How should this work in practice?**

It was agreed that any system that contributed to the well-being and stability of the child was a positive. A new order that was quicker to obtain than the present ones could be helpful for the child. People professionally involved in adoption at the meeting found the current system workable but thought that it may not be clear to non-professionals and thus streamlining might be helpful.

There were concerns that, under a new system, adopting families could be forced to allow the adoptee to have contact with the birth family even where it is not in the best interests of the adoptee and that adopting families would have lower levels of responsibility for their adopted children, which might put people off adopting.

Any new legislation needed to be flexible enough to allow children to be considered as individuals and not just as siblings, with regard to relations with the birth family, and also be tight enough so that decisions were made on the basis of fact.

#### **Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

It was agreed that there should be clear, consistent criteria and a consistent approach as to how couples are assessed for suitability. The child's needs should be the focus and the important issue is that adopting people can offer a safe, happy home, whatever the marital status, even though and perhaps a married couple might be the 'ideal'. A couple's relationship should be enduring and stable, although participants did not mention specific time lengths. It is necessary that any couple can cope with potential problems and it could be appropriate to give childcare training; adopters should also have good information about a child they are adopting.

There was a concern that in traditional areas of Scotland children adopted by same-sex couples could face discrimination.

#### **Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

It was agreed that extensive support should be available and that this should be properly resourced. This support should be of a range of professionals, including psychologists specialising in adoption; support groups, of those who had experienced adoption, should also be available. It was thought unworkable that the originating local authority of the child

should be the one to offer support, where the adopting family lived in a different area, for distances were too great in the Highlands and Islands and other rural areas.

Greater support for birth parents than has been previously available was required. There were mixed opinions as to whether social workers should work with just one party in an adoption process or with all parties. There were also different opinions as to whether support services should be delivered by a centralised agency or locally.

Financial support for foster carers and members of extended families who step in was suggested. There was divided opinion about whether adopters should receive financial help. It was also argued that if non-birth family members adopt and receive financial help then birth family members who were willing to adopt should also.

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

It was thought that medical information should be made available to prospective adopters as part of the matching process and that some sort of system should be in place to collect information on later health issues of the birth parents.

**Other issues**

There were concerns that: judgements made by Children's Panels are inconsistent; the Children's Hearings system in Scotland was unduly complicated compared to that in England; the Adoption Review Group may not have the right mix of members; birth parents do not have the right to search for their child/children, unlike in Australia; background checks are not thorough enough and abusers slip through the net.

***Group 1***

Participants in this group included: a grandmother with an adopted grandchild, professional social workers; and a man going through the adoption process.

**Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a 'Permanence Order') that should secure children in a long-term placement? How should this work in practice?**

It was generally agreed that it would be quicker to obtain a Permanence Order than the present system and that this would be a positive element as birth parents often try to procrastinate in order to extend the adoption process. This was felt to have a detrimental affect on children. Although professionals felt that the current system is workable, as there are clear guidelines and systems in place, it was acknowledged that it can be hard for lay people to understand the framework: from this point of view streamlining the system would be preferable. All orders should be written in clear, non-jargon language.

There was, however, some concern that there might be a perception that adoptive parents would have less responsibility and that this could be off-putting to potential adoptive parents. There was also concern that a Permanence Order might force the adoptive family to allow the child to have contact with the birth family even where it is not in the best interests of the child. The question was asked as to whether the present legal discretion would be removed.

As birth parents do not always relate equally or in the same manner to all their individual children, new legislation should be able to take individuals into account rather than the sibling group as a whole.

It was felt very strongly by participants in the group that the legislation should be so tight as to ensure that Sheriffs could only make judgements purely on the basis of fact.

**Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

The group began the discussion by saying that in society today every couple should be acceptable if they are a “secure couple”. The length of time they had been together is important and also the degree of accord between the couple. There needs to be clear criteria for assessing what constitutes “a couple” to ensure that professional workers assess along strict guidelines without bringing their own personal/emotional values to bear. A safe, secure and happy home is important. The strength of the couple’s relationship is vital. Group members all agreed that, ideally, adoptive parents should be married, but unmarried couples in a loving relationship are also acceptable. The latter should, however, be questioned as to why they are not making the formal commitment of marriage.

There was a view, however, that being adopted by a same-sex couple could be a double stigma for the adoptee that would mean that peers doubly discriminate against them. Children spot differences relating to other children and this might not be fair to adopted children. One person was concerned that the issue of discrimination might be a particular issue in the rural, traditional West Highlands where the issue of morality could come into play.

It was agreed that whether the couple is unmarried or same-sex, professionals must be assured that the couple can cope with any potential problems for the child which might arise in the future from the couple’s personal, intimate circumstances.

**Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

It was felt that adoptive parents should get support from the local authority region in which they live and that cost should not be a factor. It was felt that the area from which the child came should not be expected to offer support for adoptive parents. This was particularly relevant in the Highlands and Islands and other rural areas, where distance is a significant factor. It was felt that it would be unworkable to offer support for three years to adoptive parents when the relevant authority is geographically distant. Adoptive parents need local professionals as well as the more informal support of local groups.

It was felt that greater support needed to be offered to birth parents once their child has been taken for adoption. They often have a great deal of need, feeling that they have “failed to parent” and so they need support themselves through the Adult Services. The current process could disillusion birth parents so much that they feel totally powerless in the process. It was suggested that historically the single birth parent might have wanted a child to be taken quickly to hide the stigma of illegitimacy - “to put it behind them”. However, it was felt that whether birth parents chose to place a child for adoption or it occurred as a legal requirement, support should be in place when needed.

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

The group felt this was the most difficult question to answer. It was felt that what is done with the medical information is very important. If it was available it should be passed on to the adoptive parents and not withheld by the authorities if it was deemed that sharing of any medical knowledge might lessen the child's chance of being adopted. Medical information would become part of the matching process and would therefore have an effect on potential adoption. The group wondered how vigorously medical information would be sought and was concerned as to what would happen if the birth mother did not know or was not willing to say who the birth father is.

**Other points raised:**

It was felt that the hearing system is an unnecessary hurdle for parents and that the process is unduly complicated in Scotland compared with other parts of the UK.

There was felt to be no consistency or continuity over the judgements made by Children's Panel members and there should therefore be new, clear training criteria for members concerning all schemes. This would be particularly important if Permanence Orders were introduced. Panel members should have more training, be more professional and less subjective in their judgements and decisions. "...The Panel should not be swung by tears, tantrums, and promises..."

**Group 2**

The group included birth parents, a member of an adoptive family who is also a professional and an adoptee.

**Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a 'Permanence Order') that should secure children in a long-term placement? How should this work in practice?**

The group felt that a question of this specific, technical nature is hard to answer in a meeting like this. However, it was felt that processes that would give young people stability are good.

**Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

Overall, the selection of adopters should focus on the child's needs rather than the characteristics of the adopters (whether this is marital status or anything else). It was agreed that there needs to be an enduring, stable relationship, demonstrable from proper evidence and information gathering. It was not suggested what might represent "proper" evidence. Couples should have had basic childcare training, including understanding of the trauma some adoptees have gone through before and during adoption. Adoptive parents should be provided with good information about the child they are adopting. It was agreed that there needs to be a more consistent approach across Scotland.

**Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

The group had several points of clear agreement and some points of disagreement. It was agreed that traumatised children need massive support and that support services therefore need to be of high quality and involve a range of professionals including psychologists specialising in adoption. It was also agreed that support from people who have been through the same experience is invaluable. Support should extend throughout childhood and beyond. Birth mothers have received less support and attention than other parties involved in adoption and this needs to be rectified with support from specialists with relevant expertise. It was felt that good support needs proper resources and that support services are not sufficiently resourced at present.

There was disagreement about whether or not a social worker should work with all the parties involved in an adoption or specialise in dealing with one of the parties involved (ie, adopters, adoptees or birth parents). Both options found supporters within the group, as did the question of whether support services should be delivered at local government level or by a centralised agency.

It was suggested there should be salaries for foster parents or extended families where they are willing to step in.

There was a difference of opinion about whether or not there should be financial help for adopters.

It was argued that if there is an allowance for non-blood relatives to adopt there should also be an allowance for extended family members who were willing to adopt. A case was cited where a grandmother was willing to take on a group of five siblings but could not do so for financial reasons: as a result the sibling group was split up and the children placed/adopted separately.

In the plenary session it was noted that Kinship Carers' Support exists and it should be used more. There was a lack of consistency in its use.

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

Participants thought medical information should be available but some thought it was available already through existing information collection processes. However, it was pointed out that there is nothing that can be done at present if the birth parents won't cooperate. It was felt that a system is needed to collect information about later life health problems/developments of the birth parents.

**Other issues raised:**

It was questioned as to whether the Adoption Review Group had the right people on it, ie, people with personal experience of adoption as well as professionals.

It was pointed out that whereas adoptees in Scotland can look for their birth parents from age 18, birth parents do not have a right to search for their child/children. This right exists in Australia and there was a suggestion this system should be adopted in Scotland.

There was concern that background checks, disclosure etc, are not thorough or consistent throughout the UK and that this allows abusers to move from area to area and slip through the net.

## **Report on Edinburgh Meeting**

The meeting was held in Edinburgh City Chambers on 10 October 2005. A total of [20] participated including an observer from the Scottish Executive. There was a good cross-section of participants: adoptees, adopters, birth parents, professionals and relatives of adopters.

### **Summary**

#### **Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a 'Permanence Order') that should secure children in a long-term placement? How should this work in practice?**

Participants did not have enough knowledge of the current system to fully consider this question but if the system could be simplified and if it could be easier for birth relatives to adopt and if the term 'adoption' could be moved away from, these could be positives.

#### **Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

Many thought that whether a couple is married or unmarried, there should not necessarily be a difference in the assessment criteria for suitability as adoptive parents. The stability of a relationship (perhaps with a minimum previous commitment of five years), joint financial responsibilities and commitments, the ability to offer a stimulating environment, references, might all be included in an assessment process.

Participants were split on the issue of adoption by same-sex couples. Some felt that a child who was adopted by a same-sex couple might be stigmatised. Some thought that same-sex couples should be allowed to foster while others did not. Some felt that the ability to provide a supportive environment is the important thing and not sexual preference, while others felt that sexual preference was an issue.

#### **Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

There were mixed views as to whether psychological support should be available lifelong or for a set amount of time. All parties (adoptees, adoptive families and birth families) needed support and both professional and support-group help should be available. Other support measures mentioned were psychotherapy, occupational therapy and counselling. It was noted that resources for support should be ring-fenced and that money should be allocated at the time of placement for ongoing support. Consistency across Scotland is needed and a national agency may be appropriate, with video links.

Letterbox contact should be encouraged and at age 16 adopted people should be given access to appropriate details, such as to enable them to trace their past history. It was suggested that information for birth parents should be relayed through an intermediary.

There were mixed views over financial support. Some felt that it was appropriate for fostering but not for adoption.

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

It was thought that medical information should be made available but there were different suggestions made as to whether this should go to the adoptive parents and to the adoptee at, e.g. age 18, or to the adoptee's GP, or if it should be held confidentially as part of the adoption records and accessed by the adoptee's doctor. There was a suggestion that cross-referencing could occur within the NHS in order to provide updated medical information on the birth family. There were, however, concerns about privacy, and also that perhaps information should only be accessed in life or death situations.

**Other issues**

There were concerns that changing an adopted child's name can mean that the child loses an identity – the Norwegian practice of making the birth names two middle names was noted.

Adoptive parents should be honest with a child that he/she is adopted. Contact arrangements should be agreed between birth parents and adoptive parents and a question was raised about what information adoptive parents should pass onto adopted children and what should be decided by the local authority as to which facts should be passed on.

It was suggested that a child might go immediately to an adoption family rather than into foster care.

**Group 1**

**Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a 'Permanence Order') that should secure children in a long-term placement? How should this work in practice?**

It was felt that many participants don't have enough information or knowledge of the current process to answer the question fully and this made it hard to tackle. However, it was felt that change is needed because most people don't understand the current orders. Changes in terminology would help society to move on in its view of adoption. The title 'Permanence Order' was thought to be good terminology. It was felt that, in the longer term, the word 'adoption', which implied scrubbing out the past and making the child the adopters' own, should be moved away from.

**Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

The same high standards should apply whoever is adopting – for example, covering suitability, stimulating environment, references from the community, etc.

Although marriages are not always permanent they are still important. However, anyone should be able to apply to be considered. It was felt that sexual orientation should not be a reason to exclude anyone from consideration and that it was bad that same-sex couples currently have to cover up their relationship in order to adopt. The important thing is the ability to provide a supportive environment. Assessment should focus on how couples

interact and cope with stress, and how committed they are to each other. Methods to ascertain this include references, proper evidence to support information about their background and good questioning techniques. Close checking is justified even if it feels intrusive. Social worker expertise is important.

It was also felt important that adopters must love children. They are not trophies even though some (American) celebrities seem to act as though they are.

In cases of same-sex couples adopting or single parent adoption, it is important to ensure interaction with the other sex. Post-adoption support to achieve this was suggested and in this context it was noted that there are not enough men in childcare.

### **Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

A number of general points were made and then there were comments specific to adoptees, to adoptive families and to birth parents.

#### **General**

It was felt that there should be lifelong support for all parties. It should be optional but available because needs change over time. Information on all aspects of support should be published. The point was made that however much you love, you still need help. Many people had suffered grief and trauma in the past but this had often been ignored. Some people have had bad experiences with social workers and so were reluctant to see them. Professionals need to improve at dealing with all parties in the adoption process. Independent help should also be available. Mentoring support by people with previous experience should be mandatory rather than best practice. It was felt that user-led support groups are useful because they can provide an environment where it is relatively easier for people to feel able to open up.

Birth and adoptive parents should be on the “same side” - the child’s – and sharing of their experience is the ideal situation. It was felt that the more open adoption is in terms of information, the better. The group wondered if the three parties in adoption - adoptees, adopters and birth parents - could come together to learn from experience.

It was suggested that a ‘centre of excellence’ is needed, with video links across Scotland. Consistency across Scotland is needed. All parties need help with adoptee/birth parent reunions in order to understand their own feelings. Prospective adoptive parents need to be prepared for this.

Good models include:

Family Futures Consortium in London  
Know My Own, Ireland

#### **Adoptees**

Traumatised children’s behaviour can be puzzling but it shouldn’t be left until the problems get bigger before support is given. Early input will avoid problems later. Older children

have specific issues (neglect, abuse, inconsistent care, etc). There is a lack of good psychological support to address these issues. Proposals should be developed working with people who have adoption experience and also birth parents. It was suggested that as local authorities are hard pressed the need for support for adopted children (in terms of, for example, social worker time and therapeutic support, occupational therapy, psychotherapy, etc) should be independently assessed and the support ring-fenced. A full package of support is needed. At the point of placement, money should be allocated for a child's ongoing needs for support.

It was felt that schools are not sensitive enough and need to understand the experience of the adopted child and recognise it within the curriculum. This should include recognition of the need of adoptees, like all children, to be normal.

Adoptees can be haunted by family history issues. There is a specific need to support in cases where adoptees don't know about, or have contact with, their birth parent(s). An adoptee may look for information when he/she grows up, but there may be no information there. This refers to information in general, not just medical information, which is discussed below. The birth mother may have withheld information for a variety of reasons. A way through this is needed; compulsion to disclose information is controversial and it is necessary to understand the motives for withholding. The bottom line is that it's about what's best for the child. Birth parents need encouragement, such as ongoing requests/reminders for information. This is important from the adoptee's point of view because being denied something gives it power. Adoptees want information but simultaneously don't want to hurt their adoptive parents. This can be a painful dilemma, which is unfair on the adoptee who probably didn't ask to be adopted.

### Adoptive Families

Adoptive parents can feel abandoned and need support.

### Birth Parents

It was felt that there is currently no support for birth parents who need, for example, grief counselling. Birth fathers are often forgotten. For birth parents, being sought by their child is a shock. We should try to prevent adoption by supporting birth parents and helping them turn their lives around. In Australia there is no adoption, only "guardianship".

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

It was agreed that medical information should be available otherwise lack of information can make adoptees anxious for themselves and any children they may have about every lump and bump. They need information about their risk of potentially life-threatening conditions. Our understanding of genetics is developing.

It was suggested that the information should go to adoptive parents and, at age 18, to the adoptee. It was suggested alternatively that GPs could hold the information. The gathering of information needs to be ongoing so that adoptees can learn what happens to birth parents' health as they (the birth parents) grow older. Channels of communication need to be kept

open. The question of obtaining information needs to be kept separate from the issue of personal contact. Another way of obtaining the information would have to be developed.

Although the general point about obtaining medical information was agreed, there were some reservations amongst the group about privacy – it was suggested that maybe it is not possible to have all of the information we want.

### **Other points**

The possibility of a child going forward immediately to the adopter, without going into foster care in the interim, should be explored.

It was highlighted that the issue of name changing is a delicate issue. Name is an identity and to learn you once had another one is to bring your identity into question. Change of name can also make it more difficult to trace birth family. In Norway birth names are made into the middle two names.

### ***Group 2***

The group included one person who had been a member of the Scottish Executive appointed Review Group that had produced the proposals under consideration.

**Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a ‘Permanence Order’) that should secure children in a long-term placement? How should this work in practice?**

This question was left until the end of the discussion group since the group had little knowledge of the technical detail. However, the group thought that a single order should be introduced if it would simplify the adoption procedures. It would possibly make it easier for birth relatives to adopt children and this would be good.

**Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

The group suggested that there should not necessarily be a difference in criteria for married/unmarried couples – the rigour of any assessment process was stressed as being essential. There was a minority view that unmarried couples may be less likely to sustain their relationship than married couples. It was suggested that, although this may not be the case, in the assessment procedure being married/in a Civil Partnership should be a “bonus” factor in the assessment.

The group was split over the remaining points raised. Some people felt that stigma/discrimination for adoptees related to the fact of being adopted rather than the sexual preference of the adopted parents. However, it was suggested by others that discrimination is often multi-layered/faceted – and the issue of sexual preference could add another layer of stigma to the adoptee.

It was pointed out that the position at present allows for a single person to adopt who may well be in a same-sex relationship – if the law was to be altered this would assist in the event of a death of a single adoptive parent in this situation – parental rights would be the same as married couples who adopt. If the law is not changed those waiting for adoption will have a longer wait as there will be fewer prospective parents. Stability of the adoptive relationship could be enhanced if couples were allowed to adopt rather than just single people. This issue resulted in the broadest split in opinion in the group of any of the questions.

**Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

Support of whatever kind should be available for at least five years after adoption (and possibly longer in certain cases). There was a minority opinion that support should be available at any stage.

Some information should be required as mandatory in the adoption process to make the task easier for adoptees should they wish to know more regarding their birth parents. It was suggested that it could be a letter at age 16 giving them access to certain details.

There should be minimum professional standards for all those dealing with any adoption issue. It should not just be left to whichever social worker happens to be in the post at the time. An independent national adoption agency (with local access points) should be created and staffed by trained staff (with continuous upgrading of staff skills).

Services regarding all facets of adoption should be better publicised and made known, especially to adoptees. Information for birth parents should be limited and any information relayed through an intermediary – but there is a need for caution as this could cause problems for adoptive parents in relationship building with the adoptee. This service could possibly be administered via a national agency but it may be that there is a need for a separate body with a good working relationship with any national adoption agency.

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

It was agreed that medical information should be available and should be held, confidentially, as part of the adoption records and could be accessed by the adoptee's doctor. It should only happen in life or death situations. It was suggested that there could be cross-referencing of NHS records relating to the birth family and adoptee and this could be used as a means of obtaining up to date information should these circumstances arise.

***Group 3***

The members of the group between them had experience of being a birth mother and giving up a child for adoption; adoptees; and adoptive parents. Some attended as interested individuals and others represented a support group. There was also a professional working in the field of adoption.

**Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a 'Permanence Order') that should secure children in a long-term placement? How should this work in practice?**

There were no comments on this question.

**Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

Any couple should be in a long-term relationship, possibly a commitment of about five years, and plan to be together for the length of the childhood of any child adopted. A couple should have joint financial responsibilities and commitments to demonstrate a degree of permanence about their relationship. The group was divided on the question as to whether the adopting couple should be a heterosexual couple or if they could be a same-sex couple. People who felt they should be heterosexual also believed there should be a demonstration of commitment through marriage. Others, who felt it was acceptable for same-sex couples to adopt, also wanted to see a well-established enduring family commitment.

In relation to **same-sex couples** the following points were made:

It was pointed out that a same-sex couple has all the capabilities of a heterosexual couple.

Some people felt that same-sex couples should not be allowed to foster, especially in short term cases as it is too confusing for the child. Others thought that if a same-sex family can adopt why should they not be able to foster?

Another view was expressed that it is in the best interests of the child to have parents who are a mother and father (ie, a heterosexual couple).

An adopted child wants to merge into its community. It already has the label of being adopted without the added problems associated with same-sex parents "...a child does not want to stick out like a sore thumb..."

**Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

There needs to be preparation and support for adoptive parents at all stages of the child's life, not just during the first period of matching. Ongoing, professional, cautious support for the child and adoptive parents should be provided until the child is aged 16. A lifelong mentor like a "godparent" should be provided for an adoptee. The mentor should be from a voluntary organisation, centrally funded so that its future is assured. Counselling should be offered to all parties during and after the process of adoption. It should be readily available and accessible to anyone, whatever the circumstances of the adoption.

Letterbox contacts should be encouraged and maintained. If a child has not been told about the letterbox link to his/her birth family, then at age 16 the local authority must offer him/her the chance to see what has been received and held in his/her name over the years.

At age 16 an adoptee should be informed of their status and given their original NHS number so that they can trace their history.

In relation to financial support, one person felt it was correct to continue paying an allowance if a child was first fostered and then later adopted. The rest of the group believed this to be incorrect and that "...fostering was a job and adoption a vocation – for giving and not taking..." Adoption should be voluntary and not a commitment for which you get paid.

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

It was felt that the welfare of the child is paramount and critical and important medical information should not be withheld from health professionals. There needs to be clear guidance to authorities about whether known medical information about birth parent/s can be disclosed to the adoptee or adoptive family.

Ideally, everyone in the adoption process should have the best interests of the child to the fore, so a birth parent will pass on all medical information and be understanding about who else should know this, but it was felt that in the real world the information could easily be withheld in order to be deliberately obstructive or to use it as a bargaining tool.

**Other points**

It was felt that as part of the adoption process a couple should tell the child he/she is adopted. "...it is a child's right to know who they are..." Honesty was important as a child may already feel let down by adults. Some felt the adoptive parents should give all the details. Others felt that only as a child grows up and asks questions should specific details be disclosed.

In the preparatory stages of adoption, the birth parents and adoptive parents should agree contact arrangements for the future. As most children who are adopted are not babies, the adoptive child will remember its birth parent(s) and this contact should be encouraged and not allowed to fall away over time.

The question was asked, however, about how would it feel to have two sets of parents? Is an adopted child really given all the support and counselling required?

The question was raised as to whether an adopted child should be told if the birth parent dies? Does an adoptive parent have the right to withhold this important information? Should it be at their discretion or should the local authorities make that type of decision?

## **Report of Aberdeen Meeting**

The meeting was held on 11 October in the Foyer, Marywell Place, Aberdeen, a centre that provides support and training for vulnerable young people. There were nine people present including an observer from the Scottish Executive.

### **Summary**

**Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a 'Permanence Order') that should secure children in a long-term placement? How should this work in practice?**

There was support for a process that would be quicker and more child-centred and consensus that it is probably better for adoption professionals to make decisions rather than sheriffs or lay people.

**Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

The participants felt that marriage was not a guarantee and instead the important thing was that a child can be offered a loving environment.

If marriage was not a possibility for a couple then other evidence of commitment should be sought such as a secure home, shared finance, longevity of relationship and community involvement, with perhaps references from neighbours or colleagues. There were divided opinions on whether prospective adopters should be able to financially support a child – some felt that income should not be a barrier.

An older child could perhaps be asked for input on whether he/she might be placed with a same-sex couple.

**Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

There were divided opinions on whether adoptive parents should receive an allowance – one adoptive parent explained that an adoptee may have special requirements that mean that financial assistance is needed. It was suggested that financial support could be means-tested. Others thought that receiving money for an adopted child could be divisive with regard to the adoptive family's birth children. There was support for allowances for foster carers.

All parties in adoption should have access to support, such as local support groups. Adoptive families should receive training and counselling. Support for birth parents may enable them to keep communication links open.

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

The child's best interests should be at the centre of decisions and it was important to share medical information with prospective adopters so that they may make an informed decision about their ability to cope. Also, adoptees should know their medical history and a family doctor could hold this information and provide it without revealing the identity of the birth

parent; it is also important to provide information as birth parents age, since some issues may arise in later life.

### **Other issues**

Support should be offered in private and international adoptions. There was a question raised about how formal extended family adoption can be.

**Question 1: Do you agree that existing freeing and parental responsibilities orders should be replaced by a single flexible order (a ‘Permanence Order’) that should secure children in a long-term placement? How should this work in practice?**

Simon Cuthbert-Kerr from the Scottish Executive, who was there as an observer, expanded on the question and explained terminology more fully.

There was consensus that the court may not be the best place for decisions to be reached about adoption and care orders. Professionals should be involved at all stages of the decision-making process (eg, over child protection issues). Professionals are paid and trained to look after children and they should be the people making informed decisions about placements – not lay people or sheriffs who may not have the necessary training and insights required to make calculated decisions over the best interests of the child/children. A Permanence Order would appear to be flexible and more able to meet the needs of the child – the group thought it seemed a necessary move to make the adoption process quicker and more child-centred.

**Question 2: What criteria should an unmarried couple have to meet before they are allowed to adopt?**

It was felt that the word ‘unmarried’ should be taken out of this question, as there is no guarantee that just because a couple have a marriage certificate they will be more likely to be committed to a long-term relationship. The important thing was for a couple to be able to offer a secure, safe, loving home environment. Their personal commitment to each other should be self-evident.

If a child is old enough they should be consulted concerning their prospective adoptive parents and their opinion should definitely be sought if the prospective parents are a same-sex couple, as it is the child who will be most affected by this decision. However, a child is probably not able to make a fully objective decision, so there needs to be an infrastructure to support the child and help them make the best assessment for their future. It cannot be 100% the child’s own decision. Depending on their previous experiences, a child may not be able to understand what a secure relationship is if they have no feeling of security from their past.

The question was raised as to how a couple could prove commitment if they are unable to marry? Legal commitment should not be used in a discriminatory manner. It was suggested that there would need to be strong evidence of a secure home, with shared finance, a community involvement of some type and longevity of their relationship. It was recognised that whatever the previous commitment between the couple, the dynamics would alter when a child joins the family. This needs careful preparation in advance.

It was asked if references should be taken from people who are not necessarily friends or related to the prospective adoptive parents, such as neighbours or colleagues.

There were split opinions as to whether or not a couple should be able to financially support any children they adopt. An adoptive parent explained that in some cases extra financial assistance is required as an adoptee might have special requirements and income should not be a barrier to a couple applying for adoption. Another strong belief was that fostering is a job and is a cheaper option for an authority than putting a child into a children's home: therefore foster parents should be paid; adoption, however, is different and is taking someone in as a family member. They should just be eligible for the usual statutory benefits available to families (eg, family allowance, tax credits etc).

**Question 3: What support should be offered during the adoption process and after to adoptees, adoptive families and birth parents?**

Adoptive parents need coping systems and support over basic childcare processes as their experience has not had the time to evolve in the same manner as birth families. This needs to be ongoing. All three groups (adoptees, adoptive parents and birth parents) should have access to local support groups so they do not feel isolated, "... a child coming into a household can create catastrophic changes to the adoptive family and they may need help in how to manage the change..."

The mixed views related to financial support, recorded in respect of the previous question, emerged here also. There was agreement that there might be an initial settling-in allowance and extra money if a child has special needs, but otherwise the group were divided in opinion. One view was that if there were adoptive siblings then division, disquiet or discrimination might occur within the family if an adopted child received special income. The other view was that it was helpful to have extra money and if there was ongoing support from professionals any problems within the family can be discussed. There was a suggestion that it might be easier if there was a means test so that if a family needed financial support it could be offered.

Support should involve training and counselling for adoptive parents and extended family if needed. It was agreed that the present system is inadequate. Families "...need to be able to deal with baggage brought to the new family..." by the adoptees. Adoptive parents may not be able to deal alone with a child who has attachment disorders and is unable to form relationships.

Birth parents should not be excluded from the support process. It should be offered to them so that possibly their children can keep open reasonable communication links. Ideally, birth and adoptive parents should work in unison so that adoptees can keep some kind of relationship with their birth family.

**Question 4: Should medical information about birth parents be made available if it is in the best interests of planning for a child's future? Who should be able to obtain such information and in what circumstances?**

The child is the focus and their interests should override confidentiality and data protection matters. It was felt that adoptees should know their medical history if they request it and there should be a process where an adoptee can get their medical background.

It was suggested that to get this medical information it was not necessary to reveal the identity of a birth parent if this has been withheld. A GP should be able to pass on confidential medical information to the adoptees' GP and explain the implications of it. This should not just be at the point of adoption but throughout the adoptee's life, as some medical matters may only arise as the birth parents age.

If a full medical history of the birth parents is available at the start of the adoption process it should be shared with adoptive parents so they can make an informed (with support) decision about their ability to cope with the potential conditions that may develop in the child. This might deter some adoptions but it was felt that adoptive parents have the right to know if the information was already held by social workers.

The question was asked, "...what is in the best interests of the child?" It was felt that as adoption is a "long haul" then sharing of information was vital and in a child's best interests. Should it be compulsory to get a birth parent's medical history and how might an authority get this record, especially if a parent comes from a country where records may not have been kept? There was no conclusion, but there were questions as to whether a birth parent can be obliged to have a medical examination.

Should a GP or other medical specialist be able to disclose information about a birth parent and then not have any control over its confidentiality? Can a GP be requested to offer information about non-medical matters? There may be historical details or patterns of behaviour that might be relevant to adoption and the best interests of the child. The GP should not have discretionary powers to disclose relevant medical facts and extended family backgrounds if known or surmised.

### **Other points**

What support is offered in private and international adoptions? If it is not offered, it should be. Also, if private adoptions are rare now, there are still many adults in Scotland who were adopted in this manner and their historical experiences and needs should not be ignored now.

In many cultures it is usual for the extended family to look after children – how would this fit into the Scottish model of adoption if they move to the UK? Would their relationship be seen as legal? How formal can extended family adoption be?

## **APPENDIX 4**

### **SUMMARY OF CONSULTATION QUESTIONS**

## SUMMARY OF CONSULTATION QUESTIONS

### *General*

1. The Executive welcomes general comments on the recommendations of the Group and the Executive's proposed responses. Views on those recommendations requiring legislation are particularly welcome.
2. The Executive welcomes views on any aspects of adoption and permanence law not covered in the Group's report which should be reflected in future legislation.

### *Adoption*

3. The Executive would welcome views on the appropriate definition of an unmarried (or unregistered) couple for a Scottish court to apply in deciding whether to make a joint adoption order, bearing in mind the Executive's intention that the court should consider the enduring nature of the relationship. (Recommendations 6 and 7)
4. The Executive would welcome views on whether there should be a power for Ministers to make regulations to ensure that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship. (Recommendations 6 and 7)
5. The Executive would welcome views on:

There are other issues raised by the proposal on which the Executive would welcome views:

- What other factors should the court take into account in deciding whether an unmarried couple should adopt a child? For example, should the views of birth parents of the child be considered?
- Should there be any exceptions of special rules, for example for faith-based adoption agencies?
- Should the Executive issue guidance on considerations to be examined in determining the best interests of the child, and what might such considerations be?

(Recommendations 6 and 7)

6. The Executive would welcome views on the issues on which parental views should be sought in placing a child for adoption. (Recommendation 11)

### *Permanence Order*

7. The Executive would welcome views on the principle and details of the Permanence Order, in particular any practical or procedural issues that might arise from use of the Orders, and how these can best be addressed. (Recommendations 19-25)
8. The Executive would welcome views on the role of the hearing system in Permanence Orders, in particular any practical difficulties that would be raised by the recommendations

and further suggestions on how the special arrangements that have been made for children on permanence orders can be recognised by the hearing system. (Recommendations 28 and 29)

### *Support for adoption*

9. The Executive would welcome views on what additional adoption support services might be prescribed. (Recommendations 33-36)

10. The Executive would welcome views on the recommendation that local authorities should have an adoption support officer within the senior management team. (Recommendation 38)

11. The Executive would welcome views on the recommendation that a local authority placing a child for adoption should have responsibility for providing adoption support services to the child and the adoptive family for three years after the adoption order, in particular whether the period of three years is appropriate. (Recommendation 41)

12. The Executive would welcome views on how widespread any entitlement to adoption support should be – for example, should grandparents and siblings have a right to support – and on what services different groups of people should receive, for example should birth relatives have a right to any services beyond counselling. (Recommendation 42)

### *Improving court rules and avoiding delays*

13. The Executive would welcome views on whether a system of leave to apply to court would be effective in providing the protection from repeated or vexatious applications for children and adoptive families. (Recommendations 26,51 and 52)

14. The Executive would also welcome views on whether other statutory measures would make the system of leave a more effective safeguard. For example:

- Should the legislation require the applicant to produce new evidence, or evidence of a significant change in circumstances to support an application for leave?
- Should there be a minimum period between new applications for leave in respect of the same child?

(Recommendations 26, 51 and 52)

15. The Executive would welcome views on whether legislation should limit the circumstances in which an applicant could seek information about an adopted child in support of an application to court. (Recommendations 26, 51 and 52)

### *Curators, reporting officers and safeguarders*

16. The Executive would welcome views on the recommendation that there should be a centralised national system to appoint and train curators, reporting officers, and safeguarders from which individual case appointments are made locally. (Recommendation 61)

*Role of the children's hearing system in permanence cases*

17. The Executive would welcome views on the stage in permanence planning at which there should be a statutory requirement on the local authority to inform the children's hearing of its intention. The Executive would also welcome views on the steps to be followed after the hearing is informed of the local authority's intention, for example the model currently used when a decision is taken to place a child for adoption. (Recommendations 62-71)

*Fostering issues*

18. The Executive would welcome views on the options for a national scale of fostering allowances. (Recommendation 76)

19. The Executive would welcome views on the proposed working group on private fostering, and what the remit of such a group might be. (Recommendation 85)

*Procedures within local authorities and agencies*

20. The Executive would welcome views on the detailed proposals of the Group on local authority and adoption agency procedures, particularly on the issue of independent appeals and complaints. (Recommendations 88-99)

*Access to information*

21. The Executive would welcome views on the proposal that medical information about birth parents and families should be shared, without consent, to plan properly for a child. Particular issues include: what sort of information could be shared; who could have access to the information; and whether any information should be communicated to the adopted person or the adoptive parents. (Recommendations 103-106)

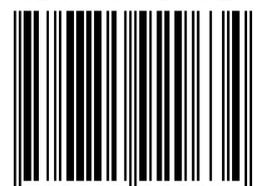
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