

# **ADOPTION AND CHILDREN (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Chapter 2**

#### ***The Adoption Process***

#### ***Section 31 - Parental etc. consent***

130. Before an adoption order can be made, the court must be satisfied that one of five conditions relating to consent is met.
131. The first condition is that each parent or guardian of the child has either consented to the making of the adoption order (subsection (2)(a)) or his or her consent should be dispensed with (subsection (2)(b)).
132. Subsection (3) sets out the grounds on which a parent or guardian's consent can be dispensed with. These are that the parent or guardian is dead; that they cannot be found or are incapable of giving consent; that, either subsection (4) or (5) applies or, where neither of those subsections applies, the welfare of the child requires the consent to be dispensed with. Subsection (4) applies where the parent or guardian has parental responsibilities or parental rights in respect of the child (other than those mentioned in sections 1(1)(c) and 2(1)(c) of the Children (Scotland) Act 1995 (relating to contact only)), and, in the opinion of the court, is unable satisfactorily to discharge those responsibilities or exercise those rights and is likely to continue to be unable to do so. Subsection (5) applies where the parent or guardian does not have parental responsibilities or parental rights as the result of the making of a permanence order (not including one granting authority to adopt) and is unlikely to have parental responsibilities or parental rights vested in them.
133. The second condition is contained in subsection (7) and is that the child in respect of whom the adoption order is applied for is subject to a permanence order which grants authority for the child to be adopted. This means that the child's parents will already have consented to the making of an adoption order or their consent has been dispensed with at the time the permanence order was made.
134. The third condition, set out in subsection (8), applies where consent to adoption has been given by the child's parent or guardian under section 20 (advance consent to adoption) of the Adoption and Children Act 2002, that consent has not been withdrawn and the parent or guardian does not oppose the making of the adoption order.
135. The fourth condition, set out in subsection (9), applies where the child to be adopted has been placed with the prospective adopters by an adoption agency within the meaning of section 2(1) of the 2002 Act (basic definitions), either by virtue of section 19 (placing of children with parental consent) or section 21 (placement orders) of the 2002 Act. The child must have been at least 6 weeks old at the time the consent was given or, as

*These notes relate to the Adoption and Children (Scotland) Act  
2007 (asp 4) which received Royal Assent on 15 January 2007*

the case may be, the order was made. In addition, no parent or guardian must oppose the making of the adoption order under consideration.

136. The fifth condition, set out in subsection (10), applies where a freeing order in respect of the child to be adopted is in force, having been made under legislation in Northern Ireland.
137. Subsection (11) provides that parental consent given by the mother to the making of an adoption order under subsection (2)(a) only has effect if the child is at least 6 weeks old when the consent is given.
138. By virtue of subsection (12) a parent or guardian can oppose an adoption under subsection (8) or (9) only with leave of the court. Under subsection (13), a court may grant such leave only if it is satisfied that there has been a change of circumstances since consent was originally given or the order under section 21 of the 2002 Act (placement orders) was made.
139. By virtue of subsection (14) it is not possible for a parent or guardian to withdraw consent given under section 19 (placing children with parental consent) or 20 (advance consent to adoption) of the 2002 Act, or under an order under section 21 of that Act, if that consent was given after an application for an adoption order has been made.
140. Subsection (15) defines 'parent', for the purposes of subsections (2) and (3), as meaning a parent who has any parental responsibilities or parental rights in relation to the child or a parent who, by virtue of a permanence order which does not include authority for the child to be adopted, has no such responsibilities or rights.