

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 2

The Adoption Process

Section 21 - Restrictions on removal: notice of intention to adopt given

83. This section applies where, under section 18, prospective adopters give notice of intention to adopt and the child has lived with the prospective adopters for the five years immediately preceding the adoption application.
84. Subsections (2) and (3) provide that, between notice being given under section 18 and the occurrence of a “relevant act” specified at subsection (4), a child may not be removed from the care of the prospective adopters, unless the prospective adopters consent to the removal; a court with jurisdiction to make adoption orders grants leave for the child to be removed; the child is arrested; or the removal is authorised by virtue of any enactment.
85. Subsections (4) and (5) specify the “relevant act” as the making of an application for an adoption order where the application is made within 3 months of the date on which the local authority received notice under subsection (1). Where prospective adopters have not made an application for adoption within that 3 month period, the “relevant act” is the expiry of that 3 month period.
86. By virtue of subsection (6), where, during the 3 month period mentioned above or during the 28 day period immediately after the expiry of the 3 month period, prospective adopters give further notice of their intention to apply for an adoption order in respect of the same child, the prohibition on removing the child under subsection (2) does not apply.
87. Subsection (7) provides that it is an offence for a person to contravene the terms of this section. Such an offence is punishable by imprisonment for a period of up to 3 months or a fine not exceeding level 5 on the standard scale or both.