



Adoption (Scotland) Act 1978

1978 CHAPTER 28

PART II

ADOPTION ORDERS

Freeing for adoption

18 Freeing child for adoption.

- (1) Where, on an application by an adoption agency [^{F1}which is a local authority], an authorised court is satisfied in the case of each parent or guardian of the child that—
 - (a) he freely, and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order, or
 - (b) his agreement to the making of an adoption order should be dispensed with on a ground specified in section 16(2),the court shall, subject to subsection (8), make an order declaring the child free for adoption.
- (2) No application shall be made under subsection (1) unless—
 - (a) it is made with the consent of a parent or guardian of a child, or
 - (b) the adoption agency is applying for dispensation under subsection (1)(b) of the agreement of each parent or guardian of the child, and the child is in the care of the adoption agency.
- (3) No agreement required under subsection (1)(a) shall be dispensed with under subsection (1)(b) unless the child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption.
- (4) An agreement by the mother of the child is ineffective for the purposes of this section if given less than 6 weeks after the child's birth.
- [^{F2}(5) On the making of an order under this section, the parental responsibilities and parental rights in relation to the child are transferred to the adoption agency.]

Status: Point in time view as at 01/04/2002.

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- (6) Before making an order under this section, the court shall satisfy itself, in relation to each parent or guardian [^{F3}of the child who can be found], that he has been given an opportunity of making, if he so wishes, a declaration that he prefers not to be involved in future questions concerning the adoption of the child; and any such declaration shall be recorded by the court.
- [^{F4}(7) Before making an order under this section in the case of a child whose father is not, and has not been, married to the mother and does not have any parental responsibilities or parental rights in relation to the child, the court shall satisfy itself in relation to any person claiming to be the father that—
- (a) he has no intention of applying for, or, if he did so apply, it is likely that he would be refused, an order under section 11 of the Children (Scotland) 1995 Act (orders in relation to parental responsibilities and parental rights); and
 - (b) he has no intention of entering into an agreement with the mother under section 4(1) of that Act (acquisition by natural father by agreement of such responsibilities and rights), or, if he has such an intention, that no agreement under that subsection is likely to be made.]
- [^{F5}(8) An order under this section shall not be made in relation to a child of or over the age of 12 years unless with the child's consent; except that where the court is satisfied that the child is incapable of giving his consent to the making of the order, it may dispense with that consent.]
- [^{F6}(9) Where a court making an order under this section in relation to a child who is subject to a supervision requirement is satisfied that, in consequence of its doing so, compulsory measures of supervision in respect of the child are no longer necessary, it may determine that the child shall forthwith cease to be subject to that requirement.]

Textual Amendments

- F1** Words in s. 18(1) inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 11(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F2** S. 18(5) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 11(b)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F3** Words in s. 18(6) substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 40**
- F4** S. 18(7) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 11(c)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F5** S. 18(8) substituted (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), **ss. 2(3)(b)**, 11(2) (with s. 1(3))
- F6** S. 18(9) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 11(d)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

Modifications etc. (not altering text)

- C1** S. 18 restricted by S.I. 1984/988, **reg. 16**

19 Progress reports to former parent.

- (1) This section and section 20 apply to any person [^{F7}(in this section and in section 20 referred to as the “relevant parent”)] who was required to be given an opportunity of making a declaration under section 18(6) but [^{F8}either—
- (a) did not do so; or

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- (b) having done so, subsequently by written notice under this subsection to the adoption agency to which the parental responsibilities and parental rights have been transferred, has withdrawn such declaration.]
- (2) Within the 14 days following the date 12 months after the making of the order under section 18, the adoption agency [F9to which the parental responsibilities and parental rights were transferred] on the making of the order, unless it has previously by notice to the [F10relevant] parent informed him that an adoption order has been made in respect of the child, shall by notice to the [F10relevant] parent inform him—
- (a) whether an adoption order has been made in respect of the child, and (if not)
- (b) whether the child has his home with a person with whom he has been placed for adoption.
- (3) If at the time when the [F11relevant] parent is given notice under subsection (2) an adoption order has not been made in respect of the child, it is thereafter the duty of the adoption agency to give notice to the [F11relevant] parent of the making of an adoption order (if and when made), and meanwhile to give the [F11relevant] parent notice whenever the child is placed for adoption or ceases to [F12be placed with a person with a view to his being adopted by that person].
- (4) If at any time [F13the relevant] parent by notice makes a declaration to the adoption agency that he prefers not to be involved in future questions concerning the adoption of the child—
- (a) the agency shall secure that the declaration is recorded by the court which made the order under section 18, and
- (b) the agency is released from the duty of complying further with subsection (3) as respects [F14that relevant] parent[F15but a declaration under this subsection may be withdrawn in the same way as may a declaration under subsection (6) of section 18, in which event the agency shall no longer be so released]

Textual Amendments

- F7** Words in s. 19(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(a)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F8** Words in s. 19(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(a)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F9** Words in s. 19(2) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(b)(i)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F10** Words in s. 19(2) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(b)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F11** Words in s. 19(3) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(c)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F12** Words in s. 19(3) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(c)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F13** Words in s. 19(4) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(d)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F14** Words in s. 19(4) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(d)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F15** Words in s. 19(4) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 12(d)(iii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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20 Revocation of s. 18 order.

- (1) The [^{F16}relevant] parent, at any time more than 12 months after the making of the order under section 18 when—
- (a) no adoption order has been made in respect of the child, and
 - (b) the child does not have his home with a person with whom he has been placed for adoption,

may apply to the court which made the order for a further order revoking it on the ground that he wishes to resume the parental [^{F17}responsibilities and parental rights].

[^{F18}(1A) The adoption agency, at any time after the making of the order under section 18 when the conditions mentioned in paragraphs (a) and (b) of subsection (1) above are satisfied, may apply to the court which made the order for a further order revoking it.]

- (2) While [^{F19}an application under subsection (1) or (1A)] is pending the adoption agency having the parental [^{F20}responsibilities and parental rights] shall not place the child for adoption without the leave of the court.

[^{F21}(3) Where an order freeing a child for adoption is revoked under this section, the court shall, by an order under section 11 of the Children (Scotland) Act 1995 determine on whom are to be imposed the parental responsibilities, and to whom are to be given the parental rights, in relation to the child.]

- (4) Subject to subsection (5), [^{F22}if an application under subsection (1)] is dismissed on the ground that to allow it would contravene the principle embodied in section 6—
- (a) the [^{F23}relevant] parent who made the application shall not be entitled to make any further application under subsection (1) in respect of the child, and
 - (b) the adoption agency is released from the duty of complying further with section 19(3) as respects that parent.

- (5) Subsection (4)(a) shall not apply where the court which dismissed the application gives leave to the [^{F24}relevant] parent to make a further application under subsection (1), but such leave shall not be given unless it appears to the court that because of a change in circumstances or for any other reason it is proper to allow the application to be made.

Textual Amendments

- F16** Word in s. 20(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(a)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F17** Words in s. 20(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(a)(ii)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F18** S. 20(1A) inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F19** Words in s. 20(2) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(c)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F20** Words in s. 20(2) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(c)(ii)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F21** S. 20(3) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(d)** (with s. 103(1)) (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F22** Words in s. 20(4) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(e)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F23** Word in s. 20(4)(a) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(e)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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F24 Word in s. 20(5) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 13(f)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

[^{F25}21 Variation of section 18 order so as to substitute one adoption agency for another.

- (1) On an application to which this section applies an authorised court may vary an order under section 18 so as to transfer the parental [^{F26}responsibilities and parental rights] relating to the child from the adoption agency [^{F27}to which they are transferred by virtue of] the order (“the existing agency”) to another adoption agency (“the substitute agency”).
- (2) This section applies to any application made jointly by the existing agency and the would-be substitute agency.
- (3) Where an order under section 18 is varied under this section, section 19 shall apply as if the parental [^{F28}responsibilities and parental rights] relating to the child had [^{F29}been transferred to] the substitute agency on the making of the order.]

Textual Amendments

- F25** S. 21 substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 88, **Sch. 10 para. 37** (with s. 108, **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F26** Words in s. 21(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 14(a)(i)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F27** Words in s. 21(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 14(a)(ii)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F28** Words in s. 21(3) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 14(b)(i)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.**
- F29** Words in s. 21(3) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 14(b)(ii)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch.** (as amended by S.I. 1997/744, **arts. 2, 3**)

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