These documents relate to the Adoption and Children (Scotland) Bill (SP Bill 61) as introduced in the Scottish Parliament on 27 March 2006

ADOPTION AND CHILDREN (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Adoption and Children (Scotland) Bill introduced in the Scottish Parliament on 27 March 2006:

   • Explanatory Notes;
   • a Financial Memorandum;
   • an Executive Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 61–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Adoption and Children (Scotland) Bill is intended to modernise, improve and extend the system of adoption in Scotland. Existing legislation relating to adoption lies mainly in the Adoption (Scotland) Act 1978 (which is based on the Adoption Act 1976). Legislation relating to other aspects of adoption is contained in the Children (Scotland) Act 1995. Legislation relating to intercountry and overseas adoption lies in the Adoption (Intercountry Aspects) Act 1999.

5. This Bill will repeal and replace the Adoption (Scotland) Act 1978, save for Part IV, and will amend the Children (Scotland) Act 1995.

6. The Bill will maintain the existing adoption service and local authorities will continue to have a duty to provide an adoption service for placing children with adopters and assessing adopters. A wider range of people will be able to adopt. Provisions will modernise and improve this existing service and the broader services available to children who cannot live with their original families. The Bill will introduce a new court order for accommodating children who cannot live with their original family in long-term placements. Provisions in the Bill will improve access to a broader range of support services for people affected by adoption, including members of adoptive and original families. The Bill contains provisions to ensure that people are able to gain access to services and will be clear about what services they will be provided with by adoption agencies. The Bill will reproduce existing provisions for intercountry and overseas adoptions, but will introduce new restrictions on bringing children into the country in certain circumstances and will give the Scottish Ministers the power to charge for the processing of intercountry adoption casework.

7. The key provisions of the Bill are:
   - Unmarried couples will be able to adopt jointly.
   - Local authorities will have a duty to provide a range of adoption support services, the meaning of which may be expanded by secondary legislation.
   - People directly affected by an adoption (the child, parents and adoptive parents) will have a right to pre-adoption services and, if they have an assessed need, post-adoption services.
The provision of support services will be a clearly stated part of the adoption process. People will know what services are available to them.

A new type of order – the permanence order - will be introduced for children who cannot live with their families. This will replace existing freeing orders and parental responsibilities orders. This will allow parental responsibilities and parental rights relating to residence and guidance to pass to the local authority and will allow other relevant parental responsibilities and parental rights to be granted to appropriate people, including the child’s parents. The permanence order should allow some flexibility (unlike an adoption order) to adapt to a child’s changing circumstances.

COMMENTARY ON SECTIONS

Section 1. Duty of local authority to provide adoption service

8. Subsection (1) places a duty on local authorities to provide an adoption service or continue to do so to the extent that they already do and subsection (2) specifies that an adoption service must consist of pre-adoption services, adoption support services and post-adoption services. This is a continuation of the current situation. In practice all local authorities will provide their own adoption service, but may contract with another provider, being a registered adoption service, to provide this service, as set out at subsection (4).

9. Subsection (3) places a duty on local authorities to provide the adoption service in a way that takes account of their general duties under the Social Work (Scotland) Act 1968 with regard to children. This means that all local authority functions that relate to children should be co-ordinated in order to provide a cohesive service to children.

10. Under subsection (5), a “registered adoption service” means an adoption service within the meaning given by section 2(11)(b) of the Regulation of Care (Scotland) Act 2001, which is a registered adoption service under that Act.

Section 2. Local authority plans

11. Subsection (1) places a duty on local authorities to prepare and publish a plan for providing an adoption service as set out by section 1(1).

12. Subsection (2) places a duty on local authorities to review the plan created under subsection (1) “from time to time” and to modify or replace completely the plan and publish it as necessary.

13. By virtue of subsection (6) the duty to review and modify or replace plans and the right not to publish a separate plan under subsection (5) will apply to any modified or replacement plan as well as plans originally created under subsection (1).

14. Subsection (3) places a duty on local authorities to consult a range of bodies and organisations in making and reviewing plans under subsection (1) or subsection (2). The bodies and organisations that should be consulted are the Health Board in the relevant local authority area, any voluntary organisations which may represent the interests of a person who is likely to
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use the adoption service, any voluntary organisations which may provide adoption services and any other persons that may be prescribed by regulations.

15. Subsection (4) allows a local authority to incorporate a plan that is to be published under subsection (1) into any plan published by the local authority in connection with services for children. Under subsection (5) it is not necessary also to publish separately a plan incorporated in this way.

Section 3. Assistance in carrying out functions under sections 1 and 2

16. Subsection (1) allows a local authority to require assistance from an “appropriate person” in carrying out any function set out at section 1 or 2.

17. Subsection (2) sets out the circumstances in which an appropriate person may refuse to comply with a request made by a local authority under subsection (1). These include where it would not be reasonably practical to do so, where it would be incompatible with the person’s functions, statutory or not, and where the person’s functions (when the person is not a natural person) would be unduly prejudiced.

18. Subsection (3)(a) to (c) defines an “appropriate person”. This includes another local authority and a Health Board. Subsection (3)(c) gives the Scottish Ministers the power by regulations to prescribe any other person as an “appropriate person”.

Section 4. Meaning of “adoption service” in Regulation of Care (Scotland) Act 2001

19. This section amends the definition of “adoption service” in section 2(11) of the Regulation of Care (Scotland) Act 2001 (meaning of “care services”) as a consequence of the provisions of the Bill.

Section 5. Adoption agencies: regulations about carrying out of functions

20. Subsection (1) gives the Scottish Ministers the power to make regulations relating to a registered adoption service carrying out its functions.

21. Subsection (2) gives the Scottish Ministers the power to make regulations relating to a local authority carrying out its functions of making or participating in arrangements for the adoption of children.

Section 6. Pre-adoption services

22. Subsection (1) defines pre-adoption services which are to be provided by a local authority. These are services designed for children who may be adopted, the parents and guardians of such children and people who have applied to be assessed or who have been assessed as adopters. Under subsection (3) a local authority has a duty to provide pre-adoption services to these people on request.

23. Subsection (2) defines the types of pre-adoption services referred to in section 1(2). In practice this will be a continuation of the existing service.
24. Subsection (4) gives the Scottish Ministers the power to make regulations to amend or make further provision in relation to pre-adoption support services.

Section 7. Adoption support services

25. Subsection (1) allows a local authority to make an assessment of needs for “adoption support services” when requested to do so by a person not listed at section 6(1). The local authority has discretion to make this assessment, rather than having a duty to do so. Subsection (2) describes adoption support services as services that are designed to meet the needs of persons affected by an application, or a proposed application, for an adoption order. A wider range of people than those listed at section 6(1) may be affected by an adoption and may require support. This could include siblings, grandparents, other family members and other people who have been involved in the raising of the child. The type of service such people may require would be that under subsection (3), namely, counselling and assistance, the provision of information about and guidance on the adoption process and any other assistance that a local authority considers to be appropriate in a given case.

26. Subsection (4) gives the Scottish Ministers the power to make regulations that add to, modify or make further provision with regard to the types of service to be provided.

Section 8. Provision of adoption services

27. This section provides that, where a local authority has carried out an assessment and has found that there is a need for adoption support services, it has a discretion whether or not to meet this need. It is not under a duty to do so.

Section 9. Considerations applying to the exercise of powers

28. This section places various duties on the court or adoption agency to ensure that the best interests of the child are the paramount consideration, and to ensure that an adoption order is granted only if there is no better alternative for the child.

29. By virtue of subsection (2), the court or adoption agency must consider all of the circumstances of the case before coming to a decision to place the child for adoption or to make an adoption order.

30. By virtue of subsection (3), when making a decision about whether or not to place a child for adoption or whether or not to make an adoption order, the court or adoption agency has a duty to have as its paramount consideration the best interests of the child throughout his or her life.

31. In addition to this overarching principle, under subsection (4) the court or adoption agency must take into account a number of specific considerations. These are the child’s own wishes regarding adoption; the child’s religious persuasion, racial origin and cultural and linguistic background; and the likely effect on the child, throughout his or her life, of having ceased to be a member of his or her original family and having become an adopted person. The child’s wishes will be taken into account where the child is of sufficient age and maturity to
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understand the situation and express his or her wishes. Subsection (7) provides that a child who is at least 12 years old will be presumed to be capable of expressing his or her wishes.

32. In carrying out these duties an adoption agency has a further duty under subsection (5) to consider whether adoption is the best way to meet the interests of the child or whether there is a better alternative. If it considers that there is a better alternative it must not make arrangements for the adoption of the child (subsection (6)).

Section 10. General considerations when placing child for adoption

33. This section applies when an adoption agency is placing a child for adoption.

34. By virtue of subsection (2)(a) an adoption agency must have regard, as far as possible, to the child’s religious persuasion, racial origin and cultural and linguistic background when placing a child for adoption. Adoption agencies should seek to place children with adopters who will be able to provide an upbringing that is sympathetic to such a background. Adopters should be able to help the child to understand any such religious, racial, cultural and linguistic background and to practise these, as appropriate. This does not mean that adoption agencies must only place children with adopters of similar religious, racial, cultural and linguistic origins and backgrounds. However, in practice, adopters must have regard to any such origin and background that the child may have.

35. Subsection (2)(b) places a duty on adoption agencies to have regard, as far as possible, to the wishes and feelings of any relative of the child regarding the placement of the child. In practice, it is likely that this will relate to such issues as the religious, racial, cultural and linguistic background of the prospective adopters. This does not mean that an adoption agency cannot place a child with an adopter without conforming to the wishes of the child’s relative. Any such wishes should not be applied when to do so would be contrary to the best interests of the child.

Section 11. Restriction on arranging adoptions and placing children

36. By virtue of subsections (1) and (2), it is an offence for anyone to make arrangements for the adoption of a child or to place a child for adoption unless they are an adoption agency or a relative of the child to be adopted.

37. Subsection (3) provides that it is an offence for a person to receive a child in contravention of subsection (1) with the intention of adopting the child.

38. By virtue of subsection (4), it is an offence for a person to manage or control a body which is not a registered adoption service or a local authority and the purpose of which is or includes making arrangements for the adoption of children.

39. Under subsection (5), any person who commits an offence under this section is punishable by imprisonment for a period of up to 3 months or a fine not exceeding level 5 on the standard scale or both.
40. By virtue of subsection (6), in proceedings under subsection (4), things done or words written, spoken or published by a person managing a body making arrangements for the adoption of children is sufficient evidence of the purpose of that body. By virtue of subsection (7), it does not matter if the acts listed in subsection (6) are not carried out in the presence of a party to the proceedings.

Section 12. Adoption societies which are not registered adoption services

41. Under subsections (1) and (2) where an adoption society is registered in England and Wales or Northern Ireland, but not in Scotland, such an adoption society may not operate in Scotland unless it considers it necessary to do so in the interests of a person mentioned in section 3(1) of the Adoption and Children Act 2002 (“the 2002 Act”) (maintenance of adoption service) or Article 3 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203) (the adoption service).

42. By virtue of subsection (3), subsection (1) only applies to a voluntary adoption organisation which is registered under Part 2 of the Care Standards Act 2000 (establishments and agencies) in respect of an adoption service or, in England, a service which corresponds to that adoption service.

Section 13. Prohibition of certain payments

43. Any person who makes any payment in relation to the adoption of a child, the giving of consent required in connection with the adoption of a child, the transfer of the care and possession of a child with a view to his or her adoption, or the making of any arrangements for the adoption of that child commits an offence. By virtue of subsection (2), this section applies to anyone who makes any payment, agrees or offers to make such a payment, receives or agrees to receive any such payment or attempts to obtain such a payment.

44. A person who commits such a crime is liable to imprisonment for a term not exceeding three months or to a fine not exceeding level 5, or both.

45. By virtue of subsection (4), where a person has committed such a crime the court can order that the child be removed to a place of safety until the child can be returned to his or her parent or guardian, or other arrangements can be made for the child.

46. By virtue of subsection (5), references to “payment” in this section include reward.

Section 14. Excepted payments

47. This section relates to payments made in connection with adoptions which are not prohibited, as set out at section 13.

48. By virtue of subsection (2)(a), a payment is exempt if it is made to an adoption agency by a parent or guardian of the child or by a person who adopts or proposes to adopt the child in respect of expenses reasonably incurred by the agency in connection with the adoption or proposed adoption of the child.
49. By virtue of subsection (2)(b), a payment is exempt if it is made in relation to legal or medical costs incurred or to be incurred by any person in connection with an application which the person makes or intends to make for an adoption order or a preliminary order under section 65.

50. By virtue of subsection (2)(c), a payment is exempt if it is authorised by the court to which the adoption application was made.

51. By virtue of subsection (2)(d), a payment is exempt if it is made by one adoption agency to another in consideration of placing the child for adoption.

52. By virtue of subsection (2)(e), a payment is exempt if it is made by an adoption agency to a voluntary organisation as a fee for the services of the organisation putting the adoption agency in touch with another agency.

Section 15. Child to live with adopters before adoption order made

53. By virtue of subsections (1) to (3), an adoption order may not be made in respect of a child where the child has been placed with prospective adopters by an adoption agency or one or both of the prospective adopters is a parent, step-parent or relative of the child, unless the child is at least 19 weeks old and has lived with the prospective adopters for 13 weeks immediately preceding the adoption application.

54. Where the child was not so placed or neither of the applicants is a parent, step-parent or relative of the child, an adoption order cannot be made unless the child is at least 12 months old and the child lived with the prospective adopters at all times during the 12 month period immediately preceding the adoption application.

55. Subsection (5) applies to adoptions by way of Convention adoption orders (see section 111 of the Bill for interpretation) and to adoptions of children who are habitually resident outwith the British Islands otherwise than by that type of order. In these cases the reference to the period of 13 weeks referred to above is read as a reference to a period of 6 months.

Section 16. Home visits

56. By virtue of subsections (1) and (2), where a child has been placed with prospective adopters by an adoption agency, an adoption order cannot be made unless the court is satisfied that the adoption agency has been given sufficient opportunities to see the child with the prospective adopters in their home environment.

57. By virtue of subsections (3) and (4), where the child was not so placed, an adoption order cannot be made unless the court is satisfied that the local authority in whose area the prospective adopters live has been given sufficient opportunities to see the child with the prospective adopters in their home environment.
Section 17. Reports where child placed by agency

58. Where an adoption application relates to a child who has been placed for adoption by an adoption agency, by virtue of subsection (2) of this section the agency must submit to the court a report addressing the suitability of the applicants and any other matters relevant to the operation of section 9 (considerations applying to the exercise of powers). In addition, the agency must assist the court in any way which the court directs.

Section 18. Notification to local authority of adoption application

59. By virtue of this section, where a child was not placed for adoption by an adoption agency, an adoption order cannot be made unless the prospective adopters have given notice to the local authority within whose area they live of their intention to apply for an adoption order at least 3 months before the date of application.

Section 19. Notice under section 18: local authority’s duties

60. Where a local authority receives notice under section 18 of an intention to apply for an adoption order, it must, by virtue of subsection (2), investigate the matter and submit a report of the investigation to the court.

61. Subsection (3) specifies the factors which the local authority must, in particular, investigate, namely the suitability of the applicants and any other matters relevant to the operation of section 9, any contravention of section 11, and any failure to comply with section 12(2) of the Bill.

62. By virtue of subsection (4), if a local authority receives a notice under section 18, and it is aware that the child is in the care of another local authority, it must give a copy of the notice to that local authority within seven days of receipt.

Section 20. Restrictions on removal: child placed for adoption with consent

63. Where a child has been placed for adoption and the child’s parents have consented to this, subsection (2) provides that the parents cannot remove the child from the home of the prospective adopters without the leave of the adoption agency or the appropriate court.

64. Subsection (3) makes it an offence to remove a child in breach of subsection (2), which is punishable by imprisonment for a term not exceeding 3 months, a fine not exceeding level 5, or both.

Section 21. Restrictions on removal: notice of intention to adopt given

65. This section applies where prospective adopters give notice under section 18 and the child has lived with the prospective adopters for the five years immediately preceding the adoption application.

66. Subsections (2) and (3) provide that, between notice being given under section 18 and a relevant act specified at subsection (4), a child may not be removed from the home of the prospective adopters, unless: the prospective adopters consent to the removal; a court with
jurisdiction to make adoption orders grants leave for the child to be removed; the child is
arrested; or the removal is authorised by virtue of any enactment.

67. Subsections (4) and (5) specify the relevant act as the making of an application for an
adoption order in the case of an application being made for an adoption order before the expiry
of the period of 3 months beginning with the date on which the local authority received notice
under subsection (1). In the case of prospective adopters who make an application later than that
3 month period, the “relevant act” is the end of that period.

68. By virtue of subsection (6), where, during the 3 month period mentioned above or during
the 28 day period immediately after the expiry of the 3 month period, prospective adopters give
further notice of their intention to apply for an adoption order in respect of the same child the
prohibition on removing the child under subsection (2) does not apply.

69. Subsection (7) provides that it is an offence for a person to contravene the terms of this
section. Such an offence is punishable by imprisonment for a period of up to 3 months or a fine
not exceeding level 5 on the standard scale or both.

Section 22. Restrictions on removal: application for adoption order pending

70. By virtue of subsections (1), (2) and (3), where an application for an adoption order has
been made to the court, but the court has not yet made a determination, and where the child’s
home during the 5 year period preceding the adoption application has been with the prospective
adopters, a child cannot be removed from the home of the prospective adopters unless the
prospective adopters agree to the removal; the court grants leave for removal; the child is
arrested; or removal is authorised by an enactment.

71. Subsection (4) makes it an offence to remove a child in breach of subsection (2), which is
punishable by imprisonment for a term not exceeding 3 months, a fine not exceeding level 5, or
both.

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

72. This section gives the Scottish Ministers the power to making an order amending the
period of 5 years referred to in section 21(1)(b) or 22(1)(b), or amending any other period that
has been substituted by this section. Such an order is subject to affirmative resolution procedure.

Section 24. Duty to give notice where child in care of other local authority

73. Where a local authority, by virtue of section 21(1)(a), receives notice under section 18(2)
of the Bill in relation to a child whom the local authority knows to be in the care of another local
authority, the local authority must give a copy of the notice it receives to the local authority
which is currently looking after the child before the expiry of the 7 day period beginning on the
day that the notice is received.

Section 25. Restrictions on removal of child in care of local authority

74. Subsection (2) applies where an application for an adoption order has been made but not
yet determined or prospective adopters have given notice of intention to adopt and, in each case,
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the child’s home has been with the prospective adopters for the previous 5 years; where the child was in the care of a local authority before he or she lived with the prospective adopters; and where the child remains in the care of the local authority.

75. By virtue of subsection (2), the local authority must not remove the child from the care and possession of the prospective adopters, except where subsection (3) applies, namely, where the removal is made in accordance with section 27 or 28; an appropriate court grants leave for removal; or where the removal is authorised by virtue of Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995. “Appropriate court” is defined at section 110 of the Bill.

Section 26. Return of child removed in breach of certain provisions

76. By virtue of subsection (1), a person who has removed a child in breach of the provisions listed in subsection (3) can, on application by the person from whom the child was removed, be ordered by the court to return the child.

77. Under subsection (2), a court can order a person not to remove a child from another’s home. This can be done when the court receives an application from a person who has reasonable grounds to believe that another person intends to remove a child in breach of the provisions listed in subsection (4).

78. The provisions set out in subsection (4) are sections 20, 21, 22 and 25 of the Bill, sections 30 (general prohibitions on removal), 34 (placement orders: prohibition on removal), 35 (return of child in other cases) and 36 (restrictions on removal) of the 2002 Act and Articles 28 (restriction on removal where adoption agreed or application made) and 29 (restrictions on removal where applicant has provided home for 5 years) of the Adoption (Northern Ireland) Order 1987.

Section 27. Return of child placed for adoption by adoption agency

79. This section applies where a child has been placed with prospective adopters, but where no adoption order has been made.

80. By virtue of subsection (2), prospective adopters with whom a child has been placed can notify the adoption agency of their intention to cease caring for the child. By virtue of section 111 of the Bill notice must be made in writing.

81. By virtue of subsection (3), an adoption agency can notify prospective adopters with whom a child has been placed of their intention to remove the child from their care. Where an application for an adoption order has been made, then, by virtue of subsection (4), an adoption agency can only do so if leave of the court has been given.

82. Under subsections (5) and (6), where notice is given under subsection (2) or (3) or where an application for an adoption order is refused or withdrawn, prospective adopters must, before the expiry of the relevant period, return the child to the adoption agency or to a person nominated by the adoption agency. By virtue of subsection (7), where the court refuses the
application for an adoption order it may, before the relevant period expires, make an order extending the period for the return of the child by a period not exceeding 6 weeks.

83. Subsection (7) defines the “relevant period”. Where notice is given by virtue of subsection (2) or (3), the relevant period is 7 days beginning with the day on which notice was given. Where an application for an adoption order is refused or withdrawn, the relevant period is 7 days beginning with the day on which the application was refused or withdrawn.

84. By virtue of subsection (8) it is an offence for a person to fail to return a child within the relevant period and such a person is liable to imprisonment for a period of up to three months or a fine not exceeding level 5 on the standard scale or both.

85. By virtue of subsection (9), where a court convicts a person under subsection (8), it may order that the child be returned to his or her parents or guardian, an adoption service or a local authority.

Section 28. Return of child in care of local authority and not placed for adoption

86. This section applies where a child who is looked after by a local authority is living with prospective adopters, but has not been placed there by an adoption agency, and the prospective adopters have given notice under section 18.

87. By virtue of subsection (2), the prospective adopters can notify the local authority that they intend not to retain care of the child.

88. By virtue of subsection (3), the local authority can inform the prospective adopters that they intend to remove the child from their care. Where an application for an order has been made in relation to the child then, by virtue of subsection (5), the local authority can only do so if leave of the court has been given.

89. By virtue of subsection (4), where notice is given under subsection (2) or (3), the prospective adopters must return the child to the local authority or a nominated person before the expiry of the relevant period.

90. Under subsection (6) where an adoption order in relation to a child is refused or withdrawn, the child need only be returned to the local authority if the local authority so requires and in which case the child must be returned before the expiry of 7 days beginning with the date of the requirement.

91. Subsection (8) provides that it is an offence for a person to contravene the terms of this section. Such a person is liable to imprisonment for a period of up to 3 months or a fine not exceeding level 5 on the standard scale or both.

92. By virtue of subsection (9), where a person contravenes this section and is convicted, the court may order that the child is returned to his or her parent or guardian or to the local authority.
93. By virtue of subsection (7), where the prospective adopters are awaiting the outcome of an adoption application, a local authority cannot require the child to be returned other than under this section.

Section 29. Contravention of sections 30 to 36 of the 2002 Act

94. By virtue of subsection (1), anyone who contravenes any of the sections of the 2002 Act listed at subsection (2) is guilty of an offence and is liable to imprisonment for a term not exceeding 3 months, a fine not exceeding level 5, or both.

95. The provisions listed in subsection (2) are sections 30(1), (2) and (3) (general prohibitions on removal), 32(2)(b) (recovery by parent etc. where child placed and consent withdrawn), 33(2) (recovery by parent etc. where child placed and placement order refused), 35(2) (return of child in other cases), 34(1) (placement orders: prohibition on removal), 36(1) and 36(5) (restrictions on removal) of the Adoption and Children Act 2002. These prohibit the removal of a child in specified circumstances or provide for an order for the return of a child who has been removed.

Section 30. Adoption orders

96. By virtue of subsection (1), an adoption order vests all parental responsibilities and parental rights in relation to the child in the adopter(s).

97. Before making an adoption order, in addition to the considerations which the court must take into account in terms of section 9 of the Bill, subsection (2) requires that the court must be satisfied that it would be better for the child that the adoption order should be made than that it should not be made.

98. Subsection (3) provides that the court may attach whatever terms or conditions it sees fit when it makes an adoption order, although this power must be exercised in accordance with the requirements of section 9.

99. Adoption orders are generally to be made in respect of a “child”, which is defined in the Bill to mean a person who has not attained the age of 18. However, subsection (4) allows an adoption order to be made in respect of a person who is 18 if the adoption application was made when the person was under 18.

100. An adoption order may be made in respect of a child even if the child has already been adopted or the subject of a permanence order (subsections (5) and (6)). This will allow a child to be “readopted” should previous adoptive parents become incapable of caring for the child.

101. Subsection (7) prohibits an adoption order being made in respect of a person who is or who has been married or a civil partner.

Section 31. Adoption by certain couples

102. By virtue of subsection (1), “relevant” couples may make an application for adoption where the following conditions are met. Both members of the couple must be at least 21 years
old, and neither applicant should be a parent of the child to be adopted. Further, at least one of the conditions in subsection (2) must be met, namely that at least one member of the couple must be domiciled in the British Islands or that both members of the couple have been habitually resident in the British Islands for at least 1 year before the date of the adoption application.

103. A “relevant” couple is defined in subsection (3) and means a married couple, civil partners or a couple that is living together in an enduring family relationship, whether or not that relationship is heterosexual or homosexual. The phrase “enduring family relationship” is used to indicate two people who are in a relationship that is akin to a marriage or civil partnership. The length of a relationship or financial interdependency will be relevant factors in assessing the overall strength of a relationship and the suitability of a couple to adopt.

104. The definition of enduring family relationship does not apply to two people who do not have a relationship akin to a marriage or civil partnership, such as two platonic friends or two siblings who live together.

Section 32. Adoption by one person

105. This section sets out the circumstances in which one person (as opposed to a couple) may apply to adopt a child.

106. By virtue of subsection (1), that person must be at least 21 years of age, and either domiciled in the British Islands (subsection (6)(a)) or have been habitually resident in the British Islands for at least one year before the date of the application for an adoption order (subsection (6)(b)).

107. In addition to these two conditions, such persons must fall within one of the following categories.

108. By virtue of subsection (2), a single person may apply (ie, a person who is unmarried, not a civil partner and not part of a couple living together in an enduring family relationship).

109. By virtue of subsection (3) a person may apply where they are a member of a “relevant” couple, the other member of which is the parent of the child to be adopted. That parent must have parental responsibilities and parental rights in relation to the child to be adopted. This category therefore relates to step-parents, civil-partners and cohabitants and allows them to make an application to adopt the child of their spouse, civil partner or person with whom they are living in an enduring family relationship. In this case, the parent of the child must also meet the domicile requirements provided for at subsection (3)(e).

110. By virtue of subsection (4) one person may make an application for adoption if his or her spouse or civil partner cannot be found, is separated from the applicant on a basis that is likely to be permanent, or is incapable of making an application for adoption because of illness. The application may be made only if the spouse or civil partner is not the parent of the child to be adopted.
111. By virtue of subsection (5), one person may apply to adopt where they are living in an enduring family relationship with someone who is incapable of applying to adopt because of illness. Again, the application may be made only if the applicant’s cohabitant is not the parent of the child to be adopted.

112. By virtue of subsection (7), where the application to adopt is made by a person who is the parent of the child to be adopted, an adoption order can only be made if the other parent is dead or cannot be found, or there is no other parent by virtue of section 28 of the Human Fertilisation and Embryology Act 1990 (meaning of “father”) (disregarding subsections (5A) to (5I) of that section), or there is another reason justifying the exclusion of the other parent.

Section 33. Parental etc. consent

113. Before an adoption order can be made, the court must be satisfied either that each parent or guardian of the child has consented to the making of the adoption order or that his or her consent should be dispensed with (subsection (2)), or, alternatively, that one of the other conditions contained in this section has been satisfied.

114. Subsection (2)(b) allows a court to dispense with the need for the parent or guardian’s consent where the parent or guardian cannot be found, is incapable of giving consent or the welfare of the child requires that consent be dispensed with.

115. Subsection (3) applies where an adoption order is being made in respect of a child who is subject to a permanence order which grants authority for the child to be adopted. This means that the child’s parents will already have consented to the making of an adoption order or that their consent to the inclusion of this measure has been dispensed with at the time the permanence order was made.

116. Subsection (4) applies where consent to adoption has been given by the child’s parent or guardian under section 20 (advance consent to adoption) of the 2002 Act, that consent has not been withdrawn and the parent or guardian does not oppose the making of the adoption order.

117. Subsection (5) applies where the child to be adopted has been placed with the prospective adopters by an adoption agency within the meaning of section 2(1) of the 2002 Act (basic definitions), either by virtue of section 19 (placing of children with parental consent) or section 21 (placement orders) of the 2002 Act. The child must have been at least 6 weeks old at the time the consent was given or the order was made. In addition, no parent or guardian must oppose the making of the adoption order under consideration.

118. Subsection (6) applies where a freeing order made under legislation in force in Northern Ireland has been granted in respect of the child to be adopted.

119. By virtue of subsection (7), parental consent to the making of an adoption order under subsection (2)(a) only has effect if the child is at least 6 weeks old when the consent is given.

120. By virtue of subsection (8) a parent or guardian can only oppose an adoption under subsection (4) or (5) with leave of the court. Under subsection (9), a court may grant such leave
only if it is satisfied that there has been a change of circumstances since consent was originally given or the order under section 21 of the 2002 Act (placement orders) was made.

121. By virtue of subsection (10) it is not possible for a parent or guardian to withdraw consent given under section 19 (placing children with parental consent) or 20 (advance consent to adoption) of the 2002 Act, or under an order under section 21 of that Act, after an application for an adoption order is made.

Section 34. Consent of child aged 12 or over

122. By virtue of subsection (1), a child who is at least 12 years old must consent to the making of an adoption order if they are capable of doing so. Subsection (2) allows the court to dispense with this requirement if the child is incapable of consenting.

Section 35. Restrictions on making orders

123. By virtue of subsection (1), a court may not hear an application for an adoption order in relation to a child where any application falling within subsection (3) has already been made by the same applicants and refused by any court.

124. The applications listed at subsection (3) are an adoption order within the meaning of the Bill; an adoption order as defined section 46(1) of the 2002 Act (adoption orders); an adoption order made, or having effect as if made, under Article 12 of the Adoption (Northern Ireland) Order 1987 (adoption orders); an order for adoption made in the Isle of Man; or an order for adoption made in any of the Channel Islands.

125. Subsection (1) does not apply where, in refusing the previous application, the court directed that this section should not apply (subsection (2)(a)). In addition, a court may hear an application where it appears that it is proper to do so because of a change in circumstances or for any other reason (subsection (2)(b)).

Section 36. Contravention of section 13 no bar to making order

126. By virtue of this section, even where the applicants have made payments prohibited by section 13 of the Bill in relation to the child to be adopted, a court can still make an adoption order in their favour.

Section 37. Effect of order on existing rights etc.

127. By virtue of subsection (2), the making of an adoption order extinguishes all parental responsibilities and parental rights in relation to the child adopted which were vested in any person prior to the making of the adoption order.

128. Subsection (1) creates an exception from this in relation to applications for adoption under section 32(3) of the Bill. Such applications are for adoption by one person who is a member of a relevant couple, the other member being the parent of the child. Where such an adoption takes places, the parental responsibilities and parental rights of the child’s parent are unaffected. This allows the parent to retain the relevant parental responsibilities and parental rights as well as giving full parental responsibilities and parental rights to the applicant.
129. By virtue of subsection (3), any duty owed to the child to pay or provide aliment or to make any payment connected to parental responsibilities and parental rights after the making of the adoption order is extinguished by the making of an adoption order. However, the making of an adoption order does not extinguish a duty deriving from a deed or agreement which constitutes a trust or which expressly provides that it is not extinguished by the making of an adoption order (subsection (4)).

130. By virtue of subsection (5), the making of an adoption order has no effect on parental responsibilities and parental rights in relation to the period prior to the making of the order.

Section 38. Automatic revocation of supervision requirement

131. By virtue of this section, a supervision requirement (see section 111 of the Bill for interpretation) will cease to have effect upon the making of an adoption order where the court is satisfied that compulsory measures of supervision (see section 111) are no longer necessary.

Section 39. Information to be kept about adoptions

132. By virtue of this section, the Scottish Ministers have the power to make regulations with regard to the information which an adoption agency must keep in relation to adoptions, and the form and manner in which such information must be kept.

Section 40. Disclosure of information kept under section 39

133. By virtue of this section, the Scottish Ministers have the power to make regulations providing for disclosure of the information about adoptions kept by adoption agencies to adopted persons and other person specified in the regulations.

134. Subsection (2) provides that such regulations may include provision giving adoption agencies discretion as to whether to disclose information or not in certain circumstances, specifying conditions which are to apply to the disclosure of information, or specifying circumstances in which information should not be disclosed to certain categories of adopted persons.

Section 41. Meaning of “adoption” in Chapter

135. Subsection (1) defines the term “adoption” for the purposes of Chapter 3 of the Bill.

136. Subsection (2) provides that references to adoption in this Chapter do not include an adoption which took place before the Chapter came into force.

137. Subsection (3) provides that any reference in an enactment to an adopted person within the meaning of Chapter 3 also includes an adopted child within the meaning of Part IV of the Adoption (Scotland) Act 1978. Part IV deals with the status of adopted children and is the only part of the 1978 Act which is not repealed by the Bill. This is to ensure that the status of children adopted before the Bill is unaffected by the Bill’s provisions.
Section 42. Status conferred by adoption

138. This section provides for the status conferred by adoption. An adopted person is to be treated in law as if he or she were the child of the adopters or adopter (subsection (1)). Where the adoption is undertaken by a relevant couple under section 31, or a step-parent, civil partner or cohabitant under section 32(3) of the Bill, the adopted person is to be treated as the child of the relationship of the couple concerned (subsection (2)).

139. In the case of an adoption under section 32(3), the adopted person is to be treated in law as if he or she were not the child of any person other than the adopter and the parent (i.e. the other member of the relevant couple (subsection (3))). In all other cases, an adopted person is to be treated as the child of no-one other than the adopters (subsection (4)).

140. By virtue of subsection (5) references to a person’s natural parents or any other natural relationship elsewhere in this Bill are not affected by subsections (3) and (4).

141. Where an application is made under this section in the case of a person adopted under a Convention adoption (as defined in section 111 of the Bill), subsections (6) and (7) provide that the Court of Session has a discretion to direct that subsection (4) should not apply or that it is only to apply to the extent specified in the direction. The conditions which must be met before such a direction may be given are set out in subsection (6), namely that under the law of the country in which the adoption took place the adoption was not a full adoption (as defined by subsection (8)), that the consents required for adoption have not been given or the UK is not a receiving State and that it would be more favourable to the person for a direction to be given by the court under this provision.

Section 43. Miscellaneous enactments

142. Although section 42 means that a person is regarded in law as the child of the adopters and not the child of anyone else, section 43(1) provides that this does not affect the rules on marriage to or registration of a civil partnership with a relative. So, while a child’s natural parents are, on the making of an adoption order, treated in law as if no longer that child’s parents, the ban, for example, on a child marrying his or her natural mother or natural father or forming a civil partnership with either natural parent continues to apply. Similarly, despite the terms of section 42, a child’s natural parent remains treated as the child’s mother or father and therefore falls within the forbidden degrees for the purpose of the law on incest.

143. Subsection (2) provides that, on the making of an adoption order, the adopter and adopted person are considered for all time coming to be within the forbidden degrees relating to marriage, eligibility to register as civil partners, and incest.

144. Subsection (3) provides that section 42 does not apply for the purposes of the British Nationality Act 1981, the Immigration Act 1971, any instrument having effect under any either of those Acts or any other law which determines British citizenship, British overseas territories citizenship or British Overseas Citizenship.
Section 44. Pensions
145. The effect of this section is to provide that section 42 of the Bill does not affect an adopted person’s entitlement to a pension which is payable to, or for the benefit of, the person, at the time of the adoption and which is in payment at that time.

Section 45. Insurance
146. Under section 45, where a child is adopted and his or her natural parents had an insurance policy for the payment on the death of the child of money for funeral expenses, the rights and liabilities under the policy are transferred to the adoptive parents. The adoptive parents are to be treated as the persons who took out the policy.

Section 46. Succession and inter vivos deeds
147. The effect of this section is to preserve the law relating to succession and to disposal of property by a person under a deed which takes effect while the person is still alive (as that law affects adopted persons). That law remains unaffected by section 42.

Section 47. Post-adoption services
148. This is the first section of Chapter 4 of Part 1 of the Bill dealing with post-adoption services, which are part of the adoption service defined in section 1(2) which local authorities are under a duty to provide.

149. Subsection (1) defines post-adoption services which are any services required to meet the needs of a person affected by the making of an adoption order.

150. Subsection (2) sets out the types of service that are post-adoption services. These are counselling and assistance for and provision of information to any relevant person affected by an adoption and counselling for anyone else affected by an adoption. The relevant persons who may be affected by adoption are the adoptive family (children who have been adopted; people who have adopted a child; the children of people who have adopted a child; and children who have been treated as children of the family by adoptive parents); and the pre-adoption family (natural parents and former guardians of an adopted child; siblings of adopted children; persons who treated the child as a child of theirs before the child was adopted; and grandparents of adopted children).

151. Post-adoption services also include the provision of any other assistance which the local authority considers to be appropriate to a specific case.

152. Subsection (5) gives the Scottish Ministers the power to make regulations relating to post-adoption support.

Section 48. Assessment of needs
153. Subsection (1)(a) places a duty on local authorities to carry out an assessment of needs for post-adoption support for any of the people listed at section 47(4) when requested to do so by any such person. Subsection (1)(b) places a duty on local authorities to decide whether,
following an assessment of needs under subsection (1)(a), there is a need for the provision of any post-adoption services. Where a local authority decides that there is a need for the provision of any post-adoption services for such a person, it must provide the services (section 49).

154. Subsections (2) and (3) give local authorities a discretion to carry out an assessment of needs for post-adoption support when requested to do so by people not listed at section 47(4). Where an assessment of needs has been carried out subsection (3)(b) places a duty on local authorities to decide whether or not such services are required.

155. Subsection (4) gives the Scottish Ministers the power to make regulations relating to the assessment of needs for post-adoption support and places a duty on local authorities to have regard to matters prescribed by such regulations when assessing such needs.

Section 49. Provision of services

156. This section places a duty on the local authority to provide post-adoption services to a person where it makes a decision under section 48(1)(b) of the Bill that such services are called for in respect of that person. Subsection (2) provides that, where a decision is made under section 48(3)(b) of the Bill, the decision to provide post-adoption services in that respect is discretionary.

Section 50. Urgent provision

157. Where the local authority considers that it is required urgently, subsection (1) allows a local authority to provide post-adoption support to a person without carrying out an assessment of needs.

158. Where post-adoption support has been provided without an assessment of needs, subsection (2) places a duty on a local authority to carry out such an assessment as soon as is practicable after the support has been provided.

Section 51. Care plans

159. This section applies when the local authority decides that the provision of post-adoption support is necessary for a person who falls into a class listed in section 47(4) and that person is a member of an adoptive family (as defined in subsection (7)).

160. Subsection (2) places a duty on a local authority to prepare a care plan for each member of the relevant adoptive family.

161. Subsection (3) outlines the information that must be included in a care plan. Each care plan must specify the needs of the individual to whom it relates; set out how those needs may be met by the provision of post-adoption services; record details of any previous assessment of needs for that person made under section 48(1)(a); record the details of any assessment of needs made under section 12A(1) of the Social Work (Scotland) Act 1968 (duty of local authority to assess needs); record details of any care plan prepared under regulations made under section 17 of the Children (Scotland) Act 1995 (duty of local authority to children looked after by them); record the details of any post-adoption services which were being provided before the care plan
was made or are to be provided when the care plan is made; specify any other matter which the
local authority considers to be relevant to the provision of post-adoption services. Where there is
no information of the type required in paragraphs (a) to (i) of subsection (3) relating to a person,
a care plan must, under paragraph (j), still be prepared in respect of the person to record that fact.

162. Subsection (4) allows the local authority, subject to relevant consent from the adoptive
family, to prepare a single care plan in respect of all members of the adoptive family instead of
an individual plan for each.

Section 52. Duration of care plan

163. Subsections (1) and (2) provide that a care plan will cease to have effect upon the
occurrence of one of the following events: the expiry of a 3 year period after the making of an
adoption order for the child or the date on which the adopted child reaches the age of 18.

Section 53. Family member’s right to require review of care plan

164. Where a care plan is in place and a member of the adoptive family considers that the
local authority is failing to comply with the terms of the care plan then, under subsection (2), the
member can request that a local authority reviews the care plan. Subsection (3) allows the
authority when reviewing a plan to make a reassessment of the need for post-adoption services of
the member.

165. By virtue of subsection (4), only the adoptive parents or a relevant member who the local
authority considers is capable of understanding the need for post-adoption services may make a
request under subsection (2).

166. A request for review of a care plan will normally be made by either adoptive parents or
the adopted child. The adoptive parents can request a review on behalf of the adopted child if, in
the opinion of the local authority, the child is not capable of understanding the need for post
adoption services.

167. Subsection (5) imposes a duty on local authorities, following a review under subsection
(2), to vary the care plan to reflect any changes in the reassessed needs of a person and the post-
adoption support that will be provided. The effect of subsection (6) is that the section applies
equally to members of an adoptive family who have not had their needs for post-adoption services
assessed under section 48(1)(a). In this case, references to “reassessment” of a
member’s needs are to be read as references to an “assessment”.

Section 54. Other cases where authority under duty to review care plan

168. Where a care plan is in force subsection (2) places a duty on a local authority to review a
care plan “from time to time” and when it becomes aware of a change in circumstances of a
member of a family to which a care plan relates.

169. When reviewing the care plan under subsection (2), subsection (3) allows a local
authority to reassess the need for post-adoption support of any member of the adoptive family to
which the care plan relates.
170. Subsection (4) places a duty on a local authority to vary a care plan to reflect the changes in the reassessed needs of a relevant person under subsection (3) and changes to the post-adoption services provided by the local authority.

171. By virtue of subsection (5) “relevant member” has the same meaning as in section 53(2). As in section 53, references to a reassessment of needs include an assessment of needs if such an assessment has not been carried out in respect of the relevant member.

Section 55. Reassessment of needs for post-adoption services

172. Where a care plan is in force subsection (2) provides that any member of an adoptive family aged 12 years or over may request the local authority to carry out a reassessment of that person’s need for post-adoption services.

173. Subsection (3) places a duty on local authorities, following a reassessment, to decide whether or not there is a need for post-adoption services.

174. Subsection (4) requires a local authority to provide support where they consider there is an assessed need.

175. Subsection (5) places a duty on a local authority which is providing post-adoption support by virtue of subsection (4) to vary the care plan to reflect any changes in the post-adoption support that will be provided.

176. Subsection (6) provides that where a local authority is making a reassessment of needs it should do so in such a manner and having regard to such matters as are prescribed by regulations made by Scottish Ministers. Subsection (7) makes the same provision as subsection (5) of section 54 in relation to the meaning of “relevant member” and “reassessment of needs”.

Section 56. Care plans: directions

177. This section allows the Scottish Ministers to give directions of a general or specific nature to a local authority with regard to the implementation of care plans. Such directions may not require an authority to provide, continue to provide, or withhold provision of a particular post-adoption service.

178. By virtue of subsection (3) the Scottish Ministers may vary or revoke any such direction made under subsection (1).

Section 57. Guidance

179. This section relates to any guidance issued by the Scottish Ministers concerning the provision of post-adoption services. Subsection (2) places a duty on local authorities to have regard to any such guidance. Subsection (3) specifies what may be included in such guidance. Guidance may include information on how a local authority should assess or re-assess a person’s need for post-adoption services; how a local authority’s power to assess a person’s needs should be exercised; how a local authority should decide the classes of person who are eligible for post-
These documents relate to the Adoption and Children (Scotland) Bill (SP Bill 61) as introduced in the Scottish Parliament on 27 March 2006

adoption services; how care plans should be prepared and reviewed; and how responsibility for providing post-adoption services should be transferred between local authorities.

180. By virtue of subsection (4) the Scottish Ministers may vary or revoke any such guidance.

Section 58. Regulations about adoption services and care plans

181. This section gives the Scottish Ministers the power to make regulations relating to various aspects of the adoption service.

182. Paragraph (a) enables regulations to determine which local authority is responsible for the provision of post-adoption services and the making of an assessment of needs.

183. Paragraph (b) enables regulations to determine when and under what circumstances a local authority’s duty to provide pre-adoption and post-adoption services ends.

184. Paragraph (c) enables provision to be made about the circumstances in which a local authority can continue to provide post-adoption services after the duty to provide such services has ended.

185. Paragraph (d) enables regulations to specify the arrangements that may be made by a local authority when a person to whom it is supplying an adoption service moves outwith the authority’s area.

186. Paragraph (e) enables regulations to specify with whom arrangements under paragraph (d) can be made.

187. Paragraph (f) enables regulations to be made concerning the assessment of needs for adoption services of someone who has moved or intends to move from one local authority area to another or from outwith Scotland to Scotland.

188. Paragraph (g) enables regulations to specify the ways in which reviews of care plans should be carried out.

Section 59. Adopted Children Register and index

189. This section applies to the registration of adoptions by the Registrar General for Scotland (“the Registrar”).

190. By virtue of subsection (1), the Registrar must continue to maintain the Adopted Children Register and an index of the Adopted Children Register.

191. By virtue of subsection (2), entries in the Adopted Children Register must only be made as directed by adoption orders or as required under schedule 1 of the Bill.
192. The effect of subsection (3) is that the provisions of the Births, Deaths and Marriages (Scotland) Act 1965 ("the 1965 Act") concerning the correction of errors in entries in the register of births also apply to entries in the Adopted Children Register.

Section 60. Searches and extracts

193. Certain rules of the 1965 Act are, by virtue of subsection (1), made to apply in respect of searches in the index to the Adopted Children Register and supplies of extracts of entries in that Register. Those rules concern the payment of fees, and the form and authentication of documents, in respect of searches in indexes which the Registrar General is obliged to keep under the 1965 Act and the supply of extracts of entries in the registers of births, deaths and marriages.

194. By virtue of subsection (2), where a person requests a search to be carried out as specified in subsection (1), the Registrar must, if the General Register Office is open, search (or permit the person to search) the index to the Adopted Children Register and issue to the person an extract of an entry in the Register.

Section 61. Connections between the register and birth records

195. By virtue of subsection (1), the Registrar must ensure that there is a traceable connection between any entry in the register of births which has been marked 'Adopted' and any corresponding entry in the Adopted Children Register. Subsections (2) and (3) provide that any information which the Registrar keeps for the purpose of subsection (1) is not open to the public and can only be disclosed in accordance with subsection (4).

196. Subsection (4) states that such information can only be disclosed if it is disclosed by virtue of an order of the Court of Session or a sheriff, or to an adopted person aged 16 or over and to whom the information relates or to a local authority, Board or adoption society which is providing counselling to an adopted person to whom the information relates.

197. By virtue of subsection (5), where such information is disclosed to an adopted person by virtue of subsection (4), the Registrar must inform the person that counselling services are available. If the adopted person is in Scotland, counselling is available from any local authority in Scotland. If the adopted person is in England and Wales, counselling is available from any local authority in England and Wales. If the adopted person is in Northern Ireland, counselling is available from any Board in Northern Ireland. If the adopted person is in the United Kingdom and the adoption was arranged by a registered adoption service, counselling is available from that service. If the person is in the United Kingdom and the adoption was arranged by an adoption society registered under Article 4 of the Adoption (Northern Ireland) Order 1987 (registration of adoption societies), counselling is available from that service.

198. By virtue of subsection (6), when the Registrar discloses information by virtue of subsection (4) to an adopted person who is in Scotland or when such a person applies for information under Schedule 2 to the 2002 Act (disclosure of birth records by Registrar General)
or Article 54 of the Adoption (Northern Ireland) Order 1987 (disclosure of birth records of adopted children) any organisation listed at subsection (7) must provide counselling for the person if requested to do so. These organisations are any local authority in Scotland and any registered adoption service or adoption society mentioned in subsection (5)(d)(ii) or (iii) is so far as that organisation, by virtue of section 12(2) of the Bill, is acting as an adoption society in Scotland.

199. Subsection (8) defines certain expressions used in the section.

Section 62. Admissibility of extracts as evidence

200. By virtue of subsection (1) an extract of an entry in the Adopted Children Register, issued by virtue of 60(2)(b) of the Bill is for the purpose of any court proceedings sufficient evidence of the adoption to which it relates.

201. By virtue of subsection (2), an extract of an entry in the Adopted Children Register, issued by virtue of section 60(2)(b), which shows the date of birth of the adopted person or the country of birth of the adopted person is sufficient evidence of that date or country.

Section 63. Interpretation of Chapter

202. This section specifies that any register, index or record maintained under section 59 or 61 of, or schedule 1 to, the Bill may be maintained in any form that the Registrar General of Births, Deaths and Marriages for Scotland considers appropriate. Any references to entries in such a register, or to their amendment, cancellation or marking, are to be read accordingly.

Section 64. Restriction on bringing children into the United Kingdom

203. The provisions of this section apply where a person who is habitually resident in the British Islands (“British resident”) either brings, or causes another to bring, a child habitually resident outwith the British Islands into the United Kingdom for the purposes of adoption; or, brings, or causes another to bring, a child adopted by the British resident under an external adoption effected within a period of 12 months from that adoption. Subsection (2) extends the reference to adoption by the British resident to include the British resident and another person. Subsection (3) excludes this section from applying if the child is intended to be adopted under a Convention adoption order. “Convention adoption order” is defined at section 111 of the Bill and means an adoption made under the law of a country that has acceded to or ratified the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993.

204. Subsection (4) defines an external adoption as an adoption, other than a Convention adoption, effected under the law of any country or territory outside of the British Islands.

205. Subsection (5) allows regulations to be made which require a person to apply to an adoption agency for an assessment of his or her suitability to adopt and provide the agency with any information it may require for the purpose of the assessment if he or she intends to bring, or cause another to bring, a child into the United Kingdom under the circumstances specified in this section.
206. Subsection (6) allows regulations to prescribe the conditions which must be met in respect of a child brought into the United Kingdom under the circumstances specified in this section.

207. Subsection (7) allows regulations to provide for any provision in Chapter 2 to apply with modifications, or not to apply, to a child brought into the United Kingdom for adoption purposes.

208. Subsection (8) allows the Scottish Ministers to make regulations exempting adoptions where the prospective adopter is either a relative or guardian, or a step-parent of the child. Subsection (9) specifies the parliamentary procedure which applies to the statutory instrument containing regulations made on the first occasion on which the power under subsection (8) is exercised.

Section 65. Preliminary order where child to be adopted abroad

209. By virtue of subsection (1), on receiving an application from prospective adopters who intend to adopt a child under the law of a country or territory outwith the British Islands, a court may make an order vesting parental responsibilities and parental rights in relation to the child in those prospective adopters.

210. By virtue of subsection (2), if the prospective adopters meet the domicile or habitual residence requirements for an adoption order in Scotland, an order cannot be made under this section.

211. Under subsection (3), no order under this section may be made unless any requirements prescribed by the Scottish Ministers are satisfied.

212. Under subsection (4), an application for an order under this section cannot be made unless the child has lived with the prospective adopters for the whole of the 10 week period immediately preceding the application.

213. Subsection (5) provides that section 37 of the Bill has effect in relation to an order under this section as it does to adoption orders.

214. Subsection (6) gives the Scottish Ministers the power to make regulations by which any provision of this Bill relating to adoption orders relate to orders under this section.

Section 66. Restriction on removal of children for adoption outwith Great Britain

215. Subsection (1) makes it an offence for any person to take or send a protected child out of Great Britain to any place outwith the British Islands with a view to the adoption of that child. “Protected child” is defined at subsection (9) as a child who is a British subject or a citizen of the Republic of Ireland.
216. Subsection (2) makes it an offence for any person to assist in the transferring of care and possession of a protected child to another person, knowing that the other person intends to take or send the child out of Great Britain which would be an offence under subsection (1).

217. Subsection (4) then specifies the activities which would be deemed to constitute an offence under subsection (2).

218. Subsection (3) outlines the exemptions to an offence committed under subsection (1). It is an offence to remove a protected child from the British Islands with a view to the adoption of that child unless an order has been made under section 65 of the Bill, section 84 of the 2002 Act (giving parental responsibility prior to adoption abroad), or Article 57 of the Adoption (Northern Ireland) Order 1987 (adoption by persons domiciled outside Northern Ireland).

219. Subsection (5) makes special provision for adoptions with a foreign element where the prospective adopters are parents, relatives or guardians or step-parents of the child. The Scottish Ministers may by regulations modify the offence provisions at subsection (1) and (2) and the exceptions at subsection (3), or declare that they do not apply. This may be done only in respect of prospective adopters who are parents, relatives or guardians, or a step-parent, of the child, and if conditions set out in the regulations are met.

220. Subsection (6) specifies the parliamentary procedure which applies to any regulations made under this provision. The first use of the power is subject to affirmative procedure. Thereafter such regulations will be subject to negative procedure.

221. Subsection (7) makes provision for reports by, or depositions made before, a British consular officer to be sufficient evidence in any proceedings under this section.

222. Subsection (8) prescribes the penalty for an offence under this section as a maximum of 3 months imprisonment, a fine not exceeding level 5 on the standard scale or both.

Section 67. Regulations under section 64: offences

223. Subsection (1) makes it an offence for any person to bring, or cause another to bring, a child into the United Kingdom in circumstances where section 64 of the Bill applies if the person has not applied to an adoption agency to have his or her suitability assessed or has failed to provide the agency with any information it may require all in terms of section 64(5) or if the person has not met any condition prescribed by regulations made under subsection (6) of that section.

224. Subsection (2) specifies the penalties applicable to a person who has committed an offence under subsection (1). On summary conviction this is 6 months imprisonment or a fine up to the statutory maximum or both and on conviction on indictment imprisonment for a term not exceeding 12 months or a fine or both.
Section 68. Declaration of special restrictions on adoptions from abroad

225. This section applies where the Scottish Ministers believe that it would be contrary to public policy to continue bringing children into the United Kingdom, in the cases outlined in subsection (2), from a country or territory outside the British Islands (the “relevant country”) due to practices taking place in that country or territory. Subsection (2) specifies the cases under which a child should not be brought into the country where this section would apply. These cases are where a British resident wishes to bring into the United Kingdom for the purpose of adoption a child who is not a British resident and there have been proceedings or dealings with authorities or agencies in the relevant country with a view to adoption or where within the last 12 months a British resident has adopted a child in a relevant country and wishes to bring that child into the United Kingdom.

226. Subsection (3) allows the Scottish Ministers to declare by order that special restrictions are to apply for the time being to any relevant country in relation to the bringing in of children in the cases mentioned in subsection (2). In effect, this means that the Scottish Ministers will be able to apply restrictions to the bringing of children into the United Kingdom from outwith the British Islands who are adopted under the law of that country, or are brought into the United Kingdom for the purposes of adoption.

227. The Scottish Ministers must publish the reasons for making the declaration and a list of the restricted countries. Subsections (5) and (6) require the list to be kept up to date and for it to be published in such a way as the Scottish Ministers consider appropriate for bringing it, and the reasons for the declaration, to the attention of adoption agencies and the public.

Section 69. Review

228. Subsection (1) states that the Scottish Ministers must review whether a country should continue to be restricted. Under subsection (2), where the Scottish Ministers deem that a country should no longer be restricted they must, by order, revoke the order containing the declaration made under section 68(3).

Section 70. The special restrictions

229. This section makes provision for the special restrictions mentioned in section 68(3) of the Bill. These are that the Scottish Ministers should take no further action in connection with bringing a child from outwith the British Islands into the United Kingdom who was adopted under the law of the relevant country, or is to be brought into the United Kingdom for the purposes of adoption.

230. Subsection (2), however, allows for action to be taken by the Scottish Ministers if the prospective adopter satisfies them that they should take this action despite the special restrictions. This means that the Scottish Ministers are prevented from taking any action which involves the bringing of a child from outwith the United Kingdom into the British Islands in connection with adoption, unless the prospective adopters satisfy the Scottish Ministers that they should undertake this action.

231. Subsection (3) allows the Scottish Ministers to make regulations that provide for the procedure to be followed to determine whether further steps should be taken despite the special
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restrictions, and for matters which should be taken into account when making such a determination.

Section 71. Imposition of extra conditions in certain cases

232. Subsection (1)(a) allows regulations to identify additional steps agreed between the United Kingdom and a restricted country that Scottish Ministers normally take in connection with bringing a child from the restricted country into the United Kingdom, and are not otherwise provided for by any enactment, to be specified in the restricted list in relation to that country. Subsection (1)(b) states that, where a step has been specified in relation to subsection (1)(a), one or more conditions set out in the regulations need to be met in connection with a British resident bringing a child from the relevant restricted country into the United Kingdom, where the child was adopted under the law of that country within a period of 12 months, or is to be brought into the United Kingdom for the purposes of adoption and there have been or would have to be dealings with authorities or agencies in the restricted country.

233. Subsection (2) clarifies that such conditions are in addition to any conditions provided for by section 64 of the Bill or any other enactment.

234. Subsection (3) makes it an offence for any person to bring, or cause to bring, a child into the United Kingdom for the purposes of adoption if they have not met any condition which they are required to meet in terms of regulations made under subsection (1)(b). Subsection (4) states that, if the step specified in the regulations had already been taken before the publication of the restricted list, no offence is committed in terms of subsection (3).

235. Subsection (5) prescribes the penalties for an offence made under subsection (3) being, on summary conviction a maximum of 6 months imprisonment or a fine up to the statutory maximum or both and on conviction on indictment imprisonment for a term not exceeding 12 months or a fine or both.

Section 72. Power to charge

236. Subsection (1) indicates that this section applies to adoptions mentioned in section 64 of the Bill or regulations made under section 1 of the Adoption (Intercountry Aspects) Act 1999 (regulations giving effect to Convention). In effect, this will apply to any overseas adoption or any Convention adoption.

237. Subsection (2) allows the Scottish Ministers to charge a fee to adopters for services undertaken in relation to adoption. Subsection (3) allows the Scottish Ministers to set the level of this fee, or waive the fee, as they see fit. However, subsection (4) indicates that the income for these fees must not exceed the total cost of providing the service during one financial year.

238. Subsection (5) defines “financial year” as 12 months ending with 31st March.

Section 73. Meaning of “overseas adoption”

239. Subsection (1) defines “overseas adoption” as meaning an adoption as described in regulations made by the Scottish Ministers where the description is that of an adoption effected
under the law of any country or territory outside the British Islands (namely the United Kingdom, Channel Islands and Isle of Man), but that is not a Convention adoption.

240. Subsection (2) allows for regulations to specify requirements that should be met by an adoption for it to be an overseas adoption after commencement of the regulations.

241. Subsection (3) restricts the Scottish Ministers’ power to make regulations under subsection (1) while regulations under subsection (2) are in force. The power must be exercised to ensure that adoptions effected after the coming into force of regulations under subsection (2) are not overseas adoptions if they are unlikely, within a reasonable time, to comply with those regulations.

242. Subsection (4) provides that any regulations made under subsection (1) may indicate how evidence of overseas adoptions may be given.

Section 74. Annulment etc. of overseas adoptions

243. By virtue of subsection (1), the Court of Session can, on an application under this subsection, annul a Convention adoption or a Convention adoption order on the ground that the adoption or order is contrary to public policy.

244. By virtue of subsection (2), the Court of Session can, on an application under this subsection, order that an overseas adoption or a determination (defined as a “relevant determination” in terms of section 76 of the Bill) is to cease to be valid in Great Britain on the ground that the adoption or determination is contrary to public policy or that the authority which authorised the adoption or made the determination was not competent to do so. The Court of Session may also decide the extent to which a determination has been affected by a subsequent determination.

245. By virtue of subsection (3), the Court of Session may, in proceedings in that court, decide that an overseas adoption or determination is for the purposes of those proceedings to be treated as invalid in Great Britain on the grounds that the adoption or determination in contrary to public policy or the authority which authorised the adoption or made the determination was incompetent.

246. By virtue of subsection (4), an order or decision by the High Court on an application under section 89(2) of the 2002 Act (annulment etc. of overseas or Hague Convention adoptions) is to be recognised and have effect as if it were an order or decision of the Court of Session on an application under subsection (2).

247. By virtue of subsection (5), the validity of a Convention adoption, a Convention adoption order, an overseas adoption or a determination may not be called into question in any proceedings in any court in Scotland, except by virtue of this section.
Section 75. Section 74: supplementary provision

248. By virtue of this subsection, any application for an order under section 74 or a decision made under subsection (2)(b) of that section is to be made as prescribed by regulations made by the Scottish Ministers and within such a period as prescribed.

249. By virtue of subsection (2), no application is to be made under section 74 of the Bill unless immediately before the application is made the person adopted was habitually resident in Scotland or the persons on whose application the adoption order was made were habitually resident in Scotland.

250. By virtue of subsection (3), in deciding in pursuance of section 74 whether or not an authority as mentioned in section 76 of the Bill was competent to hear a particular case, a court is to be bound by any finding of fact made by the authority and stated by the authority to be so made for the purpose of determining whether the authority was competent to hear the case.

Section 76. Effect of determinations and orders made outwith Scotland

251. Subsection (2) provides that where an authority makes a decision pursuant to the exercise of a power of the type mentioned in paragraph (a) or (b) of subsection (1), the decision has effect in Scotland as it has in the country or territory in which it was made.

252. This only applies if the authority is:
- that of a Convention country (other than the UK) which has exercised a legal power to make decisions (specified in subsection (1)(a)) in relation to Convention adoptions or Convention adoption orders, or
- that of any of the Channel Islands or Isle of Man which has exercised a legal power to make decisions (specified in subsection (1)(b)) in relation to Convention adoptions, Convention adoption orders or adoptions effected in that territory.

253. By virtue of subsection (3), sections 37(2) to (4) and 45 of the Bill apply in relation to a child who is the subject of an order which is similar to an order under section 65 of the Bill and is made (whether before or after the Bill is enacted and brought into force) in England or Wales, Northern Ireland, the Isle of Man or any of the Channel Islands.

Section 77. Adoption allowances schemes

254. This section gives the Scottish Ministers the power to make regulations concerning the preparation of a scheme for the payment of allowances to a person who has adopted, or intends to adopt a child, through an adoption agency.

255. Subsection (1) provides that a local authority must, within such period as the Scottish Ministers direct, prepare an adoption allowances scheme. A registered adoption agency may prepare such a scheme.
256. Subsection (2) defines an adoption allowances scheme as a scheme for the payment by an agency of allowances to any person who has adopted or intends to adopt a child where arrangements are made, or to be made, by the agency.

257. Subsection (3) enables the Scottish Ministers to make regulations in connection with adoption allowance schemes.

258. Subsection (4) sets out what such regulations may particularly include: the procedure to be followed to decide whether or not someone should be paid an adoption allowance; the circumstances in which an allowance can be paid; factors to be taken into account in deciding how much allowance should be paid; the procedure for review, variation and termination of any such allowance; the information about allowances that should be supplied to potential adopters; and the procedure to be followed in drawing up, making alterations to or revoking and replacing the scheme.

259. By virtue of subsection (5), section 13 of the Bill (prohibition on certain payments) does not apply to any payments made through a scheme created by virtue of this section.

Section 78. Disclosure of medical information about parents of child

260. Subsection (1) gives the Scottish Ministers power to make regulations allowing for the disclosure of information about the health of the natural parents of a child who will be, may be, or has been adopted.

261. Any such regulations must ensure that a person to whom such information is disclosed is subject to a duty of confidentiality in respect of this information (subsection (2)).

262. However, by virtue of subsection (3), information may be disclosed to the child and to persons who are to, or may, adopt, or have already adopted the child.

263. Subsection (4) lists matters which any regulations made by virtue of subsection (1) may cover. These are: the types of persons by whom and to whom such information is to be disclosed; the circumstances in which this information is to be disclosed; the type of information which is or is not to be disclosed; the circumstances in which consent to the disclosure of such information is not required; and the processing of the information.

Section 79. Power to provide payment to person entitled to adoption service

264. This section relates to the payment of cash in lieu of the provision of a service by a local authority. It applies when a person is by virtue of section 1(1) of the Bill entitled to be provided with an adoption support service but the relevant local authority is unable to provide that service.

265. Subsection (2) gives local authorities a power (not a duty) to provide a cash payment instead of providing specific services having had regard to certain matters set out in subsection (3).
266. Under subsection (3) the matters to which a local authority must have regard before deciding whether to provide a person with a cash payment are the person’s eligibility for assistance from another source and the availability of such assistance at the time when the service would have been provided by the local authority.

267. Under subsection (4), a local authority may make a cash payment subject to such conditions (including conditions concerning repayment) as the authority considers reasonable, taking account of the person’s eligibility for assistance from any other body.

Section 80. Admissibility of certain documents as evidence

268. By virtue of this section any document which is receivable as evidence of any matter in England and Wales under section 77(4) and (5) (adopted children register) of the 2002 Act, or in Northern Ireland under Article 63(1) of the Adoption (Northern Ireland) Order 1987 (evidence of adoptions, etc.), is considered sufficient evidence in Scotland of the matter to which it relates.

Section 81. Effect of certain orders made in England and Wales

269. Under section 81, an adoption order or placement order (including the variation and revocation of a placement order) made in England and Wales has the same effect in Scotland, with the exception that any reference made in the 2002 Act to the parental responsibility for the child is taken as the parental responsibilities and parental rights in relation to the child.

Section 82. Effect of placing for adoption etc. under 2002 Act

270. Section 82 specifies that if a child is placed for adoption, or an adoption agency is authorised to place a child for adoption, with parental consent under the 2002 Act, the relevant provisions concerning parental responsibility and the further consequences of placement also have effect in Scotland with the exception that the appropriate terminology used in Scottish legislation is substituted. With regard to parental responsibility any reference to the parental responsibility for the child is to be read as a reference to the parental responsibilities and parental rights in relation to the child, and with regard to the further consequences of placement the reference to the court is to be read as a reference to the appropriate court.

Section 83. Further consequences of placement and placement orders

271. Under section 83, if a child is placed for adoption, or an adoption agency is authorised to place a child for adoption, with parental consent under the 2002 Act, no residence order under section 11(2)(c) of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc) may be made in respect of the child.

272. Subsection (3) specifies that if a placement order is made for a child under the 2002 Act, any residence order, contact order, specific issue order and interdict in relation to parental responsibilities made under the Children (Scotland) Act 1995, ceases to have effect. Subsection (4) specifies that where a placement order is in force, none of the previously mentioned orders under the Children (Scotland) Act 1995 may be made in respect of a child and additionally, a child assessment order may not be made.
Section 84. Permanence orders

273. A permanence order is a new court order which will regulate the exercise of parental responsibilities and parental rights in respect of children who cannot reside with their parents but where contact or shared exercise of parental responsibilities and parental rights is appropriate. A permanence order may remove certain parental responsibilities and parental rights and grant them to other parties specified in the order. Freeing orders and parental responsibilities orders will be replaced by permanence orders which are likely to be used when a child cannot live with his or her family but where adoption is not an immediate option.

274. By virtue of subsection (1), the permanence order is an order granted by the court in respect of a child. Only a local authority can apply for a permanence order.

275. Subsection (2) sets out those measures which the permanence order will consist of. All permanence orders will contain the mandatory provision as set out at subsection (3). In addition the order will contain such of the available ancillary provisions listed at subsection (4) as the court sees fit. It will also be possible for the order to contain a measure granting authority for the child to be adopted, but only where the conditions in subsection (5) are met.

Mandatory provision

276. Subsection (3) specifies the mandatory provision mentioned in subsection (2). The mandatory provision will vest in the applicant the following parental responsibilities and parental rights:

(i) the responsibility to provide, in a manner appropriate to the stage of development of the child, guidance to the child (as set out at section 1(1)(b)(ii) of the Children (Scotland) Act 1995); and

(ii) the right to have the child living with the parent or otherwise regulate the child’s residence (as set out at section 2(1)(a) of the Children (Scotland) Act 1995).

277. These will be the core elements of the permanence order: all permanence orders must transfer these parental responsibilities and parental rights to the local authority in whose favour the permanence order has been made. The right mentioned at (ii) will, in practice, allow the local authority to decide where a child should live. The transfer of the parental responsibility mentioned at (i) will allow the permanence order to last until the child reaches 18 years. Without this as a core right, a permanence order would fall when the child reached the age of 16 years, since the right to regulate the child’s residence at section 2(1)(a) of the Children (Scotland) Act 1995 (parental rights) only lasts until 16.

Ancillary measures

278. In addition to these core responsibilities and rights, by virtue of subsection (4) a permanence order can allocate other parental responsibilities and parental rights to other parties. This will be a matter for the court to determine in each individual case. For example, the parental responsibilities and parental rights set out at sections 1 (parental responsibilities) and 2 (parental rights) of the Children (Scotland) Act 1995 (with the exception of the mandatory measures specified at section 87(3) of the Bill), could be allocated between the local authority applicant, foster carers and the child’s parents. The allocation of these parental responsibilities
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and parental rights will allow the court to take into account the circumstances and needs of each individual child. In addition, if the court considers it to be appropriate, the child’s parents may be able to retain some parental responsibilities and parental rights and thereby continue to exercise some influence on the child’s life.

279. Subsection (4)(c) allows the court to make conditions relating to contact between the child and any other person the court considers to be relevant. The court will be able to specify such contact arrangements.

**Measure granting authority for the child to be adopted**

280. An application for a permanence order may seek authority for the child to be adopted. Where sought, this can only be granted where the conditions set out at subsection (5) are met. These conditions are that the court is satisfied that the child has already been placed for adoption or is likely to be so placed; the court is satisfied that either the child’s parents have understood the effect of the making of the adoption order and have consented to its making or that the court has dispensed with their consent because they are incapable of giving it or the child’s welfare required it to do so, as set out at subsection (6); and the court considers that it would be better for that child for the measure to be granted than for it not to be granted. The grounds for seeking or dispensing with the consent of the parents mirrors that at section 33(2) of the Bill for the making of an adoption order. The measure granting authority for the child to be adopted will allow parents to give their consent to adoption at an early stage or will allow a court to dispense with the need for their consent.

281. Subsection (7) clarifies that a permanence order can be made in respect of an adopted child and subsection (8) specifies that a permanence order cannot be made in respect of a child who is married or is a civil partner.

282. Subsection (9) deals with the duration of the measures contained in the permanence order. The measures specified at subsections (3) and (4)(a) and (b) will endure for the “appropriate period”. Subsection (9) defines “the appropriate period”. For the parental responsibility referred to at subsection (3)(a) this will last from the date of the making of the permanence order until the child reaches 18 years. The parental responsibilities and parental rights conferred by the permanence order in terms of subsections (3)(b) and (4)(a) and (b) will last until the child reaches 16 years. This reflects the effect of the parental responsibilities and parental rights in relation to the age of the child at sections 1 (parental responsibilities) and 2 (parental rights) of the Children (Scotland) Act 1995.

**Section 85. Conditions and considerations applicable to making of order**

283. This section specifies the tests which must be met before the court grants a permanence order.

284. By virtue of subsection (1), a child who is at least 12 years of age must consent to the making of a permanence order if they are capable of doing so. Subsection (2) allows the court to dispense with this requirement if the child is incapable of consenting. Under subsection (3) a court must only make a permanence order if it considers that it is better for the child to do so than it would be not to make the order. By virtue of subsection (4), when considering whether or
not to make a permanence order and whether it should include authority for the child to be adopted, the court’s need to safeguard and promote the welfare of the child must be its paramount consideration. This means that the child’s welfare takes precedence over all other considerations.

285. Under subsection (5)(a), the court must allow a child, who is considered to be old enough or mature enough, to express his or her views on the making of a permanence order. Where the child does express views subsection (5)(b) places a duty on the court to have regard to such views. In addition, when considering whether or not to make a permanence order, the court must have regard to the child’s religious persuasion, racial origin and cultural and linguistic background.

286. By virtue of subsection (5)(b), the court must also have regard to the effect on the child of the order being made. However, the court’s duty to regard the need to safeguard and promote the welfare of the child remains its paramount consideration.

Section 86. Representations

287. Subsection (1) allows specified persons to make representations to the court in a permanence order hearing. The court must allow these people to make representations should they wish to do so.

288. Those persons who have a right to make representations are listed at subsection (2). They are the adoption agency making the application; the child or the child’s representative; anyone who has parental responsibilities and parental rights in relation to the child; and any other person able to demonstrate an interest to the court.

289. This last category may allow people who have been involved in the child’s life, but who do not fall into any of the other categories to make representations. However, it is for the court alone to determine in each case whether an individual has demonstrated a sufficient interest.

Section 87. Effect of order on existing orders

290. By virtue of this section, where a person has parental responsibilities or parental rights in regard to a child through the making of an adoption order, a permanence order or an order under section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc), on the making of a permanence order these responsibilities and rights are lost and the original order is revoked. By virtue of subsection (3), a court must ensure that any parental responsibilities and parental rights which vested in a person in such an order before the making of the permanence order must be transferred to a person by virtue of the permanence order.

291. This means that no parental responsibilities or parental rights which were vested in a person by virtue of an order under section 11 of the Children (Scotland) Act 1995, an adoption order or a previous permanence order should be left undetermined when that order falls on the making of the permanence order. The new permanence order must allocate the parental responsibilities and parental rights.
Section 88. Effect of marriage or civil partnership on order

292. By virtue of this section, when a child who is subject to a permanence order marries or becomes a civil partner, the permanence order ceases to have effect.

Section 89. Variation of ancillary provisions in order

293. This section relates to the variation of ancillary provisions in a permanence order. It includes provision to specify those who can request a variation and the effect of a variation. The power for a court to vary a permanence order which includes ancillary provisions is made by virtue of subsection (2).

294. Subsection (3) lists those who can apply for variation of the ancillary provisions of a permanence order. These are the adoption agency which made the original application for a permanence order; the child who is subject to the permanence order (if the child is at least 12 years old or is considered by the court to be mature enough to do so); anyone who was granted parental responsibilities and parental rights by the permanence order; and anyone who lost parental responsibilities and parental rights by virtue of the permanence order or a variation of it. In practice those who have lost parental responsibilities and parental rights by virtue of the making of the permanence order could apply for a variation of that order to gain contact arrangements with the child. However, it will be possible for such people to apply to vary any aspect of the permanence order (subject to section 91(4) of the Bill). Anyone other than the adoption agency which made the original application for the permanence order will be required to obtain the leave of the court before such an application can be made (see section 91(4) and (5) of the Bill).

295. By virtue of subsection (4), “ancillary provisions” has the same meaning as in section 84(4) of the Bill.

296. Subsection (5) defines a variation for the purposes of this section as including additions to, amendments of or the removal of any of the provisions of the permanence order.

Section 90. Amendment of order to grant authority for child to be adopted

297. By virtue of subsection (1), this section applies where a permanence order is in place in respect of a child, but it does not include authority for the child to be adopted. By virtue of subsection (2), an appropriate court may, on application by the local authority which applied for the original permanence order, grant authority for the child to be adopted if the court considers that it is better for the child that the measure be granted, if the court is satisfied that the child has already been placed for adoption or will soon be placed for adoption and if the condition in subsection (3) or (4) is met.

298. Under subsection (3), the parent or guardian of the child must fully understand the effect of such authority and must consent to it being granted. By virtue of subsection (4), the court can dispense with the consent of the child’s parent or guardian if they cannot be found or are incapable of giving consent, or if the court considers that it is in the child’s best interests for such consent to be dispensed with.
299. Subsection (5) clarifies that references in subsections (3) and (4) relate to anyone who has parental responsibilities and parental rights in respect of the child.

Section 91. Proceedings

300. By virtue of subsection (1), in any proceedings relating to an application by an adoption agency for the variation of a permanence order, the appropriate court must permit any person who is affected by the permanence order and who wishes to, to make representations to the court.

301. By virtue of subsection (2), in any proceedings relating to an application by anyone other than the adoption agency which made the original permanence order application for the variation of a permanence order those persons specified at subsection (3) have a right to make representations to the appropriate court. Those persons listed at subsection (3) are: the adoption agency which made the original application for the permanence order; the child who is subject to the order (if the child is at least 12 years old or is considered by the court to be mature enough to do so); anyone who has parental responsibilities and parental rights by virtue of the order; anyone who has a duty or power by virtue of the permanence order; anyone who had parental responsibilities and parental rights immediately before the making of the order, which the order then transferred to another person; any person who had parental responsibilities and parental rights conferred by virtue of the original permanence order but which have been vested in another person by virtue of any variation of the order; and anyone else able to demonstrate an interest to the satisfaction of the court.

302. By virtue of subsection (4), if a person other than the adoption agency which made the original permanence order application seeks to apply for a variation to a permanence order they must obtain leave of the court to do so. Subsection (5) provides that the court must grant leave if there has been a material change in circumstances directly relating to the provisions of the order.

Section 92. Duty of adoption agency to apply for variation or revocation

303. Where a permanence order has been made the adoption agency on whose application the order was made must apply for the variation or revocation of the order where it determines that there has been a material change of circumstances directly relating to the provisions of the order. A variation may include provision granting authority for the child to be adopted.

Section 93. Revocation

304. By virtue of subsection (1), a court may revoke a permanence order when it is satisfied that it is in the best interests of the child to do so, on the application by any of those people listed at subsection (2). In particular, but not exclusively, the court should consider whether there has been a material change in the circumstances directly relating to the provisions of the order and whether the parents or guardian wish to have parental responsibilities and rights reinstated.

305. Subsection (2) lists those persons who can apply for revocation of the permanence order as the adoption agency which applied for the permanence order and anyone else affected by the order who has obtained the leave of the court to apply for a revocation.
Section 94. Revocation: order to be made under section 11 of Children (Scotland) Act 1995

306. This section applies where a court has revoked a permanence order. When a court revokes the order, it must, by virtue of subsection (2), make an order under section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc) imposing on a particular person parental responsibilities and parental rights in regard to the child. This is ensures that, when a permanence order is revoked, relevant parental responsibilities and parental rights will be vested in an appropriate person. This provision requires the court to exercise this duty at the same time as the revocation takes effect.

Section 95. Effect of subsequent adoption order on permanence order

307. By virtue of this section, where a child who is subject to a permanence order becomes subject to an adoption order, the permanence order ceases to have effect.

Section 96. Restriction on making of orders under section 11 of Children (Scotland) Act 1995

308. This section amends section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.).

309. When a permanence order is in force, the court may not make an order under section 11(2)(a) to (e) of the Children (Scotland) Act 1995 in respect of the same child who is subject to the permanence order.

Section 97. Permanence orders: rules of procedure

310. This section allows rules of court to make provision in relation to applications for permanence orders, applications for variation or revocation of permanence orders (including, by virtue of subsection (5), an application to vary a permanence order to include a measure granting authority for the child to be adopted) and applications for leave to apply for variations or revocations.

311. Subsections (2), (3) and (4) require the rules to specify that certain persons will be notified of certain events. Every person who can be found and whose agreement or consent to the making of the order is required to be given or dispensed with under this Bill or, if no such person can be found, any relative prescribed by rules who can be found (subsection (3)(a)) must be notified of the date on which the application will be heard; where the application will be heard; whether or not the person is entitled to be heard on the application; and the fact that the person does not need to attend the hearing if they do not wish to do so, unless required by the court (subsections (3)(a) and (4)).

312. The father of the child, if he has never had parental responsibilities and parental rights in relation to the child, and if he can be found, must be notified of the date on which the application will be heard and the place where that application will be heard.

Section 98. Notification of proposed application for order

313. By virtue of subsection (1), this section applies where a local authority proposes to apply for a permanence order or becomes aware that an application for an adoption order for a child in
its area is planned and when three conditions apply. These conditions are that the father of the child is not married to the mother of the child on the relevant date when the local authority intends to apply for the permanence order or becomes aware of the planned application for an adoption order; that on the relevant date the father of the child does not and has never had parental responsibilities and parental rights in regard to the child; and that the local authority knows the identity and whereabouts of the father or is able to find out this information using reasonable and practicable steps.

314. By virtue of subsection (2), where subsection (1) applies, a local authority must notify the father either that it proposes to apply for a permanence order or that an adoption order application has been, or is to be made. The local authority must also provide the father with specific information, as prescribed in regulations, about the processes of applying for the order in question. The local authority must provide notice at least 4 weeks before the relevant date on which it intends to apply for the permanence order or as soon as is reasonably practicable when it becomes aware of the application, or intended application, for the adoption order.

Section 99. Child subject to supervision requirement: duty to refer to Principal Reporter

315. By virtue of this section, where a registered adoption society intends to place for adoption a child who is subject to a supervision requirement under the Children (Scotland) Act 1995, the registered adoption society must refer the case to the Principal Reporter. Subsection (3) gives the Scottish Ministers the power to make regulations specifying a time period in which such a referral should be made. By virtue of subsection (4), Principal Reporter has the same meaning as in Part II of the Children (Scotland) Act 1995.

Section 100. Making of adoption order no longer to be bar to making of contact order

316. Section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc) prevents persons who have lost parental responsibilities and parental rights through the making of an adoption order, a freeing order, a parental responsibilities order or a parental order by virtue of the Human Fertilisation and Embryology Act 1990 from applying for a contact order with the child under section 11(2)(d) of the 1995 Act. This section amends that provision to allow persons who have lost their parental responsibilities and parental rights by virtue of the making of an adoption order to apply for a contact order.

Section 101. Rules: appointment of curators ad litem and reporting officers

317. By virtue of this section, a court can appoint a curator ad litem or a reporting officer to act in an application for a relevant order (defined by subsection (4) as an adoption order, a permanence order or an order under section 65 of the Bill) in such cases as are prescribed by rules. Subsections (1)(a) and (1)(b) outline the roles of these officers: a curator ad litem will act to safeguard the interests of the child during proceedings; a reporting officer will witness agreements to adoption and perform other duties that may be prescribed.

318. By virtue of subsection (2), the rules made under subsection (1), may, in particular, make provision enabling the reporting officer to be appointed before the application is made and enabling the court to appoint the same person as curator ad litem and reporting officer.
By virtue of subsection (3), any rules made under subsection (1) may not allow the any person who is employed by the adoption agency which has applied for an adoption order in respect of the child to be appointed as a curator ad litem or reporting officer. Similarly, rules may not allow any person who is employed by the local authority who has applied for a permanence order in respect of the child to be appointed as a curator ad litem or reporting officer.

Section 102. Proceedings to be in private

By virtue of this section, any proceedings before the court in relation to any of the provisions listed at subsection (2) must be heard and determined in private, unless the court specifies otherwise.

Subsection (2) lists the provisions to which this section relates: section 26, section 31, section 32, section 65, section 84, section 89, section 90 and section 92 of this Bill.

Section 103. Regulations about fostering allowances

Subsection (1) gives the Scottish Ministers the power to make provision by regulations for, or in connection with, local authority payments in respect of their placing of looked after children in accommodation.

By virtue of subsection (2) these regulations may, in particular, specify descriptions of persons to whom payments may be made; specify circumstances in which payments may be made; and specify rates of payments, including minimum required or recommended rates in specified circumstances and a requirement for local authorities who do not comply with the recommended rates to publish their reasons for not doing so.

Section 104. Evidence of consent

By virtue of subsection (1), any document signifying consent required by this Bill, if it was witnessed in accordance with rules of the court, is sufficient evidence of the signature of the person by whom it was executed. Any such document which purports to be witnessed in accordance with rules is presumed to have been executed and witnessed on the date and place specified in the document, unless otherwise shown.

Section 106. Rules of procedure

Subsection (1) provides a power for any matter relating to procedure to be dealt with by court rules. Subsection (2) specifies that any court rules dealing with an application for an adoption order must require notification of specific people (as set out at subsection (3)) of particular aspects of the adoption case (as set out at subsection (4)) and notification of the father of the child (if he can be found) who does not have and has never had parental rights and parental responsibilities in respect of the child of the date on which and place at which the application will be heard (subsections (2)(b) and (5)).

The people who must be notified, as set out in subsection (3), are anyone whose consent to the making of an adoption order is required and who can be found, or, if no such person can be found, anyone relative prescribed by rules who can be found; anyone who has consented to the
making of an adoption order under section 20 of the 2002 Act (advance consent to adoption) (and who has not withdrawn that consent); anyone who, if leave were given under section 33(8) of the Bill would be entitled to oppose the making of the order.

327. Under subsection (4) the people listed at subsection (3) must be notified of the date on which the application will be heard and the place where it will be heard; the fact that the person is entitled to be heard on the application; and that person does not have to attend the hearing unless they wish to do so, or are requested to do so by the court.

328. By virtue of subsection (6), in the case of an application under section 65 of the Bill, rules must require every person who can be found, and whose agreement to the making of the order would be required if the application were for an adoption order other than a Convention order to be notified of the matters in subsection (4).

Section 107. Offences by bodies corporate and partnerships
329. By virtue of subsection (1), where an offence is committed under the Bill by a body corporate which is proved to have been committed with the consent or the connivance of a relevant person, or because of any neglect by the relevant person, the relevant person, as well as the body corporate, will be guilty of the offence and liable to punishment.

330. Where the affairs of a body corporate are managed by its members, a member is regarded as a relevant person in relation to subsection (1) as regards that person’s management functions in relation to the body.

331. Where any offence is committed by a partnership with the consent or connivance of a partner, or because of the neglect of a partner, the partner and the partnership are guilty of the offence and are liable to punishment.

332. By virtue of subsection (4), a relevant person in relation to a body corporate means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any of these capacities.

Section 108. Ancillary provisions
333. By virtue of subsection (1), the Scottish Ministers have the power to make, by order, any incidental, supplementary, consequential, transitory, transitional or saving provision as is necessary to give full effect to this Bill, or any provision of it. By virtue of subsection (2), such an order may modify any enactment, including the Bill itself after enactment.

Section 109. Orders and regulations
334. This section relates to any orders or regulations made by virtue of any provision in the Bill.

335. By virtue of subsection (1), any power in the Bill to make regulations or orders will be exercised by statutory instrument, if the Scottish Ministers choose to use that power.
These documents relate to the Adoption and Children (Scotland) Bill (SP Bill 61) as introduced in the Scottish Parliament on 27 March 2006

336. By virtue of subsection (2), any power to make regulations or orders may be used to make different provision for different purposes and includes power to make any incidental, supplementary, consequential, transitory, transitional or saving provisions as the Scottish Ministers consider appropriate.

337. By virtue of subsection (3), any power to make orders or regulations may be exercised in relation to those cases subject to specified exceptions or a particular case or class of cases.

338. By virtue of subsection (4), any statutory instrument (other than one mentioned in subsection (5)) containing regulations or an order is subject to annulment in the Scottish Parliament.

339. By virtue of subsection (5) any statutory instrument which contains an order under sections 23 or 108(1) of the Bill or regulations under sections 6(4), 7(4) or 47(5) amending those sections must not be made until a draft has been laid before and approved by the Scottish Parliament.

Section 110. Meaning of “appropriate court”

340. This section defines what is meant by “appropriate court” in dealing with an application for an order in relation to a child.

341. By virtue of subsection (2), where the child is in Scotland when the application is made, the “appropriate court” is the Court of Session or the sheriff court of the sheriffdom where the child is at the time of the application.

342. By virtue of subsection (3), if the child is not in Scotland and the application is for an adoption order or for a permanence order seeking provision granting authority for adoption of the child the “appropriate court” is the Court of Session.

Schedule 1: Registration of adoptions

343. This schedule is introduced by section 59 and deals with the registration of adoptions.

Registration of adoption orders

344. By virtue of paragraph 1(1), every adoption order must contain a direction to the Registrar General for Scotland to make an entry in the Adopted Children Register.

345. In order to satisfy the requirement at paragraph 1(1), where the precise date of the child’s birth is not known, the court is to determine the likely date of the child’s birth and this is to be specified in the adoption order as the child’s date of birth. Where the country of the child’s birth is unknown, if it appears likely that the child was born in the British Islands, the child should be regarded as having been born in Scotland. Otherwise, this information can be excluded from the adoption order and the entry in the Adopted Children Register. Where the application for the adoption order specifies any names in regard to the child, those names are to be recorded in the adoption order as the names of the child. Where the adoption order does not specify these
names, the child’s original name and the surname of the applicant are to be recorded in the adoption order as the names of the child.

346. On an application for an adoption order in relation to a child, where the identity of the child can be linked to an entry in the register of births, and where the child has not previously been subject to an adoption order made by a court in Scotland, the adoption order must contain a direction to the Registrar General for Scotland to mark that entry in the register of births with the word “Adopted”. Where the child has previously been subject to an adoption order made by a court in Scotland, the adoption order must contain a direction to the Registrar General for Scotland to mark the relevant entry in the register of births with the word “Re-adopted”.

347. Where an adoption order is made, it is the responsibility of the clerk of the court which made the order to communicate the order to the Registrar General for Scotland. The Registrar General for Scotland must secure that the direction contained in the order is complied with (paragraph 4).

Registration of adoptions in England, Northern Ireland, the Isle of Man and the Channel Islands

348. Under paragraph 5, when the Registrar General for Scotland is notified of an adoption order made in respect of a child who matches an entry in the register of births in a part of the British Islands other than Scotland, and there is no entry for the child in the Adopted Children Register, the Registrar General for Scotland must mark the relevant entry with the word “Adopted” followed by the name of the part of the British Islands in which the adoption order was made in brackets. Where there is an entry for the child in the Adopted Children Register, the Registrar General for Scotland must mark the entry in the register of births with the word “Re-adopted” followed by the name of the part of the British Islands in which the adoption order was made in brackets.

349. Where the Registrar General for Scotland is notified that any such adoption order no longer stands, the Registrar must ensure that the marking is cancelled.

350. Where such an adoption order is cancelled, an extract of the entry is not accurate unless both the marking and the cancellation are omitted.

Registration of other adoptions

351. Under paragraph 6 where a child is adopted under a registrable foreign adoption (by which is meant a Convention order or an overseas adoption), the Registrar General for Scotland must make an entry in the Adopted Children Register if there is enough information to allow this.

352. Where such an adoption takes place, and there is enough information to allow it, the Registrar General for Scotland must make an entry in the register of births showing “Adopted” or “Re-adopted” as the case may be, followed by the name of the part of the British Islands in which the adoption order was made in brackets.
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353. An application under paragraph 6 must be made in the prescribed manner and any entry in the Adopted Children Register must be made in the prescribed manner, as made by the Registrar General for Scotland with the approval of the Scottish Ministers.

Amendment of orders and rectification of registers

354. By virtue of paragraph 7, on the application of an adopter or adopted person, a court which made an adoption order can amend the order by correcting any errors it contains.

355. Within one year of the adoption order being made, on application by an adopter or adopted person, a court can amend the adoption order to include any new name which has been given to the adopted person or taken by the adopted person.

356. The court which made the adoption order, may, on application by an adopter or adopted person, revoke a direction for the marking of an entry in the register of births or the Adopted Children Register if the court is satisfied that the direction was wrongly included.

357. Where an adoption order is amended, the clerk of the court must ensure that the amendment is communicated to the Registrar General for Scotland.

358. The Registrar General for Scotland must ensure that the relevant entries are amended or cancelled, as the case may be.

359. Where an adoption order is cancelled or quashed or otherwise falls, the court must direct the Registrar General for Scotland to cancel any relevant entry in the Adopted Children Register or the register of births.

360. Where an adoption order has been amended, any extract issued in accordance with section 60 (searches and extracts) must be a copy of the entry as amended without any note or marking relating to the amendment or any matter cancelled in relation to the order.

361. Where the marking of an entry is cancelled, an extract of the entry is not to be treated as accurate unless both the marking and the cancellation are excluded.

362. Where the Registrar General for Scotland has enough information to do so, any entry in the Adopted Children Register or register of births can be cancelled or amended in relation to a registrable foreign adoption (by which is meant a Convention order or an overseas adoption). Where such an entry is amended, an extract of the entry is not accurate unless it shows the entry as amended, but without indicating that it has been amended.

Marking of entries on re-registration of birth

363. Under paragraph 8 where an entry in the register of births has been marked in accordance with this schedule and the birth is re-registered, the entry on re-registration must be marked in the same way.
Schedule 2: Minor and consequential amendments

364. This section amends the Children (Scotland) Act 1995 to substitute references to parental responsibilities orders with references to permanence orders and amends sections 17 (duty of local authority to child looked after by them) and 73 (duration and review of supervision requirement) to include references to permanence orders.

Schedule 3: Repeals

365. This schedule is introduced by section 112(2) and lists the enactments and parts thereof which are to be repealed by this Bill.

FINANCIAL MEMORANDUM

INTRODUCTION

366. The Bill modernises and improves the legal framework of adoption in Scotland. It provides a clearer statutory framework for the provision of services associated with the adoption process. The majority of the costs arising from the Bill fall on the Scottish Administration. The bulk of costs will be met by local authorities, the funding for which derives from the Scottish Executive. The Scottish Executive has consulted with those organisations likely to be most affected, specifically local authorities and the Scottish Legal Aid Board (who will have to bear increased Legal Aid costs as a result of certain changes). During the consultation period, local authorities commented favourably on these recommendations, recognising the need for improved services, while noting the likely increased costs. Similarly, the Scottish Legal Aid Board’s contribution to the consultation noted the likely impact of the Bill on Legal Aid costs.

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

368. Many of the Bill’s provisions extend and improve existing services, particularly those provided by local authorities. As such, local authorities already meet the costs of these services. It is likely that the Bill’s provisions will result in a moderate increase in these costs, which will be met within the portfolio budget. The Bill’s provisions are likely to bring about an increase in adoption applications: this will have a corresponding rise in costs, particularly for support services. However, the cost to local authorities of providing foster care should be noted and an increase in the number of children being adopted would result in a reduction in costs for children.
These documents relate to the Adoption and Children (Scotland) Bill (SP Bill 61) as introduced in the Scottish Parliament on 27 March 2006

who would otherwise be fostered or in residential care. The cost of fostering is discussed in greater detail at paragraphs 388 to 390 but at present local authorities pay an average of £106 per week per child in foster allowances while for child in non-secure residential care the average weekly cost is £1,467.

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

370. Local authorities currently have a duty to provide services for people who are involved in adoptions, including children who are likely to be adopted, children who have been adopted, people who are likely to adopt a child, people who have adopted a child and the birth parents of children who are likely to be, or who have been, adopted. These services will continue and will be expanded. The Bill will clarify who is eligible to receive what type of service, distinguishing between pre-adoption and post-adoption services. The UK Government set aside £70 million over 2003 – 04 to 2005 – 06 for this purpose suggesting approximate expenditure in Scotland of £2,350,000 per year.

371. Different people will have access to different levels of services. People who have been most directly affected by an adoption (most typically the child, the adoptive parents and the birth parents) will have an automatic right to have their need for services assessed by a local authority. Other people affected by the adoption (for example, siblings of the adopted child, the adopted child’s grandparents, other children in the adoptive family and people who have been involved in raising the child, even though they may not have had any parental responsibilities and rights in regard to the child) will be able to request an assessment of their need for services. In the case of these people, a local authority will not have a duty to assess their needs, but may choose to do so. These assessments will result in additional costs, both in terms of their implementation and carrying them out.

These documents relate to the Adoption and Children (Scotland) Bill (SP Bill 61) as introduced in the Scottish Parliament on 27 March 2006

372. These costs will be met by local authorities. Local authorities have been closely involved during the development of these policies and all were given the opportunity to comment during the consultation period. In the consultation process local authorities indicated strong support for these policies (as did the majority of responses which commented on these proposals) and noted the probable additional cost of these provisions, although no local authority provided a detailed estimate of costs.

373. It is intended that the Scottish Executive will contribute to meeting these costs, within the relevant portfolio budget, either through general funding for local authorities or through more direct funding specifically for these purposes (or both). This is considered further below.

374. It is expected that the Bill will come into force in the early part of 2007. This means that some costs will be borne in the current financial year (2006-07). These costs, however, will likely relate to implementation of the Bill and associated training required to help practitioners understand the Bill and its effect. This is looked at in more detail below.

COSTS ON THE SCOTTISH ADMINISTRATION

375. The provisions in the Bill will have a minor cost for the Scottish Executive, relating to the implementation of the policies and associated training. The total estimated cost to the Scottish Executive is between £330,000 - £380,000 consisting of three main elements.

Staffing

376. It is anticipated that one additional member of staff at B2 level will be required for one year to assist in the implementation of the Bill’s provisions. This would be at an estimated cost of £30,019 per year.

Implementation

377. There will be minor costs associated with the preparation and dissemination of materials associated with implementation, such as guidance. We would intend to publish 10,000 copies of any guidance, which would be disseminated to local authorities, voluntary adoption agencies and other government departments. Based on previous publications, it is estimated that this would cost around £200,000.

Training

378. The British Association for Adoption and Fostering (BAAF) are undertaking training for the Scottish implementation of the Adoption and Children Act 2002. Similarly training has been undertaken in England and Wales on that Act, which affects these jurisdictions in much more detail. Experience with costs for this training might suggest £100,000 – £150,000 on introductory training.

COSTS ON LOCAL AUTHORITIES

379. Local authorities receive funding from the Scottish Executive to assist in the provision of services. In 2005-06 the total revenue funding for core services will be £8.1 billion, rising to £8.5 billion in 2007-08. In 2003-04, local authorities spent £1.9 billion on social work, an
increase of 8.4% on the previous financial year. In addition to core funding for social work and children’s services, local authorities also receive additional specific funding and, in particular, have access to the Changing Children’s Services Fund, which amounted to £60.5 million in 2004-2005 and £65.6 million in 2005-2006. Any such costs would need to be met from this funding. As set out above, however, increased costs of adoption will have associated savings as well as costs.

Permanence orders

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

Pre-adoption services

381. Currently, these services are available to people who wish to adopt a child; children who may be adopted; and the birth parents of such children. These typically include arrangements for assessing children and prospective adopters and placing children for adoption. Although there are currently provisions that allow for counselling for persons who have problems relating to adoption (by which is meant members of the family of the child who is to be adopted), counselling services are more usually provided as a post-adoption service.

382. This is an existing service and the new provisions contained in the Bill are likely to see a negligible increase in the costs of providing pre-adoption services. Such costs will tend to be associated with providing counselling to members of the birth family of the child to be adopted. By virtue of the Bill’s provisions, the birth parents of a child who is to be adopted will have an automatic right to counselling. Other members of the birth family, and other people who have an interest in the child, will be able to request an assessment of their need for such services. The costs of arrangements for assessing children and prospective adopters and placing children for adoption are unlikely to change. The main cost here is that of assessing prospective adopters – experience in intercountry adoption, where this cost is charged to the adopters at a full cost recovery rate, suggests a cost of £5,000 for each couple or single person assessed as prospective adopters.

383. These costs are currently met by local authorities and will continue to be so.

Post-adoption services

384. The Bill will widen the range of post-adoption services that a local authority will have a duty to provide. Presently, adoption agencies have a duty to provide counselling and assistance
to children who have been adopted and to persons who have adopted a child; and counselling for other persons if they have problems relating to adoption. Evidence suggests that there is a lack of clarity about who is entitled to what kind of post-adoption service. Provision of, and access to, post-adoption services, despite its legislative footing, varies between local authorities. The provisions of the Bill will clarify this position. Inasmuch as local authorities have a large discretionary power to provide such services at present, the Bill does not as such expand the range of services.

385. In practice, however, evidence suggests that adoptive families and the birth families of adopted children are often unaware of what support services they are entitled to and hence these services are under-used. The Bill will list the services that post-adoption services must contain and will make clear what services particular people are entitled to. Additionally, regulations to be made under section 46 of the Bill (post-adoption services) will place a duty on local authorities to alert people involved in the adoption process of their entitlement to such services at an early stage. It is probable that these provisions will have the effect of increasing the number of applications for post-adoption support, although the actual range of services that a local authority will provide is unlikely to differ greatly from the current situation. These costs are presently met by local authorities and will continue to be so. Increased costs may result from a greater number of adoptions, and from a greater propensity for those affected by adoption to seek post-adoption support. Approximately 50% of adoptions are by step-parents or adoptions from overseas, where the Bill’s provisions will restate and clarify existing law but are unlikely to lead to increased demand, and where, in general, the requirement for post-adoption support is much less. The remaining 50% (of the order of 200 cases a year at present) are adoptions by strangers of children from within the United Kingdom (almost always from within Scotland). The Bill’s provisions may lead to an increased number of such adoptions, for example by removing the current bar on joint adoption by unmarried couples. While it is difficult to make definitive forecasts, the relatively low number of such adoptions at present indicates that any foreseeable rise should be containable within the £2.35 million extra for post-adoption support in Scotland implied by experiences in England (see paragraph 370).

386. These costs are presently met by local authorities and will continue to be so. Increased costs will be as a result of a greater number of applications for post-adoption support. In 2004-05, local authorities spent £7.1 net million on adoption services. This figure is not collected on a more specific basis, but it is reasonable to assume that much of this would be spent on post-adoption support. Pre-adoption support currently tends to involved assessing prospective adopters and making arrangements for the adoption of children. The provisions of the Bill with regard to post-adoption support are likely to see this figure increase, as awareness of post-adoption support increases and as a wider range of people become eligible to apply for such services. We estimate that this would be a total increase per year of £2.35 million which represents an increase of around one-third of the existing cost.

Payment of cash in lieu of services

387. The Bill will allow adoption agencies to make cash payments to adopted people and adoptive families where a service to which they are entitled cannot be provided. Currently, adoption agencies cannot make cash payments in this way. This provision should have no added cost implications: such payments will be made in lieu of a service and so the cost should already be accounted for.
Adoption allowances

388. Existing legislation allows a local authority to pay adoption allowances to an adoptive family. Such allowances may typically be paid where the adopted child has a physical or mental need for care beyond that which a child without such a need would require. Payment of these allowances is set by the Adoption Allowance (Scotland) Regulations 1996. The intention is that local authorities should still have the discretion to pay adoption allowances, but that a national standard should be set for assessing a person’s need for such allowances. There is no intention to set national rates for adoption allowances. Local authorities would still be responsible for deciding who was eligible for such allowances and how much allowance should be paid, and for meeting the costs of such payments. However, it is a governing principle that adoption allowances should be paid only in special circumstances where they are required for the care of a child. Thus the legislative provision on this is anticipated to be cost-neutral in relation to any particular child, although there may be a slight increase in overall costs if increased numbers of children are adopted.

Introduction of national fostering allowances

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

Table 2: Average rates of fostering allowances

<table>
<thead>
<tr>
<th>Age range</th>
<th>Average local authority rate (£)</th>
<th>COSLA (£)</th>
<th>The Fostering Network (£)</th>
<th>DfES figures (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-4 years</td>
<td>72</td>
<td>75</td>
<td>112</td>
<td>106</td>
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<td>5-10 years</td>
<td>87</td>
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<td>11-15 years</td>
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<tr>
<td>Average rate</td>
<td><strong>101</strong></td>
<td><strong>108</strong></td>
<td><strong>148</strong></td>
<td><strong>109</strong></td>
</tr>
</tbody>
</table>

390. Based on the assumption that all 32 local authorities currently pay the average local authority rate (calculated on a survey of 10 local authorities) shown in Table 2, the cost of increasing fostering allowances to the COSLA rate would be an additional £1.17m per year. The
cost of increasing fostering allowances to the Fostering Network rate would be £8.14m per year. The cost of increasing fostering allowances to the indicative DfES rate would be £2.5m per year. (We have included the rate used by the DfES in its consultation paper to allow as much information as possible concerning mandatory fostering allowance rates to be considered in estimating likely costs.) The Bill includes provision which would enable Scottish Ministers to set minimum levels of fostering allowances, either on an indicative or mandatory basis. At this stage, the Scottish Executive has not committed itself to setting rates at a particular level. However, for the purposes of estimating likely costs we have used the best figures available for Scotland, which are those published by COSLA and the Fostering Network. While there is a wide difference between the rates suggested by these two organisations, both rates are currently used by different local authorities. Our intention is to set rates that properly meet the needs of providing this service. Since the Bill’s provisions will increase the number of adoption applications, there is likely to be a reduction in the number of children in foster care, which will cause an appropriate reduction in these costs. Such a reduction will be comparatively small. The introduction of minimum rates is likely to result in an overall increase in these costs from the present cost. The overall increase will be in the region of the figures noted above.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Legal Aid costs

391. Several provisions contained in the Bill will have an impact on Legal Aid costs. It is difficult to judge the precise impact on Legal Aid costs of these provisions. The provision most likely to have an impact on Legal Aid costs is the removal of the bar on birth parents applying for parental responsibilities and rights through section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc). Similarly, people who have lost parental responsibilities and rights through the making of a Permanence Order will be able to apply to regain some of these responsibilities and rights. Before being permitted to do so, however, they will need to be given leave of the court. It is probable that such applications will place a modest burden on Legal Aid costs. In practice it is rare for a birth parent to contest a freeing or adoption order and where contact arrangements are made, this is usually by agreement outside the Court process.

392. It is not possible to make an accurate forecast of how many such applications will be made. The best estimates that can be made are based on the existing freeing order and Parental Responsibilities Order, both of which will be abolished and replaced by the Permanence Order. Between 2000 and 2003, 371 freeing orders were granted, an average of slightly less than 93 per year.3 It is not clear how many of these have fallen and been replaced with a new order (such as an Adoption Order). In the same period, 48 Parental Responsibilities Orders were granted.4 In total, between 2000 and 2003, 419 freeing orders and Parental Responsibilities Orders were granted. It is plausible that a similar number of permanence orders would be made each year.

393. The Bill’s provisions to allow joint adoption by unmarried couples may represent a saving for Legal Aid. In 2004-05, 137 final civil legal aid accounts for adoption cases were paid

These documents relate to the Adoption and Children (Scotland) Bill (SP Bill 61) as introduced in the Scottish Parliament on 27 March 2006

out of the Legal Aid Fund. The average case cost was £6,380. In the same period 469 final civil advice and assistance accounts for adoption cases were paid, with an average case cost of £180.\(^5\)

Currently two separate court procedures may be pursued by an unmarried couple in relation to a single child: joint adoption by unmarried couples would remove the need for separate court procedures and this should result in lower Legal Aid costs. However, this saving could be reduced by an increased number of couples coming forward to adopt jointly.

394. The removal of the absolute bar on applications under section 11 of the Children (Scotland) Act 1995 by birth parents who have lost parental responsibilities and rights will see an increase in such applications with a commensurate increase in applications for Legal Aid. Similarly, the Bill will make it possible for people to apply for parental responsibilities and rights by varying the terms of a permanence order. For children who are subject to permanence orders and their foster family, this will be a single-step process and ordinarily there is likely only to be a single Legal Aid cost for each case. Where birth parents apply for parental responsibilities and rights, however, they will be required to apply for leave of the court to make such an application. It is likely that this may involve two costs to Legal Aid: the first to make the application for leave of the court; and the second for the application for variation of the permanence order, should leave be given.

395. Overall there is likely to be a small increase in Legal Aid costs, given the small number of individual cases, and very small number of contested cases, the cost will vary from year to year but is likely to be no greater than £50,000 per year.

INCOME GENERATED BY BILL

Intercountry Adoption

396. The Bill contains provisions to allow Scottish Ministers, through regulations, to charge for processing intercountry adoption cases. This service is currently provided without charge in Scotland, as in England and Wales. Adoptions from non-Hague Convention countries are handled in conjunction with the Department for Education and Skills (DfES), which acts as the central authority. As such, adopters would be charged a single fee, which would then be split between the Scottish Executive and the DfES based on the balance of work carried out on each case by each administration. We have estimated that 25% of the fee would be payable to the DfES. We would intend to charge on a cost-recovery basis which we have estimated at £600 per case. However, the DfES has proposed to charge a fee of £800. We would therefore charge a similar fee, in order that such fees were consistent in all United Kingdom countries.

397. Adoptions from Hague Convention countries into Scotland are handled solely by the Scottish Executive. We currently process around 3 such applications each year. We would intend to charge £800 for such applications, to have parity with the fee for non-Hague Convention cases. This would mean that all adopters were charged the same, regardless of whether the case was a Hague or non-Hague Convention case.

398. Between 2000-2005, we processed 100 intercountry adoption applications. The majority of these (88) were from non-Hague Convention countries. Based on this 5-year period and the

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\(^5\) Scottish Legal Aid Board, response to Scottish Executive adoption policy review, 2005.
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charges discussed at paragraph 30, the Scottish Executive’s income from intercountry adoption would be £52,800 (£10,560 per year) for non-Hague Convention applications and £9,600 (£1,920 per year) for Hague Convention applications. This equates to a total income of £62,400 (£12,480 per year).

399. It should be noted that the majority of non-Hague Convention cases are from China. In January 2006, however, China ratified the Hague Convention and any cases from China will now be handled solely by the Scottish Executive. Between 2000-2005, China accounted for 59 of the 88 non-Hague Convention applications processed by the Scottish Executive. If these applications had been Hague Convention cases, this would have equated to an income of £56,800 (£11,360 per year) for Hague Convention applications and £17,400 (£3,480 per year) for non-Hague Convention applications. This equates to a total income of £74,200 (£14,840 per year).

TABLE OF ADDITIONAL COSTS AND SAVINGS, PER YEAR

<table>
<thead>
<tr>
<th>Element</th>
<th>Cost £</th>
<th>Saving £</th>
<th>Net Cost £</th>
</tr>
</thead>
<tbody>
<tr>
<td>One-off costs</td>
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<tr>
<td>Implementation and associated training</td>
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<tr>
<td>Recurrent costs</td>
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<tr>
<td>Adoption support services</td>
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<td>Fostering allowances (lowest rate)</td>
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<td>Fostering allowances (highest rate)</td>
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<tr>
<td>Legal Aid</td>
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<tr>
<td>Intercountry Adoption</td>
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<td>Residential accommodation (lowest rate)</td>
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<td>Residential accommodation (highest rate)</td>
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<td>Total recurrent (highest rate)</td>
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<td>5,715,000</td>
<td>5,205,000</td>
</tr>
</tbody>
</table>

400. Net additional costs up to the upper level shown will be met by the Scottish Executive, following discussion with local authorities.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

401. On 27 March 2006, the Minister for Education and Young People (Peter Peacock) made the following statement:

“In my view, the provisions of the Adoption and Children (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Adoption and Children (Scotland) Bill (SP Bill 61) as introduced in the Scottish Parliament on 27 March 2006

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

402. On 23 March 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Adoption and Children (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
ADOPTION AND CHILDREN (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

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