STATUTORY INSTRUMENTS

1987 No. 2203

The Adoption (Northern Ireland) Order 1987

PART IV

CARE AND PROTECTION OF CHILDREN AWAITING ADOPTION

Restrictions on removal of children

Restrictions on removal where adoption agreed or application made under Article 17(1) or 18(1)

28 [F1]**.**—(1) While an application for an adoption order is pending—

(a) 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;

(b) any person or body, other than a 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**[**[F2] home**]** 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 is entitled, against the will of the person with whom the child has his home, to remove the child from the**[**[F2] home**]** of that person except with the leave of the court.

[[F2](2A) For the purposes of paragraph (2) a child is in the care of an adoption agency if the adoption agency is **[**[F3]an**][**[F4]HSC trust**]** and he is in its care.**]**

(3) Any person who contravenes paragraph (1) or (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.

F1 mod. by SR 2003/16

F2 1995 NI 2

F3 Word in art. 28(2A) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 111**; S.R. 2022/102, art. 2(b)

F4 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

Modifications etc. (not altering text)

C1 Art. 28(1) applied (with modifications) (6.4.2010) by Human Fertilisation and Embryology (Parental Orders) Regulations 2010 (S.I. 2010/985), reg. 3, **Sch. 2**

C2 Art. 28(3) applied (with modifications) (6.4.2010) by Human Fertilisation and Embryology (Parental Orders) Regulations 2010 (S.I. 2010/985), reg. 3, **Sch. 2**

Restrictions on removal where applicant has provided home for 5 years

29.—(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**[**[F5] home**]** 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 [F6]... **[**[F7]HSC trust**]** 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**[**[F5] home**]**, 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 [F6]... **[**[F7]HSC trust**]** expires,

whichever occurs first.

[[F5](2A) In paragraphs (1) and (2) "any enactment" does not include Article 22(2) of the Children (Northern Ireland) Order 1995.**]**

[[F5](3) In any case where paragraph (1) or (2) applies and—

(a) the child was being looked after by **[**[F8]an**]****[**[F7]HSC trust**]** before he began to have his home with the applicant or, as the case may be, the prospective adopter, and

(b) the child is still being looked after by the [F9]...**[**[F7]HSC trust**]**,

the [F10]...**[**[F7]HSC trust**]** shall not remove him from the home of the applicant or the prospective adopter except in accordance with Article 31 or 32 or with the leave of a court.**]**

(4) In paragraphs (2) and (3) "a court" means a court with jurisdiction to make adoption orders.

[F11](5) . . . . . .

[[F12](5A) An **[**[F7]HSC trust**]** which receives such notice as is mentioned in paragraph (2) in respect of a child whom the **[**[F7]HSC trust**]** knows to be**[**[F5] looked after by another **[**[F7]HSC trust**]****[**[F13]... or to be provided with accommodation by a voluntary organisation**]** shall, not more than 7 days after the receipt of the notice, inform that other **[**[F7]HSC trust**]** or that [F14]... organisation, in writing, that it has received the notice.**]**

(6) Paragraph (2) does not apply to any further notice served by the prospective adopter on any [F15]... **[**[F7]HSC trust**]** in respect of the same child during the period referred to in sub-paragraph (b) of that paragraph or within 28 days after its expiry.

(7) Any person who contravenes paragraph (1) or (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.

(8) The Department may by order made subject to affirmative resolution amend paragraph (1) or (2) to substitute for the period of 5 years mentioned in that paragraph such other period as may be specified in the order.

F5 1995 NI 2

F6 Words in art. 29(2) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 112(2)**; S.R. 2022/102, art. 2(b)

F7 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

F8 Word in art. 29(3)(a) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 112(3)(a)**; S.R. 2022/102, art. 2(b)

F9 Words in art. 29(3)(b) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 112(3)(b)**; S.R. 2022/102, art. 2(b)

F10 Words in art. 29(3) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 112(3)(b)**; S.R. 2022/102, art. 2(b)

F11 Art. 29(5) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 112(4)**; S.R. 2022/102, art. 2(b)

F12 1994 NI 2

F13 Words in art. 29(5A) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 112(5)(a)**; S.R. 2022/102, art. 2(b)

F14 Words in art. 29(5A) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 112(5)(b)**; S.R. 2022/102, art. 2(b)

F15 Words in art. 29(6) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 112(6)**; S.R. 2022/102, art. 2(b)

Return of child taken away in breach of Article 28 or 29

30.—[[F16](1) An authorised court may, on the application of a person from whose home a child has been removed in breach of—

(a) Article 28 or 29;

(b) section 27 or 28 of the Adoption Act 1976; or

[[F17](c) section 20, 21 or 22 of the Adoption and Children (Scotland) Act 2007,**]**

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 his home in breach of—

(a) Article 28 or 29;

(b) section 27 or 28 of the Adoption Act 1976; or

[[F18](c) section 20, 21 or 22 of the Adoption and Children (Scotland) Act 2007,**]**

by order direct that other person not to remove the child from the applicant's home in breach of any of those provisions.**]**

(3) If, in the case of an order made by the High Court under paragraph (1), the High Court or, in the case of an order made by a county court under paragraph (1), a county court is satisfied that the child has not been returned to the applicant, the court may make an order authorising a constable to search such premises as may be specified in the order for the child and, if a constable acting in pursuance of the order finds the child, to return the child to the applicant.

(4) If a justice of the peace is satisfied by complaint on oath that there are reasonable grounds for believing that a child to whom an order under paragraph (1) relates is in premises specified in the complaint, he may issue a search warrant authorising a constable to search the premises for the child, and if a constable acting in pursuance of the warrant finds the child, he shall return the child to the person on whose application the order under paragraph (1) was made.

(5) An order under paragraph (3) may be enforced in like manner as a warrant of commitment.

F16 1995 NI 2

F17 Art. 30(1)(c) substituted (15.7.2011) by Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), arts. 1(2), 2, **Sch. 1 para. 11(5)**

F18 Art. 30(2)(c) substituted (15.7.2011) by Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), arts. 1(2), 2, **Sch. 1 para. 11(5)**

Modifications etc. (not altering text)

C3 Art. 30 applied (with modifications) (6.4.2010) by Human Fertilisation and Embryology (Parental Orders) Regulations 2010 (S.I. 2010/985), reg. 3, **Sch. 2**

Return of children placed for adoption by adoption agencies

31 [F19]**.**—(1) Subject to paragraph (2), at any time after a child has been**[**[F20] placed with**]** any person in pursuance of arrangements made by an adoption agency 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 serve notice on the agency of his intention not to**[**[F20] give the child a home**]**; or

(b) the agency may cause notice to be served on that person of their intention not to allow the child to remain in his**[**[F20] home**]**.

(2) A notice under paragraph (1)(b) shall not be served 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 served on an adoption agency by any person or by an adoption agency on any person under paragraph (1), or where an application for an adoption order made by any person in respect of a child placed**[**[F20] with him**]** by an adoption agency is refused by the court or withdrawn, that person shall, within 7 days after the date on which notice was served or the application refused or withdrawn, as the case may be, cause the child to be returned to the agency, who shall receive the child.

(4) Where the period specified in an interim order made under Article 26 (whether as originally made or as extended under paragraph (2) of that Article) expires without an adoption order having been made in respect of the child, paragraph (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 paragraph (3) if the child is delivered to, and is received by, a suitable person nominated for the purpose by the adoption agency.

(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 paragraph (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 Article shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months 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 agency which made the arrangements referred to in paragraph (1).

F19 mod. by SR 2003/16
F20 1995 NI 2

[[F21]**Application of Article 31 where child not placed for adoption**

32 [F22]**.**—(1) Where a person serves a notice in pursuance of Article 22(1) on the [F23]...**[**[F24]HSC trust**]** within whose area he has his home of his intention to apply for an adoption order in respect of a child—

(a) who is (when the notice is given) being looked after by **[**[F25]an**]****[**[F24]HSC trust**]**; but

(b) who was placed with that person otherwise than in pursuance of such arrangements as are mentioned in Article 31(1),

Article 31 shall apply as if the child had been placed in pursuance of such arrangements, except that where the application is refused by the court or withdrawn the child need not be returned to the [F23]...**[**[F24]HSC trust**]** in whose care he is unless the [F23]...**[**[F24]HSC trust**]** so requires.

(2) Where notice of intention is served as described in paragraph (1) in respect of any child who is (when the notice is given) being looked after by **[**[F26]an**][**[F24]HSC trust**]** then, until the application for an adoption order has been made and disposed of, any right of the [F27]...**[**[F24]HSC trust**]** to require the child to be returned to it otherwise than in pursuance of Article 31 shall be suspended.

(3) While the child has his home with the person by whom the notice is served no contribution shall be payable (whether under a contribution order or otherwise) in respect of the child by any person liable under Articles 38 to 43 of the Children (Northern Ireland) Order 1995 to make contributions in respect of him (but without prejudice to the recovery of any sum due at the time the notice is served), unless 12 weeks have elapsed since the service of the notice without the application being made or the application has been refused by the court or withdrawn.

(4) Nothing in this Article affects the right of any person who has parental responsibility for a child to remove him under Article 22(2) of the Children (Northern Ireland) Order 1995.**]**

F21 1995 NI 2
F22 mod. by SR 2003/16
F23 Words in art. 32(1) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 113(2)(a)**; S.R. 2022/102, art. 2(b)
F24 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
F25 Word in art. 32(1)(a) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 113(2)(b)**; S.R. 2022/102, art. 2(b)
F26 Word in art. 32(2) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 113(3)(a)**; S.R. 2022/102, art. 2(b)
F27 Words in art. 32(2) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 113(3)(b)**; S.R. 2022/102, art. 2(b)

Protected children

Meaning of "protected child"

33.—(1) Where a person gives notice in pursuance of Article 22(1) to the [F28]... **[**[F29]HSC trust**]** 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.

[[F30](1A) 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—

(a) section 32 of the Adoption Act 1976; [F31]. . .

(b) [F31]. . . . . .**]**

(2) A child is not a protected child by reason of any such notice as is mentioned in paragraph (1) while—

(a) he is in the care of any person in—

[[F30](i) any school in which he is receiving full#time education;

(ii) any**[**[F32] children's home in respect of which a person is registered under Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003**]**;

(iii) any hospital;

(iv) any home or institution not specified in heads (i) to (iii) but provided by the Secretary of State, a government department or a prescribed public body; or**]**

(b) he is resident in a residential home for persons suffering from mental disorder within the meaning of Article 3(1) of the Mental Health (Northern Ireland) Order 1986[F33]; or

(c) he is liable to be detained or is subject to guardianship under that Order of 1986.

[[F30](2A) Paragraph (2)(a) shall be construed in accordance with Article 2(2) of the Children (Northern Ireland) Order 1995 (interpretation).**]**

[[F30](3) A protected child ceases to be a protected child—

(a) on the grant or refusal of the application for an adoption order;

(b) on the notification to the [F34]...**[**[F29]HSC trust**]** for the area where the child has his home that the application for an adoption order has been withdrawn;

(c) in a case were no application is made for an adoption order, on the expiry of the period of two years from the giving of the notice;

(d) on the making of a residence order, a care order or a supervision order under the Children (Northern Ireland) Order 1995 in respect of the child;

(e) on the appointment of a guardian for him under that Order;

(f) on his attaining the age of 18 years; or

(g) on his marriage**[**[F35] or forming a civil partnership**]**,

whichever first occurs.

(4) In paragraph (3)(d) the references to a care order and a supervision order do not include references to an interim care order or interim supervision order.**]**

F28 Words in art. 33(1) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 114**; S.R. 2022/102, art. 2(b)

F29 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

F30 1995 NI 2

F31 Art. 33(1A)(b) and preceding word repealed (15.7.2011) by Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), arts. 1(2), 2, **Sch. 1 Pt. 3**

F32 2003 NI 9

F33 1986 NI 4

F34 Words in art. 33(3)(b) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 114**; S.R. 2022/102, art. 2(b)

F35 2004 c.33

Duty of [[F36]HSC trusts] to secure well-being of protected children

34.—(1) Every [F37]... **[**[F38]HSC trust**]** shall secure that protected children within its area are visited from time to time by officers of the [F37]... **[**[F38]HSC trust**]**, 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 **[**[F39]an**][**[F38]HSC trust**]** 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 [F40]... **[**[F38]HSC trust**]** in which such children are to be or are being kept.

F36 Words in art. 34 heading substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 115(4)**; S.R. 2022/102, art. 2(b)
F37 Words in art. 34(1) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 115(2)**; S.R. 2022/102, art. 2(b)
F38 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
F39 Word in art. 34(2) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 115(3)(a)**; S.R. 2022/102, art. 2(b)
F40 Words in art. 34(2) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 115(3)(b)**; S.R. 2022/102, art. 2(b)

Art. 35 rep. with saving by 1995 NI 2

Notices and information to be given to [F41HSC trusts]

36.—(1) Where a person**[**[F42] with whom a protected child has his home**]** 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 1 week after the change, serve a notice specifying the new address on the [F43]... **[**[F44]HSC trust**]** in whose area his permanent address is before the change, and if the new address is in the area of another [F43]... **[**[F44]HSC trust**]**, the [F43]... **[**[F44]HSC trust**]** on whom the notice is served shall inform that other Board**[**[F45] or **[**[F44]HSC trust**]]** and give it such of the following particulars as are known to it, 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 was received.

(2) If a protected child dies, the person**[**[F42] with whom he had his home**]** at his death shall within 48 hours serve notice of the child's death on the Board**[**[F45] or **[**[F44]HSC trust**]]** .

F41 Words in art. 36 heading substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 116(3)**; S.R. 2022/102, art. 2(b)
F42 1995 NI 2
F43 Words in art. 36 omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 116(2)**; S.R. 2022/102, art. 2(b)
F44 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
F45 1994 NI 2

Offences relating to protected children

37.—(1) A person shall be guilty of an offence if—

(a) being required, under Article 36 to serve any notice or give any information, he fails to serve 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 **[**[F46]an**][**[F47]HSC trust**]** or the inspection, under the power conferred by Article 34(2) of any premises;

Sub#para. (c) rep. by 1995 NI 2

(2) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.

F46 Word in art. 37(1)(b) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 117**; S.R. 2022/102, art. 2(b)

F47 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

Miscellaneous provisions relating to protected children

Para. (1) rep. 1995 NI 2

(2) A person who maintains a protected child shall be deemed for the purposes of the Life Assurance Act 1774[F48] as extended by the Life Insurance (Ireland) Act 1866[F49] to have no interest in the life of the child.

Para. (3) rep. 1995 NI 2

F48 1774 c. 48

F49 1866 c. 42

Changes to legislation:
The Adoption (Northern Ireland) Order 1987, PART IV is up to date with all changes known to be in force on or before 05 August 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.
View outstanding changes

Changes and effects yet to be applied to :

– Pt. 2-4 repealed by 2022 c. 18 (N.I.) Sch. 5

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:
Whole provisions yet to be inserted into this Order (including any effects on those provisions):

– s. 6(2) words inserted by S.I. 2019/1514 reg. 29(4)
– art. 60(1A) inserted by 2022 c. 18 (N.I.) Sch. 4 para. 6(a)