



# Adoption and Children (Scotland) Act 2007

2007 asp 4

## PART 2

### PERMANENCE ORDERS

#### *The making of permanence orders*

#### **80 Permanence orders**

- (1) The appropriate court may, on the application of a local authority, make a permanence order in respect of a child.
- (2) A permanence order is an order consisting of—
  - (a) the mandatory provision,
  - (b) such of the ancillary provisions as the court thinks fit, and
  - (c) if the conditions in section 83 are met, provision granting authority for the child to be adopted.
- (3) In making a permanence order in respect of a child, the appropriate court must secure that each parental responsibility and parental right in respect of the child vests in a person.

#### **81 Permanence orders: mandatory provision**

- (1) The mandatory provision is provision vesting in the local authority for the appropriate period—
  - (a) the responsibility mentioned in section 1(1)(b)(ii) of the 1995 Act (provision of guidance appropriate to child's stage of development) in relation to the child, and
  - (b) the right mentioned in section 2(1)(a) of that Act (regulation of child's residence) in relation to the child.
- (2) In subsection (1) "the appropriate period" means—

- (a) in the case of the responsibility referred to in subsection (1)(a), the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 18,
- (b) in the case of the right referred to in subsection (1)(b), the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 16.

## 82 Permanence orders: ancillary provisions

- (1) The ancillary provisions are provisions—
- (a) vesting in the local authority for the appropriate period—
    - (i) such of the parental responsibilities mentioned in section 1(1)(a), (b) (i) and (d) of the 1995 Act, and
    - (ii) such of the parental rights mentioned in section 2(1)(b) and (d) of that Act,
 in relation to the child as the court considers appropriate,
  - (b) vesting in a person other than the local authority for the appropriate period—
    - (i) such of the parental responsibilities mentioned in section 1(1) of that Act, and
    - (ii) such of the parental rights mentioned in section 2(1)(b) to (d) of that Act,
 in relation to the child as the court considers appropriate,
  - (c) extinguishing any parental responsibilities which, immediately before the making of the order, vested in a parent or guardian of the child, and which—
    - (i) by virtue of section 81(1)(a) or paragraph (a)(i), vest in the local authority, or
    - (ii) by virtue of paragraph (b)(i), vest in a person other than the authority,
  - (d) extinguishing any parental rights in relation to the child which, immediately before the making of the order, vested in a parent or guardian of the child, and which—
    - (i) by virtue of paragraph (a)(ii), vest in the local authority, or
    - (ii) by virtue of paragraph (b)(ii), vest in a person other than the authority,
  - (e) specifying such arrangements for contact between the child and any other person as the court considers appropriate and to be in the best interests of the child, and
  - (f) determining any question which has arisen in connection with—
    - (i) any parental responsibilities or parental rights in relation to the child, or
    - (ii) any other aspect of the welfare of the child.
- (2) In subsection (1), “the appropriate period” means—
- (a) in the case of the responsibility mentioned in section 1(1)(b)(ii) of the 1995 Act, the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 18,
  - (b) in any other case, the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 16.

### **83 Order granting authority for adoption: conditions**

- (1) The conditions referred to in section 80(2)(c) are—
  - (a) that the local authority has, in the application for the permanence order, requested that the order include provision granting authority for the child to be adopted,
  - (b) that the court is satisfied that the child has been, or is likely to be, placed for adoption,
  - (c) that, in the case of each parent or guardian of the child, the court is satisfied—
    - (i) that the parent or guardian 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, or
    - (ii) that the parent’s or guardian’s consent to the making of such an order should be dispensed with on one of the grounds mentioned in subsection (2),
  - (d) that the court considers that it would be better for the child if it were to grant authority for the child to be adopted than if it were not to grant such authority.
- (2) Those grounds are—
  - (a) that the parent or guardian is dead,
  - (b) that the parent or guardian cannot be found or is incapable of giving consent,
  - (c) that subsection (3) or (4) applies,
  - (d) that, where neither of those subsections applies, the welfare of the child otherwise requires the consent to be dispensed with.
- (3) This subsection applies if the parent or guardian—
  - (a) 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,
  - (b) is, in the opinion of the court, unable satisfactorily to—
    - (i) discharge those responsibilities, or
    - (ii) exercise those rights, and
  - (c) is likely to continue to be unable to do so.
- (4) This subsection applies if—
  - (a) the parent or guardian has, by virtue of the making of a permanence order which does not include provision granting authority for the child to be adopted, no parental responsibilities or parental rights in relation to the child, and
  - (b) it is unlikely that such responsibilities will be imposed on, or such rights given to, the parent or guardian.
- (5) In subsections (1)(c) and (2), “parent”, in relation to the child in respect of whom the permanence order is to be made, means—
  - (a) a parent who has any parental responsibilities or parental rights in relation to the child, or
  - (b) a parent who, by virtue of a permanence order which does not include provision granting authority for the child to be adopted, has no such responsibilities or rights.

**84 Conditions and considerations applicable to making of order**

- (1) Except where subsection (2) applies, a permanence order may not be made in respect of a child who is aged 12 or over unless the child consents.
- (2) This subsection applies where the court is satisfied that the child is incapable of consenting to the order.
- (3) The court may not make a permanence order in respect of a child unless it considers that it would be better for the child that the order be made than that it should not be made.
- (4) In considering whether to make a permanence order and, if so, what provision the order should make, the court is to regard the need to safeguard and promote the welfare of the child throughout childhood as the paramount consideration.
- (5) Before making a permanence order, the court must—
  - (a) after taking account of the child’s age and maturity, so far as is reasonably practicable—
    - (i) give the child the opportunity to indicate whether the child wishes to express any views, and
    - (ii) if the child does so wish, give the child the opportunity to express them,
  - (b) have regard to—
    - (i) any such views the child may express,
    - (ii) the child’s religious persuasion, racial origin and cultural and linguistic background, and
    - (iii) the likely effect on the child of the making of the order, and
  - (c) be satisfied that—
    - (i) there is no person who has the right mentioned in subsection (1)(a) of section 2 of the 1995 Act to have the child living with the person or otherwise to regulate the child’s residence, or
    - (ii) where there is such a person, the child’s residence with the person is, or is likely to be, seriously detrimental to the welfare of the child.
- (6) 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).

**85 Child in respect of whom order may be made**

- (1) A permanence order may be made in respect of a child who is an adopted child.
- (2) A permanence order may not be made in respect of a child who is or has been—
  - (a) married,
  - (b) a civil partner.

**86 Representations**

- (1) In any proceedings relating to an application for a permanence order, the appropriate court must permit any person mentioned in subsection (2) who wishes to make representations to the court to do so.
- (2) Those persons are—

- (a) the local authority making the application,
- (b) the child or the child's representative,
- (c) any person who has parental responsibilities or parental rights in relation to the child,
- (d) any other person who claims an interest.