



Adoption Act 1976

1976 CHAPTER 36

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

- (1) While an application for an adoption order is pending in a case 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 is not entitled, against the will of the person with whom the child has his home, to remove the child from the custody 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 custody of that person except with the leave of the court.
- (3) 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.
- (4) This section, except subsection (3), applies notwithstanding that the child is in Scotland at the time he is removed.
- (5) Any person who removes a child from the custody of any other person while the child is in England or Wales, contrary to section 34 of the Adoption Act 1958 (which makes for Scotland provision similar to this section), shall be guilty of an offence and liable

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on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.

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 custody 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 custody, 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 the local authority,the authority shall not remove the child from the actual custody of the applicant or of the prospective adopter except in accordance with section 30 or 31 or with leave of a court.
- (4) In subsections (2) and (3) " a court " means a court with jurisdiction to make adoption orders.
- (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 or of a voluntary organisation shall, not more than 7 days after the receipt of the notice, inform that other authority or the organisation, 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) This section, except subsection (6), applies notwithstanding that the child is in Scotland at the time he is removed.
- (9) Any person who removes a child from the custody of any other person while the child is in England or Wales, contrary to section 34A of the Adoption Act 1958 (which makes for Scotland provision similar to this section), 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.

- (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).

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 custody a child has been removed in breach of section 27 or 28 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 custody in breach of section 27 or 28 by order direct that other person not to remove the child from the applicant's custody in breach of section 27 or 28.
- (3) If, in the case of an order made by the High Court under subsection (1), the High Court or, in the case of an order made by a county court under subsection (1), a county court is satisfied that the child has not been returned to the applicant, the court may make an order authorising an officer of the court to search such premises as may be specified in the order for the child and, if the officer finds the child, to return the child to the applicant.
- (4) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a child to whom an order under subsection (1) relates is in premises specified in the information, he may issue a search warrant authorising a constable to search the premises for the child; and if a constable acting in pursuance of a warrant under this section finds the child, he shall return the child to the person on whose application the order under subsection (1) was made.
- (5) An order under subsection (3) may be enforced in like manner as a warrant for committal.

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 actual custody of 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 give notice to the agency of his intention not to retain the custody of the child ; or
 - (b) the agency may cause notice to be given to that person of their intention not to allow the child to remain in his custody.
- (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 agency by any person or by an adoption agency 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 actual custody by an adoption agency is refused by the court or withdrawn, that person shall, within 7 days after the date on

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which notice was given 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 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 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 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 agency which made the arrangements referred to in subsection (1).

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 actual custody 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 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 actual custody 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 86 of the Children and the Young Persons Act 1933 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.

Protected children

32 Meaning of " protected child "

- (1) Where a person gives notice in pursuance of section 22(1) to the local authority 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.
- (2) 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 section 37 of the Adoption Act 1958.
- (3) A child is not a protected child by reason of any such notice as is mentioned in subsection (1) while—
 - (a) he is in the care of any person in any such school, home or institution as is mentioned in subsection (3) or (5) of section 2 of the Children Act 1958 ; or
 - (b) he is resident in a residential home for mentally disordered persons as defined by section 19 of the Mental Health Act 1959 ; or
 - (c) he is liable to be detained or subject to guardianship under the said Act of 1959.
- (4) A protected child ceases to be a protected child—
 - (a) on the appointment of a guardian for him under the Guardianship of Minors Act 1971;
 - (b) on the notification to the local authority for the area where the child has his home that the application for an adoption order has been withdrawn ;
 - (c) on the making of any of the following orders in respect of the child—
 - (i) an adoption order;
 - (ii) an order under section 26 ;
 - (iii) a custodianship order ;
 - (iv) an order under section 42, 43 or 44 of the Matrimonial Causes Act 1973 ; or
 - (d) on his attaining the age of 18 years,whichever first occurs.

33 Duty of local authorities to secure well-being of protected children

- (1) It shall be the duty of every local authority to secure that protected children within their area are visited from time to time by officers of the authority, 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 a local authority 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 authority in which such children are to be or are being kept.

34 Removal of protected children from unsuitable surroundings

- (1) If a juvenile court is satisfied, on the complaint of a local authority, that a protected child is being kept or is about to be received by any person who is unfit to have his care or in any premises or any environment detrimental or likely to be detrimental to him,

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the court may make an order for his removal to a place of safety until he can be restored to a parent, relative or guardian of his, or until other arrangements can be made with respect to him ; and on proof that there is imminent danger to the health or well-being of the child the power to make an order under this section may be exercised by a justice of the peace acting on the application of a person authorised to visit protected children.

- (2) An order under this section may be executed by any person authorised to visit protected children or by any constable.
- (3) A local authority may receive into their care under section 1 of the Children Act 1948 any child removed under this section, whether or not the circumstances of the child are such that they fall within paragraphs (a) to (c) of subsection (1) of that section and notwithstanding that he may appear to the local authority to be over the age of 17 years.
- (4) Where a child is removed under this section the local authority shall, if practicable, inform a parent or guardian of the child, or any person who acts as his guardian.

35 Notices and information to be given to local authorities

- (1) Where a person who has a protected child in his actual custody 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 one week after the change, give notice specifying the new address to the local authority in whose area his permanent address is before the change, and if the new address is in the area of another local authority, the authority to whom the notice is given shall inform that other local authority and give them such of the following particulars as are known to them, 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 in whose actual custody he was at his death shall within 48 hours give notice of the child's death to the local authority.

36 Offences relating to protected children

- (1) A person shall be guilty of an offence if—
 - (a) being required, under section 35 to give any notice or information, he fails to give 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 of information;
 - (b) he refuses to allow the visiting of a protected child by a duly authorised officer of a local authority or the inspection, under the power conferred by section 33(2) of any premises;
 - (c) he refuses to comply with an order under section 34 for the removal of any child or obstructs any person in the execution of such an order.
- (2) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £400 or both.

37 Miscellaneous provisions relating to protected children

- (1) For the purposes of section 40 of the Children and Young Persons Act 1933, under which a warrant authorising the search for and removal of a child may be issued on suspicion of unnecessary suffering caused to, or certain offences committed against, the child, any refusal to allow the visiting of a protected child or the inspection of any premises by a person authorised to do so under section 33 shall be treated as giving reasonable cause for such a suspicion.
- (2) A person who maintains a protected child shall be deemed for the purposes of the Life Assurance Act 1774 to have no interest in the life of the child.
- (3) An appeal shall lie to the Crown Court against any order made under section 34 by a juvenile court or a justice of the peace.
- (4) Subsection (2) of section 47 of the Children and Young Persons Act 1933 (which restricts the time and place at which a sitting of a juvenile court may be held and the persons who may be present at such a sitting) shall not apply to any sitting of a juvenile court in any proceedings under section 34.