



2022 CHAPTER 18

PART 1

Adoption

CHAPTER 3

Placement for adoption and adoption orders

The making of adoption orders

Conditions for making adoption orders

44.—(1) An adoption order may not be made if the child has a parent or guardian unless one of the following three conditions is met; but this section is subject to section 51 (parental etc. consent).

(2) The first condition is that, in the case of each parent or guardian of the child, the court is satisfied—

- (a) that the parent or guardian consents to the making of the adoption order;
- (b) that the parent or guardian has consented under section 17 or under section 20 of the Adoption and Children Act 2002 or section 31(2) of the Adoption and Children (Scotland) Act 2007 (and has not withdrawn the consent) and does not oppose the making of the adoption order; or
- (c) that the parent's or guardian's consent should be dispensed with.

(3) A parent or guardian may not oppose the making of an adoption order under subsection (2)(b) without the court's leave.

(4) The second condition is that—

- (a) the child has been placed for adoption by an adoption agency with the prospective adopters in whose favour the order is proposed to be made;
 - (b) either—
 - (i) the child was placed for adoption with the consent of each parent or guardian and the consent of the mother was given when the child was at least six weeks old; or
 - (ii) the child was placed for adoption under a placement order; and
 - (c) no parent or guardian opposes the making of the adoption order.
- (5) A parent or guardian may not oppose the making of an adoption order under the second condition without the court's leave.
- (6) The third condition is that—
- (a) the child is the subject of a Scottish permanence order which includes provision granting authority for the child to be adopted; or
 - (b) an adoption agency (within the meaning of section 2(1) of the Adoption and Children Act 2002) is authorised to place the child for adoption under section 19 of that Act or an order under section 21 of that Act.
- (7) The court cannot give leave under subsection (3) or (5) unless satisfied that there has been a change in circumstances since the consent of the parent or guardian was given or, as the case may be, the placement order was made.
- (8) An adoption order may not be made in relation to a person—
- (a) who is or has been married or a civil partner; or
 - (b) who has attained the age of 19 years.
- (9) In this section, “Scottish permanence order” means a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (including a deemed permanence order having effect by virtue of article 13(1), 14(2), 17(1) or 19(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009).