



# 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*

### **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>F1</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

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**Changes to legislation:** *Adoption and Children Act 2002, Section 38 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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(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>F2</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>F3</sup> or section 76(5) of the 2014 Act].

#### **Textual Amendments**

- F1** 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)**
- F2** 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)**
- F3** 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)**

- C1** 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**

- I1** 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)

**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\(a\)](#))