EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2025] CSIH 3
XA58/24

Lord Malcolm
Lord Tyre
Lady Wise

OPINION OF THE COURT

delivered by LADY WISE

in the Appeal under Section 113(1) of the Courts Reform (Scotland) Act 2014

in the cause

GLASGOW CITY COUNCIL

Petitioner and Appellant

against

MM (Mother)

Respondent

Petitioner and Appellant: Moynihan KC, Sharpe; SKO Family Law Specialists (for JK Cameron, Glasgow)
Respondent: Scott KC, Allison; Drummond Miller LLP (for Livingston Brown, Glasgow)

24 January 2025

Introduction

[1] Permanence orders were introduced by the Adoption and Children (Scotland) Act 2007. They are intended to regulate parental responsibilities and rights on a long term basis for children who cannot return home. This appeal raises an unresolved issue of statutory interpretation about whether the court can competently make a permanence order for a child who has reached the age of sixteen.

Background and proceedings to date

[2] The young person who is the subject of these proceedings has been referred to only as "the child" throughout. We shall continue to protect his anonymity but will refer to him as TM. The respondent, MM, is his mother. TM has not lived at home with his mother since he was an infant. A Compulsory Supervision Order has been in place since before his first birthday. He was placed with his current foster carer when he was about 8 years old. TM is deeply attached to his foster carer and she in turn wishes to provide a permanent home for him.

[3] In early 2023 Glasgow City Council submitted a petition under the 2007 Act. Act for a permanence order in respect of TM, who was at that time 15 years old. The proceedings before the sheriff were ongoing when he attained the age of 16. Thereafter, MM opposed the making of an order solely on the ground of competency. She contended that it would be incompetent to make a permanence order for a 16 year old. The sheriff rejected that argument and made a permanence order but his decision was overturned by the Sheriff Appeal Court ([2024] SAC (Civ) 38). Glasgow City Council now appeals to this court.

The statutory framework

[4] The 2007 Act reformed the law in relation to orders that permanently alter the legal position of a child. Part 1 relates to adoption of children, Part 2 creates permanence orders and Part 3 contains miscellaneous provisions relating to both adoption orders and permanence orders. Prior to the coming into force of this legislation, children who required to live away from their parents in the long term tended to remain in local authority care (and placed with long term foster carers), or be made the subject of freeing for adoption or

adoption orders. Freeing for adoption deprived natural parents of all parental responsibilities and rights, but there was no mechanism for transferring limited parental rights to a state authority. The Adoption Policy Review Group, chaired by the late Sheriff Principal Cox QC and which reported on "Better choices for our children" following Phase II in 2005, recommended a new form of order for children who were looked after by the local authority and who could not return home. Flexibility was key to the recommended new orders, the aim of which was to transfer to the local authority only such parental responsibilities and rights as were necessary to secure the child's position throughout childhood.

[5] Section 80 of the Act creates the statutory power to make a permanence order. It provides:

> "(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."

[6] The mandatory provision referred to in section 80(2) is defined in section 81. The references therein to the 1995 Act are to the Children (Scotland) Act 1995, which includes a comprehensive list of parental responsibilities and the parental rights relative to them. Section 81 provides:

> "(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."

[7] Section 84 imposes a number of conditions and considerations applicable to the making of a permanence order. Insofar as relevant to the present case these include:

"(1) … a permanence order may not be made in respect of a child who is aged 12 or over unless the child consents.
…
(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….
(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 an 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)."

[8] Section 85 clarifies specific categories of children in respect of whom orders may and may not be made. It provides:

"(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"

[9] Section 119 is the interpretation section and applies to the whole Act. It provides that, unless the context otherwise requires, "child" means a person who is under the age of 18.

Submissions for the appellant

[10] The Sheriff Appeal Court erred in law by reading section 81(1)(b) of the 2007 Act as imposing a requirement that a permanence order can only be made in respect of a child aged under 16. The conclusion that the petition was incompetent arose from that misconstruction. It was acknowledged that if section 81 was read literally and in isolation, such that the order must contain a single mandatory provision with both components (the provision of guidance and the right to regulate the child's residence), a conclusion could be reached that it could be made only for a child under the age of 16. That would ignore, however, the context of the provision within the legislation as a whole and its purpose. For

a child like TM, reading the legislation as if it contained that restriction would leave him subject to the parental responsibility of MM to provide him with guidance, irrespective of her ability or otherwise to discharge it and any impact of that on him.

[11] In the alternative, as set out in the Sheriff's Note of 19 February 2024, the reference to "the appropriate period" in section 81(2) could be understood as referring to the period that is "appropriate" having regard to the period of the order. If so, it would be competent to make orders for children over the age of 16 but under the age of 18. The mandatory provision in those circumstances would be restricted to the responsibility to provide guidance referred to in section 81(1)(a) of the Act. That would render competent an order in the present case, where the proceedings were raised when TM was 15 years old but the date of determination was after his 16th birthday. To interpret the provisions otherwise would result in an effective deadline for raising applications much earlier than could have been anticipated, at about aged 14 to 15, given the unanticipated delays that can regrettably be a feature of contested litigation. A purposive interpretation would achieve the practical result that permanence orders can protect the widest range of children without doing any violence to the statutory language.

[12] Before the Sheriff Appeal Court, the respondent appeared to suggest that a literal approach to statutory interpretation should take precedence. That was not the accepted modern approach. The authorities were well known and had been gathered helpfully in an article by Lord Burrows of the UK Supreme Court "Statutory Interpretation in the Courts Today" (Sir Christopher Staughton Memorial Lecture, 24 March 2022). In essence, the correct approach is contextual and purposive, designed to arrive at the best interpretation of the words in light of their context and the purpose of the statutory provision. That approach

was reiterated in the recent decision of the UK Supreme Court in *In re JR 2022* [2024] 1 WLR 4877, per Lord Stephens at para 73.

[13] A permanence order serves to redistribute parental responsibilities and rights if the conditions in section 84 are satisfied, but does not affect the substance of those responsibilities and rights. A permanence order can last until the age of 18 but the right to regulate residence cannot last beyond the age of 16. Only the responsibility to provide guidance can subsist after age 16, so it would make sense to interpret section 81 as giving rise to the possibility of a distinct order for the responsibility of guidance only.

[14] A permanence order can have implications beyond regulating parental responsibilities and parental rights. It can be a means to bring a Compulsory Supervision Order to an end under section 89 of the 2007 Act. It can be a stepping stone for adoption, where an authority to adopt provision is made under sections 80(2)(c) and 83 of the Act. Applications for adoption can be lodged until a child attains the age of 18 and there is specific provision in that context for the cut-off date to be when the order is made, even if the child is already 18 at that point – section 28(4). Permanence Orders must satisfy the conditions set out in section 84. It must be better for the child that an order be made than not (section 84(3)) and the court must have regard to the need to promote the welfare of the child throughout childhood as the paramount consideration – section 84(4). Childhood endures until age 18 for that purpose – section 119(1).

[15] Section 85(2) of the Act was a significant provision. By prohibiting the making of a permanence order for a child who has been married or a civil partner, it provides confirmation that a permanence order can be made for children aged 16 and over. To determine otherwise would render that provision redundant.

[16] The purposive interpretation favoured by the sheriff was consistent with the underlying law on parental responsibilities and rights. A child brought up by his parents will be subject to their right to regulate his residence until he is aged 16. That right will then fly off but his parents' responsibility to provide him with guidance will last until he is 18. Similarly, if a permanence order is made for a child who is aged 16 or 17, the right to regulate residence will have flown off as a matter of law and only the responsibility to provide guidance can be regulated by the order. The Sheriff Appeal Court had acknowledged that the alternative interpretation it favoured would result in a lesser degree of protection for children aged 16 and over.

[17] TM had been a looked after child in terms of section 17 of the Children (Scotland) Act 1995 because he has been the subject of a Compulsory Supervision Order. In consequence of that and his now being accommodated by the local authority under section 25 of the 1995 Act, he will be looked after until at least the age of 18 and may be provided with guidance and support until he is 26 years old (1995 Act section 29). The object of the current proceedings was different, it was to remove TM from the Children's Hearing system.

[18] The emotional dimension of making a permanence order for TM was important. It would enhance his sense of permanence, stability and security. His accommodation had been settled long before the application was made, that was not the issue. He had been unable to return home for many years. He did not want the intrusion of being required to go to the Children's Hearing. There was nothing in the Report of the Adoption Policy Review Group to support a differentiation between those under 16 and those under 18, on the contrary it specifically mentioned the emotional benefits. The whole purpose of the order was to be a gateway to long term security for an accommodated child. This action was raised when TM was 15 and absent the delays which occurred, would have been determined

before he attained the age of 16. The appellant's policy was to seek permanence orders only for children aged 12 and over. There had been no reason prior to this case to be concerned about competency; there was information, albeit anecdotal, about orders having been made for 16 and 17 year olds.

[19] The interpretation proposed was consistent with the requirements of the United Nations Convention on the Rights of the Child. Senior counsel had taken the step of meeting TM, whose primary concern remained that he wanted to be free of the Children's Hearing system. While that was less important to him now, that was because he is no longer subject to a Compulsory Supervision Requirement. He continues to see his mother voluntarily but infrequently, once every 3 months. He still wants permanence in order to affirm his sense of belonging where he is, with his foster carer. Given the passage of time, his interest in the outcome of these proceedings is now largely to benefit others like himself, who may attain the age of 16 before a proposed permanence order is made.

[20] There were two conflicting but tenable interpretations available to the court. It was acknowledged that the APRG report had recommended that "[a]s a minimum" a Permanence Order should have the right to regulate residence. That was inapplicable for a 16 year old. The separate appropriate period relating to the provision of guidance in section 81(1)(a) of the 2007 Act was however consistent with the interpretation advanced by the appellant. The conjunctive "and" between section 81(1)(a) and (b) simply becomes superfluous where a child is 16 but is made subject to a permanence order that subsists until he is 18.

[21] It was noteworthy that the threshold test for permanence orders had been inserted into the Bill at the last minute and in the wrong place. In the present case, the sheriff had, correctly, made the point that TM falls within section 84(5)(c)(i) as no person has the right to

regulate his residence. That requirement being met, there was no dispute that the conditions of an order best serving his welfare, it being better for the order to be made than not and his having given consent to it and having expressed a (positive) view on it being made were all satisfied. If the mother's remaining responsibility to provide guidance, absent the order being made, was of no practical utility, one had to question why she would oppose the order.

Submissions for the respondent

[22] The Sheriff Appeal Court had been correct in deciding that a permanence order cannot be made in respect of a child aged 16 or over. That was the position whether a literal or a purposive interpretation of the statutory provisions was adopted. The threshold test for a permanence order in section 84(5)(c) was fundamental. The two parts of the test – section 84(5)(c)(i) and (ii) – had to be read together, as the whole basis for the order was postulated on their being a right to regulate residence. While the test in section 84(5)(c)(i) could be met in the case of, say, an orphan, it was not designed to apply to someone who had a parent but was now independent in terms of deciding where and with whom to reside. The right to have a child living with a person or who can at least regulate his residence does not exist in relation to a child aged 16 or over. Accordingly, the test in section 84(5)(c) could not be met in this case. To interpret it otherwise would mean that all 16 and 17 year olds could be made the subject of permanence orders because they would fall within section 84(5)(c)(i). All that would be required was a birth certificate, which would effectively negate the threshold test. It was clear from the decision of the UK Supreme Court in *West Lothian Council* v *MB* [2017] SC (UKSC) 67 that the threshold test was there to protect children and parents from unjustified state intervention. Welfare

considerations could not be addressed unless the threshold test was passed and the sheriff's construction was contrary to the objective set out by the UK Supreme Court.

[23] A permanence order was intended to be for children who cannot safely return home to live with their families. That is why the minimum requirement of such an order is, as recommended by the Adoption Policy Review Group, to remove the right of parents to have the child reside with them or to otherwise regulate the child's residence. The high test was whether or not the child could reside with someone who had parental responsibilities and rights over them, albeit that it was always intended that the order would last until the child attained the age of 18. The Policy Memorandum that had accompanied the original Bill had confirmed that the new permanence order would provide increased stability for children who cannot live with their birth family and would be flexible enough to cater for the individual needs of such children. The clear implication of the threshold test, introduced to the Bill by amendment at Stage 2, was that the ground was invoked by reference to residence rights. If those had flown off, there could be no basis for a permanence order. A mandatory requirement to extinguish the right to regulate residence did not contemplate a situation where there are no rights left and only one (relatively weak) parental responsibility. The statements to the Scottish Parliament at Stage 2 of the Bill had reinforced that a permanence order would always extinguish a parent's right to have the child live with him or her or otherwise to regulate their residence.

[24] The residual parental responsibility of guidance retained by MM in relation to TM in the absence of a permanence order was almost academic and had no practical effect. It had been thought that he was accommodated by the appellant under section 26A of the 1995 Act but it was now said to be in terms of section 25 of that legislation. Regardless of the particular provisions applicable in this case, there was no legal gap in provision. A foster

carer is recognised by the Education (Scotland) Act 1980 as a carer for a child still at school after the age of 16. Giving guidance to a 16 or 17 year old was not a legal function but a practical one. The law should not be interpreted from an emotional perspective; there was no reason to think the order would give TM any form of security.

[25] On the obligation in this jurisdiction now to interpret legislation in a manner compatible with the UNCRC, section 4 of the United Nations Convention on the Rights of the Child (Incorporation)(Scotland)Act 2024 Act permits the court to have regard to General Comments of the United Nations Committee on the Rights of the Child. It was noteworthy that the Convention recognised the weakening of the responsibility of guidance as the child moved towards the age of 18. As the UNCRC General comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration had put it (at para 44):

> "…. the more the child knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for him or her have to transform direction and guidance into reminders and advice, and later to an exchange on an equal footing".

The 2007 Act provisions on permanence orders were in any event compatible with the UNCRC and no reading down was required. The correct balance of the various rights involved had been achieved and the legislation was also ECHR compliant.

[26] TM's mother had initially opposed the application for a permanence order on the basis that she contended the appellant could not meet the threshold test. If local authorities could secure such an order just by waiting until a child attained the age of 16 that would negate the whole purpose of the legislation. It was acknowledged that section 85(2) of the Act, prohibiting permanence orders for children who have been married or in a civil partnership, posed a difficulty for the respondent's argument. It was difficult to interpret

the provisions of the Act in a way that reconciled all of the issues. However, if the starting point was accepted as being to ask who is exercising the right to residence, the respondent's interpretation made sense. Both parts of section 85(4)(c) relate to residence of children whose residence has to be regulated.

[27] An interpretation that permitted the continuation of a permanence order for a 16 or 17 year old where that had been made before they attained the age of 16 but not otherwise would create no difficulty with other provisions relating to looked after children. When the 2007 Act was enacted there was already a scheme that drew the distinction between 16 and 18 year olds. One benefit of the provision that a permanence order continues until the age of 18 is that it facilitates the ability to make foster care agreements under the Looked After Children (Scotland) Regulations 2009 until the child attains that age. It also provides continuity after the right to regulate residence flies off at age 16, if the child is being accommodated other than under section 25 of the 1995 Act and where there is a desire to take him out of the Children's Hearing system.

[28] The statutory provisions on after care have been amended since the 2007 Act came into force. Previously section 29 of the 1995 Act required local authorities to advise, guide and assist (in kind or in cash) those looked after children who were over school age but under the age of 19. The version of the 1995 Act now in force provides (in section 26A) for continuing care for all those who have attained the age of 16 and are looked after children and section 29 imposes the guidance duty on local authorities for all children who had been looked after children on their 16th birthday but are no longer. Those aged between 19 and 26 and were previously looked after can apply themselves for advice, guidance and assistance. None of those provisions was inconsistent with an interpretation of section 81 of the

2007 Act that permitted the court only to make permanence orders for those under the age of 16.

Analysis and decision

[29] The Adoption and Children (Scotland) Act 2007 Act contains no express provision on the maximum age of a child in respect of whom a permanence order can be made. The starting point for the interpretative analysis must be section 80 of the Act, as it bestows the power on the court to make such orders. It provides only that "[t]he appropriate court may, on the application of a local authority, make a permanence order in respect of a child". Section 119(1) of the legislation defines "child", unless the context otherwise requires, as a person under the age of 18. So the context for what follows is that, on the face of the empowering provision, a permanence order can be made competently for a child under the age of 18.

[30] A potential difficulty then arises from the requirement in section 80(2) that a permanence order must contain at least the "mandatory provision" and the language used in section 81 to describe what that means. Does the definition of mandatory provision in section 81 render the making of an order in respect of a 16 or 17 year old incompetent, notwithstanding the permissive general power in section 80(1)?

[31] In any exercise of statutory interpretation the general rule is that the language should bear its ordinary meaning in the general context of the statute (*Crozier* v *Scottish Power* 2024 SC 373, per Lord President (Carloway) at paragraph 27). As Lord Burrows emphasised in the 2022 article (Statutory Interpretation in the Courts Today, the Christopher Staughton Memorial Lecture, 24 March 2022), referred to by the appellant, the modern approach is to regard the object of the exercise as "contextual and purposive". The courts are seeking to

ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision (*JR 222* [2024] 1 WLR 4877, per Lord Stephens at paragraph 73). The context will include the group of statutory provisions within which the words to be interpreted are included and the statute as a whole.

[32] In the present case, while section 80(1) would appear to permit a permanence order to be made for any child under the age of 18, the language of section 81 defining mandatory provision might tend to the opposite view. Therefore, it would be inappropriate to interpret the words in section 81 literally and in isolation, as that would result in a conflict between that provision and the general power bestowed by section 80(1).

[33] The purpose of Part 2 of the 2007 Act is to assist children who cannot return home to their parents and give them long term security. Normally, the making of a permanence order will have the additional benefit of removing those children from the Children's Hearings system. The termination of the Compulsory Supervision Order is dependent on the court being satisfied that such an order is no longer necessary for the protection, guidance, treatment or control of the child (2007 Act, section 89(1)(b); *City of Edinburgh Council* v *LL* [2021] CSOH 24). There is no suggestion that TM requires the continued protection of a CSO. The convoluted procedure in this case has resulted in his CSO lapsing, but it was the clear intention of the sheriff that it would terminate on the making of the permanence order, albeit that the basis for that was initially stated incorrectly. As a CSO can subsist until a child is aged 18, there would be no inconsistency between a reading of the legislation that permits the making of a permanence order until that age and the general scheme of the Children's Hearings (Scotland) Act 2011.

[34] The threshold test for a permanence order is contained in section 84(5)(c) of the 2007 Act. It provides the necessary gateway to consideration of the welfare matters set out in

section 84(3) and (4). Contentious applications for permanence orders often focus on whether it would be "seriously detrimental" for the child to return to the parent with the right to regulate residence in terms of section 84(5)(c)(ii). Statements about the fundamental nature of the threshold test have all been made in that context – (*R* v *Stirling Council* 2016 SLT 689; *West Lothian Council* v *MB* 2017 SC (UKSC) 67).

[35] Indisputably, the threshold test in section 84(5)(c)(ii) was no longer applicable once TM attained the age of 16. The alternative threshold test in section 84(5)(c)(i) would, however, appear to be applicable, as there has been no person holding the right to regulate his residence since he attained that age. We reject the contention that utilising this threshold for subsequent consideration of the substantive welfare requirements could result in any 16 or 17 year old being able to request that the relevant local authority apply for a permanence order in respect of them. Where a child aged 16 or over is receiving appropriate guidance by his parents there could be no plausible basis for an application to the court seeking to vest that parental responsibility in the local authority. The overarching welfare test and the requirements that any order be better for the child than no order could not be satisfied in such a situation. The challenge in this case is restricted to competency. It is consistent with the scheme of the 2007 Act to permit the making of an order in situations such as the present, where the child has been unable to return home for some time but where the right to regulate residence has flown off before any order is made. The substantive basis for the order will always have to be satisfied, so the fact that the threshold test may more easily be met for a child who is 16 or over is not a matter of concern. There are other statutory circumstances in which meeting a welfare test is sufficient, for example, to dispense with parental consent to the adoption of a child and the consequent severance of their responsibilities and rights (2007 Act, section 31(3)(d), *S* v *L* 2013 SC (UKSC) 20). The

welfare requirements of sections 84(3) and (4) would necessarily apply to permanence orders in respect of those between the ages of 16 and 18, who would also require to consent to the making of the order.

[36] The provisions on permanence orders are only one part of a statute concerned with providing long term solutions for children. Part 1 of the Act relates to adoption. A child can be adopted until the age of 18 and there is specific provision to permit adoption orders for those who have attained that age if the proceedings were initiated before their 18th birthday (2007 Act, section 28(4)). There is a relationship between Parts 1 and 2 of the Act. Although not sought in this case, provision can be made as part of a permanence order granting authority for the child to be adopted (section 80(2)(c)). There are then key provisions in section 85. While section 85(1) permits a permanence order to be made in respect of a child who is an adopted child (which could include any child under the age of 18 years) there is a specific prohibition on making a permanence order in respect of a child who is or who has been married or a civil partner – section 85(2). This is the only category of child in respect of whom a permanence order cannot be made. It is only possible to make sense of this provision by reading it as meaning that a permanence order could otherwise be made in respect of a child who has reached the age of 16 and so has capacity to marry. If the Act is interpreted as meaning that permanence orders can be made only for those under the age of 16, this provision would be at best otiose. The provision is, however, consistent with an interpretation that permits orders to be made for those aged 16 and 17

[37] We have considered whether the use of the singular term "mandatory provision" and the conjunctive "and" between section 81(1) (a) and(b) require an interpretation that excludes orders being made for those who have attained the age of 16. In so doing, we have borne in mind all of the above mentioned factors about the context of the provisions within

Part 2 of the Act and the general scheme and purpose of the legislation as a whole. In our view, the sheriff was correct to focus on the separation of the two "appropriate period[s]" in section 81. Where a permanence order is being made for a child under the age of 16, the mandatory provision will consist of both parts of section 81(1) and both the responsibility to provide guidance and the right to regulate residence will transfer such that they will vest in the local authority. If the child in respect of whom an order is to be made is aged 16 or over, then only the responsibility of guidance will vest in the local authority and the appropriate period will end on the child's 18th birthday. The conjunctive "and" in section 81(1) applies only where both parts of that subsection are in play because the child is under the age of 16.

[38] We have concluded that this interpretation fits best with sections 80-85 of the Act and the scheme of the legislation a whole. It does not conflict with other statutory provisions relating to looked after children. Counsel for the respondent suggested that if orders can be made after a child turns 16 then local authorities might delay until a child attains the age of 16 to avoid having to meet the more stringent test of serious detriment under section 84(5)(c)(ii). The converse would also, however, apply; if a permanence order cannot be made for a child who has reached the age of 16, a parent could seek to delay proceedings until that date has passed. While we do not suggest there was any such motive in this case, we note that the proceedings were raised by the appellant over 6 months before TM's 16th birthday. In the absence of a provision permitting an order to be made so long as proceedings are raised before a particular date, a prohibition on making a permanence order for a child aged 16 or over would effectively require proceedings to be raised by the child's 15th birthday to account for any procedural delays. That would sit uneasily with the general subsistence of permanence orders until the age of 18. It would create an unnecessary and unfortunate differential between those 16 and 17 year olds who have in law someone

(whether a parent or the local authority) with the responsibility and ability to provide them with guidance and those who do not.

[39] An interpretation that is inclusive of all children under the age of 18 also seems consistent with the United Nations Convention on the Rights of the Child, incorporated into domestic law in this jurisdiction by the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. The Convention applies to all those under the age of 18 years. The veto given by the 2007 Act to those aged 12 and over and the general obligation to take account of the child's views are both clearly compliant with the UNCRC. Notably, Article 5 of the Convention requires all those legally responsible for a child to provide, "in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights" recognised by the Convention. The emerging autonomy of an older child will result in their seeking guidance in how to exercise their rights and navigate their social world in a different way from much younger children. However the importance of providing direction and guidance to older children is supported by the specific provision of a separate responsibility for that in the Children (Scotland) Act 1995 and section 81(1)(a) of the 2007 Act.

[40] For the reasons given, we conclude that there is no requirement in the legislation that a permanence order can be made only for a child under the age of 16 and in construing the relevant provisions otherwise the Sheriff Appeal Court erred. That leaves the question of what should happen next. TM consents to the order and wants it to be made. While the benefits to him of a permanence order are now less than they were when it was a means to remove him from the Children's Hearing system, an order would nonetheless give him an emotional sense of security and provide a suitable legal framework for his guidance during the short period left of his childhood. To give effect to that we shall allow the appeal, which

will have the effect of reinstating the sheriff's order of 4 January 2024, under exception of part 3 thereof, which has been superseded by the relevant Compulsory Supervision Order lapsing.

[41] We shall meantime reserve all questions of expenses.