

**From:** Robert Swift  
**Sent:** 30 July 2017 10:30  
**To:** SLC info  
**Subject:** Programme of law review 2018

For the attention of Malcolm McMillan

Dear Mr McMillan

I am writing to propose that the law relating to the adoption of children is included in the tenth programme of law reform starting in 2018.

Until 2016 I was a Chief Social Work Officer. I have worked in the field of adoption and fostering for forty years as a practitioner, manager, panel chair and agency decision maker. I am an adoptive parent. I am the author of a book, *Adopting a Child in Scotland*, published by BAAF. Whilst now retired I continue to provide support to a number of fostering and adoption agencies.

A key element of the Scottish Government's strategy relating to vulnerable children is that Looked After children should be placed in secure and permanent placements as soon as possible. This aim stems from evidence that the outcomes for children who are unable to be cared for by their birth parents and who may have suffered adversity are most positive if they can bond with their life long carers in their formative, early years. Permanent care can include care by birth families, kinship carers and adoptive parents and foster carers. There are considerable weaknesses relating to adoption law as it currently stands and this impedes the Government's aim of achieving permanence for those children whose best interests would be served by being placed for adoption.

A major provision of the Adoption and Children (Scotland) Act 2007 Act is that children identified as being in need of adoption could be made the subject of a Permanence Order with Authority to Adopt (a POA), following an application to the court, with the child then subsequently placed with suitable adoptive parents once these have been identified. In practice this process has led to delays in placing children with adoptive families for a number of reasons. The children's hearing system currently retains a role in relation to such children. Current requirements for children's hearings in relation to

this cause delays, with little evidence for any added value to such involvement. Scenarios presented to children's hearings can be complex and decisions difficult for lay members of the children's hearing system to make. There is an argument that the court should become wholly responsible for decisions about adoption after a certain point has been reached in proceedings. It may be that decision-making could be further strengthened through the use of sheriffs with particular experience in the field of adoption.

A further cause of delay arises from a requirement for the court to give consent to move a child subject to a POA once an adoptive family has been identified. It can take months to obtain such consent.

The above processes can collectively delay the placement of children with adoptive parents by many months and sometimes years, and so impact on the life chances of the child. These delays are greater now than before the current legislation was introduced, which is exactly contrary to the policy intention of the Scottish Government.

Many local authorities attempt to circumvent the above problems by requiring adoptive parents to lodge petitions for adoption direct to the court rather than using the POA legislation. This illustrates the limitations of the POA mechanism in its current form and illustrates the need for review. The practice of direct petitions is, furthermore, an unsatisfactory alternative to the POA. It can mean that adoptive parents are in an adversarial court process with birth parents in court. This can be very stressful and comes at just the time adoptive parents are working hard to assimilate the child into their family. Children in need of adoption have nearly always suffered major adversity and the burden of placing the responsibility for the legal process on the adoptive parents is not appropriate. It is likely, furthermore, that this practice deters some would-be adopters from applying to adopt.

There is a demonstrable need to review the current legislative arrangements to ensure that the Scottish Government's aim of securing permanence through adoption is not subject to unnecessary delays and that adoption is a possibility for more looked after children who are unable to be brought up by their own families or by kinship carers. Adoptive parents should not be subject to

unnecessary stress and pressure as a direct result of the current legislative shortcomings.

Many adoption agencies are currently reviewing practices and systems to minimise drift and delays in the planning for children but their ability to affect change is hampered by the current legal framework.

Should you wish me to expand on any of the above, do please get in touch.

Yours sincerely,

Robert Swift