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STATUTORY INSTRUMENTS

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**1987 No. 2203**

**The Adoption (Northern Ireland) Order 1987**

**PART IV**

**CARE AND PROTECTION OF CHILDREN AWAITING ADOPTION**

*Restrictions on removal of children*

**Restrictions on removal where adoption agreed or application made under Article 17(1) or 18(1)**

**28.**—(1) While an application for an adoption order is pending—

- (a) 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;
- (b) any person or body, other than a 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 actual 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 actual custody of that person except with the leave of the court.

(3) Any person who contravenes paragraph (1) or (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.

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

**29.**—(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 actual 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 Board 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 actual 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 Board expires, whichever occurs first.

(3) In any case where paragraph (1) or (2) applies and—

(a) the child was in the care of a Board 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 Board,

the Board shall not remove the child from the actual custody of the applicant or of the prospective adopter except in accordance with Article 31 or 32 or with the leave of a court.

(4) In paragraphs (2) and (3) “a court” means a court with jurisdiction to make adoption orders.

(5) A Board which receives such notice as is mentioned in paragraph (2) in respect of a child whom the Board knows to be in the care of another Board or of a voluntary organisation shall, not more than 7 days after the receipt of the notice, inform that other Board or the organisation, in writing, that it has received the notice.

(6) Paragraph (2) does not apply to any further notice served by the prospective adopter on any Board in respect of the same child during the period referred to in sub-paragraph (b) of that paragraph or within 28 days after its expiry.

(7) Any person who contravenes paragraph (1) or (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.

(8) The Department may by order made subject to affirmative resolution amend paragraph (1) or (2) to substitute for the period of 5 years mentioned in that paragraph such other period as may be specified in the order.

### **Return of child taken away in breach of Article 28 or 29**

**30.**—(1) An authorised court may on the application of a person from whose actual custody a child has been removed in breach of Article 28 or 29 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 actual custody in breach of Article 28 or 29 by order direct that other person not to remove the child from the applicant’s custody in breach of that Article.

(3) If, in the case of an order made by the High Court under paragraph (1), the High Court or, in the case of an order made by a county court under paragraph (1), a county court is satisfied that the child has not been returned to the applicant, the court may make an order authorising a constable to search such premises as may be specified in the order for the child and, if a constable acting in pursuance of the order finds the child, to return the child to the applicant.

(4) If a justice of the peace is satisfied by complaint on oath that there are reasonable grounds for believing that a child to whom an order under paragraph (1) relates is in premises specified in the complaint, he may issue a search warrant authorising a constable to search the premises for the child, and if a constable acting in pursuance of the warrant finds the child, he shall return the child to the person on whose application the order under paragraph (1) was made.

(5) An order under paragraph (3) may be enforced in like manner as a warrant of commitment.

### **Return of children placed for adoption by adoption agencies**

**31.**—(1) Subject to paragraph (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 serve notice on the agency of his intention not to retain the actual custody of the child; or
- (b) the agency may cause notice to be served on that person of their intention not to allow the child to remain in his actual custody.

(2) A notice under paragraph (1)(b) shall not be served 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 served on an adoption agency by any person or by an adoption agency on any person under paragraph (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 which notice was served 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 Article 26 (whether as originally made or as extended under paragraph (2) of that Article) expires without an adoption order having been made in respect of the child, paragraph (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 paragraph (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 paragraph (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 Article shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months 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 paragraph (1).

### **Application of Article 31 where child not placed for adoption**

**32.**—(1) Where a person serves notice in pursuance of Article 22(1) on the Board 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 Board, not being a child who was delivered into the actual custody of that person in pursuance of such arrangements as are mentioned in Article 31(1), that Article 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 Board in whose care he is unless the Board so requires.

(2) Where notice of intention is served as aforesaid in respect of any child who is for the time being in the care of a Board then, until the application for an adoption order has been made and disposed of, any right of the Board to require the child to be returned to it otherwise than in pursuance of Article 31 shall be suspended.

(3) While the child remains in the actual custody of the person by whom the notice is served no contribution shall be payable (whether under a contribution order or otherwise) in respect of the child by any person liable under section 155 of the Children and Young Persons Act (Northern Ireland) 1968(1) to make contributions in respect of him (but without prejudice to the recovery of any sum

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(1) 1968 c. 34 (N.I.)

due at the time the notice is served), unless 12 weeks have elapsed since the service of the notice without the application being made or the application has been refused by the court or withdrawn.

### *Protected children*

#### **Meaning of “protected child”**

**33.**—(1) Where a person gives notice in pursuance of Article 22(1) to the Board 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 is not a protected child by reason of any such notice as is mentioned in paragraph (1) while—

- (a) he is in the care of any person in—
  - (i) any school within the meaning of the Education and Libraries (Northern Ireland) Order 1986(2),
  - (ii) any voluntary home within the meaning of section 126 of the Children and Young Persons Act (Northern Ireland) 1968,
  - (iii) any home or institution maintained by a government department or public body; or
- (b) he is resident in a residential home for persons suffering from mental disorder within the meaning of Article 3(1) of the Mental Health (Northern Ireland) Order 1986(3); or
- (c) he is liable to be detained or is subject to guardianship under that Order of 1986.

(3) A protected child ceases to be a protected child—

- (a) on the appointment of a guardian for him under the Guardianship of Infants Act 1886(4);
- (b) on the notification to the Board 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 Article 27;
  - (iii) an order under Article 45, 46 or 47 of the Matrimonial Causes (Northern Ireland) Order 1978(5);
  - (iv) an order under Article 10, 11 or 12 of the Domestic Proceeding’s (Northern Ireland) Order 1980(6); or
- (d) on his attaining the age of 18 years,

whichever first occurs.

#### **Duty of Boards to secure well-being of protected children**

**34.**—(1) Every Board shall secure that protected children within its area are visited from time to time by officers of the Board, 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.

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(2) 1986 NI 3  
 (3) 1986 NI 4  
 (4) 1886 c. 27  
 (5) 1978 NI 15  
 (6) 1980 NI 5

(2) Any officer of a Board 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 Board in which such children are to be or are being kept.

### **Removal of protected children from unsuitable surroundings**

**35.**—(1) If a juvenile court is satisfied, on the complaint of a Board under Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981(7), 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, 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 Article may be exercised by a justice of the peace acting on the complaint of an officer authorised to visit protected children.

(2) An order under this Article may be executed by any officer authorised to visit protected children or by any constable and, notwithstanding anything in section 7 of the Sunday Observance Act (Ireland) 1965(8), may be executed on a Sunday.

(3) The Department may receive into its care under section 103 of the Children and Young Persons Act (Northern Ireland) 1968(9) any child removed under this Article, whether or not the circumstances of the child are such that they fall within paragraphs (a) and (b) of subsection (1) of that section and notwithstanding that he may appear to the Department to be over the age of 17 years.

(4) Where a child is removed under this Article the Board shall, if practicable, inform a parent or guardian of the child, or any person who acts as his guardian.

### **Notices and information to be given to Boards**

**36.**—(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 1 week after the change, serve a notice specifying the new address on the Board in whose area his permanent address is before the change, and if the new address is in the area of another Board, the Board on whom the notice is served shall inform that other Board and give it such of the following particulars as are known to it, 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 serve notice of the child's death on the Board.

### **Offences relating to protected children**

**37.**—(1) A person shall be guilty of an offence if—

- (a) being required, under Article 36 to serve any notice or give any information, he fails to serve 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 or information;
- (b) he refuses to allow the visiting of a protected child by a duly authorised officer of a Board or the inspection, under the power conferred by Article 34(2) of any premises;

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(7) 1981 NI 26

(8) 1965 c. 17 (I)

(9) 1968 c. 34 (N.I.)

(c) he refuses to comply with an order under Article 35 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 Article shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.

### **Miscellaneous provisions relating to protected children**

**38.**—(1) For the purposes of section 32 of the Children and Young Persons Act (Northern Ireland) 1968<sup>(10)</sup>, 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 Article 34 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<sup>(11)</sup> as extended by the Life Insurance (Ireland) Act 1866<sup>(12)</sup> to have no interest in the life of the child.

(3) Subsection (2) of section 65 of the Children and Young Persons Act (Northern Ireland) 1968 (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 Article 35.

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<sup>(10)</sup> 1968 c. 34 (N.I.)

<sup>(11)</sup> 1774 c. 48

<sup>(12)</sup> 1866 c. 42