



Adoption and Children (Scotland) Act 2007

2007 asp 4

PART 1

ADOPTION

CHAPTER 2

THE ADOPTION PROCESS

Restrictions on removal of children placed for adoption

20 Restrictions on removal: child placed for adoption with consent

- (1) Subsection (2) applies where—
 - (a) an adoption agency has placed a child for adoption with persons (“prospective adopters”), and
 - (b) each parent or guardian of the child has, in accordance with such provision as may be made by regulations by the Scottish Ministers, consented to the placement (whether or not each parent or guardian knows the identity of the prospective adopters).
- (2) A parent or guardian of the child must not remove the child from the care of the prospective adopters without the leave of—
 - (a) the adoption agency, or
 - (b) the appropriate court.
- (3) A person who removes a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

Changes to legislation: Adoption and Children (Scotland) Act 2007, Cross Heading: Restrictions on removal of children placed for adoption is up to date with all changes known to be in force on or before 05 May 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

Modifications etc. (not altering text)

- C1** Pt. 1 Ch. 2 applied in part (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **9(1)**

Commencement Information

- I1** S. 20(1) in force at 20.4.2009 for specified purposes by [S.S.I. 2009/147](#), art. 2, [Sch.](#)
- I2** S. 20(1) in force at 28.9.2009 in so far as not already in force by [S.S.I. 2009/267](#), [arts. 1\(2\)](#), 2 (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)
- I3** S. 20(2)(3) in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\)](#), 2 (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

21 Restrictions on removal: notice of intention to adopt given

- (1) Subsection (2) applies where—
- persons (“prospective adopters”) give notice under section 18(2) in relation to a child, and
 - during the period of 5 years immediately preceding the giving of notice, the child's home has been with the prospective adopters.
- (2) Except where subsection (3) applies, a person may not remove the child from the care of the prospective adopters during the period beginning with the giving of notice and ending with the relevant act.
- (3) This subsection applies if—
- the prospective adopters consent to the removal,
 - a court having jurisdiction to make adoption orders grants leave for the removal,
 - the child is arrested, or
 - the removal is authorised by virtue of any enactment.
- (4) For the purposes of subsection (2), “relevant act” means—
- where before the expiry of the 3 month period the prospective adopters apply for an adoption order in relation to the child to whom the notice relates, the making of the application for the adoption order,
 - where the prospective adopters do not apply for an adoption order before the expiry of that period, the expiry of that period.
- (5) In this section, “3 month period” means the period of 3 months beginning with the day on which the local authority receives the notice.
- (6) If during—
- the 3 month period, or
 - the period of 28 days beginning with the expiry of the 3 month period,
- the prospective adopters give a further notice under section 18(2) to a local authority in respect of the same child, subsection (2) does not apply.
- (7) A person who removes a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

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Modifications etc. (not altering text)

- C2** S. 21 excluded (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **9(4)(b)**
- C3** S. 21(6) excluded (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **6(2)**

Commencement Information

- I4** S. 21 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2)**, 2 (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

22 Restrictions on removal: application for adoption order pending

- (1) Subsection (2) applies where—
- an application for an adoption order in relation to a child has been made to, but not determined by, the appropriate court, and
 - during the period of 5 years immediately preceding the making of the application, the child's home has been with the persons applying for the order (the “prospective adopters”).
- (2) Except where subsection (3) applies, a person may not remove the child from the care of the prospective adopters.
- (3) This subsection applies if—
- the prospective adopters consent to the removal,
 - the court determining the application grants leave for the removal,
 - the child is arrested, or
 - the removal is authorised by virtue of any enactment.
- (4) A person who removes a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

Modifications etc. (not altering text)

- C4** S. 22 excluded (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **9(4)(c)**
- C5** S. 22 applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 4, **Sch. 3**

Commencement Information

- I5** S. 22 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2)**, 2 (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

23 Restrictions on removal of child looked after by local authority

- (1) Subsection (2) applies where—
- section 21(1) or 22(1) applies,
 - before the child's home came to be with the prospective adopters, the child was looked after by a local authority, and

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- (c) the child continues to be looked after by a local authority.
- (2) Except where subsection (3) applies, the local authority must not remove the child from the care of the prospective adopters.
- (3) This subsection applies if—
 - (a) the removal is made in accordance with section 25 or 26,
 - (b) an appropriate court grants leave for the removal,^{F1}...
 - (c) the removal is authorised by virtue of Chapter^{F2}... 3 of Part II of the 1995 Act [^{F3}or
 - (d) the removal is authorised by an order or warrant under the Children’s Hearings (Scotland) Act 2011 (asp 1) .]

Textual Amendments

- F1** Word in s. 23(3) repealed (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 17(2)(a)**
- F2** Words in s. 23(3)(c) repealed (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 17(2)(b)**
- F3** S. 23(3)(d) and preceding word inserted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 17(2)(c)**

Commencement Information

- I6** S. 23 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with **arts. 3-21**) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

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. 14(3A) inserted by [2020 asp 16 s. 30\(5\)](#)
- s. 14(4A)-(4C) inserted by [2020 asp 16 s. 2\(2\)\(c\)](#)
- s. 84(5A)(5B) inserted by [2020 asp 16 s. 2\(3\)\(c\)](#)