

PE1701/C

Joint submission from the Cabinet Secretary for Justice and the Minister for Older People and Equalities of 29 October 2018

As detailed in the recently revised National Performance Framework, our vision is a society which treats all our people with kindness, dignity and compassion, respects the rule of law, and acts in an open and transparent way. This vision has been developed together with the people of Scotland to reflect our values as a nation and the aspirations we hold for our future. It is underpinned by 16 National Outcomes, which provides a focus and direction for policy action and includes our commitment to 'respect, protect and fulfil human rights and live free from discrimination'.

Whilst recognising the importance to the Petitioner of obtaining legal recognition of his relationship to his stepfather, we are of the view that the absence of a Scottish Law allowing adult adoption does not amount to a breach of Article 8 of the European Convention on Human Rights or of the Human Rights Act 1998. In our view, the current legal provisions strike an appropriate balance between the interests involved. The state in Scotland does not stop adults forming relationships and friendships, nor does it prevent the sense of belonging encompassed by the mutual enjoyment by a stepparent and step-child of each other's company. As the Committee is aware, adults can already take steps to change their name, have official records amended and to make arrangements for succession, all which respect an individual's right to private and family life.

In Committee, the Petitioner mentioned that a small number of countries supported adult adoption. There are, as the Petitioner has acknowledged, differences in how this is approached across the world. In some countries, the adoption is only competent for a step child who has lived as a child in the family for 5 years, and in others the law is in place to allow the future care of a person who is dependent due to substantial health issues. In others there are requirements that those such as family members beyond the adopter and adoptee must also consent. It is against this varied background that Human Rights Laws allows countries scope to make their own adoption laws without breaching article 8 rights.

The Petitioner states that the current law with regard to formalising a parent-child relationship discriminates against people over a certain age. However, although age is a protected characteristic under the Equality Act 2010, the 2010 Act allows for less favourable treatment on the ground of age if it can be shown to be a proportionate means of achieving a legitimate aim. The provisions in the Adoption and Children (Scotland) Act 2007 are a proportionate means of providing protection for those aged under 18 years who cannot live with their biological parents, by making an adoption order transferring parental rights and responsibilities (PRRs) to the adopting parents. This transfer of PRRs ceases when the adoptee reaches 18 years of age. Setting out a regime within the 2007 Act to protect vulnerable young people while they are aged under 18 is a legitimate aim, and it would not be appropriate to amend the 2007 Act to extend its application to those aged over 18 for the reasons set out in the following paragraphs.

Adoption is sometimes used by step-parents to legalise a family unit for children who are under 18 at the time of application but we do not consider that the same route is necessary for adults given the voluntary nature of adult relationships. The evidence given at Committee by the Petitioner and Mrs Dempster exemplifies this, with both families embracing the relationships formed without the need for legal orders.

Further in Scotland, when you adopt someone under 18, that has the effect of extinguishing the legal relationship between the biological parent and child and the adoption process creates a new parent-child relationship. Many consequences flow from that, including issues relation to inheritance, as identified by the Committee. A child may be entitled to inherit from their parent's estate and, conversely, where a child dies before their parent, the parent may be entitled to inherit from their child's estate. On adoption, these inheritance rights cease to exist in the biological parent/child relationship and only apply in the adoptive parent/child relationship. These consequences have to be thought about in the very different context of adoption in relation to people over aged 18.

For such people, there are additional complexities. There are unfortunately, adults who may be vulnerable to being exploited, if there were to be adult adoption processes based on the Adoption and Children (Scotland) Act 2007. It would therefore require a newly designed, potentially more complex court process and one issue we would have to consider would be how to make sure all those involved understood the consequences of a proposed adoption and were capable of consenting to it. The birth parents of an individual may also have an interest in opposing any action. All of those issues have to be balanced against what is sought to be achieved and we are of the view, in that context, that there is no requirement to change the law in relation to adult adoption.

With regards to the issue of public records raised by the Petitioner in the event that he were to be married in the future, the marriage register has space for the details of the person's legal parents. It would be disproportionate in our view for an adult to be adopted simply to enable a public birth record to be amended or updated. The appropriate route would be for legislation to prescribe the new form, and changes would be needed to the IT systems used by NRS and local authority registrars. There would be costs in relation to any changes of this nature and present, there are no current plans to change the marriage notice form or the birth register. If an individual wished to reflect additional parental adult relationships on a marriage certificate then it is worth raising this with the National Registers for Scotland (NRS).

For the reasons outlined above, we are of the view that current law does not breach the Human Rights Act 1998, nor does it discriminate against people over a certain age regarding formalising a parent-child relationship. Furthermore, there are numerous complexities to consider, and in our view, the principles which underpin the rules about the adoption of children do not sit well with an addition or extension to the current Adoption and Children (Scotland) Act 2007