

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2

Permanence Orders

Section 83 - Order granting authority for adoption: conditions

298. An application for a permanence order may also include a request for authority for the child to be adopted. Where sought, this can only be granted where the conditions set out at section 83(1) are met. These conditions are: that the applicant has sought such authority in their application for a permanence order; that the court is satisfied that the child has already been placed for adoption or is likely to be so placed; that the court is satisfied that each parent or guardian of the child has understood the effect of the making of an adoption order and has consented to its making; or that the court has dispensed with their consent on one of the grounds mentioned in subsection (2); and that the court considers that it would be better for that child for the authority to be granted than for it not to be granted.
299. Subsection (2) provides for the grounds on which a parent's or guardian's consent can be dispensed with. These are the same as the grounds set out at section 31 in relation to adoption order. The grounds are that the parent or guardian is dead; that the parent or guardian cannot be found or is incapable of giving consent; that subsection (3) or (4) applies; or, where neither of those subsections applies, the welfare of the child otherwise requires the consent to be dispensed with.
300. Subsection (3) applies where the parent or guardian has parental responsibilities or parental rights in relation to the child, other than those mentioned in sections 1(1)(c) and 2(1)(c) of the 1995 Act (maintaining contact with the child on a regular basis); where, in the opinion of the court, the parent or guardian is unable satisfactorily to discharge those responsibilities or exercise those rights and is likely to continue to be unable to do so.
301. Subsection (4) applies where the parent or guardian has, by virtue of the making of a permanence order which does not include authority for the child to be adopted, no parental responsibilities or parental rights in relation to the child and it is unlikely that he or she will obtain such parental responsibilities or parental rights.
302. Subsection (5) defines 'parent' for the purposes of subsections (1)(c) and (2) (those who must give their consent or have it dispensed with) as meaning a parent who has any parental responsibilities or parental rights in relation to the child, or a parent who has lost such responsibilities and rights by virtue of a previous permanence order which did not include authority to adopt.