



Adoption and Children (Scotland) Act 2007

2007 asp 4

PART 1

ADOPTION

CHAPTER 2

THE ADOPTION PROCESS

Adoption not proceeding: arrangements

26 Looked after children: adoption not proceeding

- (1) This section applies where—
 - (a) persons (“prospective adopters”) give notice under section 18(2) in relation to a child,
 - (b) the child has a home with the prospective adopters,
 - (c) the child was not placed with the prospective adopters in pursuance of arrangements made by an adoption agency or a registered adoption society for the adoption of the child by the prospective adopters, and
 - (d) the child is being looked after by a local authority (the “relevant local authority”).
- (2) The prospective adopters may give notice to the relevant local authority of their intention not to retain the care of the child.
- (3) The authority may give notice to the prospective adopters of its intention not to allow the child to remain in the care of the prospective adopters.
- (4) Where notice is given by virtue of subsection (2) or (3) the prospective adopters must, before the expiry of the period of 7 days beginning with the day on which notice is given, deliver the child to—
 - (a) the authority, or

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- (b) a person nominated by the authority for the purposes of this section.
- (5) If an application for an adoption order in relation to the child has been made by the prospective adopters, notice under subsection (3) may be given only with leave of the court which is hearing the application.
- (6) If an application for an adoption order in relation to the child is refused or withdrawn, the child—
 - (a) must be delivered to the relevant local authority only if the authority requires it, and
 - (b) where such a requirement is made, must be delivered before the expiry of the period of 7 days beginning with the day on which the requirement is made.
- (7) Where an application by the prospective adopters for an adoption order in relation to the child has been made but not disposed of, any right of the relevant local authority to require the child to be delivered otherwise than by virtue of this section is suspended.
- (8) A person who fails to deliver 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.
- (9) The court by which a person is convicted by virtue of subsection (8) may order that the child in respect of whom the offence is committed be delivered to the child's parent or guardian or, as the case may be, the relevant local authority.

^{F1}(10)

Textual Amendments

F1 S. 26(10) repealed (27.1.2010) by [Adoption and Children \(Scotland\) Act 2007 \(Modification of Enactments\) Order 2010 \(S.S.I. 2010/21\)](#), art. 1, **Sch. para. 8(3)**

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)**

C2 S. 26 excluded (28.9.2009) by [Adoptions with a Foreign Element \(Scotland\) Regulations 2009 \(S.S.I. 2009/182\)](#), regs. 1(1), **9(4)(f)**

Commencement Information

I1 S. 26 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)

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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\(3\)\(c\)](#)