Adoption of children : working paper containing the provisional proposals of the Departmental Committee on the Adoption of Children appointed by the Secretary of State for the Home Department and the Secretary of State for Scotland.

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LONDON
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This working paper is published for comment and criticism only — it does not represent the unanimous or final views of the Committee

LONDON
HER MAJESTY'S STATIONERY OFFICE
1970

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DEPARTMENTAL COMMITTEE ON THE ADOPTION OF CHILDREN

WORKING PAPER

CHAIRMAN'S FOREWORD

This working paper has been prepared by the Departmental Committee on the Adoption of Children. Its object is to enlist the help of all who have a personal or professional interest in adoption, and members of the public generally, in the Committee's work.

Our terms of reference are to consider the law, policy and procedure on the adoption of children. When we were appointed a great deal of information was already available on the way in which the present adoption law was working and how it might be improved. This working paper contains provisional proposals which the Committee have drawn up, on the basis of this information and of the personal experience of the members, for public discussion and comment before our final report is prepared. We believe that this will produce a more useful response from all those in a position to contribute to the Committee's work, than if we invited evidence at large and then proceeded straight away to the preparation of our final report.

The working paper is about people, particularly children, and their problems. Although much of it is necessarily concerned with details of law, procedure and organisation we have had the human element very much in mind throughout. We are confident that those who comment on it will do likewise.

We invite all those with an interest in adoption to consider the proposals in this paper and to send their comments to the Joint Secretaries of the Departmental Committee on the Adoption of Children, Home Office, Horseferry House, Dean Ryle Street, S.W.1. Comments will be welcome on the paper as a whole, or on any particular aspects of it, and all comments received will be carefully studied and taken into account before the Committee prepare their final report.

W. J. Houghton

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DEPARTMENTAL COMMITTEE ON THE ADOPTION OF CHILDREN

WORKING PAPER

PART I—INTRODUCTION

We were appointed on 21st July 1969 by the Home Secretary and the Secretary of State for Scotland to consider the law, policy and procedure on the adoption of children and what changes are desirable. We were asked to interpret these terms of reference fairly broadly and to consider such issues as whether relatives should be able to apply for guardianship instead of adoption, the relation between adoption law and that part of guardianship law which gives the natural father of an illegitimate child the right to apply for guardianship, and in particular the position of long-term foster parents who wish to keep a child permanently, by adoption or otherwise, against the will of the natural parent.

2. Adoption practice has recently been considered by the Committee of the Advisory Councils on Child Care of England and Wales and of Scotland(1), and it is not our function to duplicate this work. However, one object of the law on this subject should be to allow the evolution of good practice as knowledge and resources increase. It should also make the most effective use of the social work resources available for adoption work. Adoption law cannot be considered without regard to the social work and medical services which operate in this field since law and practice are inextricably interwoven.

3. Adoption law was last reviewed by the Hurst Committee, which reported in 1954 (Cmd. 9248). The Adoption Act 1958 implemented most of the Hurst Committee's recommendations. In recent years adoption workers and others found that the 1958 Act was in some respects unsatisfactory. Their reasons for concern included:

(*a*) the fact that the Adoption Act 1958 did not make the welfare of the child paramount or even as important as the rights of the parents ;

(*b*) the way in which adoption resources varied from area to area, and the pressures of work on societies whose resources were inadequate ;

(*c*) the timing and arrangements for the mother's consent, which gave her freedom to change her mind right up to the court hearing, and imposed a considerable strain on the mother as well as causing much anxiety to the adopters and in some cases disturbance to the child ;

(*d*) the putative father's position in that while his consent to the adoption was not required, he could apply for custody under separate proceedings under the Guardianship of Infants Acts ;

(*e*) the position of the guardian *ad litem*(2) whose purpose and function were thought to need re-examination because his investigation came after the child had already been in the home and too late in the

(1) " A guide to adoption practice ", Advisory Council on Child Care series No. 2, published by H.M.S.O.

(2) In Scotland, the curator *ad litem*.

adoption procedure, particularly if third party placements were to be permitted to continue.

4. At the same time concern had arisen about a number of children who were reclaimed by their natural parents after many years in foster homes. The suggestion was made by social workers, local authorities and Members of Parliament that the law should be reviewed to establish whether long-term foster children could be given greater protection. It was apparent that in a number of these cases the foster parents wished to adopt, but were reluctant to apply to a court for fear that the natural parents would immediately withdraw the child. It therefore seemed desirable to consider the needs of these children in the context of adoption law.

5. The Home Office and the Social Work Services Group, Scotland, had therefore been collecting information from all those concerned with adoption work about the way in which adoption law was working and ideas for its improvement, and the Home Office had also collected information about the reclaim of foster children. Two research projects, one statistical(1) and one a study of adoption based on a sample of adopted children born in 1958,(2) had been undertaken, and a major review of adoption practice had been completed (see paragraph 2).

6. The Home Secretary and the Secretary of State for Scotland explained to us that with all this information already available they hoped that it would be possible for us to proceed fairly quickly to the formulation of provisional proposals which could be published as a basis for discussion and comment before the final report was prepared. At our first meeting we decided to adopt this method of procedure, and we so informed all those who had already put forward their views, and others whose views we wished to have.

7. We have considered the major issues involved arising from our terms of reference in the light of all the available material on adoption law, practice and research, and preliminary evidence(3) on the need for changes in the law and with regard to current and foreseen changes in the social setting (see paragraph 14). We set out in this paper our provisional proposals—in some instances, alternative proposals. We intend that wide publicity should be given to these proposals so that they may be considered by adoption workers, local authorities, members of the legal, medical and social work professions, by those who have been adopted, by those who have adopted a child or placed a child for adoption, by those who have had a foster child reclaimed from them after many years or who have reclaimed a natural child from foster parents in such circumstances, and by members of the public generally. All the comments received will then be studied so that our final report can be prepared in the light of the reactions to our provisional proposals.

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(1) A statistical survey of adoption in England, Wales and Scotland has been made by the Home Office Research Unit and the Government Social Survey. The study is based chiefly on examination of court records of a sample of adoption applications made in 1966. The report of the survey will be published by H.M.S.O.

(2) This is an intensive study of the adopted children in the sample of children taken for the National Child Development Study (1958 cohort) and is being carried out by the National Bureau for Co-operation in Child Care. It aims to identify the factors making for a successful adoption and to compare the development of adopted and other children.

(3) The organisations whose preliminary evidence was considered are listed at Appendix A.

PART II—WHAT IS ADOPTION? WHAT OBJECTS DOES IT SERVE?

Adoption defined : what it means to those affected

8. Adoption means the complete severance of the legal relationship between parents and child and the establishment of a new one between the child and his adoptive parents. Although it is a formal legal procedure it deals with very human problems. It focusses primarily on the needs and wellbeing of individual children for whom this particular form of substitute care is considered appropriate. Nevertheless it has to be considered as a family problem with crucial personal implications for several different sets of people: the natural parents of the child and their families, the adoptive parents and their family, and the child himself. The mother of an illegitimate child whom she is unable to bring up herself can continue her life knowing that her child has acquired the security of a normal home life. The natural father of an illegitimate child may have the same assurance. A married couple who because of circumstances relinquish their child may feel they have secured for him a better chance in life than they themselves could give. For some childless couples, adoption can satisfy the basic emotional need to create a family and to care for and rear children. Above all the child whose parents are unable or unwilling to provide a home for him can achieve permanent security in a substitute home with a couple fully committed to fulfilling parental responsibilities. The child is the focal point in adopton ; providing homes for children who need them is its primary purpose.

The need for adoption

9. For ten years the number of adoptions in England, Wales and Scotland rose steadily to a peak of 26,986 in 1968 (see Appendix B). The 1969 figure showed a decrease to 26,049(1). If the number of adoptions continued at that level something like one million children would be adopted in the course of 40 years. There will always be some children who for various reasons cannot be brought up by their own parents or by relatives, and for whom the permanence and security of adoption offers the best solution. We therefore believe it is clear that there is a continuing need for adoption.

10. The need for adoption in no way conflicts with the aim of preserving the family. The welfare of the child is best secured as part of the welfare of the family, when he is brought up in a stable and happy family environment. Sometimes however this is not possible within the natural family ; and whatever arrangements are then made must be in the interests of the child. Society should offer a satisfactory alternative plan for the care and future development of every child whose parents cannot bring him up as their own. Adoption is one of a number of alternatives, which appears to be the most satisfactory solution in many but by no means in all cases. It is therefore important to consider not only adoption, but the range of legal provisions relating to situations in which a child cannot be brought up by his own parents so as to ensure that the range is comprehensive. We do this in Part V.

(1) The indications for 1970 are that this downward trend is being maintained.

The welfare of the child

11. Most adoptions are arranged in accordance with the wishes of the child's natural parents. In some situations, however, conflict arises between the natural parents and would-be adopters and the wishes of the natural parents may be inconsistent with the interests of the child. A choice must then be made between the interests of the child and those of his parents. It is our view that, when such a conflict arises in an adoption situation, the welfare of the child should come first, having regard to the situation of the family as a whole. The welfare of the child should not be considered in isolation from the total family situation, which may include brothers and sisters and other relatives as well as parents. If, when the welfare of the child has been considered in this light, severance of the ties with his natural family appears at the time to be the best long-term solution for the child, the law should not stand in the way. We therefore recommend the application, in adoption law, of the principle that the long-term welfare of the child should be the first and paramount consideration.

12. The principle that the child's welfare should be paramount was first given statutory effect in the Guardianship of Infants Act 1925. It applies in guardianship proceedings but not in adoption proceedings. The decision in guardianship proceedings need not necessarily be related to the long-term welfare of the child because guardianship orders can be varied or discharged from time to time as circumstances change. An adoption order is, however, intended to be permanent, and it is for this reason that adoption decisions should be related to long-term welfare. The principle that the long-term welfare of the child should be the first and paramount consideration has influenced many of our propositions, both on the nature and extent of adoption services and on the resolution of conflicts where they occur.

13. The application of this principle in adoption law does not mean that no difficult or distressing conflicts over the adoption or custody of children will arise in future. It can often be extremely difficult to assess what course of action is in fact for the long-term welfare of a particular child. In each individual case a whole complex of factors will be present, making up the total social situation of the child. These factors will include social and material circumstances, the personalities of the people concerned including the child, but chiefly—and this is of increasing importance the older the child is—the nature of the child's relationship with his natural parents and the substitute parents, with brothers and sisters and wider family members in both families, and his own particular psychological and emotional needs. The length of time he may have been in a particular adoptive or foster home will have a bearing on these matters but cannot of itself be taken as the sole indicator of what is in his best long-term interests. Skilled professional assessments of such situations, by people with a deep knowledge and understanding of child development and the needs of children, are required. Such assessments are needed both for the agency itself in its handling of the case and in order to help the court to reach a decision.

Changes in the pattern of adoption

14. The conclusion in paragraph 11 is not, in our view, affected by certain changes which are taking place in the pattern of adoption. It appears that

a higher proportion of unmarried mothers are keeping their babies(1), and as a result of this, together with a fall in the birth rate, fewer babies are being offered for adoption. In view of the Abortion Act and the increasing use of contraception this tendency may be accentuated. At the same time, there seems to be an increase in the number of children with special needs, for instance children who are coloured or of mixed race(2) and handicapped and older children. The increase in the number of children with special needs being considered for adoption may in part reflect medical advances, in that more physically handicapped children now survive, but it also reflects a greater awareness that adoption for these children should not be ruled out and a determination that it should be available for them. Secondly, while greater medical knowledge and skill in the field of infertility may help to reduce the number of childless couples, more couples who already have children of their own are now coming forward to adopt, and there is increased consciousness of the positive benefits such families may have to offer an adopted child.

15. Side by side with these changes there are developments in our understanding of the needs of adopted children as they grow up. The importance of telling a child that he is adopted has long been recognised. There is growing recognition that he needs to know about his origins—about his parents, for instance, the type of people they were, their appearance, any special qualities or gifts they may have had, their reason for giving him up, any special medical features—for the proper development of a sense of identity and in order that he and his adoptive parents may have a fuller understanding of him as an individual with his own unique combination of characteristics both inherited and acquired from his upbringing and environment. There is a growing acceptance that having children by adoption is different from having natural children, and that failure to recognise this fact openly is damaging. Fulfilment of these needs is not easily reconciled with some aspects of the present legal concept of adoption as a completely new start, affording confidentiality for all concerned. We believe that a much more open approach towards adoption should be encouraged by those most closely affected, by social workers and by public opinion.

16. Although changes in legal procedures, and in casework practice may be needed to meet these trends, the basic concept of adoption will remain that of providing the full security of a permanent family for a child. The aim of any new legislation should be to achieve the objective for the child while respecting the rights, responsibilities and needs of the other people involved.

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(1) For example, the Church of England Board of Social Responsibility state that in 1968 their Diocesan Moral and Social Welfare Councils were in contact with 19,493 mothers of children born illegitimate in that year, and of these 54·3 per cent decided to keep the child, and 34 per cent placed the child for adoption (2 per cent of the children were stillborn or died: other arrangements were made, or no decision had been taken, in respect of the remainder). In 1969 they were in contact with 17,132 mothers of illegitimate children born that year and the proportion of mothers keeping their children increased to 58·8 per cent and the proportion placing for adoption decreased to 31·3 per cent.

(2) The British Adoption Project established that in 1966 local authorities and voluntary agencies placed 445 non-white children for adoption, and that there were an additional 415 children known to these agencies in 1966 whom they might have expected to place for adoption but for their racial heritage. It was suggested by some agencies that the improbability of adoption for a non-white child was so well known in their community that parents of such children did not even contact an adoption agency so that the full extent of the need was not known. (Lois Raynor, " Race ", Vol. X, October 1968, No. 2.)

Propositions for consideration

1. There is a continuing need for adoption, by which we mean the permanent legal transfer of parental responsibilities and rights. (Paragraphs 8–10.)

2. The long-term welfare of the child should be the first and paramount consideration in resolving conflicts over adoption. (Paragraphs 11-13.)

3. There are changes in the pattern of adoption, with fewer healthy babies and more children with special needs requiring placement; there is also growing understanding that the adoptive relationship is different from the biological relationship and should not be concealed. These trends call for some changes in legal procedures and casework practice, but do not affect our basic first conclusion. (Paragraphs 14-16.)

4. There should be a comprehensive range of legal provisions for children not being brought up by their own parents, and adoption forms only one part of this range. (Paragraph 10.)

PART III—THE PROVISION OF AN ADOPTION SERVICE

For whom should the service be provided and what are its objectives?

17. The continuing need for adoption implies a need for services to help all those involved. The paramountcy of the child's welfare implies a particular need for services able to protect the child. These needs cannot be regarded as adequately met if the services exist in some parts of the country but not others, or if they cover only some of the needs of some of the individuals concerned. It follows that the adoption services should be comprehensive in scope, and nation-wide. This is not the present situation.

18. Owing to the way adoption has developed, different kinds of agencies emphasise different aspects of the work. A few voluntary societies offer a comprehensive service, including long term work with mothers who keep their children, but some specialise, for example in helping the unmarried mother, some give priority to the needs of the child, and some are more concerned about the rights and needs of adoptive parents.

19. Where local authorities in England and Wales act as adoption agencies the work is carried out by children's departments. Although most have a wider intake than the voluntary societies and do not have denominational allegiance nevertheless not all have succeeded in providing an adoption service which is integrated with all the other local authority services for children and families. Some authorities acting as agencies have adoption placement work separated from general child care work and, in these cases, babies may be referred for placement by moral welfare workers or by social workers in the health department who also do the casework with the natural parents. In other authorities, work with natural parents may be done by the adoption section of the department. Some local authority children's departments offer a social work service to unmarried parents

under the powers given them by section 1 of the Children and Young Persons Act 1963. Adoption may then be offered as one of several alternatives within the total child care provision(1). In Scotland, the social work departments of local authorities may undertake adoption work, and the wide duty placed on local authorities by section 12 of the Social Work (Scotland) Act 1968 to promote social welfare includes the provision of a social work service to unmarried parents.

20. The service given to children offered for adoption also varies depending on the type of agency and the scope of its functions. For instance, some agencies, both local authority and voluntary, have foster homes and nurseries for the care of babies before final placement in the adoptive home. Local authorities may for this purpose receive children into care temporarily under section 1 of the Children Act 1948 or, in Scotland, section 15 of the Social Work (Scotland) Act 1968. Other agencies with no such resources themselves and no arrangement with a child care agency may leave the responsibility with the natural mother, either to place the child in a foster home privately, or to care for the child herself until it is placed for adoption. The availability of resources may influence the kinds of children accepted by the agency, and also the mother's decision whether and with whom to place her child.

21. Problems arise in relation to children with special needs, e.g. handicapped children ; children who are coloured or of mixed race ; older children ; families of several children ; and children whose family background is not good. Many adoption agencies which confine their work to placement do not accept such children for adoption, having neither sufficient staff for the extra work involved in seeking adoptive homes, nor the foster-home or nursery resources for pre-adoption placement care. General child care agencies, whether voluntary or local authority, are better able to offer a service to such children. The absence of general child care resources forces an agency to be selective about the children it accepts for placement by applying criteria other than the need of a child for an adoptive home.

22. In relation to adoptive parents, several questions must be answered. What criteria should govern an agency's selection of adoptive parents? Should this service be limited to selected couples who appear prima facie to have potential as adoptive parents, and to couples accepted as such, the focus of work being on the children needing homes? Should the social work service to adoptive parents be limited to the time span of the adoption process, or continue to be available to such families as the child grows up? Does an adoption agency have a responsibility to offer a social work service to childless couples, and more especially to couples not accepted by it as adoptive parents? How in fact does an agency define the scope of its work with adopters?

23. If adoption is a child-centred service, aimed at providing homes for children, the service which an agency will offer to couples wishing to adopt

(1) When the Local Authority Social Services Act 1970 comes into force, all the social work aspects of the functions of the present Health, Welfare and Children's Committees will stand referred to the Social Services Committee. This will include adoption and work with unmarried mothers.

will to a greater or lesser degree be incidental to this central aim. It will not take responsibility for offering a social work service to childless couples except where such couples apply to adopt and seem at first sight to have potential as adoptive parents. Then the agency will explore their potential further, help them to come to terms with their infertility, and the emotional problems connected with it, and prepare them for adoptive parenthood. The agency will have a certain responsibility towards couples who are not accepted, or who are positively rejected, to help them over their rejection by the agency, whether or not they are able to give them reasons for being turned down.

24. Criteria laid down for selecting adopters vary from agency to agency. Some criteria are legal requirements (e.g. minimum age and domicile). Some may be imposed by the agency's constitution (e.g. religion, in the case of church-based agencies), or by geographical limitations (i.e. where an agency serves a particular limited area). Some criteria may be imposed as a means of controlling numbers, or for reasons of doubtful validity (e.g. a rigid maximum age criteria, the exclusion of couples with children of their own, the exclusion of childless couples where no cause has been found for infertility). This means that a service is not necessarily readily available for all couples in all areas at any time.

25. On the other hand, some kind of initial selection is obviously necessary where there are many more potential adopters than children available. Agencies certainly need to have a choice of adopters in order to select the most suitable home for each child. However, where there is little prospect of their later receiving a child it is unfair to submit applicants to a lengthy home study, just as it is unrealistic for agencies to waste scarce manpower on excessive numbers of home studies.

26. To sum up, an adoption service should be available for all children whose family circumstances are such that it is in their interest to be relinquished (i.e. given up by their parents in a thought-out planned way) for this particular form of substitute care, and who are likely to benefit from it. To secure the best interests of such children, a good social work service should be available to natural parents, as part of a total family service, so that children are not relinquished unnecessarily, and so that parents who do relinquish may be helped to co-operate in planning positively for their child. Such a service should be available to natural parents wherever they happen to live and irrespective of racial or religious background. It should be available to their children regardless of the parents' marital status and their particular medical, personal and social problems. Whether or not a child is considered for adoption, continuing help should be offered to natural parents. In selecting adopters, the focus should be on the needs of children. Arbitrarily restrictive criteria should be avoided so as to allow flexibility. In view of the apparently decreasing number of babies being offered compared with the number of adopters coming forward, and in view of the increasing proportion of children with special needs available for adoption, e.g. handicapped children (see paragraph 14), new methods may have to be devised for working with adoptive applicants.

Organisation of the service

27. To attain a nation-wide comprehensive service, it will be necessary not only for local authorities actively to participate in adoption, but also for their adoption service to be an integral part of the local authority social work department.

28. It will be clear from the preceding paragraphs that agencies vary considerably in their nature, in the resources available to them and in their methods of working. These factors influence considerably the kinds of people, whether natural parents, children or prospective adopters, for whom the service is available, as well as the quality of the social work service offered. How can the service be developed to meet the need rather than the need being met only to the extent that it fits the existing organisation?

29. If adoption is to be considered as one alternative open to unmarried parents or married couples seeking placement for their child, it follows that an adoption service should be part of a wider family social work service. At present the degree of specialisation varies greatly from one agency to another. With many voluntary societies adoption is either the only function or at least a major function and there tends to be a fairly high degree of specialisation. Local authority children's departments vary in their organisation. In some, adoption work is spread among child care workers as part of a general caseload while others may employ specialist workers wholly or partly on adoption. However an agency is organised, there needs to be good communication between the worker involved with the natural parents and the adopters' worker, since in individual cases these workers will rarely be the same. Where adoption work is hived off into a specialist adoption unit, there is a danger of lack of integration with the rest of the department's work. Where it is spread among the general child care staff, there are more likely to be problems of inexperienced workers and delays in placement.

30. The fact that adoption is part of a general child care agency or family casework agency, does not of itself ensure its satisfactory integration within the structure. Good communication and co-ordination are needed between the various sections of an agency, to ensure the availability to a client of a range of options, and at the same time continuity of social work help. If agencies that are purely placement agencies are to provide a good service, with a range of options, continuity of casework and access to general child care resources, they will need to make formal agreements to this end with local authorities or general child care agencies. The aim, however, should be to offer in the long term a comprehensive casework service themselves. In addition to the basic services, all adoption agencies need access to a range of other services (medical, including psychiatric and psychological assessment services, and legal advisory services) with good inter-communication.

31. This then, is what we mean by a comprehensive service. But it is essential that such a service should also be nationally available, and have a minimum national standard. At present the quantitative provision over the country varies greatly. There are at present 66 voluntary adoption societies in England and Wales and 9 in Scotland. Geographically, the

development of voluntary adoption societies has been haphazard and uneven, and some societies provide only, for instance, for those of a particular religious denomination. The Adoption Act 1958 clarified the position of local authorities. In England and Wales 94 out of 172 counties and county boroughs now act as adoption agencies and the number is slowly increasing. Some may have entered the field originally to cater for children whom the voluntary societies felt unable to place, some because of an unmet need in an area where there were heavy pressures on voluntary societies, or because of the prevalence of third party placings in an area. To many an adoption service was a natural extension of the services they were already providing for children and families. Little attempt has been made, however, to assess the needs of different areas and to develop services accordingly. In Scotland virtually all local authorities do adoption work from time to time, but it is difficult to judge from available statistics the extent to which they deliberately set out to provide an adoption service as opposed to placing children in the course of their child care work. In 1968 the 73 voluntary societies in England and Wales and Scotland placed 9,265 children for adoption compared with about 4,000 placed by local authorities. In 1969 the number of voluntary society placements decreased to 7,907 while the number of local authority placements(1) showed only a slight decrease.

32. We see a continuing place for the voluntary societies in the adoption field. They have been the pioneers in adoption and have developed and promoted knowledge and skills. The voluntary effort which has over many years made an important contribution in this as in other aspects of child care should be enabled to continue. Research and experimentation with new methods of practice are often more easily undertaken by voluntary societies. Quite apart from the principle that voluntary organisations have a part to play in the provision of adoption services, the resources and skills of the voluntary agencies will, for the foreseeable future, continue to be indispensable as the local authorities will have insufficient resources.

33. In order, however, to ensure a comprehensive, national service, we propose that it should be mandatory on local children authorities(2) to ensure that a comprehensive adoption service is available in their area. This will require, in co-operation with voluntary societies, an assessment of the needs of the area, and of the resources available to meet them, and a co-ordinated plan for the provision of the service. The local authority itself must give an adoption service as part of its general child care provision, either alone or in conjunction with other local authorities. Specialist agencies in the short-term will have to establish formal arrangements with other agencies (see paragraph 30) so as to be able to offer a comprehensive service. In the long run, we expect specialist agencies to expand their own range of services or to merge with other agencies to become comprehensive child care agencies. We envisage that there will be an eventual phasing out of those agencies which are unable or unwilling to provide a comprehensive service.

(1) Precise figures for local authority placements are not available because the figures for children in care who are adopted do not distinguish between children placed directly for adoption and children who are boarded out with foster parents and eventually adopted by them.

(2) In Scotland, the local authorities under the Social Work (Scotland) Act 1968.

34. Thought also needs to be given to the size of agencies for a viable adoption programme. Those covering small geographical areas are in danger of placing children in homes too near their natural parents. Small agencies may lack scope and choice of adoptive homes, as well as being restricted in offering a comprehensive service because of limited resources. Groupings of agencies, pairing arrangements, or other forms of regional co-operation, are likely to develop. While we do not suggest that these kinds of arrangements need be required by law, they will need to be taken into account by registering authorities when assessing the size and scope of agencies.

Ensuring and developing standards

35. Our proposal that local authorities should be required to ensure the availability of a comprehensive service will not by itself be sufficient to secure adequate and developing standards of practice. This requires systematised knowledge and research ; measures to promote developments in practice, which should include the availability to local authorities and voluntary societies alike of the advice and guidance of central government professional officers ; and an effective system for the registration of voluntary societies. The present law is open to improvement in these respects.

Central advice and guidance

36. Advances in social work practice cannot be defined or brought about by statutory provisions alone. It is important that there should also be promotional measures to ensure that standards are constantly developing and improving. In England and Wales and Scotland, central government through an inspectorate and an advisory service accordingly offers help and guidance on professional practice and standards designed to further developments which enhance quality of service. It is essential that the law should provide that adoption practice both in the voluntary and the local authority sectors shall be open to the advice and guidance of central government professional officers. Standards are also promoted through the increasing facilities for generic social work education and training, for special short courses concentrating upon adoption practice, through conferences and seminars, through published literature and through research and evaluation. The professional advisory services are concerned with spreading systematised knowledge from all these sources. These measures should be made available throughout England and Wales and Scotland to all agencies concerned with adoption and there should be concentrated effort directed by central government professional staff towards the development of a skilled adoption service as part of the comprehensive social service concerned with children and families.

Registration of voluntary societies

37. A voluntary social work agency, unlike a statutory body, is not publicly accountable for its work. The corollary of the principle that voluntary bodies have a part to play in adoption is the need for arrangements to ensure their capacity to undertake this kind of work, in place of the public accountability of the statutory authorities. Under the present law, these arrangements take the form of a legal requirement that voluntary

adoption agencies must register with the local authority where their administrative centre is situated. Registration amounts to the grant of a licence to operate, and we think the principle of requiring registration of voluntary societies is right. At present the local authority possesses specific but limited powers to refuse or cancel registration and to require certain annual returns which include information relating to staffing, committee membership and procedures. The present requirements for registration are inadequate and indeed registration has been variously treated by local authorities as a mere formality or as a serious exercise. We think that the information required for registration and in the annual returns should be clarified and made more specific, and should at least include the matters listed in paragraph 38. The grounds on which registration may be refused or cancelled should be extended and should be such as to ensure that each voluntary agency, through its own resources or in conjunction with other agencies, can make an effective contribution towards a comprehensive service of the kind we have described. The information required and the grounds for refusal or cancellation of registration should be laid down by the central government in statutory regulations so as to secure a national standard and to enable this standard to be reviewed from time to time in the light of changing circumstances, developing practice and knowledge, and of any increase in available resources. Registration should be renewable at intervals of perhaps three years. Although local authorities are not subject to registration, this standard should be regarded as the basic standard applicable to all adoption agencies, statutory as well as voluntary.

38. We suggest that voluntary agencies should be required to provide the following information when applying for registration, and annually following registration.

(*a*) *Address* of the society's administrative centre and addresses of any other offices.

(*b*) *The geographical area* to be covered.

(*c*) *Scope of proposed activities,* how far these will provide a comprehensive service, including the placement of children for adoption, a general social work service for families, a general child care service, and casework with adoptive families. Any special restrictive criteria in the acceptance of adopters, natural families and children should be indicated.

(*d*) *Anticipated size of programme,* e.g. numbers of placements (actual statistics to be given, as at present, in the annual return).

(*e*) *Resources provided by the agency,* e.g. mother and baby homes, nursery/foster home facilities.

(*f*) *Resources available to the agency,* e.g. arrangements with other agencies for access to such resources; channels of communication with other relevant services.

(*g*) *Financial resources,* sources of income, capital, fee-charging schemes (including statement of accounts). As at present, whether the society applies the whole of its income in promoting the objects for which it exists; whether the society carries out any other activities.

(*h*) *Medical resources,* proposed arrangements for medical examination of child and adopters, and for medical assessment of these,

information to include names, qualifications, functions and availability of examiners and advisers; access to consultancy services, including psychiatric and psychological.

(*i*) *Other consultancy services*, e.g. access to legal advice.

(*j*) *Agency staff*, details of the director and other workers, including clerical and supporting staff, with qualifications and experience of professional staff. Staffing will need to be adequate for the work to be undertaken, including the additional responsibilities we propose for agencies in regard to the supervision of the child in the adoptive home and reporting to the court. (See paragraph 129 and proposition 30(*a*)). The arrangements within the agency for staff consultation and supervision should be specified. It should be made clear what is the division of role and activities between professional workers and committee members.

(*k*) *Committee and case committee*, details of the members of the controlling committee, how the committee is appointed, how it exercises control, and details of the constitution of the society; details of members of the case committee, with their qualifications and experience, and the activities of the committee.

(*l*) *Decision-making machinery* in regard to the acceptance of adopters, acceptance of child for adoption, and placement. Role of committee members and officers in this process.

39. Under the present law the registration of a voluntary adoption society *must* be refused if the local authority is not satisfied that it is a charitable organisation and *may* be refused on any one of three grounds.

(1) Any of the employees employed for adoption purposes is not a fit or proper person, or any person taking part in the management or control of the society or any member of the society has been convicted of one of a number of specified offences connected with adoption.

(2) The activities of the society are not controlled by a committee of its members responsible to its members.

(3) The number of competent staff employed by the society is insufficient for the extent of its activities.

Grounds (2) and (3) are too narrow. They do nothing to ensure a comprehensive service, they touch only one aspect of the agency's organisation and they do not cover resources other than staff. Our proposal is that they should be extended so as to make it mandatory upon the registered authority to refuse or cancel registration unless satisfied on each of the following three basic criteria.

(*a*) *The agency's programme*. The registering authority should examine the information about the nature, scope, size and geographical area of the programme, and satisfy itself that this programme would in itself provide a comprehensive service such as we have described, or would do so in conjunction with the services provided by other agencies with which arrangements had been made.

(*b*) *The agency's resources*. The registering authority should examine the information about the agency's resources for carrying out the

programme, including its own resources, resources available to it by arrangement with other agencies and services, staff of all kinds and their qualifications, medical resources, access to other consultancy services and financial resources, and satisfy itself that these resources are adequate to carry out effectively the agency's programme.

(*c*) *The agency's organisation.* The registering authority should examine the information on the agency's organisation, including staff responsibilities and relationships, the committee and the case committee, and decision-making and consultative machinery, and satisfy itself that the organisation is appropriate for the effective carrying out of the programme.

40. It would not be feasible or desirable to lay down criteria for registration with such precision and in such detail that no question could ever arise over their interpretation. We think that the central government might issue general guidance on standards, to assist in the application of the statutory criteria for registration ; this might refer, for instance, to the standards suggested in the Guide to Adoption Practice recently issued by the Advisory Councils on Child Care or to any subsequent revision of this document. When disputes arise, as they no doubt will, as to whether an agency fulfils the criteria for registration, they should be resolved by the exercise of the right of appeal against refusal or cancellation of registration. Such appeals at present lie to the courts, in England and Wales to quarter sessions, and in Scotland to the sheriff. We do not think that it would be appropriate to place upon the courts the ultimate responsibility for decisions whether criteria of the kind we propose are fulfilled. If all registration, or renewals of registration, were a local responsibility, a right of appeal to the Secretary of State could be conferred. If registration were made a central government responsibility, either there could be no right of appeal, or such appeals would have to lie to a special tribunal appointed for this purpose, such as the tribunal provided for by section 30 of the Children Act 1948 or section 64 of the Social Work (Scotland) Act 1968 to hear appeals against refusal to register, or the removal from the register of, a voluntary children's home or social work establishment.

The registering authority

41. It has been suggested in much of the evidence we received that registration should become a responsibility of the central government. Some of these suggestions implied a connection between the central government advisory service and registration. These two functions are, however, different in nature, with distinct though complementary objects. The aim of registration is to secure certain basic minimum standards, by ensuring that the organisation and resources of voluntary societies are adequate. This means a mainly administrative, paper exercise, involving the scrutiny of detailed information provided by societies and consideration of whether the statutory criteria for registration are fulfilled. Applications would have to be examined, information assessed and where necessary checked. If carried out by central government, registration would be an administrative exercise, undertaken without local knowledge, but taking into account the advice of the professional advisers. If carried out by local authorities, registration would be appropriate to senior

social work staff within the social services departments acting in consultation with appropriate specialist advisers. Effective machinery would have to be established and staff made available.

42. There is no clear answer to the question whether the registration of voluntary adoption societies should be by central or by local government. There are advantages and disadvantages either way. A possible compromise would be to make the central government responsible for the initial registration of each society in accordance with the criteria we propose, and local authorities responsible for subsequent renewals of registration. We set out below what seem to us the main relevant considerations, and should welcome further comments and suggestions on this issue.

43. Arguments put forward against registration by local government are—

(*a*) Local government faces the difficulty of demanding, in the process of registration, standards from voluntary organisations which it has not always been able to match in its own service because of a shortage of skilled and experienced social workers.

(*b*) Local authority members and officers are often too closely associated with the personnel of voluntary agencies to be able to make objective judgments and to act in accordance with them without embarrassment.

(*c*) Some local authorities are too small effectively to register a large national or regional voluntary agency whose headquarters happens to be situated in their area. This may still be the case even if local authority units are reorganised and enlarged.

44. Arguments in favour of registration by central government are—

(*a*) This could more effectively ensure objective standards being applied in England, Wales and Scotland.

(*b*) Voluntary agencies and local authorities work closely together and registration by central government would appear to be more impartial. For this reason central registration of voluntary societies might be more acceptable to both sides.

(*c*) Registration by local authorities as at present carried out has failed to achieve adequate standards.

45. Arguments in favour of registration by local authorities are—

(*a*) The authorities will possess intimate knowledge, which the central government cannot possess, of all the services and resources available and developments occurring within their area. Standards will be laid down nationally in statutory regulations, and it is the application of these standards that local registration would leave with local authorities.

(*b*) Local registration would fit in naturally with the proposed requirement on local authorities to ensure an effective adoption service for their area, which would inevitably involve them in assessment of the needs of the area and the planning of resources, in conjunction with voluntary agencies, to provide the adoption service and related services which are required.

(*c*) The general trend is towards increasing the responsibilities of local government and towards their assuming greater accountability for the regulation and control of quality of the services in their area.

46. Arguments against registration by central government are—

(*a*) The promotional role of the central government advisers under the general guidance of the Secretaries of State would not fit easily with central responsibility for registration, which would single out this area of social work from other activities requiring similar professional consideration.

(*b*) It is appropriate for the central government to lay down national criteria for registration but it does not follow that the administration of these criteria, which requires detailed local knowledge, is best done centrally. A central registering authority would in any event have to consult the relevant local authority before deciding an application.

The financing of the adoption service

47. There are two related issues.

(1) Should the adoption service be a free service or should fee-charging be permitted?

(2) How far should local authorities support voluntary societies financially?

48. Section 50(3) of the Adoption Act 1958 allows agencies to charge "expenses reasonably incurred . . . in connection with the adoption of the infant". There is therefore no statutory duty to provide a free service, and no legal prohibition on the charging of expenses. This seems to us right. Many adopters are able and ready to pay some or all of the expenses incurred by the agency. We see no objection in principle to this practice and recognise that contributions from adopters form an essential part of the income of some voluntary societies. We think it would also be wrong to require expenses to be charged. Local authorities rarely require expenses but may accept contributions. Most agencies expect adopters to bear certain expenses such as for their own medical examinations. It seems inappropriate to differentiate rigidly between fee-charging by local authorities and voluntary societies, because of the danger of splitting applicants between the two kinds of agency according to their ability to pay. We prefer the present situation which allows flexibility.

49. Local authorities have power under section 46(2)[1] of the Children Act 1948 to make contributions to voluntary organisations to promote the welfare of children and, although this covers grants specifically for adoption work, in practice only small grants are made. A local authority which itself provides an adoption service may feel no obligation to give financial support to a voluntary society for the same purpose. On the other hand we believe that voluntary adoption societies have a continuing role to play (see paragraph 32) ; and insofar as they make an essential contribution to the provision of adequate adoption services throughout the country, local authorities should recognise the work of any voluntary societies operating in their areas by giving realistic financial support based on actual costs.

(1) Section 10(3) of the Social Work (Scotland) Act 1968.

Timing of the changes

50. The development of comprehensive, nation-wide services for all those involved in adoption, with adequate resources for their work and good standards of practice, will take time. There are other important calls on the resources of the social work services, which are themselves in process of re-organisation. We think it right in this paper to set out the eventual aim, towards which all those involved in adoption services should work. Our suggestions on the legal regulation of adoption, in the succeeding parts of this paper, set out the provisions which we regard as desirable when the services are fully developed. We recognise that there will have to be a transitional period of some years, while this development is taking place, during which any new legislation on adoption that may follow our final report will not be fully operative.

Propositions for consideration

5. There should be a nationally available adoption service, focusing primarily on the needs of children. This should be an integral part of a comprehensive social work service. (Paragraphs 17–26.)

6. To achieve this:

(*a*) local authorities should have the duty to ensure the provision of a comprehensive service in their area (paragraph 33);

(*b*) there is a continuing place and need for voluntary effort (paragraph 32);

(*c*) adoption agencies unable to provide a comprehensive service by themselves should make arrangements with other agencies or with the local authority in order to do so. (Paragraphs 30 and 33.)

7. Adoption work should be organised as part of a general child care and family service, with a full range of relevant resources, good communication and co-ordination between the various aspects of the work, and access to medical, legal and other services. (Paragraph 30.)

8. Good standards of service are important, but cannot be attained entirely by legal prescription. Adoption work should be open to central government advisory and consultancy services, in the same way as other social work. (Paragraphs 35–36.)

9. The system of registration of voluntary adoption agencies should be strengthened, with more specific criteria for registration laid down in statutory regulations. (Paragraphs 37–40.)

10. (*a*) Further consideration should be given to whether registration should remain with local authorities or become a central government responsibility. (Paragraphs 42–46.)

(*b*) Appeal against refusal or cancellation of registration is not appropriate to a court. If registration remains a local responsibility, appeals should be to the Secretary of State; if it became a central government responsibility, they might be to an independent tribunal. (Paragraph 40.)

11 (*a*) Agencies should remain free to charge expenses and to accept contributions towards the cost of arranging adoptions. (Paragraph 48.)

(*b*) In exercising their power to contribute financially to the work of voluntary child care organisations, local authorities should have regard to the work done and the actual costs incurred by adoption societies. (Paragraph 49.)

12. A transitional period will be necessary before these aims can be fully achieved. (Paragraph 50.)

PART IV—THE RIGHT TO ADOPT AND TO ARRANGE ADOPTIONS

The present pattern

51. The majority of adoptions are by married couples who adopt an unrelated child. The present law does not, however, restrict adoption to such cases. There is also a substantial number of adoptions by adults who are related to the child by blood or by marriage, including many adoptions by natural parents and step parents. In this paper we refer to adoptions of the first kind as adoptions by non-relatives and to those of the second kind as adoptions by relatives. "Relatives", for most practical purposes, means natural and step parents, grandparents, and uncles and aunts, although brothers and sisters, as well as more distant relatives, can also adopt.

52. The majority of adoptions are arranged through an adoption agency. (The term "adoption agency" as used in this paper means a local authority or a registered voluntary adoption society.) The present law also allows adoptions which are not arranged through agencies; these are known as "independent adoptions", and there is a large number of them. Most of these non-agency cases are adoptions by relatives. There is also a smaller number of adoptions by non-relatives in which an agency plays no part. Arrangements for independent adoptions may be made by the child's natural parents, and these are known as "direct placements", or they may be made by a private person, who may be, for instance, a friend or the family doctor or solicitor, or a person who makes a regular practice of arranging adoptions. A private individual who arranges an adoption is known as a "third party".

53. The statistical survey undertaken by the Home Office Research Unit and the Government Social Survey examined a sample of some 3,400 adoption applications made in 1966 to 138 courts in England, Wales and Scotland. The information obtained from this survey gives the following broad picture:

	Per cent	Per cent
Adoptions by non-relatives		66
Adoptions by parents[1]	29	
Adoptions by grandparents	2	
Adoptions by uncles and aunts	2	
Adoptions by other relatives	1	
Total of adoptions by relatives		34
		100

[1] This includes 984 applications by parent and step-parent and 23 applications by a natural parent adopting alone.

	Per cent	Per cent
Adoptions arranged by voluntary societies	40	
Adoptions arranged by local authorities	19	
Total of agency adoptions		59
Adoptions by parents	29	
Direct placements	8	
Adoptions arranged by third parties	4	
Total of independent adoptions		41
		100

54. In paragraph 8 of this paper we describe what adoption means, and say that its primary purpose is to provide families for children who need them. This purpose is fulfilled when a couple adopt a child who is not related to them ; adoption by non-relatives is generally seen as the normal and proper use of adoption. Adoption by relatives is different in that the child is already part of the same family, and in most cases the adopting relatives are already caring for him and will continue to do so whether or not they adopt him. Another important difference between adoptions by non-relatives and relatives is that the great majority of the former are arranged by agencies, whereas the great majority of adoptions by relatives are arranged independently. The evidence before us indicated widespread unease, among those concerned with the various aspects of adoption, both about adoption by relatives and about other independent adoptions. Two of the main issues discussed in this part of this paper are whether it is necessary, and appropriate, that a court order giving legal recognition to the position of persons who are bringing up a child already related to them should take the form of an adoption order ; and whether it is acceptable that the crucial decision on placing a child for adoption should be taken by a private individual, without any protection for the child against an unsatisfactory placement, and without any assurance that the child's natural parents and the adopters have had proper advice on the significance of the step they are taking. First, however, it is necessary to discuss the way and extent to which the law should define eligibility and suitability to adopt.

Adoption by non-relatives : who may adopt

55. We have proposed that there should be a nation-wide comprehensive adoption service available to all, primarily to meet the needs of children, but forming an integral part of a comprehensive social work service to families (proposition No. 5). All couples wishing seriously to consider adoption should have ready access to an adoption agency ; but there is no social or moral right to become an adoptive parent, nor should the law appear to confer such a right. The selection of adopters by the agency will be determined by the actual need for adoptive homes, which will fluctuate, as well as by the agency's judgment of suitability. Agencies should not be expected to do more than select a sufficient number of adopters to enable them to choose the most suitable home for each child. Where there are more couples than children needing homes, agencies have to be selective. There will inevitably be some disappointed applicants (see paragraph 25).

56. The legal criteria determining eligibility to adopt are few. Section 1 of the Adoption Act 1958 read with section 12 provides that an order may only be made on the application of two spouses applying jointly, or otherwise by one person alone ; and that the applicant must be domiciled, and must, together with the child, normally be resident, in England, Wales or Scotland. Section 2 of the 1958 Act provides that the applicant must have attained the age of 25 (except the mother or father of the child) or be a relative aged at least 21 ; that, in the case of a married couple, one must be at least 25 or be a relative aged at least 21, and the other aged 21 or over unless one of them is the child's parent ; and that a single male applicant may not adopt a female child except in special circumstances. Subject to these few statutory requirements judgment on the suitability of adopters is left to the agencies and the courts. There are, however, statutory rules and regulations which lay down in considerable detail the information about adoptive applicants which must be obtained by the agency and by the guardian/curator *ad litem* and which must be given by the adopters in their form of application to the court. This includes name, address, date of birth, marital status, occupation, financial circumstances, accommodation, other members of the household, health, religious persuasion, residence and domicile.

57. In addition to these facts required by law, a wide range of less tangible matters need to be looked into by agencies, exploring attitudes and motives and assessing the applicants as people: their personalities, strengths and weaknesses, and general approach to life. The agency also needs to assess the implications of the facts, for example, the significance of an age gap between adopters, the stability of the employment record, and the adequacy of the housing. The Guide to Adoption Practice, in a discussion of the enquiries needed (Chapter III) includes such things as, the duration of the marriage, stability and the nature of the marriage relationship, physical and emotional ; the couple's education and achievements, their satisfaction in their own situation in life and their expectations of a child ; their enjoyment of children and their ability to accept a child for himself ; their childhood experience and general maturity ; wider family relationships, attitudes of relatives to the proposed adoption ; social relationships, friendships and interests, the attitude of the applicants to infertility and to illegitimacy, to knowing about a child's background, to telling him of his circumstances ; their attitude to other nationalities and ethnic groups and their ability to accept differences.

58. Apart from criteria imposed by law or recommended by codes of good professional practice some agencies have their own criteria, possibly imposed by the terms of their constitution, such as religion (see paragraph 24). We consider that voluntary societies should have the right to cater for certain sections of the community if they wish, provided they fulfil the criteria for registration. It is reasonable likewise for agencies to restrict their intake to the geographical area in which they operate, provided their adoption programme is viable in size and scope (see paragraph 34). They may also sometimes need to close their books to further applications, to avoid lengthy waiting lists. We deprecate, however, arbitrary criteria, such as the exclusion of couples with children of their own, or refusing to

accept for adoption a mother's second and subsequent illegitimate children. Arbitrary criteria of this kind impose rigidity and are counter to good practice. We also deprecate any arbitrary and individual interpretations by courts of suitability to adopt.

59. The crucial decision in the whole process of adoption is the decision regarding the actual placement of the child. This means that not only the professional competence of the placement agency but, equally, its criteria for the selection of adoptive applicants are of the first importance. The question is how far these criteria should be prescribed or indicated by law. It is clear that certain basic conditions of eligibilty to adopt should be defined by statute. For instance, so long as the determination of matters of personal status under British law is, by and large, related to domicile, British domicile should continue to be a condition of the grant of a full adoption order. The other requirements of section 1 of the 1958 Act (see paragraph 56) also require legal prescription.

60. The conditions in section 2 of the 1958 Act (see paragraph 56) are rather different: they attempt to embody in precise legal rules two general judgments of what constitutes unsuitability to adopt. The condition on age limits represents the judgment that adopters should be sufficiently mature to undertake the responsibilities of adoptive parenthood: the other condition is that the adoption of a girl by a single man needs exceptional justification. If it were appropriate, however, to define by statute what constitutes unsuitability to adopt other conditions might equally well be included such as a prescribed minimum length of marriage. We do not propose this. In our view a distinction should be drawn between legal criteria of eligibility and professional assessment of suitability. Some of the evidence before us expresses dissatisfaction with the present minimum age limits, which prevent some suitable couples from being considered. This illustrates the way in which skilled professional judgment can be fettered by precise criteria laid down in the law.

61. It is inescapable that decisions on the suitability of adopters should, in practice, rest upon the judgment of the agencies and the courts, whatever the law may say. This judgment must take account of many factors, some of them indefinable, which we have outlined in paragraph 57. These factors cannot all be specified in the law, and it is inconsistent to single out a few of them for legal prescription. We think the proper function of the law is to set out the basic *legal* conditions for adoption—domicile, residence, marital status—and to lay down general *principles* to guide agencies and courts in the exercise of their judgment. We think that section 2 of the Adoption Act 1958 should be repealed. We propose that any adult[1] should be eligible to adopt subject to fulfilment of the conditions in section 1 of the 1958 Act (see paragraph 56) and subject to our propositions on independent adoptions.

62. It may be thought a drawback of this proposal, that it will do nothing to prevent the variations in court practice mentioned at the end of paragraph 58. The proper corrective for such variations, however, is the exercise of the right of appeal; and we would like to see this right exercised more frequently in cases where it appears that an adoption order

(1) With effect from 1st January 1970 an adult is any person aged 18 years and over.

has been refused because of some *a priori* approach (e.g. that no white couple should adopt a coloured child) and not on the basis of an assessment of all the circumstances of the individual case. Decisions by courts to reject would-be adopters on grounds of unsuitability should be based upon individual merits and not upon the automatic rejection of particular categories decided in advance.

63. The view expressed in paragraphs 59–61 on the functions of the law and of professional judgment in deciding on eligibility and suitability to adopt leads to the conclusion that there is no need of detailed regulations requiring agencies to collect specified information about prospective adopters. Some of the information now prescribed is necessary in any event to determine whether the adopters fulfil the requirements of section 1 of the Adoption Act 1958. It is not practicable to lay down in regulations all the other information required to enable the agency to judge the suitability of the applicants ; this should be left to the agencies. We see the information which agencies should normally collect about applicants as a matter for guidance rather than legal prescription. The agency will need to indicate the extent of its contact with the home, on which its assessment of the applicants is based. There will however, remain a need for a prescribed form for applying to a court for an adoption order, covering the basic information required by the court.

Adoption by non-relatives : who may arrange adoptions

64. Part III of this Paper sets out the aim of nationally available comprehensive adoption services, with measures designed to secure an adequate and improving standard of service. Already a high proportion of adoptions by non-relatives are arranged through agencies. When a national service is available all those wishing to adopt a child will have at least one agency accessible to them and the proportion of agency placements is likely to rise. Although independent adoptions represent only a small proportion of all adoptions by non-relatives, nevertheless they involve around 1,500 cases each year and are thus sufficiently numerous to deserve serious examination. Apart from the inaccessibility of agency services there are various reasons why people who wish to adopt make independent arrangements without using agency services. Some may wish to keep control of the situation themselves, or may trust a known person such as their family doctor. Some may dislike the idea of enquiries by an agency and may resist real or imagined obstacles presented by an agency. Personal arrangements generally ensure speed. Some people may not know where to go for advice, or may be unaware of the value of professional help. Some would-be adopters may have been turned down by agencies, and others may seek an independent placement because they realise that no adoption agency would consider them suitable.

65. Much concern has been expressed in evidence about independent adoptions by non-relatives and in particular about third party placements. A strong body of evidence would prohibit them altogether and all the evidence advocates closer regulation. It is pointed out(1) that while there is no conclusive statistical evidence to show that third party placements

(1) Association of Child Care Officers Monograph No. 3 " Adoption—The Way Ahead ".

work out any less satisfactorily than agency placements, nevertheless many instances of unsuitable placements arranged by third parties have come to notice.

66. Since the passage of the Adoption Act 1926 it has been recognised in this country that the changes in legal and personal status and relationships which result from the adoption of a child are of such a nature, and so important, that they cannot be left to the private decisions of the individuals involved. The public interest is involved, especially for the protection of the child's welfare. Everyone now accepts the need for investigation of the circumstances followed by formal legal ratification of the adoption. In the earlier parts of this paper we have stressed that the final court hearing, which takes place at the very end of the adoption process, is not by itself sufficient to secure the welfare of the child or to ensure that the adult parties involved have adequate advice and help. The decision to place a particular child with a particular couple is the most important single step in the entire adoption process. It cannot be left to individuals who do not have appropriate training or experience and whose main concern may be to satisfy either the natural parents or the applicants, or both, but not necessarily the welfare of the child(1). Adoption law must give assurance of adequate safeguards for the parties concerned at this stage ; otherwise it is ineffective. Part III of this paper emphasises that this assurance rests mainly upon the skilled work of the adoption services.

67. An independent adoption is, quite simply, one in which this assurance is lacking. If it is accepted that the assurance of adequate safeguards for the parties concerned is essential at the placement stage, it must follow that independent placements for adoption by non-relatives should not be allowed.

68. The Adoption Statistics Survey showed that 8 per cent of the sample covered were direct placements by the child's parents, 3 per cent being placements with non-relatives. 4 per cent were in respect of third party placements with non-relatives. Some 7 per cent were therefore in respect of independent placements with non-relatives (total sample being 3,414 applications). The effect of the conclusion recorded in paragraph 67 will be to eliminate all these placements. In the past two main reasons have been given against the prohibition of independent placements, whether third party or direct. The first is that such a prohibition would infringe the personal liberty of people to make their own arrangements. Individual liberty does not, however, embrace the right to take actions which may be detrimental to another individual, least of all to a young child. Legal insistence that, in the public interest and the child's interest, only an agency may place a child for adoption with a non-relative, is in principle no more an infringement of liberty than legal insistence that only a court may authorise an actual adoption. Agencies would doubtless give sympathetic consideration to any suggestion or plans which natural parents themselves wish to put forward for the placement of their child, but the final decision would rest with the agency.

69. Secondly, there has been the fear that banning independent placements would lead to evasion and to unsatisfactory *de facto* adoptions. The recent

(1) Association of Child Care Officers Monograph No. 3 " Adoption—The Way Ahead ".

amendment of the Children Act 1958(1), which controls private fostering, means however that all arrangements of the *de facto* adoption type are now covered by the 1958 Act. In paragraph 236 of this Paper we propose that a court, on refusing an adoption application, should have adequate powers to protect the child, including power to remove him from the care of the applicants by committing him to the care of the local authority ; this will provide the necessary safeguard in cases where foster parents apply unsuccessfully to adopt. Once agency services are accessible to all, and the law establishes that only an agency may place a child for adoption by non-relatives, we believe there will be comparatively few would-be adopters who remain unwilling to seek help from an agency. For these reasons we do not consider that the banning of independent placements will create any undue risk of evasion.

Adoption by foster parents

70. Under the general law, the legal rights of parents include the right to arrange for others to undertake some or all of their child's upbringing. Such arrangements in no way diminish the legal rights and responsibilities of the parents towards their child. The conclusion reached in paragraphs 66–69 means that parents, and other private individuals, would no longer have the right to place a child with strangers for the express purpose of adoption. It does not mean that parents should cease to be able to arrange for the care of their child whether temporarily, or on a long-term basis, by foster parents or by relatives. Situations will continue to arise in which persons who initially assumed the care of a child as foster parents, with no thought of adoption, subsequently wish to adopt the child. Should the law continue to allow this?

71. The reasoning behind the conclusion that placements with strangers for the purpose of adoption may only be made by agencies is that this is necessary for the effective protection of the child and of the adults involved. Fostering placements, even if made by agencies, may have been based on criteria appropriate for the fostering situation but not necessarily for adoption. Moreover, it has been suggested that, if applications by foster parents to adopt are allowed, the prohibition of independent adoption placements could be evaded by the use initially of a private fostering arrangement, the foster parents later applying to adopt.

72. Distinction might be made between private fostering and the fostering by agencies of children in their care. One suggestion that has been made is that no private fostering arrangement should be allowed without prior approval by the local authority. Such a prohibition would seriously infringe people's freedom to have their children cared for for limited periods or to arrange such care in times of emergency. The Children Act 1958, as amended, provides controls against unsuitable private fostering placements and protection for children in private foster homes. We have thought it appropriate therefore to confine our consideration to cases where foster parents wish to adopt.

73. The prohibition of applications to adopt by foster parents would automatically block any evasion of the ban on independent adoption

(1) Amended by the Children and Young Persons Act 1969 and the Social Work Scotland Act 1968.

placements mentioned above. It would not however be appropriate to use such a blanket prohibition to deal with a small number of abuses unless there were other reasons why such adoptions were undesirable. It has been suggested in one piece of evidence(1) that to alter an existing fostering relationship which a child had come to accept into an adoptive relationship, would be confusing and possibly damaging to the child. We do not consider that generalised judgments of this kind can appropriately be embodied in the law. If the interests of the child are to be paramount, the law should allow room for a judgment to be reached according to the circumstances of each case as to whether adoption by foster parents would be for the welfare of the child.

74. It is true that in such applications the issue is not placement but the conversion of an existing fostering relationship into an adoptive relationship. If the law did not allow this, the child would normally remain with the foster parents as a foster child. In many cases adoption by the foster parents may be in the interests of the child, whether the fostering was arranged originally by an agency or privately, but it is necessary to provide safeguards to ensure that an adoption order if made would indeed be for the child's welfare, and also to forestall irresponsible applications and applications made in an attempt to evade the ban on independent adoption placements.

75. Children are often placed with foster parents, by a local authority or by a voluntary organisation or privately, for short periods, where the parents have no thought of giving up their parental responsibilities. The mere fact of temporary possession of a child would not be sufficient justification for the law to permit foster parents to apply for adoption against the wishes of the natural parents. This is an additional reason why foster parents should not have unrestricted freedom to apply for adoption. On the other hand, if a fostering situation appears well-established, it should be possible for foster parents to bring an application to the court, so that the court may decide whether adoption would be for the long-term welfare of the child (see paragraph 13). The problem is how to define in the law what constitutes a well-established fostering relationship. Any time limits inevitably have disadvantages, and may for instance lead parents to remove a child from a foster home shortly before the time limit expires, so as to ensure that no adoption application can be made. On the other hand, if the law left completely open the time after which foster parents could apply for adoption, many parents temporarily unable to look after their children might be unwilling to allow the children to be fostered, for fear that the foster parents would claim the children and so cause the break up of the family. Although it is basically a matter of judgment whether a fostering relationship is such that the possibility of adoption ought to be available, there may, on balance, be advantage in fixing certain limits which would enable both parents and foster parents to know where they stand.

76. We therefore suggest, for the purpose of discussion, that foster parents should not in any circumstances be able to apply for adoption, irrespective of whether the natural parents are willing to consent to adoption,

(1) Association of Child Care Officers Monograph No. 3 " Adoption—The Way Ahead ".

unless the child has been in their care for a minimum period of one year ; and that, if they have cared for a child for five years or more they should have an absolute right to apply to the court for adoption, again irrespective of the views of the natural parents (see paragraph 143-145).

77. The circumstances in which a foster child stays with foster parents for at least one year but less than five are so varied that we think that a sifting process is desirable to ensure that the foster parents are allowed to make an adoption application to a court only if there are grounds for thinking that adoption might be for the long-term welfare of the child. In such cases we propose that foster parents should not be able to apply to adopt a child in their care without the consent of the local authority in whose area they live, or, if the child is in the care of a local authority, consent of the caring authority. The local authority's enquiries should be similar to those carried out by adoption agencies prior to accepting a couple as suitable to adopt (see paragraphs 56-58 for discussion on criteria for suitability to adopt). They should include an assessment of the child's development in the particular family and of the relationship between the child and the applicants. The local authority will also have to enquire into the circumstances of the child's natural family, as part of its assessment of the situation. If the local authority gives consent for the application to be made, a report by them as with agency cases should be lodged with the court when the application is submitted. It should be borne in mind that if the child is privately fostered the family will already be known to the local authority in fulfilling their functions under the Children Act 1958 as amended.

78. The majority of cases where the local authority consent to the making of an adoption application by foster parents are likely to be ones where the natural parents are in favour of this course. Where the parents do not consent this will be one of the important factors to be considered by the local authority in deciding whether to consent to an application. It should not, however, be decisive. There will be cases where although the natural parents are opposed to adoption, the local authority consent to an application for an adoption order by the foster parents because they consider that the decision whether adoption would be for the long-term welfare of the child should be taken by a court. We discuss the procedure in cases of conflict where consent is refused in paragraph 171, the grounds for dispensing with consent in paragraphs 172 and 173, and the procedure for ensuring that a child is not moved from a foster home while an application to a local authority or to a court is pending, in paragraph 145.

79. We have considered whether, in the case of a child in the care of a voluntary organisation and boarded out by them the decision whether to permit an application for adoption by foster parents should be taken by the voluntary organisation and not the local authority. The effect would be to confer on the voluntary organisation an absolute power of veto against such cases being taken to court until the foster parents had cared for the child for five years. We doubt if it would be right to vest such a power in a body which is not accountable to the public in the same way as a local authority. In saying this we imply no lack of confidence in the capabilities of voluntary child care organisations, but the principle involved seems to us

to point to this particular responsibility being confined to local authorities. On receiving an application for consent in respect of a child in the care of a voluntary organisation the local authority would naturally consult the organisation in the first instance and give full weight to their views in reaching a decision.

80. In some cases the need may be to provide legal security for a fostering relationship, rather than to alter the nature of the relationship. Under the existing law there is no way of doing one without the other, as adoption is the only effective means whereby persons caring for someone else's child can obtain legal assurance of the continuance of the arrangement. We discuss in paragraphs 106-111 the extension of the courts' jurisdiction under the Guardianship of Infants Acts to enable long-term foster parents to obtain custody of their foster child. The local authority will be in a position to discuss with the applicants the possibility of applying for custody under these provisions as an alternative to adoption. (The status conferred thereby is referred to in this paper, for convenience, as "guardianship".) The procedure for making a social assessment and giving permission to apply for guardianship will be similar to that for adoption.

Adoption by relatives

81. Figures of adoptions by relatives are given in paragraph 53. Over one-third of all adoptions are by relatives, and we have pointed out in paragraph 54 that this large number of adoptions is fundamentally different from adoptions by non-relatives which create relationships where previously there were none, neither of blood nor of affinity nor in law. Adoption by relatives severs in law, but not in fact, an existing relationship of blood or of affinity, and creates an adoptive relationship in place of the natural relationship which in fact, though not in law, continues unchanged. Most such adoptions are artificial in a sense in which adoptions by non-relatives are not; and the concept of adoption by relatives is the harder to reconcile with the need for greater openness about adoption which we discussed in paragraph 15. *Prima facie* some special justification is needed to permit adoption by relatives at all. The nature and degree of such justification, where it exists, differs according to which relative is adopting, and in what circumstances.

Adoption by single natural parents

82. There are a few cases(1) where a single woman adopts her own illegitimate child. A single woman has, *prima facie*, already, in law, the right to the custody of her child. Adoption of the child does not confer upon her rights and responsibilities towards the child which she did not have before. The creation of an adoptive relationship cannot alter the facts that she was unmarried when the child was born, and that he was born illegitimate. Insofar as the adoption is intended to put a gloss of respectability upon the facts, or even to hide them from the child, it is likely in the long run to be damaging to him rather than helpful. It is important for a child to know the truth about his origins, however distressing, and some mothers may need help in telling him of his position. The disadvantages suffered by an

(1) 116 such orders were made in 1968.

illegitimate child are largely the product of social attitudes rather than of his legal status.

83. Similar considerations apply to the adoption of an illegitimate child by his natural father, which is legally permissible but uncommon[1]. A putative father has not, in law, the right to custody of his child, so adoption makes a crucial difference to his legal relationship to the child. However, the Legitimacy Act 1959 gave a putative father the right to apply for the custody of his child under the Guardianship of Infants Acts[2] and, as in all applications under these Acts, the welfare of the child is then the first and paramount consideration. Since, therefore, the mother of an illegitimate child already has custody, and the father has the right to apply for custody, it is arguable that the answer to the question whether the natural parent of an illegitimate child should be allowed to adopt does not differ according to whether it is the mother or the father who wishes to do so.

84. The adoption of an illegitimate child by one of his natural parents alone has one very important legal effect: it cuts out the other parent. An adoption order extinguishes all the rights, duties, obligations and liabilities of all the parents or guardians of the child, vesting them in the adopter. Where it is the mother who adopts, the father loses such legal ties as he has with his child, including the right to apply for custody; where the father adopts, the mother loses all rights of custody and access. Insofar as the exclusion of the natural father is a motive for a mother to adopt her illegitimate child, this may seem to have advantage in that it provides security, ensuring against any interference or claim to custody by the father. On the other hand, it may be wrong to deprive a child of a father who is willing to recognise his child and able to assume the responsibilities of a parent. It is not in our view desirable that adoption should be used by a mother to cut the links between a child and his father, any more than it should be used by a father to sever a child's links with his mother.

85. Balancing the considerations set out in paragraphs 82–84 leads to the conclusion that the one apparent advantage of allowing a single natural parent to adopt an illegitimate child is outweighed by the disadvantages of cutting the link with the other parent and producing an artificial relationship in place of a natural one. Custody applications, in which the interests of the child are paramount, are the appropriate means of settling disputes between parents, whether married to each other or not, as to the custody, care and control of a child whether legitimate or illegitimate; the use of adoption, so as to cut out one parent, is not.

Adoption by a parent and a step-parent

86. Such adoptions amount to one third of all applications. The great majority of these applications are made by natural mothers married to step-fathers, a few by natural fathers married to step-mothers. What we say in this section applies equally in both kinds of case, but for ease of drafting we discuss these cases in terms of natural mothers and step-fathers.

87. In about half of these cases the mother of an illegitimate child has married a man who is not the child's father, and the couple apply jointly

(1) 10 such orders were made in 1968.
(2) In Scotland he has this right under the Illegitimate Children (Scotland) Act, 1930.

to adopt the child. The effect of such an adoption is that the mother relinquishes her sole legal rights in relation to the child, which become vested equally in her and her husband. Her own legal relationship to her child changes from the natural to the adoptive relationship. The motives behind such applications are generally simple—to change the child's name and birth certificate, to confer full legal rights on the step-father who wants to assume responsibility for the child, and to give the child a legal status.

88. The extension of the courts' jurisdiction under the Guardianship of Infants Acts recommended in Part V of this paper would enable a step-parent to apply for guardianship in such circumstances ; he would then become the child's guardian together with the mother, and her legal position in relation to her child would continue unchanged. If it were also desired to change the child's name, this could be done by simple deed or deed poll(1). If the step-father wished the child to inherit from him, he could make a will. It thus seems that the aims described in paragraph 87, with the exception of a new birth certificate, could be achieved without the need for adoption at all, avoiding the artificiality involved in adoption by a natural parent.

89. The step-father might however feel that guardianship was not quite the same as being recognised in law as the child's parent. Adoption confers such recognition, and would achieve the aims in view by one step instead of by a number of separate steps. The law already allows one of two spouses to adopt a child, with the consent of the other ; but, as the law now stands, adoption by a step-father alone would extinguish his wife's legal standing as the child's natural mother and guardian. This is why, at present, applications have always to be made jointly in these cases. We think that a step-parent married to a natural parent should be able to adopt alone, and that such an adoption should leave unaffected the position of the natural parent who is the adopter's spouse, extinguishing only the rights of the other natural parent. The couple should then stand in the same position to the child as to a child born to them in lawful wedlock.

90. Adoption by a step-father would also, unlike a guardianship order, ensure that the child's natural father no longer had the right to claim custody of the child. We discuss later in this paper (paragraphs 180-184) the position of the putative father in relation to an illegitimate child, the desirability of encouraging him in practice to be involved in the planning for his child, and the need to clarify at an early stage any legal rights he may wish to exercise. His position will need to be considered in an application by a step-parent as in any other kind of application and it will be up to the local authority to investigate this as part of their enquiry for the court.

91. These adoptions may hold particular problems of family relations. Often the adoption application follows closely on the marriage, before the family has settled down as a family unit, and when the stability of the marriage is untested ; the mother may have conflicts over sharing responsibility for her child ; the child will be a constant reminder to them both of

(1) Deed poll procedure is not applicable in Scotland, where a common method of changing one's name is to place a notice in the press; another method, in conjunction with a press notice, is to register a deed declaring the change of name in the Books of Council and Session.

a former liaison ; the truth of his parentage may be hidden from him. We discuss later in this paper (paragraph 144) the procedure necessary to ensure that social work help is available to the couple and a thorough assessment of the whole situation is made, before any final decision is taken on an adoption or guardianship application.

92. About half the adoptions by a natural parent and a step-parent are of legitimate children, the application being made jointly by one of the child's parents and a new spouse following divorce or death of the child's other parent. Adoptions of legitimate children by a parent on remarriage after divorce could well increase if there is an increase in the divorce rate. Family circumstances in these cases may be very varied. Although the consent of the first partner is required unless dispensed with by the court and although the consent of a minor child to his adoption is required in Scotland and the wishes of the infant are taken into consideration in England and Wales, such adoptions hold the serious implication of effectively cutting children off from one of their natural legitimate parents with whom they may have lived for a considerable time ; these are the adoptions most likely to involve older children. The child may not wish to lose contact with the other parent, for whom he may well have deep feelings and a sense of loyalty. He may not want to have his name changed. He may suffer from severance of contact not only with one parent, but with siblings (e.g. if the divorce court divided custody of the children between the two parents) and other relatives. He may lose rights of inheritance. Circumstances may indeed later arise in which his return to the other parent would be desirable, e.g. on the breakdown of the second marriage of the parent having his custody. Some, though not all, of these considerations apply on remarriage after death of the first spouse as well as after divorce.

93. Just as openness about adoption and illegitimacy is desirable, so is it desirable to recognise openly the fact and the consequences of divorce and of death. One of the consequences of divorce is that many children are living with a parent and a step-parent and retain contact with, or even live for part of the time with, their other parent, who may also have remarried. Such a situation may well be disturbing to the child, but it is not appropriate to use adoption in an attempt to ease the pain or to cover up these consequences of divorce. The legal extinguishment of a legitimate child's links with one half of his own family, which adoption entails in such circumstances, is inappropriate and may well be damaging. We consider therefore that adoption of a legitimate child by a natural parent and step-parent should no longer be possible.

94. We recognise that we are drawing a distinction between legitimate and illegitimate children in that a step-parent will be able to adopt his step-child only if the child is illegitimate. This distinction might be regarded as invidious, and it may be thought that adoption by a step-parent should be available in both cases or in neither. On the other hand the two situations are not truly analogous. An illegitimate child, by adoption, obtains a legal status and a family which he did not have before. A legitimate child does not gain a more favourable legal status ; he exchanges one set of family relationships for another, and almost inevitably severs existing family links. It is for these reasons that we propose a distinction

in this respect between legitimate and illegitimate children. What is required is a legal procedure which recognises the position and the responsibility of the step-parent with whom such a child is living, enabling the step-parent to act as guardian of the child jointly with his spouse. The extension of guardianship law to permit step-parents to apply to be appointed guardians would provide the requisite procedure, enabling questions of custody and access to be decided by the court from time to time in accordance with the welfare of the child. (The guardianship jurisdiction would need to be tied in with the jurisdiction of the divorce court ; this is discussed in Part V).

95. It may, however, be felt that legitimate and illegitimate children should be treated similarly in law and that adoption should be retained as an alternative to guardianship for legitimate children. This is an issue on which we would particularly welcome further evidence. If adoption is retained, we consider that guardianship should be accepted as the normal procedure and that adoption orders should be granted only in exceptional circumstances, where the court is satisfied that it would be in the child's interests. A particular onus would rest with the local authority in their investigation of all the circumstances (see paragraph 144) and on the court in its final decision as to whether or not to grant an adoption order.

Adoption by relatives other than parents

96. Adoption by a natural parent extinguishes, in law, what is already a parental relationship, and substitutes an adoptive relationship which is the same in its legal effect. The main objection to adoptions by other relatives is that legal relationships are created which differ from, and distort, the natural relationship not only of the adopters to the child but also of the child to his own parents. Where the real circumstances are hidden from the child, his discovery of them later may be even more damaging than in other adoptions ; he may for example suddenly discover that his " parents " are really his grandparents, and his older " sister " is really his mother. Where he is brought up to know the truth, he is being asked to live with a legal and emotional contradiction in terms.

97. Motives of relatives in adopting vary greatly, some being natural and well-intentioned, others less so. There may be normal situations where, for instance, an aunt and uncle wish to adopt when the natural parents have died. In stable families where relationships are healthy, the applicants suitable people, and where the true circumstances are known and accepted, integration of a child into the family by adoption may seen a satisfactory solution. Problems arise particularly when the truth is concealed from the child ; when grandparents adopt and the natural parent lives with them and the child ; and where there is an atmosphere of instability and poor family relationships. Where the main motive of the adoption is to achieve legal security against interference or arbitrary removal of the child by the natural parent, adoption, with its total transfer of rights and responsibilities, goes much further than is necessary. It may be similarly inappropriate where the natural parent remains in contact and continues to take a positive interest in the child.

98. It is often in the interests of a child to be cared for by relatives. At present adoption is effectively the only way in which relatives caring for a child can have long-term security of care and custody, except in the very limited circumstances where they may be appointed guardians under the Guardianship of Infants Acts (i.e. where appointed by the parents to be guardians in the event of death, or by a court when there is dispute between parents). The essence of adoption, however, is to create a new relationship where none existed before, not to create an artificial and distorted relationship in place of a natural one. It is entirely natural for relatives to care for a child whose own parents cannot do so ; and they are already part of the family, and do not need a court order to make them so. Legal recognition of the responsibility relatives have undertaken towards the child, and legal security, can be obtained by guardianship. We see guardianship law, when it has been extended to relatives as recommended in Part V, as the proper legal procedure for settling all questions of custody as between relatives, as well as between parents.

99. It may well be thought that the logic of all that is said in this part of the paper is that adoption by relatives should cease to be possible under any circumstances. There may nevertheless be a small number of situations, especially where both the child's natural parents are dead, in which adoption might be thought more in the child's interests than guardianship. We hesitate to propose the complete exclusion of adoption by relatives who are not the child's natural parents. Were we to do so, difficulty would arise in deciding what degrees of relationship should be covered by the prohibition. The important considerations are, first, that guardianship should be available to relatives who are caring for a child ; and second, that adoption should only be granted to them, in preference to guardianship, where the court is satisfied that it is more in the child's interests. Subject to these two provisos we think that adoption by relatives, other than natural parents, might continue to be legally permissible. We expect that such adoptions will become rare.

Propositions for consideration

13. (*a*) The basic legal conditions of eligibility to adopt a child should cover only the domicile, residence, and marital status[1] of the adopters, and their relationship, if any, to the child. (Paragraphs 56–63).

(*b*) All adults fulfilling these conditions of eligibility should be legally free to apply subject to our propositions on independent adoptions. (Paragraph 61).

14. (*a*) Decisions on the suitability of prospective adopters are matters for the professional judgment of agencies and the courts, and the law should not attempt precise definitions of what constitutes unsuitability to adopt (e.g. in terms of age, or of minimum length of marriage. (Paragraphs 59–61).

(*b*) The information which agencies should collect in assessing prospective adopters is a matter for guidance, and need not be prescribed in detailed statutory regulations. (Paragraph 63).

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[1] A joint application may be made only by a couple married to each other; a single person or a married person may adopt alone but in the case of a married person the spouse must consent.

(*c*) A decision whether to grant an adoption order should be taken on the merits of the individual case. (Paragraph 62.)

15. In order to ensure the welfare of the child and to safeguard the adults concerned, only an adoption agency should be permitted to place a child for adoption with non-relatives; in particular, direct and third party placements should no longer be allowed. (Paragraphs 64–69.)

16. Irrespective of whether the child's natural parents consent to adoption:

(*a*) foster parents should not be able to apply for adoption until they have cared for their foster child for at least a year, and should have an unfettered right to apply to the court if they have cared for the child for five years or more (paragraph 76);

(*b*) foster parents who have cared for a child for at least one year but less than five years should be able to apply for adoption only if the local authority consents. (Paragraph 77.)

17. Adoptions by relatives are to be distinguished from adoptions by non-relatives, in that they sever (in law, but not in fact) an existing relationship and replace it with an artificial adoptive relationship; special justification is required for allowing such adoptions to continue in individual instances. (Paragraph 81.)

18. Accordingly in the light of proposition 20 (that relatives caring for a child should be able to apply for guardianship):

(*a*) it should no longer be possible for a natural parent to adopt his or her own child (paragraphs 82–85);

(*b*) a step-parent should be able to adopt the illegitimate, but not the legitimate, child of his spouse, and such an adoption should not affect the spouse's legal position as the child's parent (paragraphs 86–95);

(*c*) while in a few cases it may be more in the interests of the child for a relative to adopt, guardianship will normally be the appropriate means of recognising the position of relatives who are caring for a child and of conferring legal security (paragraphs 96–99).

PART V—EXTENDING THE RANGE OF LEGAL PROVISIONS FOR THE CARE OF CHILDREN

Existing legal provisions

100. The number of children being looked after by persons other than their natural parents is considerable. Many of these children are in children's homes and other establishments; many are in the care of relatives or of foster parents who are not related to them. Such persons normally have no legal status in relation to the child and the present law provides no means by which they can obtain legal recognition and security for their relationship to the child, without cutting his links with his natural family. They are faced with the choice of doing without the legal security, which may be

damaging to the child, or applying for a full adoption order—if the natural parents consent. This is one reason why, as Part IV has shown, adoption is frequently applied for in inappropriate circumstances, particularly by relatives. Another reason is that the present law encourages the erroneous idea that there is the one, ideal method—adoption—of giving legal recognition to arrangements for the substitute care of a child.

101. Apart from adoption, there are two kinds of legal proceedings under which legal rights in relation to a child may be sought by persons other than the child's parents. These are guardianship and wardship. The first is not available to anyone who wishes to apply for it, and the second is not apt to fill this gap in the law.

102. Upon an application being made by a parent, or by some other person having a legitimate interest in the care and upbringing of a child, the High Court of England and Wales may order a child to be a ward of the court. Once the court has so ordered, the child remains a ward until the court orders that he shall cease to be a ward or he reaches the age of majority. The court has full care and control over every ward, and decides who shall look after the child ; this may be one or both parents, or one or more guardians appointed by the court. The parents, and any guardian appointed by the court, remain subject to its directions and must refer important matters (e.g. marriage, leaving the jurisdiction) to it. In exceptional circumstances the court may commit the ward to the care of the local authority, or place him under supervision. The court may order the payment of maintenance by one or both parents in respect of a ward either to the other parent or to the person having care or control of him. Any decision of the court as to custody, care and control, access and maintenance is subject to variation or revocation by the court at any time. This jurisdiction is an inherent jurisdiction of the High Court. The court's powers, and the principles on which they are exercised, are only set out in part in the statute law ; to a considerable extent they rest upon case law. In Scotland there is no counterpart to ward of court procedure.

103. The Guardianship of Infants Acts are, in general, restricted to:

(1) the appointment and powers of guardians to act after the death of one or both of a child's parents—a person may be appointed a guardian for this purpose, by a parent, by will or by deed, and the courts need not be involved at all ;

(2) the resolution, by court proceedings, of disputes between persons who already have a parental or legal relationship (e.g. as testamentary guardian) to the child.

Most guardianship proceedings concern disputes between married couples over the custody or maintenance of their children. The Guardianship of Infants Acts also cover disputes between a parent and a guardian, or between two guardians, and (in England since the Legitimacy Act 1959 and in Scotland under the Illegitimate Children (Scotland) Act 1930) enables the putative father of an illegitimate child to claim custody and access. A person who has no established parental or legal relationship to a child cannot apply to a court to be appointed the child's guardian unless (i) the child has no parent, no guardian and no person having parental rights with

respect to him ; or (ii) the court exercises its power to appoint, in certain circumstances, a guardian to act jointly with a surviving parent ; it is only in these comparatively rare situations that relatives or foster parents caring for a child can apply for guardianship.

104. When an application is made to a court under the procedure mentioned in paragraph 103(*b*), the court's powers are to award custody of the child ; to award care and control of the child (it is possible to grant custody to one person and care and control to someone else, for example, custody, involving decisions about matters such as schooling, might be granted to the father, although the child might live with and be brought up by the mother) ; to order the father to pay maintenance in respect of the child ; and to order reasonable access to the child. All these orders may be varied or discharged by the court on a subsequent occasion. The power to award custody is in general terms and is not restricted to the parties to the dispute ; and it appears that the court may have power to award custody to a third party, even a non-relative, if it considers that course to be the best for the child's welfare.

105. Section 1 of the Guardianship of Infants Act 1925 lays down that where the custody or upbringing of an infant (a child under 18 in England and Wales, under 16 in Scotland) is in question, the court " shall regard the welfare of the infant as the first and paramount consideration " in deciding what order to make. The rights and duties of a guardian towards a child comprise most of those of parents. Where the guardian acts jointly with a surviving parent the parent would normally retain the custody of the child, but the court has power to make an order giving custody to the guardian.

The extension of guardianship to relatives and foster parents

106. Adoption is clearly distinguishable from wardship, and guardianship and custody orders under the Guardianship of Infants Acts (in the following paragraphs referred to collectively as " guardianship ") in that it is permanent and it extinguishes the parental rights and responsibilities of the natural parents. It is additionally distinguishable from guardianship in that anyone caring for the child may (subject to certain conditions) make an application. Guardianship is not available in the kinds of situation mentioned in Part IV, where adoption seems inappropriate and guardianship would be more appropriate. We have proposed that adoptions by a single natural parent and adoptions by a step-parent in the case of a legitimate child should not be allowed and that guardianship should be available in these cases. Among the situations where adoption remains available in law, but guardianship would seem more appropriate, both for relatives and for foster parents, are the following: where the chief motive of the applicants is to have security of care and legal status as the guardian of the child ; where the natural parent wants to keep in touch and this is desirable ; where there is an element of risk that the applicants may not be able indefinitely to continue as parents, e.g. because they are elderly or may not continue in good health ; where there is a good chance that natural parents may eventually wish to and be able to resume care of the child. At the same time, there would be no reason why guardians should not at a later date be able to apply for an adoption order if otherwise

eligible, e.g. the step-parent of an illegitimate child, or relatives where the natural parents may have dropped out of the picture and the relatives want to take full responsibility for the child. Such applications for adoption would be dealt with on their merits and subject to the criteria laid down for adoption applications.

107. There are three reasons why the existing wardship jurisdiction would not be adequate to cover the situations described in the preceding paragraph. First, the wardship jurisdiction is restricted to the High Court, and these cases are not in general of such difficulty or importance as to require the attention of a High Court Judge ; and there is no wardship jurisdiction in Scotland. Second, the circumstances in which relatives and foster parents may apply for legal custody, the basis on which such applications are to be decided, the procedures to be followed, and the powers of the court, require in our view, a degree of precision in their legal formulation and definition ; this is lacking in the very wide wardship jurisdiction. Third, wardship leaves the court with continuing, direct and comprehensive powers of control over the child, which would be unnecessary and inappropriate in the kinds of situation we have in mind for the extended availability of guardianship.

108. We accordingly consider that guardianship should be made available by statute to foster parents and to relatives who are already caring for a child. In order to cut out wholly unjustified or frivolous applications, the requirements in regard to care and possession and, in the case of foster parents, obtaining local authority permission would be the same as for adoption (see paragraphs 131 and 75–80). This means that foster parents would be eligible to be made guardians only after the child had been in their care for at least a year at the time of the order and, in the normal case, the child's parents agreed. In addition, where the child had been in the care of the applicants for less than five years, the permission of the local authority to apply for guardianship would be needed (whether or not the parents consented) and an order should not be made until at least three months after the date when such permission was requested. In cases where the child had been with the applicants for 5 years or more, the foster parents should be able to make a direct application to the court without first obtaining local authority permission. In these latter cases however the foster parents should be required to notify the local authority of their intention to apply for guardianship, and an order should not be made until at least three months had elapsed from the date of such notification. In all cases, the local authority would prepare a social enquiry report for the court (see paragraphs 143–144).

109. In the case of relatives wishing to apply for guardianship in respect of a child in their care, local authority permission would not be required, but they would be required to notify the local authority of their intention. An order would not be made until at least three months had elapsed from the date of notification. The local authority would prepare a social enquiry report for the court, as in other guardianship applications. The requirement of a specific period of care and possession would not be appropriate to the situations covered by the existing guardianship jurisdiction (mainly disputes between parents), and we do not suggest its extension to these situations.

No other criteria of eligibility to apply for guardianship seem necessary ; the court would take all relevant factors into account in deciding what was best for the welfare of the child.

110. Since a guardianship order can be reviewed by the court at any time, there seems no need of formal provisions for the giving of parental consent. The parents of the child should be notified of the application, and should be parties to the case with a right to attend and be heard. The court would then satisfy itself, by questioning the parents if they were present, or by appropriate written or oral evidence if they were not, that they were agreeable to the granting of the application ; this is one of the matters that would be covered in the social enquiry report. In cases where one or both natural parents were not present and had not been notified of the hearing, the court should be able to proceed with the application on being satisfied that the parents could not be found, or, in the case of the putative father of an illegitimate child, that his identity was not known, or that he was not maintaining, and had had no recent contact with, the child. If a parent who did not know of the application subsequently wished to take over the care of the child, he or she would be free of apply to the court to revoke any guardianship order, so as to make this possible. Any other person or body with an interest should also have a right to be heard.

111. One object of enabling relatives and foster parents to apply for guardianship is to provide a means of settling, in the interests of the child, disputes between natural parents and other persons who are caring for their child. This extension of guardianship jurisdiction should not, therefore, be dependent on the agreement of one or both of the natural parents. We do not, however, propose that it should be made possible to confer guardianship on relatives or non-relatives who have some connection with the child (e.g. former foster parents), who wish to become guardians but do not have care of the child. There are some situations in which relatives are caring for a child, e.g. the illegitimate child of a young and unstable girl, in which the welfare of the child may best be secured by ensuring that the relatives can retain care of the child unless and until a court allows otherwise, and if necessary that the mother's access to the child is controlled by the court. Guardianship should accordingly be available to relatives caring for a child (subject to the requirement of three months' care and possession at the time of the order) even without the agreement of the child's parents. The court would hear both the relatives and the parents before deciding what was best for the child ; the care of the child would remain within the family, and the court's order would be subject to review.

Court procedure and powers

112. In applications for guardianship the applicants, the child's natural parents and any other interested persons or bodies (e.g. the local authority, in the case of a child in care) will be parties to the proceedings, and the court, having heard them all, will then decide what order to make, the welfare of the child being the first and paramount consideration. The court will also require an independent source of information and advice about the applicants' situation and other relevant circumstances. In the matrimonial

jurisdiction the court has power to obtain a report from a probation officer or the local authority before reaching its decision, but at present there is no comparable power in guardianship cases. Nor do the courts have power in guardianship cases to make a supervision order or to commit the child to the care of the local authority, as they may do, in exceptional circumstances, in matrimonial cases. We are informed that representations have already been made to the Home Secretary that in guardianship cases the courts should have all these powers as they already have in matrimonial cases ; and that this has been agreed in principle. It is important that these powers should be available in the case of guardianship applications by relatives other than parents, and by non-relatives. In paragraphs 143–144 we discuss a procedure for ensuring in particular that the court will have, in such cases, a full report on and assessment of the position of the child, the applicants and the natural parents. The procedure for resolving disputes, both in adoption and in guardianship applications by foster parents and relatives, is discussed further in Part VII.

113. A guardian can obtain a passport for his ward and is then free to take the child overseas (unless he is appointed by the court in wardship proceedings in which case he must obtain leave of the court). As matters now stand, therefore, there would be nothing to prevent relatives or foster parents appointed as guardians from taking the child overseas, even with a view to permanent emigration, without the consent or even the knowledge of the child's parents. In proposing the extension of guardianship we have in mind primarily those situations where it is not desirable to cut the child's links with his own parents. We suggest therefore that relatives and foster parents appointed as guardians under this extended jurisdiction should have to obtain the leave of the court to taking or sending the child overseas, except for short holiday periods expressly permitted by the terms of the court order.

114. Our proposals mean that there will be cases where relatives and foster parents are appointed guardians of a child against the wishes of his natural parents. As guardianship law stands the parents will have the right at any time to ask the court to revoke the guardianship order so that the child may return to them. An essential feature of guardianship, by contrast to adoption, is that it does not finally cut the child's links with his natural parents and it is subject to review by the court. There may however be parents who are unable to accept the court's decision to make others the guardians of their child, or who are unstable, and who consequently make regular applications to the court for revocation of the guardianship order. Unless there has been some material change in the relevant circumstances the court is most unlikely to revoke or vary its order, and the main effect of such repeated applications for revocation or variation would be to cause anxiety and distress to the child and the guardians. In order to give protection against such anxiety and distress we propose that the court should have a discretionary power in guardianship proceedings to make an order restraining the child's parents from applying for revocation of the guardianship order without express leave of the court. The court could make such an order either when it granted the initial application by relatives or foster parents to become the child's guardians, or on any subsequent occasion when dealing with an application to revoke or vary the original order. The court would

then be able to ensure that no subsequent application for revocation or variation could be made by the child's parents unless it was satisfied that there had been some change in circumstances which made it desirable to hear an application. The child and the foster parents would be secure against the uncertainty and distress that might otherwise be caused by repeated applications for revocation.

115. Paragraphs 112–114 set out certain additions to guardianship law which would be necessary if it were extended to relatives and foster parents as we have proposed. Subject to these additions, we think that the existing Guardianship of Infants Acts contain all the necessary provisions to cover this extended range of cases, and that no modification would be required. This means that the court would have power to award custody, and care and control; to determine access; to appoint someone other than the applicants to be guardian (as in present guardianship); and in exceptional circumstances to commit to the care of the local authority or to make a supervision order. These powers would be available to the court, subsequently, at any application for variation of the order. We discuss the question of maintenance in paragraphs 119–122.

Effects of guardianship orders

116. The natural parents would still be the parents in law. Guardianship would only put in suspense, not sever, their parental rights. Normally custody and care and control would both vest in the guardian(s). The court would have power to vary the order subsequently. Applications for variation (or revocation) could be made by the natural parent(s) or by the guardians. It would be possible for the child's natural parents to be kept in touch with the child where this seemed appropriate and for the welfare of the child, but their access would be under the control of the court. Guardianship would be effective in law only until the child reached majority in England and Wales (although in practice the courts do not enforce the control of parents or guardians, e.g. over where a child lives, after the sixteenth birthday) or in Scotland only until the child reached the age of 16. The child would retain his own name, and would continue to inherit from his natural parents. He could inherit from his guardians only by will. Eligibility for family allowances and for tax relief would be as under the present law, that is a guardian maintaining the child would receive an income tax child allowance in respect of the child, and a family allowance, if eligible, unless the child's parents were paying sufficient towards the child's maintenance to retain the family allowance.

117. Where relatives or foster parents were appointed as the guardians of a child in the care of a local authority or voluntary organisation the responsibility of the authority or organisation would lapse, since their quasi-parental responsibility could not co-exist with that of the guardians. In the case of a child received into care under section 1 of the Children Act 1948(1), the guardianship order would have the effect that the child went out of care on being taken into the care of the guardian. If the authority had passed a resolution assuming parental rights, under section 2 of the 1948 Act(2), the guardianship order would have the effect of revoking the

(1) In Scotland section 15 of the Social Works (Scotland) Act 1968.
(2) In Scotland section 16 of the 1968 Act.

resolution. It would likewise revoke an order of a court committing the child to care. The court would, of course, hear the local authority before reaching any decision, and would have power to make a supervision order if it granted the guardianship application. In the case of a child in the care of a voluntary organisation, the guardianship order would mean that the Boarding Out Regulations, and the obligation on the applicants to return the child to the organisation if requested, would cease to apply.

118. We think it important to stress that our main object in proposing the extension of guardianship is to give greater security for children, and for persons other than parents who are caring for children. Security is threatened when a child is the subject of conflict or of divided control. Arrangements whereby, for instance, one party has custody of a child, a second has care and control (see paragraph 104), and the first (or a third) party has rights of access, are all too likely to be confusing and damaging to the child. These difficulties may be unavoidable in some disputes between the child's own parents ; but they should not be allowed to spill over into the new guardianship situations we have proposed. In our view it should be the guardians who have both custody and care and control, and the courts should be able in appropriate cases to restrict or prevent access by parents if necessary, e.g. where visits by a mentally ill parent may be highly disturbing to the child.

Financial aid

119. At present a guardian's allowance of £2 9s. a week may be paid to a guardian under section 29 of the National Insurance Act 1965 if a child's parents are both dead and one had been an insured person. Under the Guardianship of Infants Acts, the court has power to order the father to pay maintenance in respect of the child (see paragraph 104). The question arises as to what kind of financial help, if any, should be available to foster parents or relatives applying for guardianship through the extended availability which we propose. On the other hand many foster parents wishing to apply for guardianship may be unable to afford to do without the boarding out allowance paid by the local authority or voluntary organisation, and the benefit of guardianship would for that reason be denied to the child.

120. This particular issue is, however, part of a wider issue altogether, namely whether allowances of any kind should be available under certain circumstances to adoptive parents also. We have referred earlier, in discussing the changes in the pattern of adoption, to the apparent increase in numbers of children with special needs (see paragraph 14). It has been suggested to us that more adoptive homes might be found for such children (handicapped, mixed race, older children, families of children), if financial help were available—for instance with people who already have children and feel unable to assume an extra financial burden. " Subsidised adoption " is already accepted in certain cases in some of the United States of America and we are seeking information about these developments.

121. If the principle of financial aid were accepted, two important aspects would need consideration :

(1) what criteria should be used to decide which guardians and adopters should be eligible for an allowance ;

(2) who should pay for such allowances?

In regard to the first of these, it is important that the decision of foster parents or relatives as to whether their application should be for adoption or guardianship should not be influenced by financial factors. Nor should the decision of the natural parents as between adoption and guardianship be so influenced. Therefore similar principles and criteria should apply to both kinds of case. Courts when granting an order would presumably assess the need for an allowance on the basis of the financial circumstances of the applicants and any particular problems of care presented by the child himself. This is one of the aspects which would be covered by the social work report for the court. The second issue of who would finance allowances is more complicated. It could be held to be unfair to natural parents to be liable to contribute towards the maintenance of their child for an indefinite period when surrendering parental rights, though not irrevocably, under a guardianship order, when if the child had been adopted their liability, would have ceased under the law as it stands at present. At the same time it would be inappropriate to seek contributions from natural parents in respect of a child who had been adopted and in respect of whom the natural parents had relinquished permanently and completely their parental rights. An alternative would be that allowances should be available from public funds, for example, where a child had been in the care of a local authority or voluntary organisation the authority or organisation should continue to pay a boarding out allowance, or a guardian's allowance could be paid as at present under the National Insurance Act 1965. The natural parents should not be required to contribute. If allowances were paid by a local authority or voluntary organisation, the question would arise as to whether and to what extent the agency should continue to keep in touch with the family receiving the allowance to meet the need for public accountability for the expenditure.

122. The committee is inclined to the view that allowances should be available in guardianship cases under the extended availability we envisage, and that there might be a case for introducing subsidised adoption. We recognise however that this whole issue poses problems, and would welcome views on it.

Propositions for consideration

19. The existing range of legal provisions for the substitute care of children is incomplete, in that the law provides no generally available means, short of adoption, whereby persons other than natural parents caring for a child may obtain legal recognition and security for their relationship to the child. (Paragraphs 106–108.)

20. The existing rights to apply for custody under the Guardianship of Infants Acts (which we call, for convenience, "guardianship") provide such legal recognition and security, and should be made available to relatives and foster parents already caring for a child (subject to the requirements set out in proposition 21). (Paragraph 106.)

21. Irrespective of whether the child's natural parents consent to guardianship:

(*a*) foster parents should not be able to apply for guardianship until they have cared for their foster child for at least a year, and

should have an unfettered right to apply to the court if they have cared for the child for five years or more (paragraph 108);

(*b*) foster parents who have cared for a child for at least one year but less than five years should be able to apply for guardianship only if the local authority consents (paragraph 108);

(*c*) relatives, and foster parents who have cared for a child for more than five years, should be required to notify the local authority of their intention to apply for guardianship, and an order should not be made until at least three months have elapsed from the date of notification (paragraphs 108 and 109).

22. The child's parents, and any other interested person or body, should be a party to such a guardianship application, with a right to be heard before the court takes its decision. (Paragraphs 110 and 111.)

23. The powers of the courts in dealing with guardianship applications by relatives and foster parents should include:

(*a*) in exceptional circumstances, power to make a supervision order whether or not it grants the application, and to commit the child to the care of the local authority on refusing the application (paragraph 112);

(*b*) on making a guardianship order or dealing with a subsequent application for its revocation or variation, power to order that no application to revoke or vary the order may be made by the natural parents without express leave of the court (paragraph 114);

(*c*) control over whether the child may be taken or sent overseas by the guardians. (Paragraph 113.)

24. In other respects the powers of the courts should be similar to those for guardianship cases under the present law, covering custody, care and control, and access (see proposition 27 regarding maintenance). (Paragraph 115.)

25. The welfare of the child should be the first and paramount consideration in the exercise of all these powers. (Paragraph 112.)

26. When guardians are appointed by a court for a child in the care of a local authority or voluntary organisation, he should thereby cease to be in their care, and any court order committing him to care or resolution assuming parental rights should be revoked on the making of the guardianship order. (Paragraph 117.)

27. Further consideration should be given to the possibility of allowances and subsidies for guardians and adoptive parents, in particular whether allowances should be available, what criteria should be used to decide who should be eligible to receive them, and who or what body should be responsible for paying them. (Paragraphs 119–122.)

PART VI—LEGAL PROCEDURES BEFORE THE COURT HEARS THE APPLICATION

Present procedure

123. The evidence before us was virtually unanimous in assuming that the final decision whether or not a child shall be adopted should continue to be taken by a court. Adoption is a legal process, involving a permanent and radical change in the legal relationship between the child, his natural parents and the adopters. Full statutory regulation, and the use of judicial process, seem to us essential safeguards when a change in personal status of so far-reaching a kind as adoption is decided. They are essential for the protection of the rights and interests of the people involved, especially the child, and for the resolution of conflicts when these arise. They are also necessary for the resolution of questions of eligibility, which may, for instance, raise difficult legal problems of domicile. It follows that adoption orders should be granted by a court of law. We discuss the court hearing and the kind of court required in Part VIII. This part is concerned with procedure before the final court decision.

124. In agency cases, both for parents giving their child for adoption and for the adopters, the procedure at present falls broadly into two stages, the first involving the agency and the second the court. During the first stage, the agency offer a social work service to the natural parents, to enable them to reach a satisfactory decision regarding their own and their child's future. At the same time they assess whether it is in the interests of the child to be placed for adoption, and whether it is likely that a suitable placement can be found. In good agency practice, the agency remain in contact with the parents for as long as necessary, whether the parents decide to keep their child or not. Where a decision to relinquish for adoption seems likely, the agency must fulfil certain requirements laid down by the Adoption Agency Regulations. These are to arrange for the parents to sign a memorandum explaining the legal procedures of adoption in simple terms ; to elicit certain specified information about the parents and the child ; and to have the child medically examined. When the child has been placed with prospective adopters, and an adoption application is made to the court, the parents must sign their consent ; this cannot, however, become final until the court decides to grant an adoption order, and the parents retain the right to withdraw it up to that moment. Then they are interviewed by the guardian/curator *ad litem*, and receive notice of the hearing ; they have the right to appear before the court and be heard. Finally, they are notified of the court's decision.

125. The first stage for the adopters is a home study which the agency carry out to assess their suitability to adopt. For this purpose the agency obtain the information and make the enquiries specified in the Adoption Agencies Regulations, and make their own professional assessment. The agency then place the child with the adopters (after approval by the agency's case committee), and are responsible for the supervision of the child in the home until the adopters notify the local authority of their intention to apply for an adoption order as required by section 3(2) of the Adoption Act 1958. During the period between notification and court hearing (a minimum of three months), the child is under the supervision of the local authority ; this

is known as " welfare supervision ". The adopters meanwhile complete their application and file it with the court. The court appoint a guardian/curator *ad litem*, fix a time for the hearing of the application and serve the requisite notices on the natural parents and anyone else with a claim to be heard (the " respondents "). The guardian interviews the applicants as part of his enquiries into " all circumstances relevant to the proposed adoption ", and makes a confidential report to the court. The actual hearing is attended by the guardian/curator and by the applicants and usually by the child(1). Any respondents may also appear and be heard, at a different time if necessary in order to preserve confidentiality.

Drawbacks to the present procedure

126. The present procedure was devised so as to cover both independent and agency adoptions ; and, for the purposes of the present law, an adoption agency is defined in terms of a body making arrangements for the adoption of a child, i.e. in terms of placement only. Future procedure must be appropriate to a situation in which only an agency may place a child for adoption with non-relatives, and no agency will be registered for this purpose unless it forms part, or has access to the services, of a wider family social work service (see Part III). The evidence before us indicated widespread dissatisfaction with the procedure outlined in paragraphs 123-125. The dissatisfaction concentrated on three main aspects.

(1) In agency cases the natural parents and the adopters are involved with at least two different social workers, the agency's worker and the guardian/curator, whose inquiries largely duplicate each other. The applicants may also be visited by a third social worker, the welfare supervisor, not to mention the health visitor. The evidence suggests that adoptive parents are bewildered by these different visiting social workers and often fail to distinguish between them or to understand their respective functions. This duplication of visiting is regarded by many of those most experienced in adoption work as a wasteful and ineffectual use of scarce social work resources.

(2) There is some feeling that the court is not brought in until a stage when it is too late to have any real effect on the outcome ; it is difficult, unless compelling grounds exist, to refuse an application which is legally in order, given that the child has by then been established in the applicants' home for several months.

(3) The consent procedure, and in particular the fact that the law allows parents to withdraw their consent at any time before the adoption order is actually made, creates uncertainty and anxiety for adopters and natural parents alike, and is almost universally regarded as unsatisfactory.

The need for welfare supervision : the probationary period

127. Section 3 of the Adoption Act 1958 contains two requirements which are interlinked. The applicants (unless one of them is a parent of

(1) In Scotland there is normally no hearing. The application is considered by the sheriff in chambers.

the child or the child is above the upper limit of compulsory school age) must notify the local authority, at least three months before the date of the order, of their intention to apply for an adoption order. The child must also have been continuously in their care and possession for at least three consecutive months immediately preceding the date of the order, not counting the first six weeks of the child's life. The purpose of this second requirement is to allow a period for the child to settle in the home and for the applicants to adapt to their new role as parents. This three months' period largely overlaps the period of welfare supervision and the role of the welfare supervisor is to watch over the child's well-being and to assist the settling-in process.

128. Under the present law, the full responsibility for the welfare not only of the child but also of the adults involved rests effectively with the agency up to the point when notice of intention to apply for an adoption order is given (at which point the local authority begins to supervise the placement). The agency plays a crucial role in the selection of the adopters and in the actual placement decision and supervises the child until this notice is given. It is obvious to us that this contact between agency worker and adoptive family should continue throughout the whole procedure, through the court hearing and indeed subsequently in appropriate cases and where the adoptive family so wishes. It is the support and help of the familiar worker from the agency which the adopters most need at this time. Because of his intimate knowledge of the situation, it is also the agency worker who can best make a useful report to the court.

129. The transfer of supervisory responsibility to the welfare supervisor at a relatively late stage, apart from being confusing to the adopters, may be positively damaging, e.g. if (as does happen) there is inadequate liaison between the agency worker and the welfare supervisor and conflicting advice or information is given to the adopters. Welfare supervision by the local authority should accordingly be abolished in agency cases and full responsibility for the protection of the child, and for supervising and advising the adopters, should be placed squarely upon the agency alone right up to the hearing. This will both make a better use of scarce social work resources and provide a better service to the adoptive family and to the court. As a consequence, it will no longer be necessary for adopters to notify the local authority of their intention to apply to the court for an adoption order.

130. Not all adoption agencies are sufficiently equipped to assume this extra responsibility at the present time. Our proposals for the achievement of higher agency standards will take time, and a transitional period will be needed before the propositions put forward in our report can be fully implemented (see paragraph 50 and proposition 12). An agency which was unable or unwilling to provide the supervision we have described would not qualify for registration under our proposals in Part III. In so far as agencies already keep in touch with adopters after welfare supervision has begun, this proposal will mean a net saving of the time of social workers as well as a more valuable supervisory period.

131. The length of this supervision period should clearly continue to be tied in with the care and possession requirement. Suggestions have been put

forward that the care and possession period (at present three months) should be lengthened and that, given a procedure for finalising consents to adoption at an earlier stage (discussed later in paragraphs 147-54), the chief objection to a longer waiting period before the court hearing (i.e. the risk of withdrawal of consent) will have been removed. Ideally a longer period could be used for " educating " and preparing adopters for the future, but we are not convinced that adoptive parents, despite relief from anxiety about withdrawal of consent, can look ahead sufficiently to gain really effectively from a longer waiting period imposed on them at this point in time. For some, this would impose considerable practical problems (e.g. where people work abroad). We propose therefore that the minimum care and possession period should remain three months, but this should be seen as a minimum period and not as the norm. It will be up to the agency, during the supervision period, to help adopters decide when they are ready to apply to the court, to advise them to wait where this seems desirable, and, where an application has been lodged, to ask the court for more time if necessary. We expect that the practice will develop of having a longer period before the hearing, along with a gradual extension of agency work with adoptive families, as resources permit, after the court hearing.

The role of the court : the guardian ad litem

132. The role of the guardian/curator *ad litem* is more difficult to decide. In the evidence which we have received, and in our own discussions, a variety of views have been expressed. The most difficult issue is whether the appointment of a guardian/curator should be mandatory in all adoption cases irrespective of the circumstances, as under the present law, or whether his appointment should be at the discretion of the court, or whether this appointment is necessary at all. On this basic issue sharply conflicting views are expressed. Some regard it as indispensable to appoint a guardian/curator in every adoption case to provide the court with an assessment made by a person independent of the agency and of the parties ; others see the present requirement to appoint a guardian for this purpose as no more than a duplication of the agency's work, which is at best wasteful and unnecessary and at worst positively harmful, and would like this requirement abolished. There are, however, a number of related issues which seem to us less difficult. We discuss these other issues first, since they help to bring more clearly into focus the arguments for and against the appointment of a guardian/curator in agency cases.

133. The facts establish clearly that the placement decision taken by the agency is nearly always the crucial one in an adoption arranged by an agency. The subsequent series of checks, by the welfare supervisor, the guardian and the court, rarely have any effect on the outcome. Nearly all agency placements result in an order being made. This fact underlines what we have already said about the need to concentrate on improving the standards of adoption agencies. The avoidance of unsatisfactory placements by agencies provides a more effective safeguard for the child and for the adults concerned than can be provided by any procedures which do not operate until after the placement has been made. Safeguards to ensure the rightness and suitability of individual placements should be built into good agency practice, through the use of effective casework consultation and supervision, through proper use of case committees and through effective decision-making machinery.

Under our proposals for registration an agency would not qualify for registration unless its organisation was satisfactory in these respects.

134. The fact that the agency's placement decision is crucial has led some to suggest that the present system brings in the court and the guardian too late, and that the court should have to approve the placement, or even the agency's decision to accept a couple as prospective adopters. Such suggestions seem to us to rest upon a failure to distinguish the different roles and skills of a social work agency on the one hand and a court on the other. A social work agency is directly involved with its clients and their problems, and with assessing human situations, personalities and motives. A court is independent of all the parties to a case, and its members require above all the capacity of impartial judgment in accordance with the law and the evidence. To implicate a court directly in the work of a social work agency would mean the mixing of distinct and incompatible functions, and would destroy the independence of the court if it was involved, at a later stage, in judging the work of the agency. The selection of children for adoption, and of adopters, and the placement of children in adoptive homes are matters for social work agencies, not courts, just as final decisions on the granting or refusal of adoption orders are matters for courts, not agencies.

135. We suggest that the proper relationship between an adoption agency and the court is one of accountability. The law ought clearly to recognise the decisive part played by the agency in arranging an adoption by making the agency directly accountable to the court. Under the present system it is the guardian/curator, not the agency, who reports to the court on an adoption application. The agency is rarely represented in court and rarely has any direct contact with the court ; the guardian acts as a buffer between them. Yet in agency cases, vital aspects of the background to the total situation which the court must judge comprise assessments made and decisions taken by the agency. The court cannot be expected to reach an informed decision unless it has a first hand account of these assessments and decisions from the agency itself, and the opportunity to question the agency. In all cases therefore the agency should make a full written report direct to the court, should be a party to the case and should be represented at the hearing so that the court may ask questions (see paragraph 215 for situation if there were no hearing).

136. We do not take the view that, if the agency were made directly accountable to the court, there would no longer in any circumstances be a need for a guardian/curator. It is nowadays well-established that in judicial proceedings relating to family matters, and especially in cases affecting children, the court should have power to require an independent report from a suitably qualified person. We discuss in Part VIII the question of obtaining reports from appropriate experts in adoption and guardianship cases. Our proposals will mean that agencies of high standard will report directly to the court in adoption cases, providing it with full information on all aspects of the case. Situations may nevertheless arise where the court wishes to have a report from a suitably qualified person who has not hitherto been involved in the case and who makes his inquiries on the court's behalf. Thus if the appointment of a guardian/curator ceased to be mandatory in every case, we are clear that the court should still have

power to appoint a guardian if it thought this necessary before reaching a decision. The nature of the guardian's work is such that he should always be a social worker: an officer of the local authority or a probation officer in England and Wales, and in Scotland a social worker drawn from an approved list (see paragraph 225).

137. Some of the criticism of the automatic appointment of a guardian/curator in every case is directed not at the requirement itself but at the way in which the law requires him to perform his functions. The guardian visits the natural and the adoptive parents, repeating inquiries already made by the agency. This at best causes confusion and increased anxiety; at worst it may mean that natural and adoptive parents are given conflicting information and advice and that the carefully thought-out work of the agency is undermined. It is not, however, essential that the guardian's work should be performed in this way. We suggest that the guardian (whether or not his appointment is mandatory) should in the first instance make all his inquiries of the agency, not the parties. In many cases he would be satisfied by what he learnt from the agency and would report to the court on that basis without seeing the parties. Where he thought it necessary to see the natural parents or the adopters or both, it should be made clear that his sole function was to make inquiries of them so as to be able to report to the court, that they were not his clients, and that he should not usurp the casework functions of the agency. A standard format for the guardian's report to the court might be devised to ensure that all relevant aspects of each case were covered.

138. Paragraphs 133-137 have set out our conclusions on the importance of the agency's placement decision and on how best to ensure satisfactory placements; on the respective roles of the court and the agency, and the relationship between them; on the need for a guardian/curator in some cases, whether or not in all; and on the way in which he should perform his functions. There remains the question whether the law should continue to require the appointment of a guardian/curator in every case. We should emphasise that those who take differing views on this issue disagree only about means, not ends. All are agreed on the prime importance of safeguarding the welfare of the child, and the interests of natural parents and adopters. The disagreement is concerned solely with what procedure will in fact most effectively achieve this aim. We should also emphasise that we would not in any event think it right to modify the present requirement to appoint a guardian/curator in every case until our proposals for ensuring and developing standards of adoption practice were fully effective. It is only when the new, more stringent system of registration was in operation, when any agencies which could not meet the criteria for registration we have proposed had ceased to operate, and when the local authorities had had time to implement their new responsibilities to ensure the provision of a comprehensive adoption service, that the question of dispensing with the mandatory guardian/curator would arise. The two following paragraphs, which summarise the arguments for and against the mandatory guardian/curator, must be read with this in mind.

139. One argument put forward for retaining permanently the legal requirement to appoint a guardian/curator in every adoption case without exception

is that the adoption procedure would lack an essential safeguard in the court did not always have an independent report from the guardian/curator in addition to the full report from the agency or in non-agency cases, from the local authority (see paragraphs 143 and 144). The need is seen to safeguard in this way not only the child, but also the natural parents, especially unmarried mothers ; when deciding whether or not to give up their child for adoption. Doubts are expressed whether agency standards will, in the foreseeable future, be sufficiently high and reliable to warrant dispensing with the automatic appointment of a guardian/curator in every case ; and it is suggested that the agency is directly involved with the parties to a case, and will wish to justify its placement decision, so that it may be unable to offer a fully objective report to the court. It is feared that the court, without the aid of a guardian/curator, might not be able to identify features of the case on which the agency should be questioned, or which would warrant the appointment of a guardian/curator to make further inquiries. There is concern about the situation that would arise if, in addition to abolishing welfare supervision and making the appointment of the guardian/curator discretionary, it became accepted in England and Wales, as it is in Scotland, that an adoption application could be granted without a hearing (this is discussed in paragraph 215) ; this could mean some adoption orders being granted solely on the basis of a written report from the agency which had made all the arrangements for the adoption. It is also suggested that the guardian/curator can act as a spur to good practice which agencies might welcome.

140. The main argument put forward for making the appointment of a guardian/curator a matter for the discretion of the court is that, however strong the arguments for a mandatory appointment may appear in theory, it simply does not provide an effective safeguard in practice. The evidence shows that in practice the guardian/curator almost invariably endorses the adoption application or, if he does not, the court makes the order despite any doubts he may express ; this is what happens under the existing system, and any improvement in agency standards would reinforce this argument. It is pointed out that the only way in which the guardian/curator could effectively influence the vital placement decision would be to involve him before this decision is taken (a proposal which we reject for the reasons given in paragraph 134). It is further pointed out that the guardian/curator may be no better qualified, and quite possibly worse qualified, than the agency's workers ; and, however well qualified, he cannot possibly acquire the same intimate knowledge of all aspects of the case as the agency. It is argued that a good agency, concerned to offer service and not over-identified with its clients, will present an honest, objective and comprehensive report to the court ; and that given such a report, courts should be able to identify aspects of a case which cause concern and to inquire into them, either directly of the agency or by appointing a guardian/curator. In so far as courts found difficulty in this respect, it is suggested that the answer is growing knowledge and expertise on the part of those sitting in the courts (see paragraph 207) and not the automatic appointment of a guardian/curator. Similarly, this automatic appointment is not seen as the most appropriate and effective way of improving standards of practice. Finally,

it is pointed out that an automatic appointment involves an enormous amount of effort spent simply in checking what a competent agency will already have done properly; much of this effort achieves no practical results and would be better spent in increasing the resources and improving the standards of agencies.

141. The proposition which we put forward for consideration is that the appointment of a guardian/curator should not be automatic, but the court should have power to make such an appointment. In making the appointment the court would specify the particular aspects of the case into which it wished the guardian/curator to inquire, and when appointed he should perform his functions in the manner indicated in paragraph 137. One corollary of this proposition is that the practice of adjourning a case, to enable the guardian to make his inquiries, would probably become more common but we envisage this happening only in a relatively small minority of cases.

Procedure before the hearing in non-agency adoptions and guardianship applications

142. Paragraphs 127 to 141 have considered the need for welfare supervision and a guardian *ad litem* enquiry for the court in the case of agency adoption applications. We now consider the position in cases where no agency is involved. Under our proposals in Parts IV and V there will still be a number of applications for adoption by step-parents (of illegitimate children), relatives, and foster parents; and there may be considerable numbers of applications for guardianship by relatives and foster parents. In most of these cases no agency will have been involved; it is accordingly necessary to devise alternative means for carrying out certain functions that will be performed by agencies in agency cases. These functions are supervision and protection of the child; help and advice to the applicants (including, in these cases, advice whether guardianship or some other course would be more appropriate than adoption); ensuring that the position of the natural parents is safeguarded and that they also receive any advice they may need; and making a report to the court. As with adoptions arranged by agencies, we think that these functions should all be the responsibility of one social work agency, that is the local authority, and should not be divided between two or three different agencies or social workers.

143. In the case of foster parents who have cared for a child for less than five years, the local authority's permission will be required for an application to adopt the child and for a guardianship application. The local authority will be either that in whose care the child is, or, in the case of private foster homes, the local authority of the area where the foster parents live, which will already be supervising the home under the Children Act 1958. The decision whether or not to grant permission will involve an investigation of the whole situation (including the circumstances of the natural parents) and the authority will be in a position to give any help, advice or protection that may be required, and to make a report to the court if the foster parents are given permission to apply. Once the local authority's consent for an application has been sought, the authority will be

in a position comparable to that of the agency in an agency adoption, and it should perform the functions mentioned in the previous paragraphs.

144. In the case of relatives, and foster parents who do not need local authority permission to apply for a guardianship or adoption order (i.e. those who have cared for a child for more than five years, see paragraphs 75–76) the applicants will be required to notify the local authority of their intention to apply for such an order. The local authority should then carry out the duties normally undertaken by an agency, and no order should be made for at least three months after the date of notification. This means that the local authority will be involved in all guardianship and adoption applications arising from non-agency placements, either by investigating the circumstances before giving permission for application to be made to the court or, where the permission of the local authority for such an application is not required, by carrying out protection functions following notification, that is advice, supervision, inquiry, and eventual reporting to the court. These are the duties carried out by an agency in agency placements. The court will have a discretionary power, as in agency placements, to appoint a guardian/curator *ad litem* to make further inquiries on its behalf.

145. It is necessary to consider what limitations should be placed on the parent's power to frustrate such applications by removing the child from relatives or from a foster home while an application for an adoption or guardianship is pending or contemplated. We consider that where the child has been with the relatives or foster parents for five years an application to the court for an adoption or guardianship order, made without the parent's consent, should have the effect of freezing the situation or, in other words, debarring the parents from removing the child from the home until the court has heard the application or specifically given the parents leave to withdraw the child. Such applications made *without* the parent's consent would therefore be protected in the same way as applications now made *with* the parent's consent. The more difficult question arises when the child has been with foster parents for a shorter period and local authority permission has to be obtained before application can be made to the court, or with relatives applying direct to the court without the parent's consent. In some of these cases the natural parent may be unstable or incapable of coming to any decision on a long-term plan for the child and, once alerted by local authority inquiries, may react by withdrawing the child from the home when this may be contrary to the interests of the welfare of the child. We therefore propose that, where the child has been in the home for a minimum of twelve months, an application to the local authority for leave to apply for an adoption/guardianship order should debar the parent from withdrawing the child from the home until a decision has been reached by the local authority or the local authority has given the parent leave to do so. As there is some local authority supervision of all foster homes there is unlikely to be any undue delay on their part in rejecting any applications from foster parents which are frivolous or irresponsible or where it is clearly desirable that the parents should retain full parental rights. Where the local authority grants the foster parents leave to apply to a court then, providing application is made within, say, one month of leave being granted, the child should remain in the home until the court has decided the application or given the

parent leave to withdraw the child. An application to a court made by a relative who has had the care or possession of a child for a minimum of three months should debar the parent from removing the child without the leave of the court.

Consent to adoption : the present procedure

146. The present law prohibits the making of an adoption order without the consent of every person who is a parent(1) or guardian of the child (section 4 of the Adoption Act 1958), unless the court dispenses with consent on one of the seven grounds specified in section 5 of the Act. Evidence of consent may be given by personal attendance at the court hearing the adoptive application or by the signing of a consent document suitably attested. The consent of a mother is not valid if given before the child is six weeks old. Consent may be given without knowing the identity of the proposed adopters, and may be given unconditionally, or subject to conditions with respect to the religious persuasion in which the infant is proposed to be brought up. If consent has been given and an application for an adoption order is pending in any court, the parent or guardian who gave the consent may not remove the child from the applicant without the consent of the court (section 34 of the Adoption Act 1958). It is the duty of the guardian *ad litem* to ascertain that every consent to adoption has been freely given(2) and with full understanding of the nature of an adoption order. It is open to the parent or guardian to withdraw consent at any time before an adoption order is made, even though the applicants may by then have cared for the child for several months (a minimum of three months care and possession of the child is necessary before an order can be made), except that the court has discretion to dispense with consent (see paragraph 172).

147. There appear to be no grounds for departing from the two basic principles in the existing adoption law on consents, that adoption should normally be possible only with parental consent ; and that it should be open to a court to dispense with consent on certain specified grounds. But there is, as we have stated, general dissatisfaction with the timing and nature of the consent procedure, which gives the parent several opportunities to change her mind before an adoption order is actually granted. This encourages indecisiveness on the part of the parent and imposes unnecessary strain and confusion on her ; and it may prevent her from coming to terms with her own decision to place her child for adoption and from planning her own future, since her parental responsibility for her child remains legally unimpaired until the adoption order has been granted. If there is a delay in making the application or arranging the hearing, this period can be considerably prolonged. The welfare of the child is at risk, whether indirectly on account of the adopters' anxiety and fear of totally committing themselves to the child, or directly in cases where, due to vacillation on the part of the mother, the child may either have to be moved or his future remain uncertain.

(1) The mother of the child may herself be a minor but, however young, she is fully competent to consent to her child's adoption and the consent of her parents is not required. A putative father of an illegitimate child is not a parent for the purpose of giving consent to adoption (see Re M (an infant) [1955] 2 All E.R. 911 [1955] 2 Q.B. 479).

(2) This is not specifically required of the curator ad litem under the Scottish rules.

The evidence also suggests that the provisions for dispensing with consent are inadequate for mothers who will not sign consent to adoption, yet leave the child in the care of others and are incapable of providing a satisfactory home for the child themselves.

148. Under the existing system parental rights and responsibilities are not terminated at the time the parents give consent to adoption but continue until the adoption order is made and the rights are transferred to the adopters. As there is no surrender of parental rights on giving consent it automatically follows that under this system any consent given by a parent before an adoption order is made must necessarily be provisional and revocable. The argument in favour of this system is that there is never a period when the child is not the legal responsibility of either natural or adoptive parents. In some overseas countries, notably some of the United States of America, the opposite principle is followed, and a child is not placed for adoption until the parent has taken an irrevocable decision to have the child adopted and has given up all her rights and responsibilities. During the interim period parental rights and responsibilities rest with the adoption agency, which acts as the child's guardian until an adoption order is made. Some other countries, such as New Zealand, adopt a middle course ; a parent who wishes to have her child adopted appoints the Superintendent of Child Welfare as the guardian of the child until such time as the child is legally adopted, and the Superintendent is then the person who gives consent to the child's adoption. The parent cannot recover parental rights at any time while an application to adopt the child is pending, or until the proposed adopters have had a reasonable opportunity to make an application. They may however recover parental rights at any other time if an adoption order has not been made. While any of these systems can be operated, we think for the reasons outlined in the preceding paragraph that some change in our existing system is desirable in the interests of all parties.

Proposed new consent procedure

149. There appear to be strong grounds, in agency cases, for making it possible for consent to become final before an adoption order is made ; this could be done even before the child was placed (see paragraphs 150, 155 and 156). It would be in the interests of the child, not only by diminishing the risk of his removal from the adoptive home, moves being particularly damaging to the very young child, but also by lessening the adopters' anxiety and the harmful effect of such anxiety and tenseness on the child and on his developing relationship with his adoptive parents. It is however, essential that safeguards should be retained to ensure that the mother's consent is given freely and with full understanding of its implications, and that the child should be provided for if adoption does not prove possible.

150. Under the present system the court has to ensure that every consent has been freely given with full understanding of the nature and effect of an adoption order, consent being in respect of a specific adoption application. We propose that this function should remain with the court but that the consent should normally be to adoption in general. It would entail a relinquishment of parental rights and duties by the parent and it

would be irrevocable. The giving of consent should be dealt with at a court hearing, which should be distinct and separate from the hearing of a particular adoption application and would often (though not necessarily always) take place before the child was placed in the adoptive home. Parental rights and duties would be conferred on the adoption agency which would retain them until such time as a final adoption order was made. Thus, the purpose of the court hearing the consent application would be to terminate the existing parent/child relationship and to protect the child pending adoption by conferring temporary legal guardianship on the agency (see also paragraphs 152 and 158).

151. In straightforward agency cases, where the parent (1) seeks adoption and there is no dispute, applications will be made jointly by the parent and the agency. The court's function will be to satisfy itself that the parent really wants the child to be adopted and understands the implications of such a decision, and that in reaching the decision she has been aware of the possible alternatives. The onus will be on the agency to show that the alternatives to adoption have been discussed with the parent and that she has had the benefit of proper advice and help. The court will have mainly a safeguarding role. So long as it is satisfied on the foregoing matters it will not have discretion to reject an application even when, for instance, it considers that it would have been possible for the child's mother to bring up the child herself. It will be open to the court to adjourn the case if it is not satisfied, to allow further time for discussion or help.

152. Before declaring the child legally free for adoption, however, the court will have to satisfy itself that the child fulfils the legal criteria for being adopted (e.g. that he is resident in this country), and that the rights and interests of any other relevant person or body are considered (any person whose consent to adoption for this child would be required, the putative father, anyone with rights and duties of a parent). It will be up to the agency to satisfy the court that no other person or body has rights or interests in the case; and to arrange through the court for any interested parties to be served with a notice of the hearing and to have an opportunity to be heard. We deal with cases in which conflict or dispute arise between those directly related to the child or with an interest in the child in paragraphs 161–171, and with grounds for dispensing with consent in paragraphs 172 and 173. We indicate in paragraph 163 that disputes should be dealt with at the initial court hearing, and in paragraph 171 that applications for dispensing with consent should in agency cases also be dealt with at this hearing.

153. Some who favour a consent procedure on these lines consider that the consent should not become final and irrevocable at the court hearing, and that a parent should be allowed a further period of, say, a month, in which to change her mind. In our view, no application should be made to the court to give consent until the parent has had sufficient time to come to a decision to give up her child. If the court is then satisfied that she is ready to make the decision, and understands its consequences and what alternative possibilities might be open nothing would be gained by not making the consent final then and there. If the court is not

(1) The parent is referred to in the singular but in the case of a legitimate child the consent of both parents is required.

satisfied that the parent is ready to take an irrevocable decision it should adjourn the hearing. Consent must become final at some point in time, and the appropriate time is at the court hearing, on the court's being satisfied that the parent has made up her mind.

154. We consider that consents should be given formally in court rather than informally before a single justice or a court officer as at present. We recognise that the giving of consent to adoption is for parents an experience involving deep feeling and that a formal court hearing might often be viewed by parents (perhaps more particularly by unmarried mothers) with much anxiety. We consider however that the decision to relinquish a child for adoption is so important for both the child and the parent that the full safeguards offered by a court are essential. Such safeguards are necessary to an even greater degree if the suggestions made in paragraph 150 are accepted, namely that consent should be to adoption in general, that parental rights should thereby be terminated, and that the consent should be irrevocable. Other suggestions later in this paper, in regard to the role of the guardian ad litem and to the court hearing, further support this view. In paragraph 213 we suggest that consent hearings should normally be before magistrates. It is important that the proceedings should be in private and not in any way intimidating. It should be borne in mind that, although it is the parent who is relinquishing parental rights, she will not go to court alone but will be accompanied by a representative of the agency, who will be joining with her in the application.

155. We suggest in paragraph 149 that hearings of consent applications should normally take place before the child is placed for adoption, so that the child's security in the adoptive home is safeguarded from subsequent vacillation on the part of the parents. Nevertheless, it is of the utmost importance that adoption placement should take place as early as possible in the child's life, since the early establishment of the parent/child relationship is vital for good emotional development. If the system we are proposing is to work well in practice, with the purpose of securing the child's welfare, it is essential that the consent application should be set down for hearing promptly, once the parents have reached their decision. A court hearing consent applications must be able to offer quick service, with the timing of hearings determined by the circumstances of each case and not by court's administrative arrangements. (The court system is discussed in Part VIII.)

156. Notwithstanding the benefits of a final consent being given before a child is placed with adopters, placement before final consent has been given should remain possible. Indeed it may often be desirable because of the importance of early placement which we have emphasised in paragraph 155. Many adoptive parents wish to take a child as early as possible, e.g. on discharge from hospital. This allows the very early establishment of parent/child relationships in the adoptive home, and avoids any interim placement for the child. It should be left to the professional judgment of agencies to weigh the advantages of early placement, and to assess the mother's readiness to make a decision.

Minimum period for mother's consent

157. Under the present law, a mother's consent to adoption is not valid unless given at least six weeks after the birth of the child ; this delay is

intended to ensure that she has recovered from the effects of childbirth. Article 4 of the European Convention on the Adoption of Children provides that, if no fixed period is specified in the law, the mother's consent shall not be accepted unless it is given at such time after the birth of her child as, in the opinion of the competent authority, will have enabled her to recover sufficiently from the effects of giving birth to the child. While the average time for such recovery is considered to be from four to six weeks, we think that here as in other respects the law should lay down a general criterion rather than a rigid rule of thumb. There might however be advantage in retaining a minimum period within which consent may not be given, otherwise courts might never feel able to accept a consent made during the first weeks or months of a child's life without medical evidence that the mother had recovered from the effects of the birth. Although more research(1) is being undertaken on this point, the indications are that most mothers reach a final decision within one week of their child's birth. The minimum period could therefore be as little as one week, as in several overseas countries, although for an adequate recovery from childbirth four weeks might be more appropriate.

Parental responsibility after consent

158. The position of the child during the period between final consent and the making of an adoption order has then to be considered. As indicated in paragraph 150, the corollary of an early final consent hearing is that the rights and duties of a parent of the child are conferred by the court on the agency pending the making of an adoption order. There will however be cases where an adoption placement turns out to be inappropriate or impossible to effect. We do not propose that the court, when hearing an application for giving consent, should be expressly required to be satisfied that adoption will be possible. An agency is unlikely to support an application unless they are reasonably confident that they can find an adoptive home for the child. In the rare case where adoption did not prove possible, the agency would retain legal rights over the child and responsibility for providing whatever alternative plan seemed to be in the child's best long-term interests. It has been suggested that, in such cases, an agency should be free to re-open discussion of alternative plans with the natural parent and that in some such cases the care of the child by the parent herself might be reconsidered. We think that, once an agency has agreed to accept a child for adoption placement, and the parent has finally and irrevocably relinquished parental rights at a court hearing, there should be no further approach by the agency to the parent. This is clearly right in cases where it is in the child's interest to be relinquished by his parent even where adoption may be difficult to achieve e.g. where the mother totally rejects a handicapped child. In other cases where placement may be difficult the parent may be reluctant to relinquish parental rights except with a firm assurance that an adoptive home will be found. In such cases the agency would be likely to defer the consent hearing until a placement had been effected or was assured.

(1) The Association of British Adoption Agencies is undertaking, with Home Office support, a study of the attitude of unmarried mothers to the timing and finality of consents. The results of this research are expected to be available in time for consideration by the Committee in preparing their final report.

159. The responsibility placed on agencies for the guardianship of children following the legal consent of parents and pending adoption placement implies the need for resources for the temporary care of children (see paragraph 38(*c*)) and generally to meet their legal responsibility for such children. They will also need resources, or access to resources, for alternative long-term care for any children for whom adoption placement is not achieved, although such cases should be rare. It is expected that voluntary adoption placement societies will increasingly be in a position to meet this need as they expand their resources to provide a comprehensive service. Where they are unable to do so it will be essential for them to establish close links with local authorities or other general child care agencies so that, where long-term care for a child proves necessary which they themselves are unable to provide, responsibility can be transferred to the other agency. An agreement for such a transfer of responsibilities should be registered with the court.

Consent procedure in non-agency cases

160. The procedure we have proposed for the early and final giving of general consent to adoption would clearly not be appropriate or adequate in cases where no agency was involved. Where relatives or foster parents were making application to adopt a child already in their care the applicants would normally be known to the natural parents. Consent would be to a specific adoption application and would not become final and irrevocable until an adoption order was made. Legal rights and responsibilities would be transferred as at present at the time the order was made. Nevertheless, we consider that the giving of consent should, as in agency cases, be dealt with at a court hearing, the natural parent being the petitioner and attending the hearing. Such a hearing could be arranged at the same time as the adoption application. Alternatively, it could be arranged separately and in advance, in which case the consent would be conditional on the subsequent making of an adoption order. In cases of dispute, any application for dispensing with consent would be heard by the court hearing the adoption application. The procedure for resolving such disputes is discussed in Part VII.

Propositions for consideration

28. Decisions on the grant or refusal of adoption orders should continue to be taken by courts of law. (Paragraph 123.)

29. The requirement that the adopters shall have been caring for the child for at least three months before an adoption order can be granted should remain, although a longer period will often be appropriate. (Paragraph 131.)

30. (*a*) Responsibility for the supervision of the child in the adoptive home, and for helping and advising the adopters, should rest with the adoption agency throughout the period between the placement and court hearing. (Paragraphs 128–130.)

(*b*) "Welfare supervision" of the child by the local authority, and the requirement to notify the local authority of the intention to apply for an adoption order, should eventually be discontinued in agency cases. (Paragraph 129.)

31. (*a*) Placement decisions are matters for the professional judgment of agencies, and it would not be appropriate to involve the court, which must remain independent and impartial, in such decisions. (Paragraph 134.)

(*b*) The appropriate safeguards for the rightness and suitability of agency placements comprise concentration of available social work resources on improving agency standards, effective decision-making procedures with shared responsibility within the agency, and independent judicial scrutiny by the court. (Paragraphs 133–134.)

(*c*) The agency should be accountable to the court, making a full written report direct to the court, being a party to the proceedings and being represented at the hearing. (Paragraph 135.)

32. (*a*). The appointment of a guardian/curator *ad litem* to make inquiries for the court, should eventually be at the discretion of the court and not automatic in every case. (Paragraphs 138–141.)

(*b*) The guardian should inquire into those aspects of the case indicated by the court. He should in the first instance make his inquiries of the agency or local authority involved in the case, and should see the parties only if necessary to fulfil the instructions of the court. (Paragraph 137.)

(*c*) Guardian/curator duties should be carried out by social workers. (Paragraph 136.)

33. The changes in proposition 30(*a*) and 32(*a*) should not take effect until our proposals for ensuring and developing standards are in full operation. (Paragraph 138.)

34. Whenever adoption or guardianship is sought in respect of a child who has not been placed by an agency, the local authority should be involved before application is made to the court, either by giving consent to the application or by being notified of intention to apply, and should carry out the functions that would otherwise be appropriate to the placing agency. (Paragraphs 143–144.)

35. During the period when leave to make a guardianship or adoption application is being sought, or when the application has been made and is awaiting the court hearing, the child should not be removed from the care of the applicants without the leave of the local authority or the court, whichever is applicable. (Paragraph 145.)

36. Adoption should continue to be possible only with the consent of the child's parent, unless this consent is dispensed with by the court on one of the grounds laid down by statute. (Paragraph 147.)

37. (*a*) The law should no longer insist that consent cannot become final until an adoption order is actually granted, and should provide for a general consent to adoption in agency cases rather than a consent to be a specific application. (Paragraphs 149–150.)

(*b*) Responsibility for ensuring that consent has been given freely, and with full understanding of its implications, should remain with the court, pursuant to a separate application. Persons whose consent is required and the agency concerned should all be parties to the application and attend the court hearing. (Paragraphs 150–152.)

(*c*) The rights and interests of any other relevant person or body should be considered at this stage before the child can be considered legally " free " and eligible in law for adoption. (Paragraph 152.)

(*d*) If the court is satisfied at this hearing, the parent's consent should thereupon become final and irrevocable, all parental rights and duties being relinquished by her and vested in the agency to be retained by them until an adoption order is made. (Paragraph 150.)

(*e*) If for any reason an adoption is not effected the agency would retain such rights and duties unless they were transferred by court order, or by an agreement registered with a court, to some other body or person, or until the child attains majority. (Paragraphs 158–159.)

(*f*) Consideration should be given to reducing the minimum period of six weeks before which a mother's consent to the adoption of her child is not valid. (Paragraph 157.)

38. In non-agency adoption (i.e. application by relatives or foster parents), consent should be to the specific application, should be given at a court hearing, and should become final only at the time an adoption order is made. (Paragraph 160.)

PART VII—RESOLUTION OF CONFLICTS

Disputes to be resolved at consent hearing

161. Within the broad frame of reference of our discussions the main conflicts about the future of a child tend to be between a child's natural parents and relatives or foster parents who wish to establish a legal claim, and between individuals and agencies. The child who is the subject of the conflict is usually too young to participate, hence the importance of protecting his interests.

162. One of the main objects of the propositions we have put forward is to reduce conflict situations as far as possible. In any system however there will inevitably continue to be some conflict situations, and there must be procedures to resolve them.

163. We have suggested in paragraph 152 that at the hearing for the giving of consent the court should also satisfy itself that the rights and interests of other parties are considered and that, in cases of dispute the court will need to determine the issue. It is a basic proposition that, where agency adoptions are concerned, this initial court hearing should be used to resolve conflicts among interested parties directly related to the child including custody disputes and to declare a child " free " or not for adoption placement. Any rights to object to a subsequent placement and adoption application would end here and claims to the child by such parties later on would be eliminated.

Disputes between natural parents

164. In the case of disputes between two natural parents, it is suggested that one parent together with the agency should be able to apply to a court to free the child for adoption, the dispute to be settled by the court. It is

suggested that the rights of the putative father to apply for guardianship should be considered by the court at the initial hearing for consideration whether or not the child should be freed for adoption (see paragraphs 181–184). Such a hearing would also determine the child's legal status (legitimate or illegitimate where the mother is a married woman) and the need or otherwise to involve the mother's husband where the child is alleged not to be his.

165. Where there is conflict which is resolved at the consent hearing, any party against whom a decision is made will have the normal rights of appeal. (See Part VIII for proposals as to the courts to hear adoption applications and paragraph 193 for the present appeal procedure.)

Disputes between adoptive or foster parents and an agency

166. In disputes between adoptive or foster parents and an agency, three kinds of situations might occur: (1) an agency might wish to withdraw a child from an adoptive home in which it had placed the child and where the placement turned out to be unsatisfactory. Legal machinery already exists (section 35 of the Adoption Act 1958) for the agency to take initiative, with court protection for the applicants once an application has been lodged(1). (2) A local authority may refuse permission to foster parents to apply for adoption or guardianship in cases where the child has been in the home for less than five years. We consider that the resolution of disputes of this kind is not properly a matter for a court of law. At the same time, we recognise that professional workers are not infallible in their assessments. Indeed, the kinds of situation we are referring to are human situations and, as we indicate in paragraph 13 it is often extremely difficult, even with the best motives and professional knowledge and skill, to assess what is in a child's best long-term interests. Where the adults concerned feel aggrieved, either on their own behalf or on behalf of a child, by a local authority decision, we consider that the appropriate channel for challenging such a decision is through locally elected representatives and committee members, through whom the local authority is accountable to the public. This should provide the means whereby the public interest can be safeguarded. Under our proposals local authority consent to the making of an application by foster parents would no longer be required where a child had been in the care of the foster parents for over 5 years (proposition 16(*a*)). (3) A local authority may want to oppose an adoption application to a court in the case of foster parents applying direct (i.e. where they have had a child for over 5 years) or in the case of relatives applying to adopt. In these cases the local authority will be able to express its views in its report to the court which will make the final decision on the merits of the case (see paragraph 144).

Disputes between parent and agency

167. There will be situations where a parent wishes adoption for a child whom the agency feels unable to place, for instance, where a child is severely handicapped. It is the responsibility of the agency to help the parent find the best solution for the child from a variety of available alternatives, which

(1) Section 35 of the Adoption Act 1958 provides that an agency which has placed a child may give notice to the applicants in writing if they intend to withdraw the child from the home. Leave of the court is required for this if an application to the court for an adoption order has already been made. The child must then be returned within seven days.

might include approaches to other agencies, or possibly long-term care under the Children Act 1948 or the Social Work (Scotland) Act 1968 if adoption proves unattainable. (See paragraph 177 on the assumption of parental rights.) Some parents in this situation will decide to care for their child themselves and will often need continuing help and support. In other cases the child will require long-term care and, as we have already stressed, agencies will need access to appropriate resources.

168. There remains the situation where a parent is unable or unwilling to make an adequate plan for her child but yet will not agree to adoption. There is known to exist a sizeable group of children in various forms of care for whom no permanent future can be arranged because the parents cannot bring themselves to make a plan. There are two groups—children still living at home or privately fostered but not receiving proper care, and those in the care of a local authority or voluntary organisation.

169. Where children are still living at home or with private foster parents but not receiving proper care, we do not consider that a claim by a third party for adoption or guardianship can be justified on the grounds that removal of the child from his parents or from the care arranged by them is necessary for his own protection. A legal provision which allowed such claims would undermine the principle of preserving the natural family. The protection of children from inadequate care is a responsibility of society as a whole. The care jurisdiction in section 1 of the Children and Young Persons Act 1969 sets out comprehensively for England and Wales the circumstances in which a child may be brought before a juvenile court as in need of care or control ; provides that such proceedings may be brought only by the local authority, the police or an authorised person (the N.S.P.C.C.) ; and gives the court the necessary powers to protect the child. In Scotland the provisions of Part III of the Social Work (Scotland) Act 1968 similarly set out the circumstances under which a child who may be in need of compulsory measures of care may be brought before a children's hearing. These jurisdictions are the proper means by which society discharges its duty to protect children.

170. Where children in care are concerned, it is open to a local authority to assume parental rights (see paragraphs 174–177). We consider that it should also be open to an agency, voluntary or statutory, where adoption would seem to be in the interests of a child in their care, to apply to the court for the child to be freed for adoption and the parents' consent dispensed with (see paragraph 172–173). Where a child is boarded out, it will be open to the foster parents to apply for guardianship or adoption under the procedure we have proposed.

Cases in which a parent refuses consent

171. There will continue to be a certain number of cases of adoption applications where consent is refused: a few applications by non-relatives where placement by an agency took place before the consent hearing and where the parent subsequently declined to give consent ; a few by relatives and some by foster parents. There will also be the cases mentioned in paragraph 170 of children in the care of a local authority or voluntary organisation where the agency wishes to initiate proceedings to " free " the

child for adoption without the mother's consent. Where consent is requested to a specific adoption application (which will be the case where the child is already with applicants such as foster parents or relatives, such applicants generally being known to the parents), and the parents withhold consent, we suggest that the dispute should be determined by the court hearing the adoption application. In agency placements, the application for dispensing with consent should be made to the court hearing consent applications, as should applications by agencies in regard to children in their care mentioned above. The same grounds for dispensing with consent should apply in both types of court and both kinds of hearing.

Grounds for dispensing with consent

172. The Adoption Act 1958 (section 5) gives the court hearing the adoption application power to dispense with consent if it is satisfied that the person whose consent is to be dispensed with—

(*a*) has abandoned, neglected or persistently ill-treated the infant ; or

(*b*) cannot be found or is incapable of giving his consent, or

(*c*) has persistently failed without reasonable cause to discharge the obligations of a parent or guardian of the infant, or

(*d*) is withholding his consent unreasonably.

We consider that (*a*) above should be amended to read " has abandoned, neglected or persistently *or seriously* ill-treated the infant ". We considered whether emotional neglect or rejection should be one of the specific grounds for dispensing with consent. We think, however, that the term neglect does, if correctly interpreted, include emotional neglect and rejection. Moreover the kind of case which causes concern should be covered by the existing grounds (*c*) and (*d*) if the welfare of the child is paramount.

173. Although, as we have stated in paragraph 10, the welfare of the child is normally best secured within his own family, this is not invariably the case. As the law on dispensing with consents now stands the courts will not necessarily consider a parent to be unreasonable in withholding consent, or withdrawing it once given, even if in the particular case it seems to be against the welfare of the child that the parent should remain responsible for him. We consider that the interpretation by courts of what is " reasonable " (ground (*c*)) and " unreasonable " (ground (*d*)) (paragraph 172) should be subject to the basic proposition which we have already made (proposition 2) that, in the resolving of conflicts in adoption, the welfare of the child should be the paramount consideration.

Assumption of parental rights

174. A discussion on the resolution of conflicts is incomplete without consideration of the legal provisions for the assumption by a local authority of parental rights over a child. The questions of a parent's consent to adoption and dispensing with consent, and our proposition for an extended form of guardianship available to foster parents, are linked with the question of how to achieve greater security for a child with foster parents, where adoption or guardianship are not sought or not desired or are inappropriate.

Many so-called " tug-of-war " cases are in respect of children in the care of a local authority and boarded out with foster parents, and subsequently reclaimed by the natural parents.

175. Section 2 of the Children Act 1948 enables a local authority to assume parental rights over a child in their care where it appears to them:

(*a*) that his parents are dead and that he has no guardian ; or

(*b*) that a parent or guardian . . . has abandoned(1) him or suffers from some permanent disability rendering the said person incapable of caring for the child, or is of such habits or mode of life as to be unfit to have the care of the child.

These grounds were extended by Section 48 of the Children and Young Persons Act 1963 to include the following grounds:

(*a*) that the parent or guardian suffers from a mental disorder (within the meaning of the Mental Health Act 1959 or the Mental Health (Scotland) Act 1960) which renders him unfit to have the care of the child ; or

(*b*) that the parent or guardian has so persistently failed without reasonable cause to discharge the obligation of a parent or guardian as to be unfit to have the care of the child.

Parental rights are assumed by a resolution passed by the local authority. If the parents, if any, have not consented to the resolution it is open to them to object, in writing, and if they do so the resolution lapses unless confirmed by a court. (Section 16 of the Social Work (Scotland) Act 1968 makes similar provision in Scotland.)

176. Information was obtained from local authorities in England and Wales regarding children reclaimed by parents in 1968 against the local authority's strong advice. It appears that such reclaims were few where full use was made of the provisions for the assumption of parental rights, and that these provisions did on the whole provide protection to children from arbitrary and sudden removals from care, although some authorities could have made more use of these provisions. There are nevertheless certain situations where the existing powers seem to be inadequate: (1) in cases of the temporary disability of the parent or guardian (for instance, a parent may have a serious mental breakdown but be likely to recover after short-term intensive treatment), (2) where grounds exist in relation to one parent but not to the other (for instance, a mentally ill mother may, on discharge from hospital, not yet be fit to have the care of her child, she may even need further periods in hospital ; the husband against whom parental rights cannot be taken may exercise his right to withdraw the child from care thus returning the child to the care of his wife despite her continuing incapacity), and (3) in the interpretation of the word " reasonable " (that the parent or guardian has so persistently failed without reasonable cause to discharge the obligations of a parent . . ."). We consider that the law should be amended to remedy these

(1) Section 48(1) of the Children and Young Persons Act 1963 states that, where a child is in care and the whereabouts of his parents or guardian have remained unknown for not less than 12 months, he shall be deemed abandoned for the purposes of assuming parental rights.

gaps. In regard to (1) (temporary disability of parent or guardian), section 2(*b*) might be amended to read " . . . or suffers for the time being or permanently from a disability . . .". In regard to (2) (where grounds exist in relation to one parent but not to the other), it should be possible to pass a resolution against one parent only, with a rider, however, preventing the other parent from removing the child from care if this entailed placing him in the care of the person against whom parental rights have been assumed. With regard to (3) it should be explicit in the law that the present grounds be interpreted in the light of the paramountcy of the child's welfare.

177. It has been suggested that the assumption of parental rights should be possible, even where none of the existing legal grounds apply, solely on the request of, or with the consent of, the parents. Children may be received into care under section 1 of the Children Act 1948 or section 15 of the Social Work (Scotland) Act 1968 by request or with the consent of the parents without this implying fault or blame on their part, but parental rights can only be assumed where the parents are positively deficient or neglectful in some way. Cases arise where parents genuinely feel it to be in their child's interest for legal guardianship to be vested temporarily or permanently in the local authority, for instance where they themselves feel unable or incapable of exercising their responsibilities and wish to give legal security to their child. There are children whose parents request adoption where this cannot be achieved for some reason or another (see paragraph 167). There are other children in care and likely to remain in long-term care. Where the local authority do not hold parental rights, it is the natural parent who retains ultimate legal responsibility for the child and who must therefore continue to be involved in any significant action or decision regarding the child (e.g. consent to operations, consent to marriage if the child is under age). In such cases it might be desirable for parental rights to be vested in the local authority who could then plan the child's future with confidence. To meet the needs of this group, the present grounds would need to include " any other circumstances where this seems desirable and the parents agree ".

178. A further defect in the present law is that it does not protect children who are in the care of a voluntary organisation. It has been suggested that such organisations should have the power to apply to a court for parental rights in regard to a child in their care. It might however be held that the power of parental rights should carry with it full accountability to the general public, which a voluntary organisation does not have. One possibility would be to give local authorities power to assume parental rights in respect of a child in the care of a voluntary organisation. Alternatively, given an extension of section 1 of the Children Act 1948, a local authority might be empowered to receive such a child into their own care (without necessarily altering the existing care arrangements for the child). They could then exercise their existing powers to assume parental rights.

179. The assumption of parental rights safeguards the child's " in-care " status, parental rights being vested in the local authority. If the child is boarded out, his security in the foster home is safeguarded against removal by the parents. The foster parents themselves have no parental rights but care for the child on behalf of the local authority. Those foster parents wishing to have custody or parental rights themselves would need to apply for adoption or guardianship.

The putative father

180. The consent of the natural father to the making of an adoption order in respect of his illegitimate child is not required because he is not considered a parent for this purpose(1). If however he is " liable by virtue of an order or agreement to contribute to the maintenance of the infant ", he must, under rules of court, be made a respondent to the application and receive a notice of the hearing. Even if this does not apply, he may be made a respondent if the court considers him to be a person who ought to receive a notice of the hearing. In England and Wales the guardian *ad litem* has a duty to inform the court if he learns of any person claiming to be the father who wishes to be heard by the court on the question whether an adoption order should be made. (Second schedule to the Adoption Court Rules)(2). Section 3 of the Legitimacy Act 1959 entitles the father of an illegitimate child to apply for custody of the child under the Guardianship of Infants Acts in England and Wales, and in Scotland the father may apply for custody under the Illegitimate Children (Scotland) Act 1930.

181. Various problems have arisen in practice as the evidence suggests. The right of the putative father to apply for custody enables him effectively to delay and possibly frustrate an adoption application. The mere existence of this right makes courts hesitate to proceed with an adoption application without ensuring that the putative father is notified. Courts interpret the need to involve the putative father differently. Some insist on every effort being made to seek him out. Where a putative father in England and Wales wishes to make an application for guardianship, this is heard in a different court from any adoption application and at a different time.

182. The position of the putative father has been increasingly acknowledged and his importance in the situation recognised in good casework practice in recent years. He is seen as having problems of his own, and as having an important influence on the mother's feelings and her ultimate decision for the future of her child. In addition, agencies placing a child for adoption need to know as much about him as possible in order to make a full assessment of the child, and in order also that the child should benefit later by information about both his parents. Our proposition for a nationally available adoption service as part of a comprehensive social work service for families and children presupposes that agencies will wherever possible try to help both parents. Agencies actively seeking to involve the putative father have met with success in gaining his co-operation, and in helping the mother see the benefit of this.

183. It is however essential that his position in law should be clarified, and anomalies as between his rights under the two legislations straightened out. Where a father is actively involved in helping the mother or is interested in the child and co-operating with the social worker in planning the child's future, he has rights and duties in regard to his child. His role has too often been neglected. His involvement should be encouraged in practice, he should be made a respondent to an application, and his right to apply for guardianship should remain. His interests and rights should however be decided at

(1) See Re M (an Infant) [1955] 2 All E.R. 911 [1955] 2 Q.B. 479.
(2) In Scotland, the Act of Sederunt stipulates that the curator must inform the court of any other person who should be given notice. The putative father is not specifically mentioned.

the stage of the initial hearing for consent (see paragraph 164), and, where he wishes to apply for guardianship, or to contest a proposal for the child to be adopted, such an application should be dealt with as an integral part of the consent hearing.

184. It is equally important however to ensure that the desirability of involving the putative father does not cause undue delay in the freeing of a child for adoption and in placement. There will remain mothers who are unwilling to identify the natural father, some who do not even know who he is, and many men who will be unwilling to become involved. A mother cannot be forced to identify the natural father of her child. A court hearing the consent application will need to make a decision after hearing what the mother has to say and having advice from the agency. The court will need to be satisfied, if the putative father does not appear, that he does not wish to or that the agency has made all reasonable efforts to trace him without success. Failure to establish the identity of the father should not prevent the court from declaring a child free for adoption, and once the court ratifies the consent all other rights are eliminated. Where the putative father is known but shows no interest, the agency will be required to indicate the efforts made to discuss the matter with him. There will be cases of putative fathers who seek to exercise the legal rights open to them (e.g. to apply for custody) without having taken any apparent effective and positive interest in either the mother or the child. While such a right should be retained, the court hearing such an application for custody will no doubt continue to determine the case on its merits, bearing in mind that the welfare of the child should be paramount, and taking account of the wishes of the mother and alternative plans being put forward. The court would have the benefit of a social report. There should be a time limit fixed for any application for custody by the putative father so that the child's status can be determined at an early stage. The time limit will expire when the court ratifies consent, and it is important that all efforts are made to find him before this. Failure to find him should not prevent or unduly delay the making of an adoption order, though the court will have power to adjourn the hearing if necessary.

The mother's husband

185. At present, a child born within wedlock is presumed legitimate, hence the consent of the mother's husband is required as a parent, in any adoption application. In practice, many courts will accept evidence presented by the mother of non-access, e.g. where a separation order is in force, or where a mother has made an affidavit regarding non-access, or gives evidence in person. Other courts insist in all cases on the consent of the husband. Much distress can be caused through the disclosure to the husband of the existence of an illegitimate child. It can be damaging to the marriage where this is still viable, and pointless and unreasonable where a couple may have lived apart for many years.

186. While the principle that no child should be deprived of his legitimate father is valid, it is also valid that, where the evidence suggests that the husband is not the father, he should not have to be involved. It should be clear under the law that if there is adequate evidence that the husband is not the father, he should have no rights and should not be approached.

Where, in cases of doubt, the husband must be approached and, denying paternity, refuses to sign consent, he should be made a respondent with a right to be heard. If the husband is involved and is thought to be the father of the child, then his consent as well as the mother's should be given or dispensed with at the preliminary hearing.

Propositions for consideration

39. In agency adoptions, the initial court hearing (for dealing with consents) should be used to resolve conflicts among interested parties directly related to the child, to determine the position of the putative father of a child, and that of the mother's husband where she is married, and to declare the child " free " for adoption. (Paragraphs 163–165.)

40. While accepting the principle that the natural family should be preserved wherever possible, in cases where a child is in care with no satisfactory long-term plan in mind it should be open to an agency to apply to the " consent " court for the child to be freed for adoption and the parents' consent dispensed with. (Paragraphs 168–170.)

41. Applications for consent to be dispensed with should in agency cases be made to the " consent " court, and in relative and foster parent applications to the court hearing the adoption application, the same grounds for dispensing with consent to apply. (Paragraph 171.)

42. (*a*) The grounds for dispensing with consent should include serious ill-treatment. (Paragraph 172.)

(*b*) The interpretation by courts of what is " reasonable " and " unreasonable " should be governed by the basic principle that the long-term welfare of the child should be paramount. (Paragraph 173.)

43. There should continue to be a right of appeal on matters of law, against decisions in regard to consent and dispensing with consent. (Paragraph 165.)

44. The grounds for the assumption of parental rights by a local authority in respect of a child in their care should be extended:

(*a*) to cover the temporary disability of a parent and

(*b*) to protect children where parental rights may be assumed in regard to one parent but not the other. (Paragraphs 174–176.)

(*c*) There should be an additional ground for assuming parental rights " in any other circumstances where this seems desirable and the parents agree ". (Paragraph 177.)

(*d*) It should be explicit in the law that, in cases of conflict, the phrase " without reasonable cause " should be interpreted in the light of the paramountcy of the child's welfare whether short or long-term. (Paragraph 176.)

45. Means must be found for safeguarding children in the care of voluntary child care agencies in cases where it is desirable to assume parental rights. (Paragraph 178.)

46. The involvement of the putative father in the planning for a child's future should be encouraged; his position in law should be clarified

and his rights and interests, including any application by him for custody, should be dealt with at the initial court hearing. Failure to find him should not delay the "freeing" of a child for adoption. (Paragraphs 180–184.)

47. While no child should be deprived of his legitimate father, where the evidence establishes that a mother's husband is not the father of the child, he should not be involved. In cases of doubt and where the husband must be involved, his rights should be clarified at the time of the initial court hearing, and his consent obtained or dispensed with. (Paragraphs 185–186.)

PART VIII—THE COURT

187. England and Wales, and Scotland, have distinct and completely different court systems. Although the same general principles apply in all adoption and guardianship cases, the practical considerations involved in deciding what changes to propose are not the same either side of the border. For convenience this Part is accordingly divided into two sections, one for England and Wales and one for Scotland. In the section on England and Wales we indicate which of the changes we discuss could be introduced without affecting matters other than adoption and guardianship, and which are linked with and dependent upon possible changes in court jurisdiction and arrangements affecting other matters as well.

England and Wales

Courts having jurisdiction : the present position

188. In both adoption and guardianship three courts all have jurisdiction at first instance: the High Court, the county court and the magistrates' court. Less than 50 adoption applications, however, are heard in the High Court each year. It is said that even this small number of cases gives the High Court experience of adoption which is valuable in dealing with appeals ; and that the privacy and anonymity afford by the High Court is valued by some applicants, particularly certain minority groups. Nevertheless, in practice adoption and guardianship jurisdiction at first instance is effectively shared between the county court and the magistrates' court. (Here we should mention, however, that international adoptions under the Hague Convention on Adoption will, under the Adoption Act 1968, be heard only in the High Court ; this is because such cases may involve complex issues of private international law. Provisional adoption orders, which are required if a person desires to remove a child from this country for adoption overseas, can only be granted by the High Court or a county court for similar reasons.)

189. For a considerable number of years magistrates' courts have been dealing with some 8,000 adoption applications a year. The county courts now deal with some 16,000 applications a year ; this is a relatively recent development. In 1956 the county courts heard just over 5,000 applications and, as the total number of adoptions annually has increased, so has the

proportion heard in the county courts. Some 80 per cent of adoptions granted by county courts are by non-relatives ; and some 65 per cent of adoptions granted by magistrates' courts are by relatives. In guardianship, the position is reversed. Nearly all cases (some 4,500 a year) are heard in magistrates' courts, and the county courts deal with fewer than 100 cases a year.

190. All the courts with adoption and guardianship jurisdiction deal also with very considerable numbers of civil cases which are comparable in that they concern family and personal problems and questions of personal status, and in most cases they involve children. The High Court deals with all defended divorces. (These will be dealt with in the new Family Division when this is set up.) County court judges deal with some 35,000 undefended divorces each year. The magistrates' courts have jurisdiction to deal with matrimonial matters falling short of divorce, and deal with some 20,000 such cases a year. The magistrates' courts also deal with affiliation, and there are nearly 9,000 of these cases a year.

191. These are the main jurisdictions affecting children and families. Looking very broadly at the actual division of the work at first instance, it can be said that the High Court deals with defended divorce suits ; the county courts with undefended divorce and ancillary relief, especially questions relating to the custody of children, and most adoptions by non-relatives ; and the magistrates' courts with matters within the family, other than divorce (most adoptions by relatives, guardianship, matrimonial disputes, affiliation). Our proposals would reduce the numbers of adoptions by relatives and increase the number of guardianship applications, so that, given a continuance of the existing distribution, the balance between the county courts and the magistrates' courts would not be greatly affected.

192. Adoption applications in magistrates' courts are heard by the juvenile court, whose main business is dealing with children in need of care or control and prosecutions of children under 17. All the other family cases heard in magistrates' courts are dealt with by the domestic court, i.e., the court which hears domestic cases (other than adoptions) as distinct from criminal and other non-domestic business. The juvenile court in each area is drawn from a special panel of magistrates selected for their suitability to deal with cases involving children. All magistrates are eligible to sit on the domestic court.

193. Channels of appeal in these "family" cases are likewise various. Appeals from the High Court and the county court go to the Court of Appeal ; and those from the magistrates' court go to the High Court (which thus has a dual role, both first instance and appellate) except that affiliation appeals go to quarter sessions.

Is there a need for changes ?

194. Parts V, VI and VII of this paper have discussed the need for the judicial process in adoption and guardianship, and the role of the court. The court's functions under our proposals will be to decide whether to

ratify parental consent to adoption and to transfer guardianship of the child to the agency pending adoption ; to decide disputes between parents and others about whether a child is free for adoption and about the guardianship of the child, and to decide whether to dispense with parental consent to adoption ; and to decide whether to grant applications for adoption and guardianship and, if not, whether to make an alternative order. These functions are similar to those which are now exercised under adoption, guardianship and matrimonial legislation. With one exception the legal changes we propose are not such as in themselves to demand alterations in the existing courts and jurisdictions.

195. In the evidence before us, however, dissatisfaction is expressed at the present division of adoption jurisdiction (at first instance and on appeal) between different courts, and about the actual court hearings, and suggestions are made about the composition of courts hearing adoptions. Our proposals for the extended availability of guardianship and for the resolution of disputes about children, require that the rights and interests of all the adults involved should be considered and decided at the same time in the same court ; but under the present law separate adoption and guardianship or wardship applications in respect of a child can be, and sometimes are, made simultaneously or successively in different courts. We have accordingly considered whether changes are desirable in the existing court arrangements.

Should there be a specialised adoption court ?

196. There are a number of reasons why a specialised adoption court, to hear all adoption cases at first instance, would not be satisfactory. Such a court would have to deal with guardianship applications under our proposals for the extended availability of guardianship, since guardianship will be an alternative to adoption, taking the place of some adoptions under the present law. It would not be logical to split jurisdiction in guardianship cases according to whether the application was by a parent (as in the case of nearly all applications at present) or by some other person (as under our new proposals). And the kinds of family situation which lead to matrimonial proceedings in magistrates' courts are essentially no different from those which lead to guardianship and custody proceedings under the present law. It would thus be sensible for the jurisdiction of the adoption court to include the matrimonial jurisdiction of magistrates' courts as well as the entire guardianship jurisdiction, i.e. it would not be a specialised adoption court.

197. There are also practical reasons against such a specialised court. It would deal with perhaps 20,000 cases a year, arising in all parts of the country. Thus it would have to move around the country from one area to another, in which case considerable delay would be inevitable while applicants waited for the court to come to their area. Or it would have to sit in a very small number of centres, in which case it would not be sufficiently accessible and those appearing before it would have long distances to travel. Or it would have to be a part-time local court, in which case its members would hear very few cases and would not gain adequate experience of the work.

The need for unified arrangements in family cases

198. The most important reason against a specialised adoption court is that adoption and guardianship applications form only one part of a range of comparable problems affecting families and children which come before the courts. This fact makes it inevitable that we should consider whether the courts to deal with adoption and guardianship should be the same as the courts dealing with matrimonial cases, although only one part of this range of cases falls directly within our terms of reference. In our view there is a basic similarity between all these kinds of cases. The qualities and the experience required of the members of any court dealing with such cases do not vary according to whether the particular case in question is presented as a petition for divorce, or a matrimonial dispute for which some other relief is sought, or a guardianship or adoption application, etc. The problems and considerations involved are similar ; in particular, what makes for the welfare of the child does not differ according to the nature of the proceedings. The same family problem may result in one kind of proceedings in one case and another kind of proceedings in another. The personal qualities, experience and expertise of those who hear such cases can best be used if the entire range of these family problems is covered by unified court arrangements rather than being split up into separate jurisdictions according to the legal category of the application being made.

199. The idea of a " family court " to deal with all cases of the kinds we mention (together with some others which arise less frequently) has been under discussion for a number of years now. The Law Commission's programme already includes the composition and jurisdiction of courts dealing with such family matters, and thus in effect includes the question whether there should be a family court and, if so, what its jurisdiction and constitution should be. We have been in touch with the Law Commission, who have encouraged us to give consideration to the issues involved, so far as they affect adoption and guardianship. In the following paragraphs of this Part we discuss a number of general considerations which we believe to be important in relation to any court dealing with adoption and guardianship and relevant to any consideration of the establishment of a family court. This Part of our paper, and the reactions to it of those bodies and individuals who comment, are to be seen as a contribution to the work of the Law Commission in considering this matter.

200. In discussing the need for unified court arrangements for family cases, it is important to distinguish questions of jurisdiction and administration from questions of composition. The three courts which at present deal with family cases (the High Court, county courts and magistrates' courts) are quite distinct from each other in the sense that each has its own separately defined jurisdiction and its own separate administrative arrangements. They are also distinct in that different kinds of persons serve on each court. Any unification of these arrangements, e.g. by the establishment of a family court, would involve bringing together into a single jurisdiction the existing separate family jurisdictions, and establishing unified administrative arrangements in place of the existing separate ones. It would not necessarily follow, however, that the composition of such a court should be the same in every case. It would be perfectly possible

to have a family court with a unified jurisdiction and administration, but with a composition which varied according to the nature or difficulty of the case.

Standards of service : speed and accessibility

201. Before discussing specific aspects of the court arrangements we wish to stress that the object of any changes should be to improve the administration of justice and the standard of service to those who have recourse to the courts, not to produce changes which make the system appear tidier and more rational. Speed and accessibility are of particular importance. Many situations involving court proceedings are of a kind that ought to be resolved as soon as possible ; this is certainly true of family matters, including adoption and guardianship. Delay may result in suffering, and in alterations, perhaps deterioration, of the very situation which the court has to consider. Accessibility is also important. Court dealing with family matters at first instance should ideally be locally based (not further away than the nearest medium sized town) so that those appearing in them can get there without undue difficulty and without having to stay the night away from home. This is particularly important where children have to appear. There are practical problems concerned with the number of people available to serve in the courts, the buildings available and the rising number of cases to be dealt with, and unless all resources now being used for this purpose, of man power and of administrative organisation and of buildings, continue to be used, changes might create delays and a reduced standard of service.

A family court or freedom of choice ?

202. The considerations discussed so far in this Part point towards the establishment of a family court, with unified jurisdiction and administrative arrangements, but not necessarily a uniform composition. This would, however, mean removing the choice which applicants for adoption and guardianship have at present between three different courts. In important areas of the family jurisdiction however (divorce, matrimonial proceedings in magistrates' courts and affiliation in particular) there is no such choice now ; and, so far as the choice of court in adoption and guardianship may be influenced by any greater expectation of a favourable outcome in the chosen court, we do not think this is a valid reason for preserving three separate jurisdictions to hear these cases. The evidence suggests, moreover, that choice of court in adoption cases is determined to a considerable extent by such factors as familiarity, cost, speed, convenience and privacy ; and these factors could in general be catered for under unified arrangements. We appreciate, however, the reluctance of some adopters to apply in the local magistrates' court, which may mean that much private information about them is made known (albeit in confidence) to, and that they then appear before, local people who know them or of them. We suggest that this point could be met by relaxing, in adoption and guardianship cases, the rule which limits jurisdiction to a court acting for the area where the applicants or the child live ; this relaxation should

apply to consent hearings as well as final hearings and could be introduced as soon as possible without waiting for the establishment of a family court.

203. We accordingly suggest for consideration the aim of unifying the jurisdiction and the administrative arrangements of the courts dealing with adoption and guardianship and other family matters, so as to concentrate experience and expertise of these cases in a single system. The means by which this might be done involve issues going far beyond our terms of reference ; but we think it right to say that we recognise the considerable difficulties in the way of achieving this aim, consistently with the need to provide an improved standard of service, speed and accessibility. In the rest of the Part we discuss, in general terms, the composition of courts dealing with family matters, and some other points which seem to us to merit consideration in this context. Any such consideration should include the future of the whole of the jurisdiction of the juvenile court. Although most juvenile court cases are criminal prosecutions, there is a very high percentage of guilty pleas, and the welfare of the child in the context of his family and the rest of his environment is perhaps the main thread running through all juvenile court proceedings, criminal as well as non-criminal. Thus in the long run it may be thought right that the jurisdiction of the family court should include all cases now dealt with by the juvenile court.

Composition : general

204. At present, defended divorce cases are heard in the Family Division of the High Court and undefended divorces in the county courts. The magistrates also have a substantial matrimonial jurisdiction, and the sole affiliation jurisdiction. It is only adoption and guardianship that are shared among all three courts. The magistrates provide a speedy, convenient and cheap jurisdiction for the resolution of family problems falling short of divorce, of a kind not requiring the attention of a High Court or county court judge. The legislation governing jurisdiction in divorce cases is recent, and there seems no reason to expect any change in it in the foreseeable future. The existing three tier system has the considerable advantage of making use of the resources of all three courts for dealing with family cases, and any change which actually reduced the resources available for hearing family cases would cause considerable practical problems. Given a unified jurisdiction and administration, with arrangements for the allocation of cases to a court with the appropriate composition, we see attraction in the idea of a family court which made use of the respective talents and experience of High Court Judges, county court judges and lay magistrates. We would not, however, think it necessary to allocate adoption and guardianship cases to High Court Judges (except for international adoptions—see paragraph 188).

Composition : the legal element

205. The role of the court in adoption and guardianship is distinct from that of the social work agency ; and those serving on it require a capacity for impartial judgment in accordance with the law and with the evidence which is not confined to those with legal or other professional

qualifications. The court is, however, a court of law, and must have access to legal knowledge and advice to guide its decisions. In England and Wales the two main traditions in civil cases are a legally qualified person sitting alone (High Court Judge, county court judge, stipendiary magistrate); and a court consisting normally of three lay magistrates, including at least one of either sex, advised on matters of law by their clerk. Both these traditions seem to be generally accepted; and if, as we suggest, the work of dealing with family cases is to continue to be shared between judges and lay magistrates, we see no reason why cases of appropriate kinds should not continue to be heard by a court consisting of lay magistrates, receiving advice on the law from their clerk.

Composition : combining the legal and lay elements

206. Nor do we see any reason why a judge alone should not continue to decide cases. In discussions about setting up a family court the suggestion has, however, been made that some kinds of family situation coming before such a court would benefit from a combined examination by a court consisting of, say, a legally qualified chairman and two lay magistrates. We see merit in this suggestion for cases of difficulty or importance or involving legal issues which also require consideration of social factors or the resolution of disputes. In such a court each member would be able to bring to bear his or her own experience and understanding, there would be opportunity for discussion before the final decision was taken, it could be ensured that both sexes were represented, and the expertise of the family court chairman would ensure the clear and orderly presentation of the evidence and consideration of the issues.

Composition : qualifications etc. of those sitting

207. We attach importance to the qualifications, training and experience of those sitting in courts dealing with family matters. Under the present system judges and magistrates who do this work gain considerable experience in the course of the work, but are selected because they have qualifications and experience fitting them for the whole range of duties of a judge or magistrate rather than for this particular aspect. The establishment of a family court would, we suggest, involve a degree of specialisation in adjudication on family matters that should be reflected in the arrangements for selection and training. We envisage that the qualifications and experience of family court judges would include a wider knowledge of social services and social administration as well as traditional legal training. All newly appointed magistrates now receive training, but it is only for work in the juvenile court that a special panel of magistrates is selected and that additional specialised training is provided. Similar arrangements might be extended to the whole range of the work of magistrates in family matters.

Composition : the role of non-legal experts

208. Another suggestion which has been made is that the family court should include persons with relevant non-legal qualifications and experience, such as doctors and social workers. This suggestion raises the general issue whether relevant non-legal expertise required by courts should be provided

by including persons possessing this expertise on the court itself, or as assessors attached to the court, in addition to such persons giving evidence and providing reports.

209. Courts dealing with family matters frequently require professional non-legal evidence, advice, opinion and assessment, the areas of professional expertise most commonly of value in such circumstances being medicine and social work, although others (such as education) may also be of use. Irrespective of the composition of the court, evidence and reports given to the court by persons having the appropriate professional qualifications and experience will remain one of the main means whereby courts are advised on these matters. One effect of our proposals about the placement of children for adoption and about procedure before a court hearing in adoption and guardianship cases will be that a social work agency with access to medical advice will always have been involved in the case before it reaches the court and will report to the court. In adoption cases, the court will have medical reports on the child and on the applicants. The court will be able to appoint a guardian/curator *ad litem* (who will be a social worker) to make further inquiries in adoption and guardianship cases. These arrangements are additional to the right of parties to the case to call their own evidence, including expert witnesses, if they wish.

210. It does not seem to us possible to argue that, in addition to these arrangements, professionally qualified people such as doctors and social workers should, in all cases without exception and irrespective of the existence or otherwise of any special medical, social or other factors about the case, be built into the composition of the court itself. This would in our view be a misuse of highly skilled and scarce man-power.

211. Cases do, however, arise where it is difficult correctly to interpret expert evidence or reports, or where conflicting expert evidence is given on behalf of contending parties. When such difficulty arises the court should be able to obtain objective and expert help. Our proposals relating to reports to courts by social work agencies and the appointment of a guardian/curator *ad litem* will go some way towards meeting this need in relation to social factors. We suggest that the family court should have a general discretionary power comparable to the power to appoint a guardian/curator *ad litem* in adoption cases, to appoint an individual with relevant expert qualifications to inquire into a case before the court, or some particular aspect of the case, and report back to the court.

212. This proposal should enable the court to obtain expert evidence and opinion which it required. There would on occasion remain the difficulty of interpreting this evidence and opinion, especially if it was conflicting. There seem to us to be three possibilities. One is to retain the existing system in which a normally constituted court weighs up all the evidence, reports and opinions presented to it, expert and non-expert, and comes to a decision. The second possibility, at the other extreme, would be to appoint qualified doctors and social workers to the court itself. We have already suggested that this would be inappropriate and wasteful if done in every case. It might be advantageous in a relatively small proportion of cases, where difficulty or dispute arose ; but this would mean making special additions to the normally

constituted court in such cases, which might not be easily identifiable in advance. The third possibility would be to establish panels of expert assessors, and to give the court discretionary power to appoint an assessor from the relevant panel to assist it in interpreting the evidence. This assessor would sit, and retire, with the court, and would be and be seen to be independent of the parties and of those giving evidence or presenting reports to the court ; his position would be that of an expert adviser (comparable to that of a clerk to justices when advising his bench on matters of law) and the final decision would be that of the members of the court alone. On balance we think there would be advantage in giving courts power to appoint assessors as well as power to appoint experts to make inquiries and to report back to the court.

The allocation of cases

213. Matrimonial cases would no doubt be dealt with at the same levels as at present, but machinery would be needed to allocate adoption and guardianship cases between the county court judge or family court chairman, the magistrates, and the court comprising a family court chairman sitting with magistrates. For instance, a hearing to ratify a mother's consent to the adoption of her child will have to be available quickly, if our proposals on this point are not to be vitiated by delays in obtaining hearings. In general such cases might be allocated to the magistrates ; since questions of law would not normally arise, the issues involved would be similar to those which magistrates are accustomed to decide, and there should be less delay in fixing a hearing than in the county court. Where there was a dispute over whether the child should be adopted, the case might go to a family court chairman sitting with two magistrates. Applications to adopt or become guardians of a child involving no special difficulty might be dealt with by magistrates or by county court judges, as at present. Cases of difficulty or dispute might go to a family court chairman sitting with magistrates.

The hearing

214. At present adoption applications are heard in the magistrates' (juvenile) courts, the county courts, and the High Court. Consent to adoption is signed in the presence of, and attested by, a justice of the peace, or a justices' clerk or an officer of the county court. At the adoption application hearing the attendance of the applicants is required in the juvenile court and the county court. The child also must be present unless there are special circumstances making this unnecessary. In the juvenile court hearing, there are generally three lay magistrates (there must be a minimum of two), one being a woman. They are advised on legal matters by the clerk. The hearing is in camera, being attended by the applicants and child, the guardian *ad litem*, and sometimes by respondents (unless these are heard separately). Proceedings are formal, the applicants swearing on oath to the truth of the information in their application. The guardian presents his report (sometimes also on oath) which is confidential to the court. County court applications are heard by a Judge sitting alone, in chambers. There is very little formality, the applicants not being required to present their application formally on oath. The judge may have read the

papers and the guardian's report beforehand. He may have questions to ask the applicants or the guardian. If the case is straightforward, hearings in the juvenile court and the county court are short. In High Court applications, the applicants and the child are not required to attend in person.

Should there be an adoption hearing? What kind of hearing?

215. None of the evidence we have received expresses any doubt about the need for a hearing when an adoption application is heard by a county court or a juvenile court. The majority of adoption applications in Scotland, however, are granted without a hearing; and there has been no suggestion in the evidence that hearings in Scotland should be held in all cases, or even more frequently than now. It seems that in each country the present practice on this matter is accepted as satisfactory. Our proposals for a separate hearing to ratify parental consent to adoption postulate a hearing in every such case. Where, however, there has already been a hearing to declare a child free for adoption, and an adoption application in respect of that child is subsequently made with the support of an agency, there seems no reason of principle or practice for regarding a hearing as automatically necessary; the fact that no reclaim of the child is possible will remove much of the anxiety which adoptive applicants now feel, and experience in Scotland suggests that, if applicants are not lead to expect a hearing, they do not feel the lack of one. We suggest that consideration should be given to leaving to the discretion of the court whether to fix a hearing in such cases; if the applicants wished for a hearing the court would no doubt hold one. The absence of a hearing should not, however, cut across the accountability of the agency to the court. If the agency wished to supplement orally its written report, or the court wished to question the agency, this could properly be arranged without a full hearing being required in the presence of all the parties. In any case of doubt the court could be expected to hold a hearing, and certainly before refusing an application.

216. We have received some evidence of dissatisfaction with present court procedures, mainly on account of the brevity of the hearings, which seem an anticlimax after months of waiting. Where hearings are held in cases where there is no dispute or disagreement, we think there should be sufficient solemnity, combined with an atmosphere of friendliness, to create a memorable occasion. The hearing should never be perfunctory and it should be clear to all that time and thought have been devoted to the application, with genuine concern for the welfare of the child. These aims can only in part be achieved by statutory provisions and rules of court. Much inevitably depends on the judge or chairman of the bench who is responsible for the conduct of the hearing. It is important that judges and magistrates should be conscious of the importance of this aspect of adoption hearings. The matter might be covered in the arrangements for the training of magistrates, and practice directions in other cases.

Privacy

217. A further question requiring consideration is the extent to which family cases might be dealt with in chambers or in camera. On the one hand there is a legitimate public interest in the operation of all courts of

law ; and it is important that the publication of judgments of general interest should be possible. On the other hand, many family cases concern essentially private matters. The law already recognises this in the case of adoption, by providing that hearings shall be in camera. Similar considerations apply to cases arising under the extension of guardianship jurisdiction which we propose ; and it may be that there are also other family cases, not within our terms of reference, where the position is similar.

Wardship

218. The wardship jurisdiction overlaps considerably with the existing and proposed statutory provisions relating to the custody and care and control of children. It is occasionally used in an attempt to circumvent statutory provisions (e.g. if foster parents, with whom a child has been boarded out by a local authority, wish to keep the child against the wishes of the authority, they may seek to have him made a ward), and also in situations not covered by the present law (e.g. if foster parents, with whom a child has been placed privately by his parents, wish to keep him against the wishes of the parents, they may seek to achieve this aim through wardship proceedings). Decisions of the High Court in wardship cases have established the principle that, although the wardship jurisdiction is not ousted by the existence of overlapping statutory provisions, the High Court will not in practice exercise this jurisdiction in cases where the child is in local authority care and the authority is acting properly within the ambit of its statutory powers. Our proposals will fill the gaps in the law which at present lead to recourse to wardship proceedings. Since the wardship jurisdiction will be part of the jurisdiction of the family courts, clashes between it and the exercise of statutory jurisdictions would no doubt be avoided in practice. We think there would be considerable advantage, however, in establishing in the statute law the principle that, in so far as Parliament has seen fit to provide expressly by statute for the resolution of questions concerning the custody and care and control of children, these statutory provisions should be used and not the wardship jurisdiction. Such a provision would give effect, in relation to the entire range of statutory provisions, to the principle already adopted by the High Court to avoid any clash between the wardship jurisdiction and powers of local authorities.

Legal aid

219. Under our proposals the court will have, in all adoption and guardianship cases, a report from the agency or local authority involved, and power to appoint a guardian *ad litem* or other expert to inquire into the case ; and it should not normally be necessary for any of the parties to a case to be legally represented. Legal representation should however be available in any case where the interests of one of the parties may be adversely affected, and for the purposes of any appeal. Under the existing legal aid scheme legal aid is already available in adoption cases where a parent or guardian wishes to contest an application under section 5 of the Adoption Act 1958 to dispense with his consent to the adoption of his child and we think that the principle behind this provision is right. We propose that the civil legal aid scheme in England and Wales should be extended so as to enable legal

aid to be granted to any of the parties affected, in all adoption and guardian ship cases where there is dispute or disagreement as to whether the court should grant the application, and for the purposes of any appeal against the court's decision in an adoption or guardianship case. In Scotland, legal aid is at present available in these circumstances.

Projositions for early implementation

220. A number of the changes we propose are dependent on the establishment of a family court with unified jurisdiction and administrative arrangements, but several are not, and there are some that might be made pending the establishment of a family court.

(*a*) Under our proposals it will no longer be possible, even were it desirable, to allocate adoptions heard by magistrates to the juvenile court and guardianship cases to the domestic court. Since all other family cases go to the domestic court it would be logical to transfer adoptions to that court. On the other hand there are no special arrangements for ensuring that magistrates sitting on the domestic court are specially suited to this work. We propose as an interim measure that all family cases heard by magistrates should go to the domestic court, and suggest that consideration might be given to the arrangements for deciding which magistrates are to sit on this court.

(*b*) The nature of family cases is such that those involved in them should not, if it can be avoided, have to share waiting rooms and other court accommodation with people appearing in other kinds of case. When magistrates sit as the domestic court the law already requires that the sitting should so far as possible be held separately from other business. Until there is a family court the aim should be, in all courts hearing adoption and guardianship cases, to hear these cases at different times from all other kinds of business, or at least in a separate court room with a separate waiting accommodation.

(*c*) We have already said (paragraph 204) that it will not be necessary to allocate adoption and guardianship cases to High Court Judges, except for international adoptions, and we see no need, during the interim period, to retain the adoption and guardianship jurisdiction of the High Court.

(*d*) Our proposals on relaxing the present venue rules (paragraph 202) on the appointment of experts and assessors (paragraphs 208-212) on the need for and nature of hearings (paragraphs 215–216) on privacy (paragraph 217) on wardship (paragraph 218) and on legal aid (paragraph 219) can all be given effect without waiting for the establishment of a family court.

Propositions for consideration (England and Wales)

48. (*a*) Changes in court arrangements for adoption and guardianship, and other family matters, should be such as to improve the administration of justice and the standard of service to those who have recourse to the courts. (Paragraph 201.)

(*b*) In particular, delays must be avoided as far as possible and the court should be readily accessible. (Paragraph 201.)

49. (*a*) There should eventually be a unified jurisdiction and unified administrative arrangements for adoption and guardianship cases. (Paragraphs 194-195.)

(*b*) Such jurisdiction should not be given to a specialised court dealing only with such cases. (Paragraphs 196–197.)

(*c*) The maintenance of separate jurisdictions merely to preserve the freedom of choice of court which applicants now have in adoption and guardianship cases would not be justified. (Paragraph 202.)

(*d*) The rule which limits jurisdiction to courts in the applicant's or child's home area should be relaxed. (Paragraph 202.)

50. (*a*) The aim should be a unified family jurisdiction, covering adoption, guardianship and affiliation proceedings, and matrimonial disputes, perhaps ultimately including all juvenile court matters and questions of ancillary relief resulting from divorce proceedings. (Paragraphs 198-200 and 203.)

(*b*) The work of such a unified family court will continue to require the contributions of the Family Division of the High Court, county court judges and the magistracy. (Paragraph 204.)

(*c*) We envisage family court judges whose qualifications and experience would include a wider knowledge of social services and social administration as well as traditional legal training, sitting in some cases with magistrates specially selected and trained for this kind of work. (Paragraph 207.)

(*d*) The composition of the family court should vary according to the nature and difficulty of each case, with the allocation of cases decided by the family court administration. (Paragraph 213.)

51. In adoption and guardianship the family court jurisdiction might be exercised by:

(*a*) county court judges or family court chairmen sitting alone (paragraph 205);

(*b*) lay magistrates, advised on matters of law by their clerk (paragraph 205);

(*c*) a family court chairman sitting with two magistrates. (Paragraph 206.)

52. (*a*) All family cases heard by lay magistrates alone, including adoptions, should go to the domestic court. (Paragraph 220(*a*).)

(*b*) Selection to sit on the domestic court might be considered. (Paragraph 207.)

53. It should not be necessary for professionally qualified people such as doctors and social workers to be full members of the court but the court should have general discretionary powers where, for example, the expert evidence presented by the parties is conflicting:

(*a*) to appoint an individual with relevant expert qualifications to inquire into the case and report back to the court;

(*b*) to appoint, from a special panel, an expert assessor to advise and assist the court in its deliberations. (Paragraphs 208–212.)

54. (*a*) Consideration should be given to whether a hearing is required for all adoption applications but there should be a hearing in every case concerning the mother's consent. (Paragraph 215.)

(*b*) Guidance should be given, by appropriate means, on the conduct of hearings. (Paragraph 216.)

(*c*) All hearings of adoption and guardianship cases should be held in private (i.e. in chambers or in camera). (Paragraph 217.)

55. Wardship jurisdiction should be available only where there is no statutory provision for the resolution of questions concerning the custody and care and control of children. (Paragraph 218.)

56. Legal aid should be available, to all the parties affected, in all adoption and guardianship cases where there is dispute or disagreement whether the application should be granted, and for the purposes of any appeal against a court's decision in an adoption or guardianship case. (Paragraph 219.)

57. During the interim period before the establishment of a family court on the lines we have described, bringing about a unified jurisdiction and administration for adoption and guardianship cases, the following changes should be made within the existing court system.

(*a*) The jurisdiction of the magistrates in adoption cases should be transferred from the juvenile court to the domestic court, which already exercises the guardianship jurisdiction. (Para-220(*a*).)

(*b*) Selection of magistrates to sit on the domestic court might be considered. (Paragraph 220(*a*).)

(*c*) In every court with adoption and guardianship jurisdiction, these cases should be heard at different times from all other kinds of business, or at least in a separate court room with separate waiting accommodation. (Paragraph 220(*b*).)

(*d*) The adoption and guardianship jurisdiction of the High Court need not be retained, except for international adoptions under the Adoption Act 1968. (Paragraph 220(*c*).)

(*e*) Propositions 49(*d*) (relaxation of rules of venue in adoption and guardianship cases), 53 (appointment of experts and assessors), 54 (need for and nature of hearings, and privacy of hearings), 55 (wardship) and 56 (legal aid) should be given effect.

Scottish Position

221. In Scotland, three courts have jurisdiction of first instance in adoption cases—the Court of Session (Inner House), the sheriff court, and the juvenile court. In practice, however, no adoption applications go to the juvenile courts (no doubt largely because there are only four specially constituted juvenile courts in Scotland) and the juvenile courts will in any event cease to exist once Part III of the Social Work (Scotland) Act 1968 comes into operation about the end of 1970. Adoption applications to the Court

of Session are also rare, one being dealt with in 1968 compared with 2,261 applications to the sheriff court. In practice, therefore, adoption jurisdiction is virtually confined to one court, the sheriff court.

222. The Court of Session has exclusive jurisdiction in actions of divorce and other actions (e.g. nullity of marriage) which involve the personal status of the individual. The Court of Session also has a concurrent jurisdiction with the sheriff court in all other matters connected with the family and children, whether legitimate or illegitimate, but in practice, with the important exception of divorce, it is the sheriff court in Scotland which exercises this jurisdiction disposing (in 1968) of 742 actions relating to separation, aliment, etc., and 280 actions of affiliation and aliment, as well as dealing with questions affecting the custody of children.

223. The Scottish system at present therefore comes closer to a unified court system than the English system, and the only change in jurisdiction we put forward for consideration is that those adoption cases which go to the Court of Session at first instance should be transferred from the Inner to the Outer House ; since divorce, custody, and separation actions are dealt with by the Outer House, there appears to be no reason why adoption cases should be reserved to the Inner House.

224. Thus virtually all adoption cases and cases under the extension of guardianship jurisdiction we recommend would go the sheriff court. We have considered whether a different forum could be found for the separate action now proposed at which the mother would signify her consent to adoption, but we see no alternative to giving the sheriff court jurisdiction in this instance also, although we appreciate that this will be a substantial new burden on the sheriff court and may present some difficulty to natural mothers in remote areas who at present find it comparatively easy to go to a J.P. to signify their consent.

225. As in England we propose that the court should have discretion, comparable to the power to appoint a curator *ad litem* in adoption cases, to appoint an individual with relevant expert qualifications to enquire into a case before the court, in cases under the extended guardianship proceedings, cases dealing with applications from prospective adopters, and cases concerning the giving of the mother's consent. In view of the existence already in Scotland of unified local authority social work departments, the probation service is not available as in England as a source of social workers not connected with the agency making the placement (where the agency is a local authority): and, if the proposals of the Royal Commission on Local Government in Scotland are adopted, these social work departments may cover substantial regions of Scotland. We therefore suggest that as a guide to the courts an approved list should be drawn up of social workers of high standing, whether employees of local authorities, hospital service or voluntary bodies, who would be available to act as curator except, of course, in those cases in which they personally had been involved professionally.

226. A curator *ad litem* would be appointed by the court in those cases where the court wished enquiries to be made on their behalf into particular aspects of the case. There may also, however, be other cases in which the sheriff may take the view that specific enquiries on behalf of the court are unnecessary, in view of the full evidence being presented by the agency

and possibly by professional witnesses on behalf of the natural parents, but in which nevertheless the sheriff may wish to have the help of an expert in weighing up the evidence. We see some advantage, therefore, in a provision to enable the sheriff, at his discretion, to sit with expert assessors. Again, we would suggest that an approved list of assessors (who might be qualified in medicine or social work) should be drawn up. We envisage that the list of assessors would be more selective than the list of persons to act as curators.

227. At present the majority of adoption applications in Scotland are granted without a hearing. This of course is a substantial difference between the Scottish and English procedure, and we have considered whether to propose that there should be a hearing in each case in future. We are conscious, however, that this would be a substantial additional burden on the sheriff courts and would inevitably lead to delays. We take the view also that in the majority of straightforward cases, in which under the proposal set out above the mother has signified her consent to adoption some time before the determination of the adoption application, a hearing is not essential. The absence of a hearing would not exclude the possibility of the adoption agency giving oral information to the sheriff, if they signified that they wished to supplement their written report, nor would it exclude the sheriff seeking a discussion with a representative of the agency if he wished to enquire further into any matter raised in the agency's report. We therefore propose that it should continue to be within the discretion of the sheriff to decide whether or not there should be a hearing.

228. We propose, however, that there should be a hearing in every case at the point at which the mother signifies her consent to adoption. Since, in future, the appointment of a curator may be exceptional, rather than automatic, we see the hearing as essential, even where the application to the sheriff is jointly made by the adoption agency and the natural mother, to ensure that the mother's consent has been freely given and without any undue pressure from her parents or relatives or the agency.

229. Finally, our proposals in this section are based on the principle set out above, that the final decision whether or not a child should be adopted should continue to be taken by a court. This in our view rules out the use of the system of children's hearings, to be introduced under Part III of the Social Work (Scotland) Act 1968, for any part of the adoption process or for the extended guardianship proceedings which we have proposed. Under the children's hearings system three lay persons, chosen from the children's panel appointed for each area by the Secretary of State for Scotland, will be responsible for deciding, first, whether the children brought before them are in need of compulsory measures of care, and, secondly, if so, what measures are appropriate in each case. The children's hearing will be able to operate, however, only after the grounds for bringing a child before the hearing are established. Thus, if the ground for bringing the child before the hearing is that he has committed an offence, the hearing will be able to operate only if the child and his parents admit that he has committed the offence or after the fact that the child has committed the offence has been established by the sheriff. Thus the hearing will have no function of establishing the facts of the case or hearing and weighing up legal evidence. Nor will they, as in the case of lay magistrates, necessarily have the advantage of a legally qualified clerk; legal qualifications are not essential for the reporter, the official

who presents cases to the hearings. Thus the expertise which the children's hearings could contribute to adoption cases would be concerned with the evaluation of reports from social work agencies and the taking of decisions on the welfare of a child. This would amount in effect to a check on the work of the adoption agency which in our view would be inconsistent with our general principle that the agency should be responsible to the court for its own professional work, and that the present division and over-lapping of responsibility should be ended. To sum up, we take the view that children's hearings will not in any sense of the word be a court to which the legal decision on adoption could appropriately be referred, nor do we see any advantage in attempting to interpose the children's hearing between the adoption agency and the courts at any point in the adoption process.

Propositions for consideration (Scotland)

58. Adoption jurisdiction should remain with the sheriff court and with the Court of Session, but should be transferred from the Inner to the Outer House of the Court of Session. (Paragraph 224.)

59. The court should have discretion to appoint a curator *ad litem*, chosen from an approved list of social workers of high standing, to make enquiries on behalf of the court in cases concerning the giving of the mother's consent, cases arising under the extension of the guardianship jurisdiction we propose, and adoption cases. (Paragraph 225.)

60. The court should also have discretion to sit with expert assessors, chosen from an approved list of assessors (who might be qualified in medicine or social work). (Paragraph 226.)

61. It should be within the discretion of the sheriff to decide whether or not there should be a hearing for adoption applications or applications by relatives or foster parents for guardianship, but there should be a hearing in every case concerning the giving of the mother's consent. The absence of a hearing should not exclude contact between the sheriff and the adoption agency or curator. (Paragraphs 227–228.)

PART IX—MISCELLANEOUS

The link between natural parents and adopted child

230. The issues of whether, in an adoption application, the identity of the natural parents should be concealed from the adopters, and whether and to what extent an adopted child should have a right to know his origin and background are interlinked. At present, adoptive applicants may make application to the court under a serial number, if they wish their identity to be kept confidential. The names of the natural parents do however appear on the documents: on the consent form, the child's birth certificate and on the application form for an adoption order and are therefore known to the adoptive applicants. Then, at present, in Scotland, an adopted child at the age of 17 has a right to see the original entry relating to his birth. In England and Wales an adopted child can only see the original birth entry with leave of a court.

231. We fully accept the need for adoptive parents to be open and frank with the child about the fact that he is adopted, and that an adopted child should have a right—indeed he has a need—to know about his natural parents and his background (see paragraph 15). At the same time, anonymity serves as a protection both for the child and the adoptive parents on the one hand and the natural parents on the other—for the adoptive home against interference from the natural parents or the fear of this ; for the natural parents against any temptation to watch the child's progress or in any other way to feel the links still in existence. It enables both families to move into the future with confidence and with clear recognition of their respective rights and responsibilities.

232. We have stated our belief that there is a continuing need for adoption (proposition 1) and that the basic concept of adoption will remain that of providing the full security of a permanent family situation for a child, while respecting the rights, responsibilities and needs of the other people involved (see paragraph 16). If anonymity were abolished, this security could well be threatened, to the detriment of the child, and adoption brought nearer to guardianship in nature. Similarly, much distress might be caused to natural parents if the practice became widespread of children actively tracing their original parents. On the other hand the climate of opinion is changing and mothers are much less desirous of concealing the fact of having an illegitimate child. Research(1) is being undertaken in Scotland which may establish to what extent adopted persons who seek access to their original birth records actually attempt to trace their natural parents.

233. We consider there is a need for better and continuing social work help to adoptive parents up to the hearing and subsequently where this is appropriate (see paragraphs 128 and 131). An advisory or counselling service for adoptive families would cover such areas as educating adoptive parents for their role and the special responsibilities they assume in the bringing up of an adopted child, the " differentness " of adoption, and would especially focus on the question of telling the child about his adoption and his origins. Background information about the child should be given in writing to the adoptive parents to enable them to satisfy the child's curiosity as he grows up. This might include his original surname if the natural parents had not sought anonymity (see paragraph 234) but it need not necessarily be revealed to the child. If the adoption agency were named on the adoption order the adopted person would know to whom to go for background information, if the adoptive parents were unable or unwilling to supply it, or for counselling.

234. Greater openness about adoption does not however necessarily entail a knowledge of the actual names of the natural parents and other identifying information. We suggest therefore that the serial number procedure should be extended to the natural parents so that their anonymity may be preserved if they so wish. It would be necessary for the adoption agency to retain certain of the documents making up the application, submitting these to the court separately, or alternatively being responsible for collating all the papers and submitting the application to the court on behalf of the applicants. If our suggested procedure for the giving of consent at a separate court

(1) Dr. John Triseliotis, Department of Social Administration, University of Edinburgh, is undertaking this research with the support of the Social Work Services Group, Scotland.

hearing is accepted, the content of the forms would in any event be altered and the two aspects of adoption proceedings ("freeing" the child from the original parent/child relationship and establishing a new one) would be distinct. Where the natural parents and the adopters are known to each other (e.g. in relative adoptions) such a procedure would not apply.

235. In regard to the right of a child to have access to the original entry relating to his birth, we considered first the position in England and Wales where such access is only possible if a court makes an order to that effect. We understand that applications to courts for such orders are few and that the number of orders actually granted is very small indeed. We are conscious that many adopted persons, particularly in their teens, have a psychological need to know as much as possible about their origins in order to establish their own identity. This need can largely be met by background information of the type referred to in paragraph 15, but there are some who feel a need to know the actual names of their parents. In many cases knowledge of the names would not make it easy to trace the natural parents, but in others e.g. where the natural parent was, or had since become, a prominent personality without change of name an immediate approach to them would be possible. On balance we consider that courts should be left with the responsibility to decide, after taking advice in relation to the natural parents' circumstances where this is practicable, and the adopted person's needs, whether access to the original birth record should be granted on application by the adopted person after his 18th birthday. Whether, in Scotland, the existing right of access to original birth records should be withdrawn is a more difficult question which the committee will consider further when the results of the current research are available.

Propositions for consideration

62. The option of serial number procedure in adoption applications should be extended to the natural parents so that their anonymity may be preserved if they wish. (Paragraph 234.)

63. The adoption agency should be named on the adoption order. (Paragraph 233.)

64. In England and Wales access to original birth records should only be granted by permission of a court. (Paragraph 235.)

The position when the court does not make a final order

Where order is refused

236. Under present law, where an adoption order in respect of a child placed by an agency is refused by a court or withdrawn, the adoptive parents have to return the child to the care of the agency (Adoption Act 1958 section 35(3)); in independent placements, there is no bar to the adopters keeping the child. The present provision whereby the child must be returned to the care of the agency in agency placements should remain. In non-agency cases the Committee propose that where a court refuses an adoption order, it should have power to make some alternative order, e.g. commit the child to the care of the local authority. In non-agency cases natural parents will still be directly involved and it may sometimes be appropriate for the child to return to the care of his mother. Where this happens, the court should have power to make

a supervision order where appropriate. We have proposed that independent placements should no longer be allowed (proposition 15). The only non-agency applications will be by relatives and foster parents and the availability of guardianship proceedings will reduce the number of these. This present proposition should provide an important added safeguard for the protection of the children involved in such placements. There will in addition be cases where the court may feel that a guardianship application might have been more appropriate. It should be open to the court, on refusing an adoption order, to suggest to the applicants this alternative course of action.

Interim Orders

237. Section 8 of the Adoption Act 1958 gives the court power to " postpone the determination of an application and make an interim order giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period . . .". The court may make conditions in regard to the supervision of the child in the home and provision for his maintenance and education. In 1968, 83 interim orders were made by juvenile courts(1) in England and Wales. It is our impression from such evidence as there is that many of the interim orders are in respect of applications by a natural parent and a step-parent and by grandparents. The Adoption Statistics Survey covered only a small number of interim orders but their findings support this impression. Interim orders appear to be used where a court is uneasy about the placement (e.g. in applications by relatives) and wishes to ensure a longer period of supervision. It is only rarely that, at the further hearing, a full adoption order is not made. Even if the situation is not entirely satisfactory, the child by this time is even more established in the adoptive home and the risks involved in removing him all the greater.

238. The evidence reveals two diametrically opposed views. One is that interim orders should be made more frequently, so as to allow a longer period to see whether the adoption turns out well. The other is that an interim order is simply an excuse for putting off a decision, that the longer the decision is put off the less likely it is in practice that the adoption order will be refused, that this places the child's whole future in doubt and accordingly interim orders should not normally be made.

239. Several propositions which we have already made have a bearing on this issue. First of all, the abolition of direct and third party placements with non-relatives, the great reduction of other independent adoptions (propositions 15 to 18) and the measures for raising standards of agency practice (propositions 5 to 12) should considerably reduce the numbers of unsatisfactory situations. Secondly we have suggested that, in all cases (agency placements and independent adoptions) the court should have power to obtain an independent report, where it needs further information, in order to reach a decision. During any adjournment for this purpose supervision would continue. Thirdly, we have proposed that courts should have power to make alternative orders (e.g. committal to care) (see paragraph 236). This will provide courts with a positive and constructive alternative plan for a child who might otherwise inevitably remain in an unsatisfactory situation.

(1) Figures for other courts are not available.

240. There must obviously remain to the courts the power to postpone a final decision. We envisage that the cases where this will be necessary will be few. The postponement might be for further information or enquiries, or for a longer period of supervision. Such a postponement could be achieved either by an interim order or by an adjournment. With an interim order, temporary custody of the child is given to the applicants. With an adjournment, legal custody will remain either with the natural parents (in independent adoptions) or with the agency (where legal consents have been accepted at the first court hearing), although the child will remain in the care and possession of the applicants. On balance, where there is doubt about the suitability of the placement, or where further information is required, an adjournment seems more appropriate.

Propositions for consideration

65. Where a court refuses an adoption order it should have power to make some alternative order. (Paragraph 236.)

66. Where a court is in doubt about the suitability of a placement, or where further information is required, an adjournment is more appropriate than the use of an interim order. (Paragraphs 237–240.)

Difficulties arising from care and possession requirement

241. At present, a child must be continuously in the care and possession of the adopter for at least three consecutive months immediately preceding the date of an adoption order. The new consent procedure we have proposed (proposition 37 (*a*)-(*d*)) will relieve the adopters of the anxiety of the possible reclaim of the child. In these circumstances the three months care and possession period could more readily be extended in any case whether the agency felt that more time was needed before the court hearing, or where the court decided that a longer period was desirable before making a final order. However, the evidence shows that continuous care and possession for even three months immediately preceding the date of the order causes difficulty in a few fairly well defined cases. For instance, a child may be at a boarding school or be an older child away training, and at home only for the holidays. There may be cases where the child may have gone away for a short period to stay with friends or relatives, or where an adoptive parent may have had to be away for short periods. The Committee consider that no alteration of the law is required but that the provision needs clarifying. The phrase " care and possession " should not be interpreted too narrowly as meaning continuous physical care and possession but rather that the adoptive applicants should have had effective responsibility for the child in a quasi-parental capacity during the required period, and actual care and possession for a reasonable proportion of that time.

242. A similar difficulty arises where, for instance, the adoptive father's employment takes him away from home a great deal, although the couple may be resident in this country (e.g. merchant navy personnel who may be away for a few weeks at a time and seldom ashore for three consecutive months). If a couple are domiciled here but resident outside Great Britain it is sufficient if the child has been in the care and possession of the wife in this country for three months and he has been with both husband and wife

in this country for at least one month (e.g. army personnel serving abroad). These situations should be brought into line. It is suggested that the law should not be altered but that clarification of the care and possession provision as suggested in paragraph 241 would help in situations where short and exceptional absences of one or other parties are unavoidable.

243. Couples domiciled in but resident outside Great Britain may come here together to receive a child for adoption, the husband returning overseas one month later. If the adoption order is not made exactly three months after the child is received the husband's one month does not come within the statutory three months period, and we consider that the law should be amended to allow the courts discretion to make an order where appropriate even though the month does not fall precisely within the three months immediately preceding the date of the order.

Propositions for consideration

67. That the existing provision whereby a child must be continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of an order needs clarifying rather than changing, " care and possession " to mean that the applicants have exercised effective quasi-parental responsibility. (Paragraphs 241–242.)

68. In the case of applicants resident overseas the courts should have discretion to grant an order where the period of care and possession in Great Britain by one of the applicants falls outside the three months immediately preceding the date of the order. (Paragraph 243.)

Provisional adoption orders

244. It is unlawful for anyone to send or take a British child out of the country with a view to adoption by any person other than a parent, guardian or relative (section 52, Adoption Act 1958) unless a provisional adoption order has first been obtained.

245. Section 53 of the Adoption Act 1958 provides that where a person not domiciled in this country wishes to remove a child from Great Britain for adoption in the country in which he is domiciled, a court may, if satisfied that the applicant intends to adopt the child in his own country of domicile, make a provisional adoption order, which will give him interim custody and authority to take the child out of the country. Applications for provisional adoption orders must be made to the High Court or county court or in Scotland to the Court of Session or sheriff court. The applicant must satisfy all the requirements of a full adoption order in this country and must have care or possession of the child for at least six consecutive months immediately before the date of the order instead of the usual three. A provisional order is therefore a means whereby foreign nationals temporarily resident in this country may gain custody of a child and take him out of the country as part of their family.

246. Concern has been expressed in the evidence about these orders, mainly on the ground that there is no means of ensuring that the child will be legally adopted after leaving this country. There is no information

about how many provisional adoptions are finalised in other countries and how many are not. In a number of cases, one of the applicants may be a natural parent. In the years 1965–1969 the numbers of provisional orders granted in England and Wales have been

1965	171
1966	127
1967	173
1968	189
1969	173

In 1968, in 84 of the total of 189 cases, one of the applicants was a parent of the child. There were therefore only 105 provisional adoption orders (about 0·4 per cent of the total number of orders) granted in cases where there was no parental relationship and the adopters were domiciled overseas (comparable figures for Scotland are not available).

247. It is necessary to distinguish three different kinds of case when considering the need for provisional orders: (1) applications by parents, guardians or relatives(1) ; (2) applications by relatives not within the definition ; (3) applications by non-relatives, i.e. agency placements (independent placements being banned under our proposals). It is not legally necessary for relatives to have a provisional adoption order in order to take a child out of the country with a view to adoption. (Under our propositions it will in any case no longer be possible for parents to adopt their own child.) Where more distant relatives are concerned, it might be appropriate to have some simpler procedure than the device of adoption for allowing such children to emigrate (e.g. a power such as that given to the Secretary of State by section 17 of the Children Act 1948 to authorise the emigration of children in care). This could help in a case where, for example, the child of an immigrant is offered a satisfactory home with the extended family overseas but it is not possible for the proposed adopters to reside in this country for six months to obtain a provisional adoption order. The number of agency placements with non-relatives domiciled abroad is likely to continue to be small. It is felt that the power to make provisional adoption orders in these cases should remain, recognising that special care is needed on the part of agencies and courts in assessing the total situation.

Proposition for consideration

69 The power to make provisional adoption orders should remain, bearing in mind that adoptions by natural parents and independent placements are to be banned under our proposals. (Paragraphs 244–247.)

Children from overseas

248. Children coming for adoption from overseas countries are subject to the same controls as other persons coming for permanent residence here. Where a visa or entry permit has to be obtained in advance there is an opportunity to make enquiries about the suitability of the proposed adopters. In the case of a child from a foreign country with which the U.K. has a

(1) " Relative " for the purposes of the Adoption Act 1958 means a grandparent, brother, sister, uncle or aunt, whether of full-blood or by affinity, including a natural father.

visa abolition agreement, nothing may be known of the proposed adoption until the child arrives at a U.K. port. If the child is unescorted, or escorted by some person who has agreed to care for the child for the duration of the journey only, the child may have to be admitted without enquiries being made about the proposed adopters. The placement, which may have been arranged entirely by correspondence, may break down, or an adoption order may be refused, or not sought, leaving the child in the United Kingdom with no parent or guardian. It has been suggested to us that no child unrelated to the proposed adopters should be permitted to come to this country for adoption except under the auspices of a registered adoption society. To be effective this would have to be an adoption agency in this country, although reputable agencies overseas could make arrangements through an agency registered here if one were willing to co-operate. We have already proposed (proposition 15) that only an adoption agency should be permitted to place a child with non-relatives, but a ban on other placements would apply only within the jurisdiction and would not prevent persons or bodies overseas from sending children to this country without proper safeguards. It is therefore for consideration whether, to protect children from overseas, and as a corollary to our proposition 15, it should be an offence for anyone in this country to receive a child for adoption other than through an adoption agency registered here.

Proposition for consideration

70. Steps need to be taken to safeguard children from overseas who come to this country for adoption, possibly by making it an offence for anyone other than a relative to receive a child for adoption other than through a registered adoption agency in this country (see also proposition 15). (Paragraph 248.)

Assimilation of status of an adopted child

Interpretation of wills and other instruments

249.The present law provides that for the purposes of inheritance (in Scotland, succession) and of the interpretation of dispositions made after an adoption order, an adopted person should be treated as if he were a child born to the adopter in lawful wedlock and not the child of any other person. This means that an adopted child has the same rights on an intestacy occurring after the adoption order as a child born to the adopter in wedlock. The adopted person does not however benefit under a general gift to (say) grandchildren of the adopter where the disposition was made before the date of the adoption order unless it can be construed to include adopted children as such. In England and Wales, a will is treated under the Adoption Act 1958 as having been made on the date of the death of the testator and not on the date the will was actually made (except in the case of wills made before 1st April 1959). In Scotland, a broadly similar rule applies except in the case of wills made before 10th September 1964.

250. We have proposed (proposition 1) that there is a continuing need for adoption, this being the permanent legal transfer of legal rights and responsibilities. The basic concept of adoption is to provide the full security of a permanent family situation for a child. If adoption means the complete

severance of the legal relationship between the child and his natural parents and the establishment of a new and irrevocable relationship with the purpose of making a child a full member of another family, it follows that that child should have exactly the same rights under wills and other instruments as a natural child of the adoptive family. The Committee consider that this should be the case. It will still be open to a testator or donor expressly to exclude any existing or future relative by adoption from inheriting.

Proposition for consideration

71. An adopted child should have the same rights under wills and other instruments as a natural child of the adoptive family. (Paragraphs 249–250.)

Degrees of consanguinity

251. Under the law as it stands an adopter and the person whom he has been authorised to adopt are not allowed to marry, but a person may marry his relations by adoption, including his brother or sister, if they are not otherwise within the prohibited degrees of marriage. Both the English Law Commission and the Kilbrandon Committee on the Law of Marriage in Scotland have considered this issue. The Scottish Committee have advocated the extension of the law so as to prohibit marriage between an adopted person and his or her sister and brother and niece and nephew in the adoptive relationship, but would allow an adopted child to marry his or her aunt or uncle by adoption.

252. The Committee consider that there exist strong emotional feelings against inter-marriage between natural and adopted children, where an adopted child has been brought up from an early age in the adoptive home. There might be cases of older children adopted into a family, where this emotional taboo is less strong. This will apply particularly to children who have only joined the family at a later age. Bearing in mind our opinion that an adopted child should have a status similar to a natural child's we consider on balance that it should be prohibited for adopted children to marry anyone whom they would have been debarred from marrying if they had been born, rather than adopted, into that family, save that it should be open to them to apply to a court for special permission to marry.

Proposition for consideration

72. It should be prohibited for adopted children to marry anyone whom they would have been debarred from marrying if they had been born rather than adopted, into that family, unless they have obtained the leave of a court to do so. (Paragraphs 251-252.)

Religion

253. Consent to the making of an adoption order can at present be given subject to a condition with respect to the religious persuasion in which the infant is proposed to be brought up (section 4(2) of the Adoption Act 1958). When adoption law was last reviewed "religious persuasion" in this country was likely to mean a particular denomination of the Christian

church, or the Jewish religion. There are now many more mothers from overseas of other religious persuasions, although some, e.g. the Muslim faith, would not be specified for this purpose because Muslim law does not recognise adoption.

254. The arguments which have been put to us against the retention of this condition are:

(1) that if adoption is the complete severance of the legal relationship between parents and child (see paragraph 8) it is anomalous that the parent should appear to retain control over this one aspect of the child's future;

(2) that the condition is unenforcable and therefore bad law;

(3) that it may be contrary to the best interests of the child in that adopters may be selected not because they are the most suitable but because there is a shortage of adopters of the religious persuasion named by the mother, or there may be considerable delay in placement while adopters of a particular sect are sought.

255. We have said that we see a continuing need for voluntary adoption agencies (see paragraph 32). Many of these have religious affiliations and it will remain open to a mother of a particular religious persuasion to go to a voluntary society which serves those of her faith in the expectation that the child will be adopted by persons of similar beliefs. For the reasons given in the previous paragraphs, however, we do not consider that it should remain possible for the mother to make her consent subject to a condition as to the religious persuasion in which it is intended that the child should be brought up. We propose that the agency, whether or not it has any religious affiliations, should be required to ascertain whether the mother has any wishes in the matter of religious upbringing and, if she has, to have regard to those wishes when selecting adopters. If, however, it is impracticable to comply with the wish expressed by the mother, or to do so might be harmful to the child's welfare (e.g. because it might involve undue delay), the agency should be free to make whatever placement appears to be in the best interests of the child.

Proposition for consideration

73. When placing a child the agency should have regard to the parent's wishes (if any), as to the religious persuasion in which the child should be brought up, but it should cease to be possible to attach a condition as to religion to the consent to adoption. (Paragraphs 253-255.)

The medical aspects of adoption

256. The importance of the medical aspects of adoption including mental health is recognised both in the present law and in agency practice. They are an integral part of the total process of the assessment of the adopter, of the child, and of the suitability of a particular placement. We have indicated that adoption focuses primarily on the needs and well-being

of individual children (see paragraph 8). It is essential that a child is placed with people who are likely, as far as can reasonably be ascertained, to enjoy satisfactory health, physical, mental and emotional, and who have a good expectation of life at least until the child has reached the age of independence. Where the child is concerned, the adoptive parents should be aware of any medical problems in his own condition or his family background on both sides if possible, so that they can make a decision to take the child in full knowledge of the facts and be aware of any special needs he may have in the future.

257. Certain requirements regarding the health of adopters and child are written into the present legislation. The court rules[1] require that a certificate of a fully registered medical practitioner as to the health of the applicants should be filed with the application to the court. The form suggested simply states: "I examined..... on..... and have formed the opinion that he is physically, mentally and emotionally suitable to adopt a child" (although the Scottish form also requires the doctor to state whether the applicant suffers or has suffered from any serious mental or physical illness or from any serious congenital disease). In England and Wales, the applicants have to attach to their application to the court a report on the health of the child. Again, a form for this purpose is suggested, this form itemising the particular aspects that need to be checked in an examination of the child including a serological test for syphilis. Such a report for the court is not required in Scotland; the report of the pre-placement examination may be made available to the court if required. The duties of the guardian *ad litem* in England and Wales include that of ascertaining, in regard to the applicants, whether they have suffered from any serious illness and whether there is any history of tuberculosis, epilepsy or mental illness in their family. The English and Scottish Adoption Agency Regulations 1959 require the agency, before they place a child for adoption, to "obtain a report by a fully registered medical practitioner as to the health of the infant . . ." A form for this purpose is prescribed (similar in content to that suggested for the application to the court). Among the particulars which the agency must ascertain (Fourth Schedule) is, whether there is any history of serious illness or disease in the child's family. There is no requirement to investigate the health of prospective adopters.

258. In practice, in agency placements, a medical examination on the child is carried out before placement, or very early in placement, generally using the form prescribed in the Regulations, which among other things includes the result of a serological test for syphilis taken six weeks or later after the child's birth, a urine test for albumen and sugar, a test for phenylketonuria, and details of the mother's serological test for syphilis. Agencies almost invariably take up a medical reference on the proposed adopters, generally requiring the result of a comprehensive examination. Forms for this purpose have been drawn up by the Medical Group of the

(1) Rule 3 of the Adoption (Juvenile Court) Rules and Adoption (County Court) Rules and Rule 9 of the Adoption (High Court) Rules. In Scotland, paragraph 1 of the Act of Sederunt (Adoption of Children) 1959 (Sheriff Court) and Rule 219 of the Act of Sederunt (Rules of Court Consolidation and Amendment) 1965 (Court of Session).

Standing Conference of Societies Registered for Adoption (now the Association of British Adoption Agencies). After placement and in the preparation of the application for the court, the responsibility for the completion of the medical reports on themselves and, in England and Wales, the child rests with the adopters. In England and Wales the child's medical examination must have been done not more than a month before the date of the application if the child is less than a year old, and not more than six months before that date if the child is over a year.

259. Various criticisms of the present requirements and procedures have been put forward in the evidence. One important criticism is the omission of a legal requirement for agencies to enquire into the health of prospective adopters during the home study (i.e. before a child is placed). Secondly, in regard to the adopters, that the certificate they must submit to the court is useless and meaningless in its brevity. In regard to the child, dissatisfaction is expressed at the need (in England and Wales) for two identical examinations to be carried out at different stages, and objections have been raised to the two particular tests specified (for syphilis and for phenylketonuria(1)). The evidence suggests that the timing and nature of the examination on the child should be reviewed.

260. The changing trends in adoption have a bearing on the nature of the medical procedure in adoption. The focus is increasingly on the child's welfare and on finding homes for children according to their needs, rather than to satisfy the needs of childless couples through the placement of healthy and " perfect " babies. We have stressed that a comprehensive social work service should be available to parents and to their children irrespective of medical, personal and social problems in the family background (see paragraph 26). Moreover as we pointed out in paragraph 14 greater efforts are being made by agencies to find homes for children with special needs including those with health problems.

261. Substantial developments have taken place in good agency practice, with these trends in mind, influenced to a considerable extent by the promotional work of the Standing Conference of Societies Registered for Adoption and in particular the Medical Group of the Standing Conference. The Guide to Adoption Practice(2) recommends that a full health record should be obtained as an integral part of the social assessment of applicants, a medical report being based on an up-to-date medical examination (III.26.). It stresses the importance of the medical examination of the child (IV.8), the object being not to " pass " or " fail " the child or give a guarantee of future good health, but " to get a clear picture of his present condition and likely future development." Information about the natural parents' health and medical background will be needed. The Guide suggests that such examinations should be carried out by a paediatrician or by a doctor skilled in developmental paediatrics. In discussing the resources needed by an agency, it recommends that agencies should try to have a paediatrician and a physician of consultant status to act as advisers and medical referees. These experts would assess medical reports, interpret them to the case

(1) All babies are now being given a blood test for phenylketonuria and there will be no need for a special test for babies being placed for adoption.
(2) A Guide to Adoption Practice. Advisory Council Child Care, Number 2, H.M.S.O.

committee, and act as advisers to the social workers. Agencies should have access to psychiatric and psychological services where special advice or assessments are needed, whether in regard to natural parents, the child or the prospective adopters. The following paragraphs discuss these matters insofar as statutory regulation is involved, as well as the particular requirements of courts hearing adoption applications where medical information and medical reports are concerned.

Pre-placement

262. *Natural Parents.* It is important that the agency should know a great deal about the family background of the child as part of their full assessment of him if they are to make a suitable plan for his future. This should include wherever possible a full medical history of both natural parents and knowledge of the medical history of their families. The agency should have responsibility for gathering this information, drawing on the help of the family doctor. The information should be available to the doctor examining the child.

263. *Child.* A comprehensive examination of the child should be carried out before placement. The object of the examination is to obtain a clear picture of the present condition of the child and his future development as far as is ascertainable, so that suitable adopters can be sought who can then be given full information about him. The doctor carrying out this examination should have available the medical history of the natural parents and their families, an obstetric and neonatal report, together with details of the child's general progress and any illnesses or medical treatment he may have had. The person caring for the child should be present to tell about him.

264. This full examination should be carried out before placement however early. Early placement, given that the mother has been able to make a realistic decision to surrender, can contribute to a child's emotional health and development, though a delay in placement may be appropriate where " risk factors " are present in the child's or his family's history (see paragraphs 155 and 156 for a discussion of early placement in connection with the giving of consent). Where a very early placement is made, follow-up on the child's developmental progress will be needed.

265. Since the pre-placement examination is a particularly important one requiring special skills, it will be advantageous if it is performed by a paediatrician, or by a doctor with training and experience in child health and developmental paediatrics. No child should be turned down for adoption on medical grounds without an opinion from a consultant paediatrician. In principle, no child, however handicapped, should be considered unadoptable if adopters can be found to accept him with a realistic understanding of his future needs, though in practice there may be children with severe mental handicaps who cannot benefit from adoption. In the case of children with mental handicaps or unfavourable family histories, the utmost skills in physical, psychological and genetic assessment and counselling are required. With increasing experience on the part of all concerned in adoption work homes may be found for more and more babies with medical problems.

266. Medical opinion is divided on the need for a routine serological test of the baby's blood for syphilis. Some experts consider that this examination is unnecessary as a routine procedure and should cease provided that the

mother has been tested with negative results in the last trimester of pregnancy. They agree that if the mother has not been tested, or if she has suffered from syphilis, the child should be specifically examined and tested. Other medical authorities consider that the test is still essential in all cases because of the possibility of infection late in pregnancy. This is a matter which needs to be given further consideration by the medical profession.

267. *Adopters.* We regard it as essential that a thorough and comprehensive medical examination should be carried out on each adoptive applicant and a report obtained as an integral part of the home study undertaken by the agency. Medical, psychological and social factors are inter-related and must be considered together and special attention should be paid to a couple's attitude to their infertility where this is relevant. The purpose of the examination is to ascertain their health and life expectancy, their future health and details of any likely disability, the stability of their marriage, and their general emotional adjustment. When adopting another child or where there is a substantial delay before a child is placed, a further comprehensive follow-up will normally be needed.

268. The doctor performing the examination should normally be the family doctor who knows the applicants and has their medical records. If specialists have been consulted reports should be obtained from them also.

Medical reports for the court

269. We are in no doubt that medical assessments as described above should form an integral part of agency practice prior to the placing of a child with adoptive parents. There remains to be discussed the question of the extent and nature of the medical information required by the court when hearing an adoption application. We have considered the suggestion that only one comprehensive examination should be required for adopters (as part of the home study) and for the child (prior to placement) and that the report of these should be available to the court, thus serving a dual purpose. There are, however, disadvantages to this.

270. It seems to us that the requirements of agency and court in regard to medical information are different. The court must have all the relevant information, including medical information, to enable it to decide whether an adoption order is to be for the welfare of the child. They must bring an independent judgement to bear on this and have sufficient first-hand information to assist them. They will need to know the present state of health of child and adopters, anything of particular significance or risk in the background medical history, the likely future development of the child, and likely future health of the applicants. While complete frankness towards the court is to be regarded as essential in all reports submitted to the court, the makers of such reports should always regard themselves at liberty to indicate, with reasons if necessary, any matters they consider it desirable to use with discretion *vis-a-vis* the parties affected, whether parents or potential adopters. In order to standardise this safeguard prescribed forms should include a paragraph in heavy type giving such a warning. Where the child is concerned, his health and development in the adoptive home (i.e. since the time of placement) will be relevant, as well

as the adopters' attitude to him and to any medical " at risk " factors which may be present. Certain medical conditions which cannot be detected at a very early age may by this time have become apparent.

271. We consider therefore that, in regard to the child, the present procedure should remain, whereby a second examination should be carried out, and a report submitted as part of the application to the court. Where the applicants are concerned we consider that a follow-up check by the family doctor for the purpose of the application to the court should normally be sufficient, the report of this to be submitted to the court. If however more than two years have elapsed between the original comprehensive examination carried out for the agency and the court hearing, a further comprehensive report for the court will be necessary.

272. In Scotland, as has been mentioned earlier, no medical report on the child is at present required for the court. Where the court wishes to have a report in a particular instance, it generally has access to the agency preplacement report. Bearing in mind the reasons given in paragraphs 270–271, we consider that in Scotland, as in England, the court should be supplied with an up-to-date medical report on the child.

Independent adoptions

273. It will be necessary for a satisfactory procedure to be established for medical examinations in the case of adoption applications by foster parents or relatives, where no agency has been involved in placement. This should include the same thorough kind of examinations for child and adopters as in agency cases. In the case of foster parents applying to adopt, we have suggested that there should be a comprehensive assessment of the situation by the local authority. The medical examination of child and adopters should be carried out as part of this assessment before the local authority gives permission for an application to be made. In these cases it is likely that an application will follow very shortly after local authority permission is given. Moreover, the child is already in the home and the prime purpose of the full examination we envisage would not be to decide as to placement but rather to assess whether an adoption application should proceed. These examinations should therefore serve also for the application to the court and the reports should be available to the court. Where foster parents have had a child for more than 5 years and thus do not need local authority permission to apply to the court, a report of a comprehensive examination should form part of the application to the court. In the case of adoption by relatives, we consider that comprehensive medical reports should be obtained and submitted as part of the application to the court, such reports being similar to those required by agencies in agency placements and covering the adopters and the child. The responsibility for arranging for these reports will rest with the adoptive applicants. If the local authority or the court are not satisfied with the reports, they will need to initiate any further enquiries (e.g. of specialists), that are appropriate.

Form of medical reports

274. We consider that the general arrangements for child and adopters which we have discussed would be laid down in the law. With regard to the examination and reports on the child prior to placement and the adopters

prior to acceptance by the agency, we consider that the specific content of these should be a matter for the professional practice of agencies. The medical report forms for child and adopters for the purpose of the court application should be prescribed in statutory rules as at present, the forms to be revised by the Home Office (or Social Work Services Group Scotland) in consultation with the medical profession.

Fees

275. Adoption medical reports do not at present come under the National Health Service. The British Medical Association has recently revised its scale of fees as follows:

Child:	
(1)Form A (Medical history of natural parents)	£1 15s. 0d.
Form B (Perinatal report)	£1 15s. 0d.
Form C (Child's examination)... ...	£3 10s. 0d. each time
Applicants:	
Form 1 (Comprehensive examination)	£3 10s. 0d. each
Form 2 (Follow-up)	£2 0s. 0d. each

Not all doctors charge fees now but where they do it has been suggested that they would prefer these fees to be paid by the agency, and would feel more responsibility towards the agency's task of assessment rather than to their patients if this procedure were followed. This is linked with the general issues already discussed (see paragraph 48) regarding agencies requesting payment for expenses from the applicants. At present the natural parent or the agency pays fees charged for the baby's examinations before placement. These may amount to as much as £7, which many mothers cannot afford. The applicants pay their own medical fees and that of the baby after placement, which may amount to £17–£25, including an X-ray examination. The question has been raised whether adoption examinations and reports should be included in the normal medical care of the National Health Service. Many doctors up and down the country and from different disciplines in family practice, public health and the hospital service believe they should, as a service to children deprived of normal homes, and as one facet of promoting the mental health of the community. Other doctors oppose this view and feel that adequate reports might not be obtained unless fees were charged. The official British Medical Association policy is that fees are justified. A compromise solution might be that doctors should still receive additional payment for these examinations and reports but that they should be paid from National Health Service funds. We would welcome further comment on this issue.

Propositions for consideration

74. In agency placements, a comprehensive medical examination should be carried out on a child offered for adoption before placement. A subsequent examination should be made for the purpose of the

(1) These are the medical forms published by the Association of British Adoption Agencies for the use of adoption agencies.

adoption application to the court, the report of this examination to be submitted to the court. (Paragraphs 263–265 and 269–271.)

75. A comprehensive medical examination of the prospective adopters should be carried out as part of the agency's home study, before a child is placed, with a subsequent follow-up check at the time of an adoption application to the court unless more than two years has elapsed since the first examination in which case a further comprehensive examination will be needed. The report of the latter examination should be submitted to the court. (Paragraphs 267–268 and 271.)

76. In foster parent applications, comprehensive medical examinations for child and adopters will form part of the local authority's social assessment prior to giving permission for an application to be made, and the reports will be made available to the court. Where local authority permission to apply is not required (i.e. where the foster parents have had the child for more than five years) a comprehensive medical examination should be carried out for the purposes of the application to the court. (Paragraph 273.)

77. In applications by relatives, comprehensive medical examinations should be carried out prior to the application to the court, and the reports made available to the court. (Paragraph 273.)

78. Broad principles about medical requirements in agency practice should be stated in the law, leaving details of practice to professional guidance. Medical report forms for the court application should be prescribed in statutory rules. (Paragraph 274.)

79. Consideration should be given to relieving natural parents and adopters of the cost of medical examinations for adoption. (Paragraph 275.)

Committees

276. The Adoption Agency Regulations 1959 refer to the role of the adoption society's "case committee" (or to the "local authority" in the case of local authorities making or participating in arrangements for adoption). According to Regulations 5 to 7, certain of the enquiries to be made in regard to prospective adopters have to be made "by or on behalf of the society's case committee", and the case committee have to approve of the placement of a child. The case committee decides how often the child has to be visited by the agency in the adoptive home after placement and receives reports as to the welfare of the child. These regulations apply to local authorities acting as adoption agencies as well as to registered adoption societies.

277. Regulation 10 which applies specifically to voluntary societies states: "References in these Regulations to a registered adoption society's case committee means the committee of the society appointed for the purpose of considering the case of an infant proposed to be placed by or on behalf of the society in the care and possession of a person proposing to adopt him" and "A case committee shall, so far as practicable, include one man and one woman and shall consist of not less than three persons each of whom shall be competent to judge whether the proposed placing is likely to be in the interests of the infant". The application for registration

of an adoption society has to give the name, address and occupation of each member of the committee controlling the activities of the society, and other details about the activities of the committee ; and similar details of the members of the case committee, with qualifications and experience. The annual return to the registering authority by a registered adoption society also includes details of the "controlling" committee and of the case committee.

278. There appear to be great variations in the use of committees by agencies and considerable confusion as to their purpose. Where local authorities are concerned, the Regulations are particularly vague, resulting in considerable variation in practice. In some cases, the case committee is a sub-committee of the children's committee ; in some cases it is composed of members of the children's committee with co-opted members ; in some cases, it is a committee of officers (e.g. of the children's department, plus medical and other representatives with special skills) ; in some cases, decision-making is done by a panel of officers of the department ; in some cases there would seem to be no machinery at all for "group" decision-making. In their application to voluntary societies the Regulations are less vague, but there is much confusion of role, committee members frequently being used as professional workers thus having two distinct functions which cannot easily be kept apart.

279. We consider that all agencies, whether local authority or voluntary, should have an established machinery for decision-making bearing in mind the distinction between policy and case decisions. We see no reason why the procedure should not be similar for local authorities and voluntary societies. Policy decisions will normally be taken by the committee controlling the activities of the agency. This committee could include lay members and professional workers. Case decisions will involve three major aspects of the work: the selection of prospective adopters, the acceptance of the child, and the actual placement. We have indicated that the crucial decisions in adoption are in respect of the selection of adopters and the actual placement and that these decisions are a matter for the professional competence of the agency. We have also proposed that the present system of a series of subsequent checks on the work of the agency (welfare supervision and guardian *ad litem* enquiries) should be modified, on the assumption of improved agency standards of work. It is therefore essential that the process of decision-making within the agency should be carefully thought out and also that really adequate safeguards in regard to these crucial decisions are built into the agency structure.

280. The purpose of the case committee should be to bring an objective and independent, as well as knowledgeable, viewpoint to bear on a decision. Decisions should always be made by a group and not left to any individual. This principle should be established by law, leaving the details of the composition of such committees to professional practice. There should be no barrier to officers being members, and the workers involved in a case should certainly be present and participate in the discussion. If lay people are members of the case committee they should not be used as professional workers. The staffing of an agency and the effectiveness of its decision-making process will be covered by the criteria for registration (see paragraph 39(*c*)).

Propositions for consideration

80. All agencies should have an established machinery for making decisions. (Paragraph 277.)

81. Policy decisions will normally be taken by the controlling committee, which could include both lay members and professional workers. Case decisions should always be group decisions, whether of a case committee or a panel of professionals. (Paragraphs 277–278.)

82. Casework should not be undertaken by committee members who are not professional social workers. (Paragraph 278.)

CONSOLIDATED LIST OF PROPOSITIONS FOR CONSIDERATION

1. There is a continuing need for adoption, by which we mean the permanent legal transfer of parental responsibilities and rights. (Paragraphs 8–10.)

2. The long-term welfare of the child should be the first and paramount consideration in resolving conflicts over adoption. (Paragraphs 11–13.)

3. There are changes in the pattern of adoption, with fewer healthy babies and more children with special needs requiring placement; there is also growing understanding that the adoptive relationship is different from the biological relationship and should not be concealed. These trends call for some changes in legal procedures and casework practice, but do not affect our basic first conclusion. (Paragraphs 14–16.)

4. There should be a comprehensive range of legal provisions for children not being brought up by their own parents, and adoption forms only one part of this range. (Paragraph 10.)

5. There should be a nationally available adoption service, focusing primarily on the needs of children. This should be an integral part of a comprehensive social work service. (Paragraphs 17–26.)

6. To achieve this:

(*a*) local authorities should have the duty to ensure the provision of a comprehensive service in their area (paragraph 33);

(*b*) there is a continuing place and need for voluntary effort (paragraph 32);

(*c*) adoption agencies unable to provide a comprehensive service by themselves should make arrangements with other agencies or with the local authority in order to do so. (Paragraphs 30 and 33.)

7. Adoption work should be organised as part of a general child care and family service, with a full range of relevant resources, good communication and co-ordination between the various aspects of the work, and access to medical, legal and other services. (Paragraph 30.)

8. Good standards of service are important, but cannot be attained entirely by legal prescription. Adoption work should be open to central government advisory and consultancy services, in the same way as other social work. (Paragraphs 35–36.)

9. The system of registration of voluntary adoption agencies should be strengthened, with more specific criteria for registration laid down in statutory regulations. (Paragraphs 37–40.)

10. (*a*) Further consideration should be given to whether registration should remain with local authorities or become a central government responsibility. (Paragraphs 42–46.)

(*b*) Appeal against refusal or cancellation of registration is not appropriate to a court. If registration remains a local responsibility, appeals should be to the Secretary of State ; if it became a central government responsibility, they might be to an independent tribunal. (Paragraph 40.)

11. (*a*) Agencies should remain free to charge expenses and to accept contributions towards the cost of arranging adoptions. (Paragraph 48.)

(*b*) In exercising their power to contribute financially to the work of voluntary child care organisations, local authorities should have regard to the work done and the actual costs incurred by adoption societies. (Paragraph 49.)

12. A transitional period will be necessary before these aims can be fully achieved. (Paragraph 50.)

13. (*a*) The basic legal conditions of eligibility to adopt a child should cover only the domicile residence, and marital status of the adopters, and their relationship, if any, to the child. (Paragraphs 56–63.)

(*b*) All adults fulfilling these conditions of eligibility should be legally free to apply subject to our propositions on independent adoptions. (Paragraph 61.)

14. (*a*) Decisions on the suitability of prospective adopters are matters for the professional judgment of agencies and the courts, and the law should not attempt precise definitions of what constitutes unsuitability to adopt (e.g. in terms of age, or of minimum length of marriage). (Paragraphs 59–61.)

(*b*) The information which agencies should collect in assessing prospective adopters is a matter for guidance, and need not be prescribed in detailed statutory regulations. (Paragraph 63.)

(*c*) A decision whether to grant an adoption order should be taken on the merits of the individual case. (Paragraph 62.)

15. In order to ensure the welfare of the child and to safeguard the adults concerned, only an adoption agency should be permitted to place a child for adoption with non-relatives ; in particular, direct and third party placements should no longer be allowed. (Paragraphs 64–69.)

16. Irrespective of whether the child's natural parents consent to adoption :

(*a*) foster parents should not be able to apply for adoption until they have cared for their foster child for at least a year, and should have an unfettered right to apply to the court if they have cared for the child for five years or more (paragraph 76) ;

(*b*) foster parents who have cared for a child for at least one year but less than five years should be able to apply for adoption only if the local authority consents. (Paragraph 77.)

17. Adoptions by relatives are to be distinguished from adoptions by non-relatives, in that they sever (in law, but not in fact) an existing relationship and replace it with an artificial adoptive relationship ; special justification is required for allowing such adoptions to continue in individual instances. (Paragraph 81.)

18. Accordingly, in the light of proposition 20 (that relatives caring for a child should be able to apply for guardianship):

(*a*) it should no longer be possible for a natural parent to adopt his or her own child (paragraphs 82–85) ;

(*b*) a step-parent should be able to adopt the illegitimate, but not the legitimate, child of his spouse, and such an adoption should not affect the spouse's legal position as the child's parent (paragraphs 86–95) ;

(*c*) while in a few cases it may be more in the interests of the child for a relative to adopt, guardianship will normally be the appropriate means of recognising the position of relatives who are caring for a child and of conferring legal security. (Paragraphs 96–99.)

19. The existing range of legal provisions for the substitute care of children is incomplete, in that the law provides no generally available means, short of adoption, whereby persons other than natural parents caring for a child may obtain legal recognition and security for their relationship to the child. (Paragraphs 106–108.)

20. The existing rights to apply for custody under the Guardianship of Infants Acts (which we call, for convenience, " guardianship ") provide such legal recognition and security, and should be made available to relatives and foster parents already caring for a child, (subject to the requirements set out in proposition 21). (Paragraph 106.)

21. Irrespective of whether the child's natural parents consent to guardianship:

(*a*) foster parents should not be able to apply for guardianship until they have cared for their foster child for at least a year, and should have an unfettered right to apply to the court if they have cared for the child for five years or more (paragraph 108) ;

(*b*) foster parents who have cared for a child for at least one year but less than five years should be able to apply for guardianship only if the local authority consents (paragraph 108) ;

(*c*) relatives, and foster parents who have cared for a child for more than five years, should be required to notify the local authority of their intention to apply for guardianship, and an order should not be made until at least three months have elapsed from the date of notification. (Paragraphs 108 and 109.)

22. The child's parents, and any other interested person or body, should be a party to such a guardianship application, with a right to be heard before the court takes its decision. (Paragraphs 110 and 111.)

23. The powers of the courts in dealing with guardianship applications by relatives and foster parents should include:

(*a*) in exceptional circumstances, power to make a supervision order whether or not it grants the application, and to commit the child to the care of the local authority on refusing the application (paragraph 112);

(*b*) on making a guardianship order or dealing with a subsequent application for its revocation or variation, power to order that no application to revoke or vary the order may be made by the natural parents without express leave of the court (paragraph 114);

(*c*) control over whether the child may be taken or sent overseas by the guardians. (Paragraph 113.)

24. In other respects the powers of the courts should be similar to those for guardianship cases under the present law, covering custody, care and control, and access (see proposition 27 regarding maintenance). (Paragraph 115.)

25. The welfare of the child should be the first and paramount consideration in the exercise of all these powers. (Paragraph 112.)

26. When guardians are appointed by a court for a child in the care of a local authority or voluntary organisation, he should thereby cease to be in their care, and any court order committing him to care or resolution assuming parental rights should be revoked on the making of the guardianship order. (Paragraph 117.)

27. Further consideration should be given to the possibility of allowances and subsidies for guardians and adoptive parents, in particular whether allowances should be available, what criteria should be used to decide who should be eligible to receive them, and who or what body should be responsible for paying them. (Paragraphs 119–122.)

28. Decisions on the grant or refusal of adoption orders should continue to be taken by courts of law. (Paragraph 123.)

29. The requirement that the adopters shall have been caring for the child for at least three months before an adoption order can be granted should remain, although a longer period will often be appropriate. (Paragraph 131.)

30. (*a*) Responsibility for the supervision of the child in the adoptive home, and for helping and advising the adopters, should rest with the adoption agency throughout the period between the placement and court hearing. (Paragraphs 128–130.)

(*b*) "Welfare supervision" of the child by the local authority, and the requirement to notify the local authority of the intention to apply for an adoption order, should eventually be discontinued in agency cases. (Paragraph 129.)

31. (*a*) Placement decisions are matters for the professional judgment of agencies, and it would not be appropriate to involve the court, which must remain independent and impartial, in such decisions. (Paragraph 134.)

(*b*) The appropriate safeguards for the rightness and suitability of agency placements comprise concentration of available social work resources on improving agency standards, effective decision-making procedures with shared responsibility within the agency, and independent judicial scrutiny by the court. (Paragraphs 133–134.)

(*c*) The agency should be accountable to the court, making a full written report direct to the court, being a party to the proceedings and being represented at the hearing. (Paragraph 135.)

32. (*a*) The appointment of a guardian/curator *ad litem* to make inquiries for the court, should eventually be at the discretion of the court and not automatic in every case. (Paragraphs 138–141.)

(*b*) The guardian should inquire into those aspects of the case indicated by the court. He should in the first instance make his inquiries of the agency or local authority involved in the case, and should see the parties only if necessary to fulfil the instructions of the court. (Paragraph 137.)

(*c*) Guardian/curator duties should be carried out by social workers. (Paragraph 136.)

33. The changes in proposition 30(*a*) and 32(*a*) should not take effect until our proposals for ensuring and developing standards are in full operation. (Paragraph 138.)

34. Whenever adoption or guardianship is sought in respect of a child who has not been placed by an agency, the local authority should be involved before application is made to the court, either by giving consent to the application or by being notified of intention to apply, and should carry out the functions that would otherwise be appropriate to the placing agency. (Paragraphs 143-144.)

35. During the period when leave to make a guardianship or adoption application is being sought, or when the application has been made and is awaiting the court hearing, the child should not be removed from the care of the applicants without the leave of the local authority or the court, whichever is applicable. (Paragraph 145.)

36. Adoption should continue to be possible only with the consent of the child's parent, unless this consent is dispensed with by the court on one of the grounds laid down by statute. (Paragraph 147.)

37. (*a*) The law should no longer insist that consent cannot become final until an adoption order is actually granted, and should provide for a general consent to adoption in agency cases rather than a consent to a specific application. (Paragraphs 149-150.)

(*b*) Responsibility for ensuring that consent has been given freely, and with full understanding of its implications, should remain with the court, pursuant to a separate application. Persons whose consent is required and the agency concerned should all be parties to the application and attend the court hearing. (Paragraphs 150-152.)

(*c*) The rights and interests of any other relevant person or body should be considered at this stage before the child can be considered legally "free" and eligible in law for adoption. (Paragraph 152.)

(*d*) If the court is satisfied at this hearing, the parent's consent should thereupon become final and irrevocable, all parental rights and duties being relinquished by her and vested in the agency to be retained by them until an adoption order is made. (Paragraph 150.)

(*e*) If for any reason an adoption is not effected the agency would retain such rights and duties unless they were transferred by court order, or by an agreement registered with a court, to some other body or person, or until the child attains majority. (Paragraphs 158-159.)

(*f*) Consideration should be given to reducing the minimum period of six weeks before which a mother's consent to the adoption of her child is not valid. (Paragraph 157.)

38. In non-agency adoption (i.e. application by relatives or foster parents), consent should be to the specific application, should be given at a court hearing, and should become final only at the time an adoption order is made. (Paragraph 160.)

39. In agency adoptions, the initial court hearing (for dealing with consents) should be used to resolve conflicts among interested parties directly related to the child, to determine the position of the putative father of a child, and that of the mother's husband where she is married, and to declare the child " free " for adoption. (Paragraphs 163-165.)

40. While accepting the principle that the natural family should be preserved wherever possible, in cases where a child is in care with no satisfactory long-term plan in mind it should be open to an agency to apply to the " consent " court for the child to be freed for adoption and the parents' consent dispensed with. (Paragraphs 168-170.)

41. Applications for consent to be dispensed with should in agency cases be made to the " consent " court, and in relative and foster parent applications to the court hearing the adoption application, the same grounds for dispensing with consent to apply. (Paragraph 171.)

42. (*a*) The grounds for dispensing with consent should include serious ill-treatment. (Paragraph 172.)

(*b*) The interpretation by courts of what is " reasonable " and " unreasonable " should be governed by the basic principle that the long-term welfare of the child should be paramount. (Paragraph 173.)

43. There should continue to be a right of appeal on matters of law, against decisions in regard to consent and dispensing with consent. (Paragraph 165.)

44. The grounds for the assumption of parental rights by a local authority in respect of a child in their care should be extended:

(*a*) to cover the temporary disability of a parent and

(*b*) to protect children where parental rights may be assumed in regard to one parent but not the other. (Paragraphs 174–176.)

(*c*) There should be an additional ground for assuming parental rights " in any other circumstances where this seems desirable and the parents agree ". (Paragraph 177.)

(*d*) It should be explicit in the law that, in cases of conflict, the phrase "without reasonable cause" should be interpreted in the light of the paramountcy of the child's welfare whether short or long-term. (Paragraph 176.)

45. Means must be found for safeguarding children in the care of voluntary child care agencies in cases where it is desirable to assume parental rights. (Paragraph 178.)

46. The involvement of the putative father in the planning for a child's future should be encouraged; his position in law should be clarified and his rights and interests, including any application by him for custody, should be dealt with at the initial court hearing. Failure to find him should not delay the "freeing" of a child for adoption. (Paragraphs 180–184.)

47. While no child should be deprived of his legitimate father, where the evidence establishes that a mother's husband is not the father of the child, he should not be involved. In cases of doubt and where the husband must be involved, his rights should be clarified at the time of the initial court hearing, and his consent obtained or dispensed with. (Paragraphs 185–186.)

48. (*a*) Changes in court arrangements for adoption and guardianship, and other family matters, should be such as to improve the administration of justice and the standard of service to those who have recourse to the courts. (Paragraph 201.)

(*b*) In particular, delays must be avoided as far as possible and the court should be readily accessible. (Paragraph 201.)

49. (*a*) There should eventually be a unified jurisdiction and unified administrative arrangements for adoption and guardianship cases. (Paragraphs 194–195.)

(*b*) Such jurisdiction should not be given to a specialised court dealing only with such cases. (Paragraphs 196–197.)

(*c*) The maintenance of separate jurisdictions merely to preserve the freedom of choice of court which applicants now have in adoption and guardianship cases would not be justified. (Paragraph 202.)

(*d*) The rule which limits jurisdiction to courts in the applicant's or the child's home area should be relaxed. (Paragraph 202.)

50. (*a*) The aim should be a unified family jurisdiction, covering adoption, guardianship and affiliation proceedings, and matrimonial disputes, perhaps ultimately including all juvenile court matters and questions of ancillary relief resulting from divorce proceedings. (Paragraphs 198–200 and 203.)

(*b*) The work of such a unified family court will continue to require the contributions of the Family Division of the High Court, county court judges and the magistracy. (Paragraph 204.)

(*c*) We envisage family court judges whose qualifications and experience would include a wider knowledge of social services and social administration as well as traditional legal training, sitting in some cases with magistrates specially selected and trained for this kind of work. (Paragraph 207.)

(*d*) The composition of the family court should vary according to the nature and difficulty of each case, with the allocation of cases decided by the family court administration. (Paragraph 213.)

51. In adoption and guardianship the family court jurisdiction might be exercised by:

(*a*) county court judges or family court chairmen sitting alone (paragraph 205);

(*b*) lay magistrates, advised on matters of law by their clerk (paragraph 205);

(*c*) a family court chairman sitting with two magistrates. (Paragraph 206.)

52. (*a*) All family cases heard by lay magistrates alone, including adoptions, should go to the domestic court. (Paragraph 220(*a*).)

(*b*) Selection to sit on the domestic court might be considered. (Paragraph 207.)

53. It should not be necessary for professionally qualified people such as doctors and social workers to be full members of the court but the court should have general discretionary powers where, for example, the expert evidence presented by the parties is conflicting:

(*a*) to appoint an individual with relevant expert qualifications to inquire into the case and report back to the court;

(*b*) to appoint, from a special panel, an expert assessor to advise and assist the court in its deliberations. (Paragraphs 208–212.)

54. (*a*) Consideration should be given to whether a hearing is required for all adoption applications but there should be a hearing in every case concerning the mother's consent. (Paragraph 215.)

(*b*) Guidance should be given, by appropriate means, on the conduct of hearings. (Paragraph 216.)

(*c*) All hearings of adoption and guardianship cases should be held in private (i.e. in chambers or in camera). (Paragraph 217.)

55. Wardship jurisdiction should be available only where there is no statutory provision for the resolution of questions concerning the custody and care and control of children. (Paragraph 218.)

56. Legal aid should be available, to all the parties affected, in all adoption and guardianship cases where there is dispute or disagreement whether the application should be granted, and for the purposes of any appeal against a court's decision in an adoption or guardianship case. (Paragraph 219.)

57. During the interim period before the establishment of a family court on the lines we have described, bringing about a unified jurisdiction and administration for adoption and guardianship cases, the following changes should be made within the existing court system.

(*a*) The jurisdiction of the magistrates in adoption cases should be transferred from the juvenile court to the domestic court, which already exercises the guardianship jurisdiction. (Paragraph 220 (*a*).)

(*b*) Selection of magistrates to sit on the domestic court might be considered. (Paragraph 220 (*a*).)

(*c*) In every court with adoption and guardianship jurisdiction, these cases should be heard at different times from all other kinds of business, or at least in a separate court room with separate waiting accommodation. (Paragraph 220 (*b*).)

(*d*) The adoption and guardianship jurisdiction of the High Court need not be retained, except for international adoptions under the Adoption Act 1968. (Paragraph 220 (*c*).)

(*e*) Propositions 49(*d*) (relaxation of rules of venue in adoption and guardianship cases), 53 (appointment of experts and assessors), 54 (need for and nature of hearings, and privacy of hearings), 55 (wardship) and 56 (legal aid) should be given effect.

58. Adoption jurisdiction should remain with the sheriff court and with the Court of Session, but should be transferred from the Inner to the Outer House of the Court of Session. (Paragraph 224.)

59. The court should have discretion to appoint a curator *ad litem*, chosen from an approved list of social workers of high standing, to make inquiries on behalf of the court in cases concerning the giving of the mother's consent, cases arising under the extension of the guardianship jurisdiction we propose, and adoption cases. (Paragraph 225.)

60. The court should also have discretion to sit with expert assessors, chosen from an approved list of assessors (who might be qualified in medicine or social work). (Paragraph 226.)

61. It should be within the discretion of the sheriff to decide whether or not there should be a hearing for adoption applications or applications by relatives or foster parents for guardianship, but there should be a hearing in every case concerning the giving of the mother's consent. The absence of a hearing should not exclude contact between the sheriff and the adoption agency or curator. (Paragraphs 227–228.)

62. The option of serial number procedure in adoption applications should be extended to the natural parents so that their anonymity may be preserved if they wish. (Paragraph 234.)

63. The adoption agency should be named on the adoption order. (Paragraph 233.)

64. In England and Wales access to original birth records should only be granted by permission of a court. (Paragraph 235.)

65. Where a court refuses an adoption order it should have power to make some alternative order. (Paragraph 236.)

66. Where a court is in doubt about the suitability of a placement, or where further information is required, an adjournment is more appropriate than the use of an interim order. (Paragraphs 237–240.)

67. That the existing provision whereby a child must be continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of an order needs clarifying rather than changing, "care and possession" to mean that the applicants have exercised effective quasi-parental responsibility. (Paragraphs 241–242.)

68. In the case of applicants resident overseas the courts should have discretion to grant an order where the care and possession by one of the applicants falls outside the three months immediately preceding the date of the order. (Paragraph 243.)

69. That the power to make provisional adoption orders should remain, bearing in mind that adoptions by natural parents and independent placements are to be banned under our proposals. (Paragraphs 244–247.)

70. Steps need to be taken to safeguard children from overseas who come to this country for adoption, possibly by making it an offence for anyone other than a relative to receive a child for adoption other than through a registered adoption agency in this country (see also proposition 15). (Paragraph 248.)

71. That an adopted child should have the same rights under wills and other instruments as a natural child of the adoptive family. (Paragraphs 249–250.)

72. It should be prohibited for adopted children to marry anyone whom they would have been debarred from marrying if they had been born rather than adopted, into that family, unless they have obtained the leave of a court to do so. (Paragraphs 251–252.)

73. When placing a child the agency should have regard to the parent's wishes (if any) as to the religious persuasion in which the child should be brought up, but it should cease to be possible to attach a condition as to religion to the consent. (Paragraphs 253–255.)

74. In agency placements, a comprehensive medical examination should be carried out on a child offered for adoption before placement. A subsequent examination should be made for the purpose of the adoption application to the court, the report of this examination to be submitted to the court. (Paragraphs 263–265 and 269–271.)

75. A comprehensive medical examination of the prospective adopters should be carried out as part of the agency's home study, before a child is placed, with a subsequent follow-up check at the time of an adoption application to the court unless more than two years has elapsed since the first examination in which case a further comprehensive examination will be needed. The report of the latter examination should be submitted to the court. (Paragraphs 267–268 and 271.)

76. In foster parent applications, comprehensive medical examinations for child and adopters will form part of the local authority's social assessment prior to giving permission for an application to be made, and the reports will be made available to the court. Where local authority permission to apply is not required (i.e. where the foster parents have had the child for more than five years) a comprehensive medical examination should be carried out for the purposes of the application to the court. (Paragraph 273.)

77. In applications by relatives, comprehensive medical examinations should be carried out prior to the application to the court, and the reports made available to the court. (Paragraph 273.)

78. Broad principles about medical requirements in agency practice should be stated in the law, leaving details of practice to professional guidance. Medical report forms for the court application should be prescribed in statutory rules. (Paragraph 274.)

79. Consideration should be given to relieving natural parents and adopters of the cost of medical examinations for adoption. (Paragraph 275.)

80. All agencies should have an established machinery for making decisions. (Paragraph 277.)

81. Policy decisions will normally be taken by the controlling committee, which could include both lay members and professional workers. Case decisions should always be group decisions, whether of a case committee or a panel of professionals. (Paragraphs 277–278.)

82. Casework should not be undertaken by committee members who are not professional social workers. (Paragraph 278.)

APPENDIX A

Written Evidence Considered by the Committee

The Committee considered evidence submitted by the organisations listed below.

Advisory Councils on Child Care of England and Wales and of Scotland (Joint Committee on Adoption Practice).

Association of Child Care Officers.

Association of Children's Officers.

Association of County Councils in Scotland.

Association of County Court Registrars.

Association of Municipal Corporations.

Bar Council.

British Humanist Association.

British Medical Association (jointly with the Magistrates' Association).

British Paediatric Association.

British Psycho-Analytical Society.

Chief Chancery Master and the Official Solicitor.

Church of Scotland Social and Moral Welfare Board.

Cobden Trust and the National Council for Civil Liberties.

Council of Her Majesty's Judges of County Courts.

County Councils Association (England and Wales).

Department of Health and Social Security.

Dr. Barnardo's.

Faculty of Advocates.

Institute of Medical Social Workers (Maternity Group).

Justices' Clerks' Society.

London Borough of Camden.

Magistrates' Association (jointly with British Medical Association).

National Association of Probation Officers.

National Council for the Unmarried Mother and Her Child.

National Council for Women of Great Britain.

National Secular Society.

Public Record Office.

Registrar General for England and Wales.

Registrar General for Scotland.

Royal College of Obstetricians and Gynaecologists.

Scottish Burghs.

Scottish Council for the Unmarried Mother and Her Child.

Sheriff Clerks.

Sheriffs Substitute Association.

Standing Conference of Principal Probation Officers.

Standing Conference of Societies Registered for Adoption*.

Standing Conference of Societies Registered for Adoption (Scottish Group)*.

The Committee also considered evidence submitted by a number of individuals.

APPENDIX B

Number of Adoption Orders Registered in England and Wales, and Scotland, 1958–1969

	England and Wales†	*Scotland*‡	*Total*
1958	13,303	1,365	14,668
1959	14,105	1,236	15,341
1960	15,099	1,457	16,556
1961	15,997	1,609	17,606
1962	16,894	1,621	18,515
1963	17,782	1,683	19,465
1964	20,412	1,945	22,357
1965	21,033	2,018	23,051
1966	22,792	2,040	24,832
1967	22,802	2,140	24,942
1968	24,831	2,155	26,986
1969	23,803	2,246	26,049

* Now the Association of British Adoption Agencies.
† Statistical Review of the Registrar General for England and Wales.
‡ Annual Report of the Registrar General for Scotland.

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