

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2

Permanence Orders

Section 84 - Conditions and considerations applicable to making of order

303. Subsection (1) (as read with subsection (2)) provides that a permanence order may not be made in respect of a child who is aged 12 or over unless the child consents, except where the court is satisfied that the child is incapable of consenting to the order. Under subsection (3) a court may not make a permanence order unless it considers that it would be better for the child that the order be made than not. By virtue of subsection (4), when considering whether or not to make a permanence order and what provision the order should make, the court's need to safeguard and promote the welfare of the child throughout childhood must be its paramount consideration.
304. Under subsection (5), the court must consider particular factors before making a permanence order. Under subsection (5)(a), the court must, after taking account of the child's age and maturity, as far as is reasonably practicable, give the child the opportunity to indicate whether he or she wishes to express his or her views on the making of a permanence order, and if so, to give the child the opportunity to express those views.
305. Where the child does express views subsection (5)(b) places a duty on the court to have regard to such views. In addition, when considering whether or not to make a permanence order, the court must have regard to the child's religious persuasion, racial origin and cultural and linguistic background and the likely effect on the child of the making of the order. Subsection (5)(c) requires that the court must also be satisfied that there is no person who has the parental right to have the child living with them or otherwise to regulate the child's residence, or, where there is such a person, the court must be satisfied that the child's residence with the person is, or is likely to be, seriously detrimental to the welfare of the child.
306. Subsection (6) provides that a child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of subsection (5)(a).