MEMORANDUM

ADOPTION AND CHILDREN BILL

Background

1. The Adoption and Children bill which has completed Commons Second Reading in the UK Parliament introduces a number of measures aimed at reforming the adoption process in England and Wales. It has been introduced following the Prime Minister's review of adoption south of the border and a subsequent White Paper last year.

Contents of the Bill

2. The Bill is concerned with reserved matters relating to adoption in England and Wales. The major proposals are placing the life long interests of the child at the heart of the adoption process; placing the National Adoption Register for England and Wales on a statutory footing; creating a new special guardianship status (a half way position between fostering and adoption) and, for adoption purposes, tightening up restrictions on bringing children into the UK and advertising children.

Proposal

3. There are 3 areas in which the Scottish Executive would like the Bill to apply to Scottish legislation.

Maintaining Cross Border Recognition of Adoption etc orders

4. The Adoption (Scotland) Act 1978 as amended by the Children (Scotland) Act 1995 provides for the mutual recognition of adoption etc orders properly made according to legislation pertaining in England and Wales and Scotland respectively. The Bill presently recognises Scottish made orders. It makes sense for the Bill to be amended to continue recognition in Scotland of the new adoption procedures to be introduced in England and Wales through amendment of Scottish legislation.

Restrictions on Bringing Children into the UK

5. Recent publicity on a particular case of adoption using the internet has highlighted certain weaknesses in legislation north and south of the border. Within the context of the Hague Convention on the Protection of Children and Co-operation in respect of inter-country adoption which the UK hopes to ratify in the autumn, the Bill seeks to tighten up offence provisions for and impose eligibility conditions on people bringing children into the UK for adoption.

6. The Scottish Executive considers it right that these should be set within a GB context in the interests of both children entering the UK and prospective adopters.

Restrictions on Advertising

7. Stemming from the same review of legislation, the Bill contains provisions aimed at restricting advertising of children for adoption, particularly advertising on the internet. The intention is that advertising shall only be carried out in any media by local authorities or approved adoption agencies.

8. The Scottish Executive considers it right that these restrictions should be made on a GB basis. The nature of advertising of children for adoption on the internet - and indeed, advertising of children for adoption generally - such that if separate legislation was made for Scotland and England, then questions of legislative competence may arise as well as potentially difficult cross-border and jurisdictional questions in individual cases arising under the legislation. In an area as significant as this, the Executive feels that it is proper to circumvent these difficulties before they arise and legislate on a GB basis.

Public Consultation

9. While the provisions of the Bill relating to changes in the domestic adoption process in England and Wales has been subject to public consultation, the proposals concerning restrictions on bringing children into the UK and internet advertising have not and are being introduced as emergency measures. However, the Bill has been remitted to a special Committee which will take evidence from key stakeholders as part of its detailed consideration of Clauses.

10. There is nothing to prevent the Committee from taking soundings from Scottish organisations or branches of national organisations to inform its views. If Parliament agrees to extension of the Bill to cover Scottish interests in relation to these matters, it is the intention of the Scottish Executive to recommend that it take such soundings to the Minister of State for Health who will be a member of the Committee.

Scottish Executive
March 2001