



# Adoption (Scotland) Act 1978

## 1978 CHAPTER 28

### PART III

#### CARE AND PROTECTION OF CHILDREN AWAITING ADOPTION

##### *Protected children*

#### **32 Meaning of " protected child "**

- (1) Where a person gives notice in pursuance of section 22(1) to the local authority within whose area he lives of his intention to apply for an adoption order in respect of a child, the child is for the purposes of this Part a protected child while he has his home with that person.
- (2) A child shall be deemed to be a protected child for the purposes of this Part if he is a protected child within the meaning of section 32 of the Adoption Act 1976.
- (3) A child is not a protected child by reason of any such notice as is mentioned in subsection (1) while—
  - (a) he is in the care of any person in any such school, home or institution as is mentioned in subsection (3) of section 2 of the Children Act 1958 ; or
  - (b) he is resident in a residential establishment provided for persons suffering from mental disorder under section 59 of the Social Work (Scotland) Act 1968; or
  - (c) he is liable to be detained or subject to guardianship under section 23 of the Mental Health (Scotland) Act 1960.
- (4) A protected child ceases to be a protected child when—
  - (a) the application for an adoption order lapses or is withdrawn;
  - (b) the application for an adoption order is granted or otherwise determined;
  - (c) an order is made awarding custody of the child ;
  - (d) an order is made appointing a guardian of the child ; or
  - (e) the child attains the age of 18 years.

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*Status: This is the original version (as it was originally enacted).*

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### **33 Duty of local authorities to secure well-being of protected children**

- (1) It shall be the duty of every local authority to secure that protected children within their area are visited from time to time by officers of the authority, who shall satisfy themselves as to the well-being of the children and give such advice as to their care and maintenance as may appear to be needed.
- (2) Any officer of a local authority authorised to visit protected children may, after producing, if asked to do so, some duly authenticated document showing that he is so authorised, inspect any premises in the area of the authority in which such children are to be or are being kept.

### **34 Removal of protected children from unsuitable surroundings**

- (1) If the sheriff is satisfied, on the complaint of a local authority, that a protected child is being kept or is about to be received by any person who is unfit to have his care or in any premises or any environment detrimental or likely to be detrimental to him, the sheriff may make an order for his removal to a place of safety until he can be restored to a parent, relative or guardian of his, or until other arrangements can be made with respect to him ; and on proof that there is imminent danger to the health or well-being of the child the power to make an order under this section may be exercised by a justice of the peace acting on the application of a person authorised to visit protected children.
- (2) An order under this section may be executed by any person authorised to visit protected children or by any constable and may be executed on a Sunday.
- (3) A local authority may receive into their care under section 15 of the Social Work (Scotland) Act 1968 any child removed under this section, whether or not the circumstances of the child are such that they fall within paragraphs (a) to (c) of subsection (1) of that section and notwithstanding that he may appear to the local authority to be over the age of 17 years.
- (4) Where a child is removed under this section the local authority shall, if practicable, inform a parent or guardian of the child, or any person who acts as his guardian.

### **35 Notices and information to be given to local authorities**

- (1) Where a person who has a protected child in his care and possession changes his permanent address he shall, not less than 2 weeks before the change, or, if the change is made in an emergency, not later than one week after the change, give notice specifying the new address to the local authority in whose area his permanent address is before the change, and if the new address is in the area of another local authority, the authority to whom the notice is given shall inform that other local authority and give them such of the following particulars as are known to them, that is to say—
  - (a) the name, sex and date and place of birth of the child ;
  - (b) the name and address of every person who is a parent or guardian or acts as a guardian of the child or from whom the child has been or is to be received.
- (2) If a protected child dies, the person in whose care and possession he was at his death shall within 48 hours give notice of the child's death to the local authority.

### **36 Offences relating to protected children**

- (1) A person shall be guilty of an offence if—

- (a) being required under section 35 to give any notice or information, he fails to give the notice within the time specified in that provision or fails to give the information within a reasonable time, or knowingly makes or causes or procures another person to make any false or misleading statement in the notice or information;
  - (b) he refuses to allow the visiting of a protected child by a duly authorised officer of a local authority or the inspection, under the power conferred by section 33(2), of any premises;
  - (c) he refuses to comply with an order under section 34 for the removal of any child or obstructs any person in the execution of such an order.
- (2) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.

### **37 Miscellaneous provisions relating to protected children**

- (1) For the purposes of sections 14 and 323 of the Criminal Procedure (Scotland) Act 1975 (under which a warrant authorising the search for and removal of a child may be issued on suspicion of unnecessary suffering caused to, or certain offences committed against, the child), any refusal to allow the visiting of a protected child or the inspection of any premises by a person authorised to do so under section 33 shall be treated as giving reasonable cause for such a suspicion.
- (2) A person who maintains a protected child shall be deemed for the purposes of the Life Assurance Act 1774 to have no interest in the life of the child.