

Adoption and the Law: Some key terms explained

Overview of the legal orders that can be used to secure a child's accommodation outside their birth family home

General principles

Children should be brought up by and cared for by their parents within their birth families without intervention from the State. However, where this is not possible or appropriate, there are a number of legal mechanisms designed to promote the best interests of the child. These will be applied proportionately following the general principle of minimum intervention and taking account of the child's views. They may be put in place by a Children's Hearing or by the Courts.

Legal Orders

There are a number of legal Orders which can secure a child's accommodation away from home.

Under the Children's Hearing Scotland (Act) 2011

A Compulsory Supervision Order (CSO)

This will be put in place by a Children's Hearing who will have met and discussed the family circumstances with the child, relevant persons (parents and in some cases, carers) and professionals. This can only be done once Grounds for Referral (reasons for concern) have been accepted by the child and relevant persons or established as true by a sheriff. The Order can last for a maximum of one year without being reviewed by the Hearing. The local authority can ask for a review at any time and the child or relevant person can ask for it to be reviewed after 3 months of it having been made.

The local authority must implement the Order according to its terms. Measures can be attached to the Order, determining for example, where the child resides or what contact arrangements should be made. The Order relates to the child and to the local authority and cannot oblige a parent to act in any way, for example, to stop drinking or to co-operate with the local authority plan. This Order will be made only where voluntary measures have been considered inadequate or inappropriate. While parental rights and responsibilities remain with the parents, this Order legitimately interferes with the exercise of these.

A child whose ultimate plan is to be permanently fostered or to be adopted will often be subject to a CSO. This can secure their residence away from home while longer term plans are made. The Order can be appealed as well as reviewed and Hearings can make a range of decisions including returning the child to the care of the parent.

This makes it a less secure means of planning for the child and is not seen as an appropriate mechanism for securing long term plans.

Interim Compulsory Supervision Order (ICSO)

This Order is similar to a CSO in that it can suspend the exercise of parental rights and responsibilities, allowing for Children's Hearings to determine where a child should reside. As the name suggests, this is a short-term measure, often in place while Grounds for Referral are being considered at Court or until the local authority is in a position to make a longer term plan and recommendation. An ICSO lasts for a maximum of 22 days and can be renewed by Hearings, but after 66 days, a Court would need to consider the need for its continuation.

Child Protection Order (CPO)

While anyone may apply for a CPO, it is almost always the local authority who will apply to a sheriff for a CPO where there is urgency and they believe the child is or is likely to suffer significant harm. The CPO can authorise that the child be "produced", removed to a place of safety, not removed from a place, eg. a hospital or for an assessment to be carried out. A CPO can last for only a few days until a Children's Hearing is arranged to make a longer term decision. A child may be placed with a foster carer under this Order on an emergency basis.

Under the Children (Scotland) Act 1995

Voluntary Reception into Care Section 25

Where a person with PRRs has consented to the child's reception into care, or where the person cannot be found or is unable to give consent, the child can be received into care on a voluntary basis. Where the parent is agreeing to the plan for adoption, the child may be placed with adopters under Section 25. The voluntary aspect of this arrangement means that the parent may ask for the child to be returned to them at any time. Where the child has been accommodated by the local authority for more than 6 months, the parents have to give notice that they wish the child returned to them. If the child is already placed for adoption, the Court can consider whether or not such a change is reasonable. The local authority could during this notice period apply for a CPO to prevent the child's return to the parents' care, but they would need to fulfil the criteria for a CPO to be granted.

Kinship Care Order (KCO) Section 11

Kinship carers are those who are related to the child or have known the child and with whom the child has a pre-existing relationship. They are distinct from, for example, a foster carer or someone not otherwise known to the family. Under a KCO, the Court grants Parental Rights and Responsibilities to kinship carers. The important point is that the PRRs are not removed from the parents; they are shared with the kinship carers. This can really only work effectively, where there is agreement by the parents in terms of the kinship carers' right to make decisions for the child. Otherwise, the Order will mean that everyone who has PRRs would need to go to the Court for a Sheriff to resolve any differences. Where there is an absence of

agreement among the adults, the local authority may consider applying for a PO so that effective planning for the child can take place.

Under the Adoption and Children (Scotland) Act 2007

Adoption Order (AO)

Prospective adopters can petition the Court to adopt a particular child. This will be done by a direct petition to the Court and the prospective adopters will instruct their own solicitor to act on their behalf. Often the local authority will meet some or all the legal costs and this should be clarified at the outset. Those who hold PRRs must consent to the adoption or the Court may dispense with the necessity for consent. This will be where the parent is dead, cannot be found, is incapable of consenting or cannot in the Court's opinion satisfactorily discharge their parental rights and responsibilities and are likely to continue to be unable to do so. The Court may dispense with the consent where the child's welfare otherwise requires it. Where the child is 12 years of age or over, their consent must be sought before the adoption can be granted. The child would need to be considered incapable of giving consent for the adoption to be otherwise granted. Once the adoption order is granted, the child will be as though born into the adoptive family and the child's birth certificate will be changed to reflect this.

Permanence Order (PO)

Only a local authority can apply to the Court for this. Before the Court will grant a PO they need to be convinced that nothing other than a PO would be appropriate and evidence that to live with the parent, is or is likely to cause significant harm to the welfare of the child. Under the PO, parental rights and responsibilities will be removed from the parents, although they may maintain contact with the child. The local authority has the right to decide where the child will live and to make important decisions about the child's life. There will be ancillary provisions attached to the PO which are tailored to the circumstances of each child. Sometimes the local authority will have these rights and delegate them to the foster carers and other times they will be granted to the foster carers by the Court. Typically, ancillary provisions will deal with who receives school report cards, who decides what school the child attends, who signs medical consent forms, decides if the child can go abroad, have sleepovers, have their ears pierced etc.

Permanence Order with Authority to Adopt (POA)

This is the same as a Permanence Order but with the additional provision of granting authority to adopt. This means that the issue of parental consent to the adoption will be dealt with and once the POA is granted, the child may be adopted. Criteria for the dispensing with the consent of those who have PRRs are the same as for the direct petition adoption. Where the child is 12 years of age or over, their consent must be sought before a POA can be granted. The child would need to be considered incapable of giving consent for the POA to be otherwise granted.

Types of Adoption

Agency Adoption - sometimes referred to as S.17 adoption

Where a local authority places a child for adoption, the plan will have been reviewed by an Adoption Panel to ascertain that it is the best option for the child. The child must be at least 19 weeks old before the adoption may be granted and have lived with the adopters for the previous 13 weeks. Applications may be made before this time, but can only be granted as above. The placing Agency must prepare and lodge a report for the Courts in terms of S.17.

Non-Agency Adoptions - sometimes referred to as S.19 adoption

Where a child has not been placed with the prospective adopter by the Agency with the specific intention of adoption by the carers, then this is a non-agency adoption. This includes intercountry adoptions and adoptions by relatives, step parents or foster carers. Even where the Agency may have placed the child with relatives or carers, unless it was done with adoption in mind, these will be categorised as non-agency adoptions.

The prospective adopters must notify the local authority that they intend to adopt the child and this notification must be made at least 3 months before the adoption order may be granted. The local authority will investigate the matter and prepare and lodge with the court a report about the family, the child and all the circumstances of the case.

For a step-parent or relative adoption, the child, as in the case of an agency adoption, must be at least 19 weeks old before the adoption may be granted and have lived with the adopters for the previous 13 weeks. Applications may be made before this time, but can only be granted as above.

Otherwise, the child must be at least one year old before the order is made and have lived with the adopter for at least one year.

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