



Children Act 1975

1975 CHAPTER 72

PART III

CARE

Children in care of local authorities

56 Restriction on removal of child from care

- (1) In section 1 of the Children Act 1948, the following subsections are inserted after subsection (3)—

“(3A) Except in relation to an act done—

- (a) with the consent of the local authority, or
- (b) by a parent or guardian of the child who has given the local authority not less than 28 days' notice of his intention to do it,

subsection (8) (penalty for taking away a child in care) of section 3 of this Act shall apply to a child in the care of a local authority under this section (notwithstanding that no resolution is in force under section 2 of this Act with respect to the child) if he has been in the care of that local authority throughout the preceding six months; and for the purposes of the application of paragraph (b) of that subsection in such a case a parent or guardian of the child shall not be taken to have lawful authority to take him away.

- (3B) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (3A) of this section by substituting a different period for the period of 28 days or of six months mentioned in that subsection (or the period which, by a previous order under this subsection, was substituted for that period).”

- (2) The following section is inserted after section 33 of the Children Act 1948—

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“33A Restriction on removal of child from care of voluntary organisation.

- (1) Section 3(8) of this Act shall apply in relation to children who are not in the care of local authorities under section 1 of this Act but who are in voluntary homes or are boarded out, as it applies by virtue of subsection (3A) of the said section 1 to children in the care of the local authority, except that in the case of a child who is not in the care of a local authority the references in subsection (3A) to a local authority shall be construed as references to the voluntary organisation in whose care the child is.
- (2) For the purposes of this section—
 - (a) a child is boarded out if he is boarded out, by the voluntary organisation in whose care he is, with foster parents to live in their home as a member of their family ;
 - (b) " voluntary home" includes a controlled community home and an assisted community home.”.

57 Substitution of s. 2 of Children Act 1948

The following section is substituted for section 2 of the Children Act 1948.

“2 Assumption by local authority of parental rights and duties.

- (1) Subject to the provisions of this Part of this Act, if it appears to a local authority in relation to any child who is in their care under the foregoing section—
 - (a) that his parents are dead and he has no guardian or custodian; or
 - (b) that a parent of his—
 - (i) has abandoned him, or
 - (ii) suffers from some permanent disability rendering him incapable of caring for the child, or
 - (iii) while not falling within sub-paragraph (ii) of this paragraph, suffers from a mental disorder (within the meaning of the Mental Health Act 1959), which renders him unfit to have the care of the child, or
 - (iv) is of such habits or mode of life as to be unfit to have the care of the child, or
 - (v) has so consistently failed without reasonable cause to discharge the obligations of a parent as to be unfit to have the care of the child ; or
 - (c) that a resolution under paragraph (b) of this subsection is in force in relation to one parent of the child who is, or is likely to become, a member of the household comprising the child and his other parent; or
 - (d) that throughout the three years preceding the passing of the resolution the child has been in the care of a local authority under the foregoing section, or partly in the care of a local authority and partly in the care of a voluntary organisation,

the local authority may resolve that there shall vest in them the parental rights and duties with respect to that child, and, if the rights and duties were vested in the parent on whose account the resolution was passed jointly with another

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person, they shall also be vested in the local authority jointly with that other person.

- (2) In the case of a resolution passed under paragraph (b), (c) or (d) of subsection (1) of this section, unless the person whose parental rights and duties have under the resolution vested in the local authority has consented in writing to the passing of the resolution, the local authority, if that person's whereabouts are known to them, shall forthwith after the passing of the resolution serve on him notice in writing of the passing thereof.
- (3) Every notice served by a local authority under subsection (2) of this section shall inform the person on whom the notice is served of his right to object to the resolution and the effect of any objection made by him.
- (4) If, not later than one month after notice is served on a person under subsection (2) of this section, he serves a counter-notice in writing on the local authority objecting to the resolution, the resolution shall, subject to the provisions of subsection (5) of this section, lapse on the expiry of fourteen days from the service of the counter-notice.
- (5) Where a counter-notice has been served on a local authority under subsection (4) of this section, the authority may not later than fourteen days after the receipt by them of the counter-notice complain to a juvenile court having jurisdiction in the area of the authority, and in that event the resolution shall not lapse until the determination of the complaint; and the court may on the hearing of the complaint order that the resolution shall not lapse by reason of the service of the counter-notice:
Provided that the court shall not so order unless satisfied—
 - (a) that the grounds mentioned in subsection (1) of this section on which the local authority purported to pass the resolution were made out, and
 - (b) that at the time of the hearing there continued to be grounds on which a resolution under subsection (1) of this section could be founded, and
 - (c) that it is in the interests of the child to do so.
- (6) While a resolution passed under subsection (1)(b), (c) or (d) of this section is in force with respect to a child, section 1(3) of this Act shall not apply in relation to the person who, but for the resolution, would have the parental rights and duties in relation to the child.
- (7) Any notice under this section (including a counter-notice) may be served by post, so however that a notice served by a local authority under subsection (2) of this section shall not be duly served by post unless it is sent by registered post or recorded delivery service.
- (8) A resolution under this section shall cease to have effect if—
 - (a) the child is adopted ;
 - (b) an order in respect of the child is made under section 14 or 25 of the Children Act 1975 ; or
 - (c) a guardian of the child is appointed under section 5 of the Guardianship of Minors Act 1971.
- (9) Where, after a child has been received into the care of a local authority under the foregoing section, the whereabouts of any parent of his have remained unknown

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for twelve months, then, for the purposes of this section, the parent shall be deemed to have abandoned the child.

(10) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (1)(d) of this section to substitute a different period for the period mentioned in that paragraph (or the period which, by a previous order under this subsection, was substituted for that period).

(11) In this section—

" parent ", except in subsection (1)(a), includes a guardian or custodian;

" parental rights and duties ", in relation to a particular child, means all rights and duties which by law the mother and father have in relation to a legitimate child and his property except the right to consent or refuse to consent to the making of an application under section 14 of the Children Act 1975 and the right to agree or refuse to agree to the making of an adoption order or an order under section 25 of that Act."

58 **Supplementary provisions relating to care proceedings**

In the Children Act 1948, the following sections are inserted after section 4—

“4A Appeal to High Court.

An appeal shall lie to the High Court from the making by a juvenile court of an order under section 2(5) or section 4(3) of this Act (orders confirming or terminating local authority resolutions under section 2(1) of this Act), or from the refusal by a juvenile court to make such an order.

4B Guardians ad litem and reports in care proceedings.

- (1) In any proceedings under section 2(5) or 4(3) or 4A of this Act, a juvenile court or the High Court may, where it considers it necessary in order to safeguard the interests of the child to whom the proceedings relate, by order make the child a party to the proceedings and appoint, subject to rules of court, a guardian ad litem of the child for the purposes of the proceedings.
- (2) A guardian ad litem appointed in pursuance of this section shall be under a duty to safeguard the interests of the child in the manner prescribed by rules of court.
- (3) Section 6 of the Guardianship Act 1973 shall apply in relation to complaints under section 2(5) or 4(3) of this Act as it applies in relation to applications under section 3(3) of the said Act of 1973."

59 **General duty of local authority in care cases**

In section 12 of the Children Act 1948, the following subsections are substituted for subsection (1)—

- “(1) In reaching any decision relating to a child in their care, a local authority shall give first consideration to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain

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the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.

- (1A) If it appears to the local authority that it is necessary, for the purpose of protecting members of the public, to exercise their powers in relation to a particular child in their care in a manner which may not be consistent with their duty under the foregoing subsection, the authority may, notwithstanding that duty, act in that manner.”.