

ADOPTION AND CHILDREN ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Adoption

Chapter 3 - Placement for Adoption and Adoption Orders

Section 41: Recovery orders

125. *Section 41* makes provision for what is to happen where a child is removed, or there are reasonable grounds for believing that a person intends to remove a child, or a child is withheld and not returned, in breach of *sections 30 to 35*. It also applies where a person has failed to comply with *sections 31(4), 32(2), 33(2), 34(3) or 35(2)*.
126. In those circumstances an application may be made to the court and the court may by order –
- direct any person who is in a position to do so to produce the child,
 - authorise the removal of the child by an authorised person,
 - require anyone who has information as to the child’s whereabouts to disclose that information to a constable or officer of the court, or
 - authorise a constable to enter any premises specified in the order (if there are reasonable grounds for believing the child is there) and search for the child, using reasonable force if necessary.
127. Authorised persons are any person named by the court, any constable, or any person who is authorised to exercise any power under the order by the adoption agency (*subsections (2) to (4)*).
128. If a person intentionally obstructs an authorised person exercising the power of removal he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
129. A person who is required to disclose information must disclose that information even though it might amount to evidence that he had committed an offence. However, in any criminal proceedings in which the person is charged with an offence (except one which is excluded in *subsection (8)* e.g. offences under section 2 or 5 of the Perjury Act 1911) the prosecution cannot adduce evidence relating to the information provided or ask questions about it, unless it is raised by or on behalf of that person.
130. *Subsection (9)* makes provision for an order made in England and Wales under *section 41* to have effect in Scotland as if it were an order of the courts there.