



# Adoption (Scotland) Act 1978

## 1978 CHAPTER 28

### PART III

#### CARE AND PROTECTION OF CHILDREN AWAITING ADOPTION

##### *Restrictions on removal of children*

#### **27 Restrictions on removal where adoption agreed or application made under s. 18**

- (1) While an application for an adoption order is pending in a case where a parent or guardian of the child has agreed to the making of the adoption order (whether or not he knows the identity of the applicant), the parent or guardian is not entitled, against the will of the person with whom the child has his home, to remove the child from the custody of that person except with the leave of the court.
- (2) While an application is pending for an order freeing a child for adoption and—
  - (a) the child is in the care of the adoption agency making the application, and
  - (b) the application was not made with the consent of each parent or guardian of the child,no parent or guardian of the child who did not consent to the application is entitled, against the will of the person with whom the child has his home, to remove the child from the custody of that person except with the leave of the court.
- (3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.
- (4) This section, except subsection (3), applies notwithstanding that the child is in England or Wales at the time he is removed.
- (5) Any person who removes a child from the custody of any other person while the child is in Scotland, contrary to section 27 of the Adoption Act 1976 (which makes for England and Wales provision similar to this section), shall be guilty of an offence and

liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.

## **28 Restrictions on removal where applicant has provided home for 5 years**

- (1) While an application for an adoption order in respect of a child made by the person with whom the child has had his home for the 5 years preceding the application is pending, no person is entitled, against the will of the applicant, to remove the child from the applicant's custody except with the leave of the court or under authority conferred by any enactment or on the arrest of the child.
- (2) Where a person (" the prospective adopter ") gives notice to the local authority within whose area he has his home that he intends to apply for an adoption order in respect of a child who for the preceding 5 years has had his home with the prospective adopter, no person is entitled, against the will of the prospective adopter, to remove the child from the prospective adopter's custody, except with the leave of a court or under authority conferred by any enactment or on the arrest of the child, before—
  - (a) the prospective adopter applies for the adoption order, or
  - (b) the period of 3 months from the receipt of the notice by the local authority expires,
 whichever occurs first.
- (3) In any case where subsection (1) or (2) applies and—
  - (a) the child was in the care of a local authority before he began to have his home With the applicant or, as the case may be, the prospective adopter, and
  - (b) the child remains in the care of a local authority,
 the authority in whose care the child is shall not remove the child from the care and possession of the applicant or of the prospective adopter except in accordance with section 30 or 31 or with leave of a court.
- (4) Subsection (3) does not apply where the removal of the child is authorised, in terms of Part III of the Social Work (Scotland) Act 1968, by a justice of the peace or a children's hearing.
- (5) A local authority which receives such notice as is mentioned in subsection (2) in respect of a child whom the authority know to be in the care of another local authority or of a voluntary organisation shall, not more than 7 days after the receipt of the notice, inform that other authority or the organisation in writing that they have received the notice.
- (6) Subsection (2) does not apply to any further notice served by the prospective adopter on any local authority in respect of the same child during the period referred to in paragraph (b) of that subsection or within 28 days after its expiry.
- (7) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.
- (8) This section, except subsection (7), applies notwithstanding that the child is in England or Wales at the time he is removed.
- (9) Any person who removes a child from the custody of any other person while the child is in Scotland, contrary to section 28 of the Adoption Act 1976 (which makes for England and Wales provision similar to this section), shall be guilty of an offence and

liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.

- (10) The Secretary of State may by order amend subsection (1) or (2) to substitute a different period for the period of 5 years mentioned in that subsection (or the period which, by a previous order under this subsection, was substituted for that period).
- (11) In subsections (2) and (3) " a court" means a court having jurisdiction to make adoption orders.

## **29 Return of child taken away in breach of s. 27 or 28**

- (1) An authorised court may on the application of a person from whose custody a child has been removed in breach of section 27 or 28 order the person who has so removed the child to return the child to the applicant.
- (2) An authorised court may on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from the applicant's custody in breach of section 27 or 28 by order direct that other person not to remove the child from the applicant's custody in breach of section 27 or 28.

## **30 Return of children placed for adoption by adoption agencies**

- (1) Subject to subsection (2), at any time after a child has been delivered into the care and possession of any person in pursuance of arrangements made by an approved adoption society or local authority for the adoption of the child by that person, and before an adoption order has been made on the application of that person in respect of the child—
  - (a) that person may give notice in writing to the society or authority of his intention not to retain the care and possession of the child ; or
  - (b) the society or authority may cause notice in writing to be given to that person of their intention not to allow the child to remain in his care and possession.
- (2) No notice under paragraph (b) of subsection (1) shall be given in respect of a child in relation to whom an application has been made for an adoption order except with the leave of the court to which the application has been made.
- (3) Where a notice is given to an adoption society or local authority by any person, or by such a society or authority to any person, under subsection (1), or where an application for an adoption order made by any person in respect of a child placed in his care and possession by such a society or authority is refused by the court or withdrawn, that person shall, within 7 days after the date on which notice was given or the application refused or withdrawn, as the case may be, cause the child to be returned to the society or authority, who shall receive the child.
- (4) Where the period specified in an interim order made under section 25 (whether as originally made or as extended under subsection (2) of that section) expires without an adoption order having been made in respect of the child, subsection (3) shall apply as if the application for an adoption order upon which the interim order was made had been refused at the expiration of that period.
- (5) It shall be sufficient compliance with the requirements of subsection (3) if the child is delivered to, and is received by, a suitable person nominated for the purpose by the adoption society or local authority.

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- (6) Where an application for an adoption order is refused the court may, if it thinks fit at any time before the expiry of the period of 7 days mentioned in subsection (3), order that period to be extended to a duration, not exceeding 6 weeks, specified in the order.
- (7) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 or to both ; and the court by which the offender is convicted may order the child in respect of whom the offence is committed to be returned to his parent or guardian or to the adoption society or local authority which made the arrangements referred to in subsection (1).

### **31 Application of s. 30 where child not placed for adoption**

- (1) Where a person gives notice in pursuance of section 22(1) to the local authority within whose area he has his home of his intention to apply for an adoption order in respect of a child who is for the time being in the care of a local authority, not being a child who was delivered into the care and possession of that person in pursuance of such arrangements as are mentioned in section 30(1), that section shall apply as if the child had been so delivered, except that where the application is refused by the court or withdrawn the child need not be returned to the local authority in whose care he is unless that authority so require.
- (2) Where notice of intention is given as aforesaid in respect of any child who is for the time being in the care of a local authority then, until the application for an adoption order has been made and disposed of, any right of the local authority to require the child to be returned to them otherwise than in pursuance of section 30 shall be suspended.
- (3) While the child remains in the care and possession of the person by whom the notice is given no contribution shall be payable (whether under a contribution order or otherwise) in respect of the child by any person liable under section 78 of the Social Work (Scotland) Act 1968 to make contributions in respect of him (but without prejudice to the recovery of any sum due at the time the notice is given), unless 12 weeks have elapsed since the giving of the notice without the application being made or the application has been refused by the court or withdrawn.

#### *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

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- (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.

### **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

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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.