

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2

Permanence Orders

Section 92 - Variation of ancillary provisions in order

- 315. This section relates to the variation of ancillary provisions in a permanence order. It specifies those who can request such a variation, the power of the court when making a variation and the effect of a variation.
- 316. Subsection (2) provides that the court may, on an application, vary any ancillary provisions in a permanence order.
- 317. Subsection (3) lists those who can apply for variation of the ancillary provisions of a permanence order. These are the local authority which made the original application for a permanence order; the child who is subject to the permanence order (if aged 12 or over or, where under 12, is considered by the court to be mature enough to understand the effect of the order); anyone who was granted parental responsibilities and parental rights by the permanence order; anyone who lost parental responsibilities and parental rights by virtue of the permanence order or a variation of it; and any other person who claims an interest. In practice those who have lost parental responsibilities and parental rights by virtue of the making of the permanence order are likely to apply for a variation of an order in order to secure or vary contact arrangements with the child. However, such people may apply to vary any aspect of the permanence order. Anyone other than the local authority which made the original application for the permanence order will be required to obtain the leave of the court before such an application can be made (see section 94(4) and (5) of the Act).
- 318. Subsections (4) and (5) apply where a court varies the ancillary provision of a permanence order so as to vest in a person a parental responsibility or parental right that before the variation vested in another person. In this case, the court may include in the variation a provision extinguishing the parental responsibility or parental right that was vested in the other person.
- 319. Subsection (6) provides that section 84(4), (5)(a) and (b) and (6) (considerations applicable to the making of an order) apply to the variation of a permanence order as they do to the making of a permanence order. A court considering an application for variation of a permanence order must therefore apply the considerations contained in those provisions in this context too.
- 320. By virtue of subsection (7), “ancillary provisions” in subsections (1) and (2) has the same meaning as in section 82 of the Act (permanence orders: ancillary provisions).

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

321. Subsection (8) defines a variation for the purposes of this section as including adding to, omitting or amending any of the provisions of the permanence order.