

PE1701/A

The Adoption and Fostering Alliance submission of 24 October 2018

The Adoption and Fostering Alliance (AFA) Scotland is an independent, charitable organisation dedicated to improving outcomes for children in care by providing support to all those working in the field of adoption, fostering and the care of looked after children.

Our purposes are:

- Promoting consistently best practice in Adoption and Fostering and supporting agencies to deliver services that enable all children in Scotland to grow up as part of a stable, loving, safe and nurturing family.
- Giving agencies, practitioners and individuals access to authoritative advice and support about adoption, fostering and permanence in Scotland from an association of individuals with a broad range of expertise, experience and skills.
- Providing opportunities for practitioners from a range of professional disciplines to share and develop best practice offering a range of direct support to agencies and practitioners within the social work, legal and medical professions, and to individuals directly involved in adoption and fostering. These will include, training, workshops, consultancy, legal advice, independent chairing of meetings and panels, placement co-ordination, disruption meetings and service and case reviews.
- Providing an independent voice on matters of adoption and fostering policy and practice.
- Accessing and interpreting research to inform ongoing relevant practice.
- Supporting agencies to achieve value for money in their provision of services for children and families

Response to the Consultation

The petition being considered by the committee calls on the Scottish Parliament to: ***'urge the Scottish Government to amend the Adoption and Children (Scotland) Act 2007, or introduce separate legislation, to allow for the adoption of individuals who are over the age of 18, in order to respect the right to a family life enshrined in the Human Rights Act 1998.'***

AFA Scotland is a child focussed organisation dedicated to improving outcomes for all children involved in the care system. The views expressed by AFA Scotland reflect the extensive knowledge and experience within the organisation, but are also informed by the dialogue established through our national practitioner forums for social workers, lawyers, health professionals and the chairs of adoption panels. These quarterly forums allow us to hear about the experience of professionals from

across Scotland and to use this collective experience to help shape developments in policy, practice and the law.

The issues raised in the petition by Nathan Sparling concern the extension of adoption law so that it can be used for the new purpose of formalising and recognising the importance of a family relationship between adults. The benefits that this would bring for the individuals involved are clearly expressed in the testimony from Nathan Sparling and others. The potential risk that adult adoption could be misused for financial or other reasons, are acknowledged; it seems credible that appropriate safeguards could be introduced to address the risks and that these would not be a major issue. Similarly, the concern that adult adoption would primarily be focussed on inheritance rights or even residence status, can be addressed by ensuring that these matters are dealt with using the existing legal options available.

Although the view from AFA Scotland is that there is nothing intrinsically problematic about the concept of adult adoption, we do have reservations about the proposal to extend the current adoption law to encompass adults who wish to be adopted.

The first of these is essentially a question of priorities. AFA Scotland has argued for some time that the current law in relation to the adoption of children has serious shortcomings, with the complexities of the existing system making it hard to achieve satisfactory outcomes for many children within a reasonable period of time. Given our organisational focus on the needs of children, it is perhaps not surprising that we believe that the overwhelming priority for legislative change in relation to adoption law is for this to be made fit for purpose for children in the care system. Reviewing adoption law is complex, time consuming work, involving many overlapping areas of legislation; we are anxious about diverting attention from a focus on the children to an alternative focus on adult adoption. Concerns about the impact on children of the current legal framework for adoption are a constant theme in our practitioner forums. Although people are aware of the issue of adult adoption, this has rarely been raised as an issue that is a priority for change.

The second area of concern relates to the nature of adoption law in Scotland and an overly simplistic assumption that adult and child adoption are broadly equivalent. The concept of adult adoption is quite different from the legal construct of adoption that has developed and come to be practiced in Scotland. This has evolved over the years to have a clear focus on the welfare of children and, where necessary, the transfer of parental rights and responsibilities in order to achieve the best outcome for the child. Our current adoption law does not operate in isolation – it is closely interwoven with a range of statutes and regulations that govern the role of the state in relation to the welfare of children and the rights and responsibilities of their parents. Although the state may have a continuing role in relation to the welfare of young people older than 18 if they have been in the care system, the parental rights and responsibilities that are at the heart of adoption law, cease to exist when the child reaches the age of 18. The application of a set of laws designed to make decisions about parental rights and responsibilities in the best interest of a child, do not fit well with the quite different goal of formalising a relationship between two adults where there is no longer a child to be considered, and no parental rights or responsibilities to be exercised.

It is important not to confuse an understanding of the lifelong nature of adoption with a view that the legal issues for child and adult adoption are equivalent. In all of our work, AFA Scotland emphasises the lifelong nature of the relationship created by adoption between the three parties involved - child, birth parent and adoptive parent. We stress the importance of appreciating the continuing and lifelong issue involved rather than seeing adoption as a one-off event, and acknowledging that adoption does not cease to have significance once the child reaches the age of 18. We would also argue that one of the main arguments for considering adoption as an appropriate legal route for a child is the sense of permanence and security that it can provide.

The reservations about the proposal being considered by the committee are not intended to contest the benefits for adults of formalising their family relationship as set out so clearly by the petitioners. They relate instead to the proposed solution of applying child care legislation to an adult situation, and a concern about diverting attention away from the critical need to address the issues concerning adoption law as it relates to children.