

PE1701/G

Minister for Older People and Equalities submission of 30 September 2019

I note the additional questions raised by the Public Petitions Committee, which focused on the reference to the Scottish Government view that current adoption legislation in Scotland strikes “an appropriate balance between the interests involved”. The specific questions asked by the Committee are:

- what the conflict of interest might be;
- why it considers that the law has the right balance on this matter and;
- to whose detriment would it be to amend the law in this area.

The Committee also seeks the Scottish Government’s views on the Law Society of Scotland’s suggestion that further research is needed in this area, including obtaining international comparisons.

With regard to ‘an appropriate balance between the interests involved’, this was referring to “the fair balance which has to be struck between the interests of the community and the interests of the individual, the search for which balance is inherent in the whole of the Convention” (See *Rees v United Kingdom* (1986) A 106 at paragraph 37.)¹

In respect of that balancing of interests, I would like to refer to the original response jointly issued by the Cabinet Secretary for Justice and the Minister for Older People and Equalities of 29 October 2018, which read:

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.

The original response also referred to the interests of other members of the community which might be significantly or adversely affected by introducing a new process for adult adoption, such as vulnerable adults, those affected by changes to inheritance rights, and potentially issues of resources when introducing a new category of complex and costly court processes.

We believe our current approach complies with the Human Rights Act 1998 and does not discriminate against people over a certain age. We are also of the view that the law already has the right balance by permitting individuals to change their name to reflect their family connections, and make testamentary provision in favour of others. Furthermore, it does not restrict individuals from celebrating their relationships in whatever way they wish to do so. We can see no public policy reason for the state to provide any further legal provisions. To do so would raise highly complex issues in relation to the wider community.

With regard to the Committee’s final question around detriment, as explained above, the potential detriment is to vulnerable adults, to those affected by loss of inheritance rights, and the community as a whole in terms of resourcing a new and complex process. It would also be a complex and resource intensive task to create a new law which appropriately balanced all of the respective interests and included necessary safeguards.

¹ [https://hudoc.echr.coe.int/eng#{"itemid":\["001-57564"\]}](https://hudoc.echr.coe.int/eng#{)

The suggestion raised by the Law Society of Scotland that this area requires further debate and research is noted and we would be interested to see evidence on the topic. However, as pointed out in the original response to the Committee, we understand that there are significant differences in how the issue of adult adoption is approached in other countries and therefore it may be difficult to identify a meaningful consensus of approach. It is also against this varied background that Human Rights Law allows countries scope to make public policy choices about their own adoption laws without breaching article 8 rights. We have set out above the factors which inform our public policy choice in this area.