



# Adoption and Children Act 2002

## 2002 CHAPTER 38

### PART 1

#### ADOPTION

### CHAPTER 3

#### PLACEMENT FOR ADOPTION AND ADOPTION ORDERS

##### *Removal of children in non-agency cases*

#### **36 Restrictions on removal**

- (1) At any time when a child's home is with any persons ("the people concerned") with whom the child is not placed by an adoption agency, but the people concerned—
- (a) have applied for an adoption order in respect of the child and the application has not been disposed of,
  - (b) have given notice of intention to adopt, or
  - (c) have applied for leave to apply for an adoption order under section 42(6) and the application has not been disposed of,

a person may remove the child only in accordance with the provisions of this group of sections (that is, this section and sections 37 to 40).

The reference to a child placed by an adoption agency includes a child placed by a Scottish or Northern Irish adoption agency.

- (2) For the purposes of this group of sections, a notice of intention to adopt is to be disregarded if—
- (a) the period of four months beginning with the giving of the notice has expired without the people concerned applying for an adoption order, or

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- (b) the notice is a second or subsequent notice of intention to adopt and was given during the period of five months beginning with the giving of the preceding notice.
- (3) For the purposes of this group of sections, if the people concerned apply for leave to apply for an adoption order under section 42(6) and the leave is granted, the application for leave is not to be treated as disposed of until the period of three days beginning with the granting of the leave has expired.
- (4) This section does not prevent the removal of a child who is arrested.
- (5) Where a parent or guardian may remove a child from the people concerned in accordance with the provisions of this group of sections, the people concerned must at the request of the parent or guardian return the child to the parent or guardian at once.
- (6) A person who—
  - (a) fails to comply with subsection (5), or
  - (b) removes a child in contravention of this section,
 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.
- (7) This group of sections applies whether or not the child in question is in England and Wales.

#### **Modifications etc. (not altering text)**

- C1** S. 36 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **52**, 54(2)(a)
- C2** Ss. 36-40 excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **54(1)**
- C3** S. 36(1) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, **Sch. 1**
- C4** S. 36(2) excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **6(b)**
- C5** S. 36(4) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, **Sch. 1**
- C6** S. 36(5) excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **6(b)**
- C7** S. 36(6)(7) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, **Sch. 1**

#### **Commencement Information**

- I1** S. 36 in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## **37 Applicants for adoption**

If section 36(1)(a) applies, the following persons may remove the child—

- (a) a person who has the court's leave,

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- (b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act [<sup>F1</sup>or section 76(5) of the 2014 Act].

#### Textual Amendments

- F1** Words in s. 37 inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **193**

#### Modifications etc. (not altering text)

- C2** Ss. 36-40 excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **54(1)**
- C8** S. 37 applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 2, **Sch. 1**

#### Commencement Information

- I2** S. 37 in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

### 38 Local authority foster parents

- (1) This section applies if the child's home is with local authority foster parents.
- (2) If—
- (a) the child has had his home with the foster parents at all times during the period of five years ending with the removal and the foster parents have given notice of intention to adopt, or
  - (b) an application has been made for leave under section 42(6) and has not been disposed of,
- the following persons may remove the child.
- (3) They are—
- (a) a person who has the court's leave,
  - (b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act [<sup>F2</sup>or section 76(5) of the 2014 Act].
- (4) If subsection (2) does not apply but—
- (a) the child has had his home with the foster parents at all times during the period of one year ending with the removal, and
  - (b) the foster parents have given notice of intention to adopt,
- the following persons may remove the child.
- (5) They are—
- (a) a person with parental responsibility for the child who is exercising the power in section 20(8) of the 1989 Act [<sup>F3</sup>or section 76(5) of 2014 Act],
  - (b) a person who has the court's leave,
  - (c) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act [<sup>F4</sup>or section 76(5) of the 2014 Act].

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#### Textual Amendments

- F2** Words in s. 38(3)(b) inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **194(a)**
- F3** Words in s. 38(5)(a) inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **194(b)**
- F4** Words in s. 38(5)(c) inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **194(c)**

#### Modifications etc. (not altering text)

- C2** Ss. 36-40 excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **54(1)**

#### Commencement Information

- I3** S. 38 in force at 30.12.2005 by [S.I. 2005/2213](#), **art. 2(c)** (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

### 39 Partners of parents

- (1) This section applies if a child's home is with a partner of a parent and the partner has given notice of intention to adopt.
- (2) If the child's home has been with the partner for not less than three years (whether continuous or not) during the period of five years ending with the removal, the following persons may remove the child—
  - (a) a person who has the court's leave,
  - (b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act [<sup>F5</sup> or section 76(5) of 2014 Act].
- (3) If subsection (2) does not apply, the following persons may remove the child—
  - (a) a parent or guardian,
  - (b) a person who has the court's leave,
  - (c) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act [<sup>F6</sup> or section 76(5) of the 2014 Act].

#### Textual Amendments

- F5** Words in s. 39(2)(b) inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), **regs. 2(1)**, 195(a)
- F6** Words in s. 39(3)(c) inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), **regs. 2(1)**, 195(b)

#### Modifications etc. (not altering text)

- C2** Ss. 36-40 excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **54(1)**
- C9** S. 39 applied (with modifications) (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **52**, 54(2)(b)
- C10** S. 39(3)(a) excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **6(b)**

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### Commencement Information

- I4** S. 39 in force at 30.12.2005 by [S.I. 2005/2213](#), [art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

## 40 Other non-agency cases

- (1) In any case where sections 37 to 39 do not apply but—
- (a) the people concerned have given notice of intention to adopt, or
  - (b) the people concerned have applied for leave under section 42(6) and the application has not been disposed of,
- the following persons may remove the child.
- (2) They are—
- (a) a person who has the court’s leave,
  - (b) a local authority or other person in the exercise of a power conferred by any enactment, other than section 20(8) of the 1989 Act [<sup>F7</sup> or section 76(5) of the 2014 Act].

### Textual Amendments

- F7** Words in s. 40(2)(b) inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **196**

### Modifications etc. (not altering text)

- C2** Ss. 36-40 excluded (30.12.2005) by [The Adoptions with a Foreign Element Regulations 2005 \(S.I. 2005/392\)](#), regs. 1(1), **54(1)**

### Commencement Information

- I5** S. 40 in force at 30.12.2005 by [S.I. 2005/2213](#), [art. 2\(c\)](#) (with savings and transitional provisions in [S.I. 2005/2897](#), arts. 3-16)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4A inserted by [2014 c. 6 s. 5](#)
- s. 141(7) inserted by [2010 c. 26 Sch. 3 para. 13](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 3 Pt. 2 repealed (4.9.2013) without ever being in force by [2013 c. 22, s. 17\(4\)](#) ; [S.I. 2013/2200 art. 2\(a\)](#))