

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2

Permanence Orders

Section 94 - Proceedings

326. Under subsection (1), in any proceedings relating to an application by a local authority for the variation of a permanence order, the appropriate court must permit any person who is affected by the permanence order and who wishes to make representations to the court, to do so.
327. By virtue of subsection (2), in any proceedings relating to an application for the variation of a permanence order, by anyone other than the local authority which made the original permanence order application, those persons specified at subsection (3) have a right to make representations to the appropriate court. Those persons are: the local authority which made the original application for the permanence order; the child who is subject to the order (if aged 12 years or over or, where under 12, is considered by the court to be capable of understanding the effect of the order); any person who has parental responsibilities and parental rights in relation to the child; anyone who has a duty or power by virtue of the permanence order; any person who had parental responsibilities and parental rights immediately before the making of the order, which the order then vested in another person; any person who had parental responsibilities and parental rights conferred by virtue of the original permanence order but which have been vested in another person by virtue of any variation of the order; and anyone else who claims an interest.
328. By virtue of subsection (4), if a person other than the local authority which made the original permanence order application seeks to apply for a variation to a permanence order they must obtain leave of the court to do so. Subsection (5) provides that the court must grant leave if there has been a material change in circumstances directly relating to the provisions of the order or that for any other reason it is proper to allow the application to be made.
329. Subsection (6) sets out the issues to which a court must have particular regard in determining whether there has been a material change in circumstances. These are any aspect of the welfare of the child and the circumstances of his or her parent(s) or guardian or any persons mentioned in subsection (3)(e) or (f) (being those who had parental responsibilities or rights but which the order or a variation of it vested in another person).

*These notes relate to the Adoption and Children (Scotland) Act
2007 (asp 4) which received Royal Assent on 15 January 2007*

330. Subsection (7) makes clear that any references to an application for variation of a permanence order also include references to an application to amend the order to include authority for the child to be adopted.