

PE1701/E

The Law Society of Scotland's written submission of 29 October 2018

The Law Society of Scotland is the professional body for almost 12,000 Scottish solicitors. We seek to influence the creation of a fairer and more just society and are strongly committed to our statutory duty to work in the public interest and to both protect and promote the rule of law.

Current legal position

The purpose of adoption in Scots law is firmly based in the concept of the welfare of the child. The legal framework for adoption in Scotland is the Adoption and Children (Scotland) Act 2007. Adoption orders can be made for those under the age of 18, or over the age of 18 if the application was made when they were under 18, and only if that person is and has never been married or in a civil partnership. The effect of an adoption under this Act is for the adopted person to be treated in law as a child of the adopter or adopters, and not as a child of any other person (with limited exceptions). This has implications in a wide range of areas, including parental rights and responsibilities, succession, and the forbidden degrees of relationship for the purposes of marriage and incest.

There are steps that can be taken to mitigate the lack of legal status between two adults who consider themselves to be in a relationship akin to parent/child. For example, succession rights can be established through a will (though any legally recognised children will continue to have legal rights to the estate), the ability to care for an individual in the case of incapacity can be established through a power of attorney, and an individual can change their own surname to reflect a family relationship.

Proposal for reform

There is no international consensus over the issue of adult adoption, and the position and conditions vary across different countries. However, it would be a considerable change to Scots law to permit adult adoption, and this is a reform that should not be undertaken without further debate and research. Issues that require to be considered and balanced include the need to keep the welfare of children as a paramount focus, the need to safeguard vulnerable adults against exploitation, and how to address the potential implications of 'generational fluidity' and changing degrees of relationships. In any consideration of reform, there is a need to fully and openly explore both the purposes and the implications (legal and social) of reforms in order to avoid any unintended consequences.

Recommendation

Given the potentially very complex and wide-reaching implications of changing the law to allow the adoption of individuals over the age of 18, we would recommend that research should be undertaken before such a proposal for reform is progressed,

including a comparative study of the position in different jurisdictions. This may be a suitable project for recommendation to the Scottish Law Commission.