



# 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.

#### *Effect of order*

### **87 Effect of order on existing parental right**

The making of a permanence order extinguishes the parental right mentioned in subsection (1)(a) of section 2 of the 1995 Act of—

- (a) a parent of the child in respect of whom the order is made,
- (b) a guardian of such a child,

which, immediately before the making of the order, vested in the parent or, as the case may be, guardian.

### **88 Effect of order on existing orders**

- (1) This section applies where—
  - (a) parental responsibilities or parental rights in relation to a child vest in a person by virtue of—
    - (i) a permanence order, or
    - (ii) an order under section 11 of the 1995 Act (court orders relating to parental responsibilities etc.),
  - (“the existing order”), and
  - (b) the appropriate court intends to make a permanence order (“the new order”) as respects the child.
- (2) On the making of the new order, the existing order is revoked.
- (3) In making the new order, the court must secure that the parental responsibilities or parental rights vesting by virtue of the existing order vest in a person under the new order.

#### *Revocation of supervision requirement*

### **89 Revocation of supervision requirement**

- (1) Subsection (2) applies where—
  - (a) the child in respect of whom a permanence order is to be made is subject to a supervision requirement, and
  - (b) the appropriate court is satisfied that, were it to make a permanence order in respect of the child, compulsory measures of supervision in respect of the child would no longer be necessary.
- (2) The court must make an order providing that, on the making of the permanence order, the supervision requirement ceases to have effect.

### *Precedence*

#### **90 Precedence of court orders and supervision requirements over order**

- (1) Subsection (2) applies where a local authority has, by virtue of a permanence order, parental responsibilities or parental rights in relation to a child.
- (2) The local authority must not act in any way which would be incompatible with—
  - (a) any other court order of which the authority is aware relating to the child or the child's property,
  - (b) any supervision requirement to which the child is subject.

### *Exercise of parental right under order*

#### **91 Exercise of parental right under order**

- (1) Subsection (2) applies where—
  - (a) two or more persons have a parental right in relation to a child, and
  - (b) by virtue of paragraph (a) or (b) of subsection (1) of section 82, the right vests in one of them or, as the case may be, two or more of them.
- (2) Each of the persons mentioned in subsection (1)(a) may exercise the right without the consent of the other or, as the case may be, any of the others.
- (3) Subsection (2) does not apply where an order vesting the right, or regulating its exercise, provides otherwise.

### *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.
- (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.

### **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—
- (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.

## 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—
  - (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.

### *Orders and supervision requirements*

## **95 Duty of children’s hearing to prepare report for court**

- (1) Subsection (2) applies where—
- (a) an application is made for a permanence order, or variation of such an order, in respect of a child,
  - (b) the application has not been determined (or, as the case may be, withdrawn or abandoned), and
  - (c) a children’s hearing proposes to—
    - (i) make a supervision requirement in respect of the child, or
    - (ii) modify, under paragraph (c) or (d) of subsection (9) of section 73 of the 1995 Act, a supervision requirement that has been made in respect of the child.
- (2) The children’s hearing must prepare for the court to which the application has been made a report containing such information as the Scottish Ministers may by regulations prescribe.
- (3) In subsection (1)(a), 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.

## **96 Application: effect on supervision requirement**

- (1) Subsection (2) applies where an application is made for a permanence order, or variation of such an order, in respect of a child.
- (2) A supervision requirement in respect of the child may not be—
- (a) made, or
  - (b) modified under paragraph (c) or (d) of subsection (9) of section 73 of the 1995 Act,
- until the application is determined (or, as the case may be, withdrawn or abandoned).
- (3) Subsection (2) does not apply if the court to which the application is made refers the child’s case to the Principal Reporter (whether following receipt of a report under section 95 or otherwise).
- (4) 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.

- (5) In subsection (3), “Principal Reporter” has the same meaning as in Part II of the 1995 Act.

## **97 Interim orders and revocation of supervision requirement**

- (1) Subsection (2) applies where an application is made for a permanence order, or variation of such an order, in respect of a child.
- (2) The appropriate court may make such interim order as it thinks fit.
- (3) Subsection (4) applies where—
- (a) the child in respect of whom an interim order is to be made is subject to a supervision requirement, and
  - (b) the court is satisfied that, were it to make an interim order in relation to the child, compulsory measures of supervision in respect of the child would no longer be necessary.
- (4) The court must make an order providing that, on the making of the interim order, the supervision requirement ceases to have effect.
- (5) If—
- (a) the child in respect of whom an interim order is made is subject to a supervision requirement, and
  - (b) the provisions of the order conflict, or are otherwise inconsistent, with the requirement,
- the provisions of the order prevail.
- (6) 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.

### *Revocation and variation*

## **98 Revocation**

- (1) The appropriate court may, on an application by a person mentioned in subsection (2), revoke a permanence order if satisfied that it is appropriate to do so in all the circumstances of the case, including, in particular—
- (a) a material change in the circumstances directly relating to any of the order’s provisions,
  - (b) any wish by the parent or guardian of the child in respect of whom the order was made to have reinstated any parental responsibilities or parental rights vested in another person by virtue of the order.
- (2) Those persons are—
- (a) the local authority on whose application the order was made,
  - (b) any other person affected by the order who has obtained the leave of the court to apply for revocation of the order.
- (3) Subsections (4), (5)(a) and (b) and (6) of section 84 apply to the revocation of a permanence order under this section as they apply to the making of such an order.

## **99 Duty of local authority to apply for variation or revocation**

- (1) Subsection (2) applies where a local authority on whose application a permanence order was made determines that—
  - (a) there has been a material change in the circumstances directly relating to any of the order’s provisions, and
  - (b) in consequence of that change, the order ought to be varied or revoked.
- (2) The authority must, as soon as is reasonably practicable, apply to the appropriate court for variation or, as the case may be, revocation of the order.
- (3) In this section, “variation”, in relation to the permanence order, includes amendment of the order so as to include provision granting authority for the child to whom the order relates to be adopted; and “varied” is to be construed accordingly.

## **100 Revocation: order under section 11 of 1995 Act**

- (1) Subsection (2) applies where the appropriate court revokes a permanence order in respect of a child.
- (2) The court must consider whether to make an order under section 11 of the 1995 Act—
  - (a) imposing on a person specified in the order parental responsibilities in relation to the child, and
  - (b) giving to such a person parental rights in relation to the child.

### *Notification requirements*

## **101 Local authority to give notice of certain matters**

- (1) This section applies where—
  - (a) a permanence order includes provision granting authority for the child to be adopted,
  - (b) after the order is made or, as the case may be, amended under section 93(2) so as to include that provision, an event mentioned in subsection (2) occurs, and
  - (c) the order has not been revoked under section 98(1).
- (2) Those events are—
  - (a) the child is placed for adoption,
  - (b) an adoption order is made in respect of the child,
  - (c) the child ceases to be placed for adoption otherwise than on the making of an adoption order.
- (3) As soon as is reasonably practicable after the occurrence of the event, the local authority on whose application the permanence order was made must give notice of the event to any person falling within subsection (4).
- (4) A person falls within this subsection if—
  - (a) the person consented under section 83(1)(c)(i) or 93(3) to the making of the order,
  - (b) the person’s consent to the making of the order was dispensed with under section 83(1)(c)(ii) or 93(4).

- (5) The local authority need not comply with the requirement imposed by subsection (3) in relation to a person if the person has given notice to that effect to the authority.

*Effect of subsequent adoption order on permanence order*

**102 Effect of subsequent adoption order on permanence order**

- (1) Subsection (2) applies where—
- (a) a permanence order is in force in respect of a child, and
  - (b) an adoption order is made in respect of the child.
- (2) The permanence order ceases to have effect on the making of the adoption order.

*Restriction on making certain orders under 1995 Act*

**103 Restriction on making of orders under section 11 of 1995 Act**

After section 11 of the 1995 Act insert the following section—

**“11A Restriction on making of orders under section 11**

- (1) Subsection (2) applies where a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)) is in force in respect of a child.
- (2) The court may not, under subsection (1) of section 11 of this Act, make an order such as is mentioned in any of paragraphs (a) to (e) of subsection (2) of that section.”.

*Rules of procedure*

**104 Permanence orders: rules of procedure**

- (1) Provision may be made by rules of court in respect of—
- (a) applications for permanence orders,
  - (b) applications for variation, or revocation, of permanence orders,
  - (c) applications for leave to apply for such variation or revocation.
- (2) In the case of an application for a permanence order containing a request that the order include provision granting authority for the child to be adopted, or an application made by virtue of section 93(2), rules must require—
- (a) any person mentioned in subsection (3)(a) to be notified of the matters mentioned in subsection (4), and
  - (b) the person mentioned in subsection (3)(b) (if he can be found) to be notified of the matters mentioned in paragraphs (a) and (b) of subsection (4).
- (3) Those persons are—
- (a) every person who can be found and whose consent to the making of the order is required to be given or dispensed with under this Act or, if no such person can be found, any relative prescribed by the rules who can be found,

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*Status: This is the original version (as it was originally enacted).*

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- (b) if the father of the child in relation to whom the order is to be made does not have, and has never had, parental responsibilities or parental rights in relation to the child, the father of the child.
- (4) Those matters are—
- (a) that the application has been made,
  - (b) the date on which, and place where, the application will be heard,
  - (c) the fact that the person is entitled to be heard on the application,
  - (d) the fact that, unless the person wishes, or the court requires, the person need not attend the hearing.
- (5) In subsection (1), any references to an application for variation of a permanence order include references to an application to amend the order to include provision granting authority for the child to whom the order relates to be adopted.