



Adoption and Children (Scotland) Act 2007

2007 asp 4

PART 1

ADOPTION

CHAPTER 2

THE ADOPTION PROCESS

The making of adoption orders

31 Parental etc. consent

- (1) An adoption order may not be made unless one of the five conditions is met.
- (2) The first condition is that, in the case of each parent or guardian of the child, the appropriate court is satisfied—
 - (a) that the parent or guardian understands what the effect of making an adoption order would be and consents to the making of the order (whether or not the parent or guardian knows the identity of the persons applying for the order), or
 - (b) that the parent's or guardian's consent to the making of the adoption order should be dispensed with on one of the grounds mentioned in subsection (3).
- (3) 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 (4) or (5) applies,
 - (d) that, where neither of those subsections applies, the welfare of the child otherwise requires the consent to be dispensed with.
- (4) 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,

Status: This is the original version (as it was originally enacted).

- (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.
- (5) This subsection applies if—
- (a) the parent or guardian has, by virtue of the making of a relevant order, 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.
- (6) In subsection (5)(a), “relevant order” means a permanence order which does not include provision granting authority for the child to whom the order relates to be adopted.
- (7) The second condition is that a permanence order granting authority for the child to be adopted is in force.
- (8) The third condition is that each parent or guardian of the child has consented under section 20 of the 2002 Act (advance consent to adoption), has not withdrawn the consent and does not oppose the making of the adoption order.
- (9) The fourth condition is that—
- (a) the child has been placed for adoption by an adoption agency (within the meaning of section 2(1) of the 2002 Act) with the prospective adopters in whose favour the adoption order is proposed to be made,
 - (b) the child was placed for adoption—
 - (i) under section 19 of the 2002 Act (placing children with parental consent) with the consent of each parent or guardian and the consent of the mother was given when the child was at least 6 weeks old, or
 - (ii) under an order made under section 21 of the 2002 Act (placement orders) and the child was at least 6 weeks old when the order was made, and
 - (c) no parent or guardian of the child opposes the making of the adoption order.
- (10) The fifth condition is that an order under Article 17(1) or 18(1) of the Northern Ireland Order (orders declaring children free for adoption) is in force in relation to the child.
- (11) Consent is ineffective for the purposes of subsection (2)(a) if given by the mother less than 6 weeks after the child’s birth.
- (12) A parent or guardian may not oppose the making of an adoption order under subsection (8) or (9) without leave of the court.
- (13) The court must not give leave under subsection (12) unless satisfied that there has been a change of circumstances since the consent of the parent or guardian was given or, as the case may be, the order under section 21 of the 2002 Act was made.
- (14) The withdrawal of—
- (a) any consent to the placement of a child for adoption under section 19, or under an order under section 21, of the 2002 Act, or
 - (b) any consent given under section 20 of that Act,
- is ineffective if the consent is given after an application for an adoption order is made.

- (15) In subsections (2) and (3), “parent”, in relation to the child to be adopted, 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.