Adoption and Children (Scotland) Bill

Bill Number: SP Bill 61
Introduced on: 27 March 2006
Introduced by: Peter Peacock (Executive Bill)
Passed: 7 December 2006
Royal Assent: 15 January 2007

2007 asp 4

Passage of the Bill

The Adoption and Children (Scotland) Bill [SP Bill 61] was introduced on 27 March 2006. Stage 1 commenced on 10 May with the Education Committee as the lead committee. The Stage 1 (general principles) debate took place on 13 September 2006 and the Bill was passed following the Stage 3 Parliamentary debate on 7 December 2006.

Purpose and objectives of the Bill

According to the Policy Memorandum the objective of the Bill is “to improve, modernise and extend adoption in Scotland and to provide greater stability for children who cannot live with their original families”.

The Bill restates, with some amendments, many of the provisions contained in the Adoption (Scotland) Act 1978 (c 38) and introduces a number of new provisions. In particular the Bill:

- replaces existing freeing orders and parental responsibilities orders with a single court order called a permanence order. The aim of this order is to increase stability for children who cannot live with their original families but to be flexible enough to cater for the needs of individual children. A permanence order can be sought with or without a measure granting authority for the child to be adopted, dependent on the needs of a particular child. The latter case may be similar to long term fostering.

- allows joint adoption by unmarried couples (including same-sex couples). Currently, one person in an unmarried couple can adopt, while their partner may apply separately for an order under section 11 of the Children (Scotland) Act 1995 to gain parental responsibilities and parental rights.

- extends the adoption support services framework for people affected by adoption.
• includes a regulation-making power allowing the Scottish Ministers to set a national system of care allowances

Parliamentary Consideration

Stage 1

The Education Committee’s Stage 1 report was supportive of the general principles of the Bill. One issue where concerns were raised by some witnesses related to the proposal to extend joint adoption to unmarried couples. However, the Committee agreed in principle with the Executive’s proposals as outlined in the Bill. Many of the matters that were raised during Stage 1 were technical issues relating to the drafting of the Bill. Therefore, the Committee’s report included, in an annex, a list of drafting comments.

Some of the evidence received by the Committee was concerned about the lack of provisions in the Bill in relation to fostering issues. In evidence the Executive had argued that many issues relating to fostering could be dealt with through regulations and would be considered further in light of the forthcoming consultation on the national fostering strategy.

Stages 2 and 3

SPICe briefing 06/101 provides an overview of the main amendments made at Stage 2 and the key areas of debate. Many of the amendments passed were of a technical nature or related to the operation of permanence orders.

The Bill as introduced would have allowed Ministers to make regulations about fostering allowances. At Stage 2 an Executive amendment changed the reference in the Bill to “care allowances” and widened the range of circumstances in which carers would be eligible for an allowance. At Stage 3 eligibility for care allowances was widened to include to those carers who care for a child before the child has become formally looked after by the local authority and relieved the local authority of a duty that it would otherwise have had towards the child.

During Stage 2 an amendment was lodged by Michael McMahon MSP, which was later withdrawn, to the effect that faith based adoption agencies would be provided with a right to uphold their values when considering applications from prospective adopters. The Member lodged an amendment on the same issue at Stage 3 but it was narrowly defeated.

Paul Martin MSP lodged an amendment at Stage 2 that would have meant that prior to making an adoption order the court would have to be satisfied that consideration had been given to placing a child with a married couple. Although the amendment was not moved but at Stage 2, at Stage 3 Paul Martin MSP returned with an amendment that changed the criterion for adopting couples from being in "an enduring family relationship" to "a stable family unit." The amendment was passed on a narrow vote.

At Stage 3 a proposed amendment by Roseanna Cunningham MSP which would have prevented joint adoption by same sex couples was defeated.
Other amendments passed at Stage 3 were largely of a technical nature or in relation to the operation of permanence orders, and in particular the interaction of the court with the Children’s Hearing System.