



# Adoption and Children (Scotland) Act 2007

2007 asp 4

## PART 2

### PERMANENCE ORDERS

#### *Variation*

#### **92 Variation of ancillary provisions in order**

- (1) This section applies where a permanence order which includes ancillary provisions is in force.
- (2) The appropriate court may, on an application by a person mentioned in subsection (3), vary such of the ancillary provisions as the court considers appropriate.
- (3) Those persons are—
  - (a) the local authority on whose application the permanence order was made,
  - (b) if the child in respect of whom the order was made is—
    - (i) aged 12 or over, or
    - (ii) under the age of 12 but, in the court's opinion (taking account of the child's age and maturity), capable of understanding the effect of the order,  
that child,
  - (c) any person in whom parental responsibilities and parental rights are vested by virtue of the order,
  - (d) any person in whom were vested, immediately before the making of the order, any parental responsibilities or parental rights which, by virtue of the making of the order, vest in another person,
  - (e) any person in whom were vested, immediately before a variation by virtue of this section of the order, parental responsibilities or parental rights which, by virtue of the variation, vest in another person,
  - (f) any other person who claims an interest.

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- (4) Subsection (5) applies where the court exercises its power under subsection (2) to vary the ancillary provisions so as to vest, by virtue of paragraph (a) or (b) of subsection (1) of section 82, in a person a parental responsibility or a parental right which, immediately before the variation, vested in another person.
- (5) The court may include in the order as varied provision extinguishing the responsibility or right of that other person.
- (6) Subsections (4), (5)(a) and (b) and (6) of section 84 apply to the variation of a permanence order under this section as they apply to the making of such an order.
- (7) In subsections (1) and (2), “ancillary provisions” has the same meaning as in section 82.
- (8) In this section, “vary” includes add to, omit, or amend; and “variation” is to be construed accordingly.

#### Commencement Information

- II** S. 92 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

### 93 Amendment of order to grant authority for child to be adopted

- (1) This section applies where—
  - (a) a permanence order in respect of a child is in force, and
  - (b) the order does not include provision granting authority for the child to be adopted.
- (2) On the application of the local authority on whose application the order was made, the appropriate court may amend the order so as to include provision granting authority for the child to be adopted if (and only if)—
  - (a) the court is satisfied that the child has been placed for adoption, or is likely to be placed for adoption,
  - (b) the court is satisfied that the condition in subsection (3) or subsection (4) is met, and
  - (c) the court considers that it would be better for the child that authority for the child to be adopted is granted than that it should not be granted.
- (3) The condition is that each parent or guardian of the child understands what the effect of making an adoption order would be and consents to the making of such an order in relation to the child.
- (4) The condition is that the consent of each parent or guardian should be dispensed with on any of the grounds mentioned in section 83.
- (5) Subsections (4), (5)(a) and (b) and (6) of section 84 apply to the amendment of a permanence order under this section as they apply to the making of such an order.
- (6) In subsections (3) and (4)—
 

“guardian”, in relation to a child in respect of whom a permanence order to which this section applies is in force, means a guardian—

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- (a) who has any parental responsibilities or parental rights in relation to the child, or
  - (b) who, by virtue of the making of a previous such order, no longer has any such responsibilities or rights,
- “parent”, in relation to a child in respect of whom a permanence order to which this section applies is in force, means a parent—
- (a) who has any parental responsibilities or parental rights in relation to the child, or
  - (b) who, by virtue of the making of a previous such order, no longer has any such responsibilities or rights.

#### Commencement Information

**I2** S. 93 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

## 94 Proceedings

- (1) In any proceedings for variation of a permanence order by the local authority on whose application the order was granted, the appropriate court must permit any person who is affected by the order, and who wishes to make representations to the court, to do so.
- (2) In any proceedings for variation of a permanence order by a person other than the local authority on whose application the order was granted, the appropriate court must permit any person mentioned in subsection (3) who wishes to make representations to the court to do so.
- (3) Those persons are—
  - (a) the local authority on whose application the permanence order was made,
  - (b) if the child in respect of whom the original order was made is—
    - (i) aged 12 or over, or
    - (ii) under the age of 12 but, in the court's opinion (taking account of the child's age and maturity), is capable of understanding the effect of the order,that child,
  - (c) any person who has parental responsibilities or parental rights in relation to the child,
  - (d) any person on whom a duty was imposed, or power conferred, by the order,
  - (e) any person in whom were vested, immediately before the making of the order, any parental responsibilities or parental rights which, by virtue of the making of the order, vest in another person,
  - (f) any person in whom were vested, immediately before a variation by virtue of section 92 of the order, parental responsibilities or parental rights which, by virtue of the variation, vest in another person, and
  - (g) any other person who claims an interest.
- (4) A person other than the local authority on whose application a permanence order was granted may not apply to the court for a variation of the order without first obtaining the leave of the court.
- (5) If the court is satisfied—

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- (a) that there has been a material change in the circumstances directly relating to any of the order's provisions, or
  - (b) that for any other reason it is proper to allow the application to be made,
- it must grant that leave.
- (6) In determining whether there has been a material change in circumstances, the court must have regard, in particular, to any aspect of—
- (a) the welfare of the child in respect of whom the permanence order was made, and
  - (b) the circumstances of—
    - (i) a parent, or the parents, of the child,
    - (ii) the child's guardian, or
    - (iii) any person mentioned in paragraph (e) or (f) of subsection (3).
- (7) In subsection (1), the reference to variation of a permanence order includes a reference to amendment of the order to include provision granting authority for the child to whom the order relates to be adopted.

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**Commencement Information**

**I3** S. 94 in force at 28.9.2009 by S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 14(3A) inserted by [2020 asp 16 s. 30\(5\)](#)
- s. 14(4A)-(4C) inserted by [2020 asp 16 s. 2\(2\)\(c\)](#)
- s. 84(5A)(5B) inserted by [2020 asp 16 s. 2\(3\)\(c\)](#)