



# Adoption (Scotland) Act 1978

## 1978 CHAPTER 28

### PART III

#### CARE AND PROTECTION OF CHILDREN AWAITING ADOPTION

##### *Restrictions on removal of children*

#### **27 Restrictions on removal where adoption agreed or application made under s. 18.**

[<sup>F1</sup>(1) Where—

- (a) an adoption agency has placed a child with a person with a view to his being adopted by the person; and
  - (b) the consent of each parent or guardian of the child has been duly obtained to that placement (whether or not in knowledge of the identity of the person),
- any such parent or guardian shall not be entitled to remove the child from the care and possession of the person without the leave either of the adoption agency or of the court.

(2) The reference in subsection (1) to consent having been duly obtained is to its having been obtained in accordance with such regulations as may be made by the Secretary of State for the purposes of this section.]

(3) Any person who [<sup>F2</sup>removes a child in contravention of subsection (1)] shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.

(4) ..... <sup>F3</sup>

(5) ..... <sup>F3</sup>

#### **Textual Amendments**

**F1** S. 27(1)(2) substituted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 98(1), **Sch. 2 para. 19(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(3)(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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- F2** Words in s. 27(3) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 19(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F3** S. 27(4)(5) repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 9, 30, Sch. 2 para. 42, **Sch. 10**

**Modifications etc. (not altering text)**

- C1** S. 27 applied (with modifications) (1.6.2003) by The Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003 (S.S.I. 2003/19), reg. 1(1), **sch. 3** (with reg. 35)

**28 Restrictions on removal where applicant has provided home for 5 years.**

- (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 [<sup>F4</sup>care and possession] 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 local authority 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 [<sup>F4</sup>care and possession], 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 local authority expires,
 whichever occurs first.
- (3) In any case where subsection (1) or (2) applies and—
  - (a) the child was in the care of a local authority before he began to have his home with the applicant or, as the case may be, the prospective adopter, and
  - (b) the child remains in the care of a local authority,
 the authority in whose care the child is shall not remove the child from the care and possession of the applicant or of the prospective adopter except in accordance with section 30 or 31 or with leave of a court.
- (4) Subsection (3) does not apply where the removal of the child is authorised [<sup>F5</sup>under or by virtue of Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995].
- (5) A local authority which receives such notice as is mentioned in subsection (2) in respect of a child whom the authority know to be in the care of another local authority <sup>F6</sup>. . . shall, not more than 7 days after the receipt of the notice, inform that other authority <sup>F6</sup>. . . in writing that they have received the notice.
- (6) Subsection (2) does not apply to any further notice served by the prospective adopter on any local authority in respect of the same child during the period referred to in paragraph (b) of that subsection or within 28 days after its expiry.
- (7) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.
- (8) . . . . . <sup>F7</sup>

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- (9) ..... F7
- (10) The Secretary of State may by order amend subsection (1) or (2) to substitute a different period for the period of 5 years mentioned in that subsection (or the period which, by a previous order under this subsection, was substituted for that period).
- (11) In subsections (2) and (3) “a court” means a court having jurisdiction to make adoption orders.

#### Textual Amendments

- F4** Words substituted by [Health and Social Services and Social Security Adjudication Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 43](#)
- F5** Words in s. 28(4) substituted (1.4.1997) by 1995 c. 36, s. 98(1), [Sch. 2 para. 20\(a\)](#) (with s. 103(1)); S.I. 1996/3201, [art. 3\(7\)](#) (as amended by S.I. 1997/744, [arts. 2, 3](#))
- F6** Words in s. 28(5) repealed (1.4.1997) by 1995 c. 36, s. 98(1), [Sch. 2 para. 20\(b\)](#) (with s. 103(1)); S.I. 1996/3201, [art. 3\(7\)](#) (as amended by S.I. 1997/744, [arts. 2, 3](#))
- F7** S. 28(8)(9) repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), ss. 9, 30, [Sch. 2 para. 42](#), [Sch. 10](#)

### 29 Return of child taken away in breach of s. 27 or 28.

- (1) An authorised court may on the application of a person from whose [F8 care and possession] a child has been removed in breach of section 27 or 28 [F9, or section 27 or 28 of the Adoption Act 1976][F10 or Article 28 or 29 of the Adoption (Northern Ireland) Order 1987] 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 the applicant’s [F8 care and possession] in breach of section 27 or 28 [F9, or section 27 or 28 of the Adoption Act 1976][F10 or Article 28 or 29 of the Adoption (Northern Ireland) Order 1987] by order direct that other person not to remove the child from the applicant’s [F8 care and possession] in breach of section 27 or 28 [F9, or section 27 or 28 of the Adoption Act 1976][F10 or Article 28 or 29 of the Adoption (Northern Ireland) Order 1987].

#### Textual Amendments

- F8** Words substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c.41, SIF 113:3\)](#), s. 9 [Sch. 2 para. 43](#)
- F9** Words inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c.41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 44](#)
- F10** Words in s. 29 inserted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para.39](#) (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, [art. 3\(2\)](#)

### 30 Return of children placed for adoption by adoption agencies.

- (1) Subject to subsection (2), at any time after a child has been delivered into the care and possession of any person in pursuance of arrangements made by an approved adoption

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- society or local authority 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 give notice in writing to the society or authority of his intention not to retain the care and possession of the child; or
  - (b) the society or authority may cause notice in writing to be given to that person of their intention not to allow the child to remain in his care and possession.
- (2) No notice under paragraph (b) of subsection (1) shall be given 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 given to an adoption society or local authority by any person, or by such a society or authority to any person, under subsection (1), or where an application for an adoption order made by any person in respect of a child placed in his care and possession by such a society or authority is refused by the court or withdrawn, that person shall, within 7 days after the date on which notice was given or the application refused or withdrawn, as the case may be, cause the child to be returned to the society or authority, who shall receive the child.
  - (4) Where the period specified in an interim order made under section 25 (whether as originally made or as extended under subsection (2) of that section) expires without an adoption order having been made in respect of the child, subsection (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 subsection (3) if the child is delivered to, and is received by, a suitable person nominated for the purpose by the adoption society or local authority.
  - (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 subsection (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 section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 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 society or local authority which made the arrangements referred to in subsection (1).

**Modifications etc. (not altering text)**

- C2** S. 30 applied (with modifications) (1.6.2003) by [The Intercountry Adoption \(Hague Convention\) \(Scotland\) Regulations 2003 \(S.S.I. 2003/19\)](#), reg. 1(1), **sch. 3** (with reg. 35)

**31 Application of s. 30 where child not placed for adoption.**

- (1) Where a person gives notice in pursuance of section 22(1) to the local authority within whose area he has his home of his intention to apply for an adoption order in respect of a child who is for the time being in the care of a local authority, not being a child who was delivered into the care and possession of that person in pursuance of such arrangements as are mentioned in section 30(1), that section shall apply as if the child had been so delivered, except that where the application is refused by the court or

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withdrawn the child need not be returned to the local authority in whose care he is unless that authority so require.

- (2) Where notice of intention is given as aforesaid in respect of any child who is for the time being in the care of a local authority then, until the application for an adoption order has been made and disposed of, any right of the local authority to require the child to be returned to them otherwise than in pursuance of section 30 shall be suspended.
- (3) While the child remains in the care and possession of the person by whom the notice is given no contribution shall be payable (whether under a contribution order or otherwise) in respect of the child by any person liable under section 78 of the <sup>M1</sup>Social Work (Scotland) Act 1968 to make contributions in respect of him (but without prejudice to the recovery of any sum due at the time the notice is given), unless 12 weeks have elapsed since the giving of the notice without the application being made or the application has been refused by the court or withdrawn.

**Modifications etc. (not altering text)**

- C3** S. 31 applied (with modifications) (1.6.2003) by [The Intercountry Adoption \(Hague Convention\) \(Scotland\) Regulations 2003 \(S.S.I. 2003/19\)](#), reg. 1(1), **sch. 3** (with reg. 35)

**Marginal Citations**

- M1** 1968 c. 49.

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