



Children Act 1975

1975 CHAPTER 72

PART II

CUSTODY

Custody in Scotland

51 Restriction on removal of child where applicant has provided home for three years.

(1) Where a person has applied for [^{F1}a residence order in relation to] a child, it shall be an offence, except with the authority of a court or under authority conferred by any enactment or on the arrest of the child, to remove the child from the [^{F2}care and possession] of the applicant against the will of the applicant if—

- (a) the child has been in the care and possession of that person for a period or periods before the making of the application which amount to at least three years; and
- (b) the application is pending in any court.

^{F3}[(2) In any case where subsection (1) applies, and the child—

- (a) was being looked after by a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 before he began to have his home with the applicant, and
- (b) continues to be looked after by such a council,

the council by whom the child is being looked after shall not remove him from the applicant's care and possession except—

- (i) with the applicant's consent;
- (ii) with the leave of the court; [^{F4}or]
- (iii) in accordance with an order made[^{F5}, or authority or warrant granted,] under Chapter [^{F5}2 or] 3 of Part II of the Children (Scotland) Act 1995.]
- [^{F6}(iv) in accordance with section 56 of the Children's Hearings (Scotland) Act 2011 (asp 1) (constable's power to remove child to place of safety); or

Changes to legislation: There are currently no known outstanding effects for the Children Act 1975, Section 51. (See end of Document for details)

(v) in accordance with an order or warrant under that Act of 2011.]

- (3) Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding [^{F7}level 5 on the standard scale] or both.
- (4) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend subsection (1) to substitute a different period for the period mentioned in that subsection (or for the period which, by a previous order under this subsection, was substituted for that period).
- ^{F8}[(5) In this section “ looked after ” and “ residence order ” have the meanings given respectively by section 17(6) and section 11(2)(c) of the Children (Scotland) Act 1995; and “ residence order ” shall have the same meaning in sections 52 and 53 of this Act.]

Textual Amendments

- F1** Words in s. 51(1) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 26(4)(a)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F2** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 25**
- F3** S. 51(2) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 26(4)(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)**
- F4** Word in s. 51(2) repealed (S.) (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **Sch. 1 para. 3(a)**
- F5** Words in s. 51(2)(iii) repealed (S.) (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **Sch. 1 para. 3(b)**
- F6** S. 51(2)(iv)(v) inserted (S.) (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, **Sch. 1 para. 3(c)**
- F7** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F, 289G**
- F8** S. 51(5) added (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 26(4)(c)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

Changes to legislation:

There are currently no known outstanding effects for the Children Act 1975, Section 51.