

**2006 No. 411**

**SHERIFF COURT**

**Act of Sederunt (Child Care and Maintenance Rules 1997)  
(Amendment) (Adoption and Children Act 2002) 2006**

*Made* - - - - - *21st July 2006*

*Coming into force* - - - - - *18th August 2006*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a), and section 59 of the Adoption (Scotland) Act 1978(b) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Child Care and Maintenance Rules 1997) (Amendment) (Adoption and Children Act 2002) 2006, and shall come into force on 18th August 2006.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

**Amendment of the Child Care and Maintenance Rules**

2.—(1) The Act of Sederunt (Child Care and Maintenance Rules) 1997(c) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 2.1 (interpretation)—

(a) after the definition of “the 1995 Act” there shall be inserted the following—

“the 2002 Act” means the Adoption and Children Act 2002(d);” and

(b) in the definition of “adoption agency” for “or an approved adoption society” there shall be substituted “, a registered adoption service within the meaning of section 1(5) of the Act, an adoption agency within the meaning of section 2(1) (adoption agencies in England and Wales) of the 2002 Act or an adoption agency within the meaning of article 3 (adoption agencies in Northern Ireland) of the Adoption (Northern Ireland) Order 1987”.

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(a) 1971 c.58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2).

(b) 1978 c.28. Section 59 was amended by the Children (Scotland) Act 1995 (c.36), Schedule 2, paragraph 27 and the Adoption and Children Act 2002, (c.38), Schedule 3, paragraph 33.

(c) S.I. 1997/291, last amended by S.S.I. 2005/190.

(d) 2002 c.38.

- (3) In rule 2.21 (application for adoption order)–
- (a) in paragraph (2) (documents to be lodged with petition)–
- (i) in sub-paragraph (f) “and” shall be omitted; and
  - (ii) before sub-paragraph (g) there shall be inserted the following–
    - “(fa) where appropriate, the consent under section 19(1) (placing children with parental consent: England and Wales) of the 2002 Act of each parent or guardian to the child being placed for adoption, in the form prescribed under section 52(7) of that Act;
    - (fb) where appropriate, the consent under section 20(1) (advance consent to adoption: England and Wales) of the 2002 Act of each parent or guardian to the making of a future adoption order, in the form prescribed under section 52(7) of that Act;
    - (fc) any notice given under section 29(4) (notice that information about application for adoption order not required: England and Wales) of the 2002 Act by a parent or guardian of the child to an adoption agency;
    - (fd) a certified copy of any placement order made under section 21(1) (placement orders: England and Wales) of the 2002 Act; and”
- (b) in paragraph (3)(q) “and” where it second appears shall be omitted;
- (c) for paragraph (3)(r) there shall be substituted the following:–
- “(r) whether the child is subject to a supervision requirement and, if so, what steps have been taken to comply with subsections (4)(c), (5) and (13) of section 73 (duration and review of supervision requirement) of the 1995 Act;
  - (s) where paragraph (3A) applies, the information mentioned in paragraph (3B); and
  - (t) any other information which may be of assistance to the court.”;
- (d) after paragraph (3) there shall be inserted the following:–
- “(3A) This paragraph applies where–
- (a) the child was placed for adoption under section 19(1) (placement with parental consent: England and Wales) of the 2002 Act;
  - (b) the child was placed for adoption under a placement order made under section 21(1) (placement orders: England and Wales) of the 2002 Act; or
  - (c) each parent or guardian has consented under section 20(1) (advance consent to adoption: England and Wales) of the 2002 Act to the making of a future adoption order.
- (3B) Where paragraph (3A) applies, the report mentioned in paragraph (3) shall also include any available information about whether–
- (a) any placement order has been revoked;
  - (b) any of the consents referred to in section 16(3D) (consents to placement: England and Wales) of the Act have at any time been withdrawn;
  - (c) a parent or guardian of the child wishes to seek leave to oppose the petition; and
  - (d) there has been any change of circumstances since the consent of the parent or guardian was given or, as the case may be, the order under section 21(1) (placement orders: England and Wales) of the 2002 Act was made.”;
- (e) after paragraph (5) there shall be inserted the following:–
- “(6) If any of the documents required to be lodged in process under paragraph (2)(fa), (fb), (fc) or (fd) is unavailable to be lodged by reason of its being in the possession of a n adoption agency, the sheriff shall pronounce an interlocutor requiring the agency to lodge the document within four weeks from the date of the interlocutor, or within such other period as the sheriff in his discretion may allow.”.

(4) In rule 2.23(1) (consents and agreements to adoption orders) for “section 16(1)” there shall be substituted “section 16(1)(b(i))”.

(5) In rule 2.25 (appointment of curator *ad litem* and reporting officer), for paragraph (2) there shall be substituted the following:–

“(2) The sheriff shall not appoint a reporting officer where one or more of the following applies:–

- (a) an order freeing the child for adoption has been made;
- (b) the petition is founded on one or other or both of section 16(1)(aa) (advance consent to adoption: England and Wales) and section 16(1)(ab) (placement of child: England and Wales) of the Act,

but, for removal of doubt, a reporting officer shall be appointed in any case in which the petition is founded on section 16(1)(b) of the Act, whether or not it is also founded on section 16(1)(aa) or section 16(1)(ab) of the Act.”.

(6) In rule 2.26 (duties of reporting office and curator *ad litem*) after paragraph (1) there shall be inserted the following:–

“(1A) References in paragraph (1) to “agreement” are to an agreement within the meaning of section 16(1)(b) of the Act.”.

(7) In rule 2.28 (hearing), for paragraph (3)(a) there shall be substituted the following:–

“(a) in a petition for an adoption order–

- (i) every person who can be found and whose agreement or consent to the making of such an order is required to be given or dispensed with; or
- (ii) where the petition is founded on either or both of section 16(1)(aa) (advance consent to adoption: England and Wales) or section 16(1)(ab) (placement of child: England and Wales) of the Act (but not also section 16(1)(b) (agreement to adoption order) of the Act), each parent or guardian of the child except a parent or guardian who has given notice under section 20(4)(a) of the 2002 Act that he does not wish to be informed of the application for an adoption order; or”;

(8) In Schedule 1–

(a) in Form 11 (petition for adoption order under section 12 of the Adoption (Scotland) Act 1978–

(i) for paragraph h there shall be substituted the following:–

“h. arrangements for placing the child in the care of the petitioner(s) were made by (give full name and address of the agency or authority or person making such arrangement) [\*and therefore notification in terms of section 22(1) of the Adoption (Scotland) Act 1978 is not required].”;

(ii) “(\*Delete as appropriate)” where it appears after paragraph i shall be omitted;

(iii) at the end of paragraph k, there shall be inserted the following:–

“l. \*Each parent or guardian of the child has consented under section 20(1) (advance consent to adoption: England and Wales) of the Adoption and Children Act 2002 and has not withdrawn that consent.

m. \*By notice under section 20(4)(a) (notice that information about application for adoption order not required: England and Wales) of the Adoption and Children Act 2002 (*name of parent or guardian*) [and (*name of parent or guardian*) stated that he [*or she or they*] did not wish to be informed of any application for an adoption order and that statement has not been withdrawn.

n. \*The child has been placed for adoption by an adoption agency within the meaning of section 2(1) (adoption agencies in England and Wales) of the Adoption and Children Act 2002 with the petitioner(s) and the child was placed

for adoption [\*under section 19(1) (placing children with parental consent: England and Wales) of that Act with the consent of each parent or guardian and the consent of the mother was given when the child was at least six weeks old] [\*under an order made under section 21(1) (placement orders: England and Wales) of that Act and the child was at least six weeks old when that order was made].

(“Delete as appropriate”); and

- (b) in the headings for Forms 13 and 14 for “16(1)” there shall be substituted “16(1)(b)(i)”.

*A C HAMILTON*  
Lord President  
I.P.D.

Edinburgh  
21st July 2006

## **EXPLANATORY NOTE**

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt amends the Act of Sederunt (Child Care and Maintenance Rules) 1997 to make provision consequential upon amendments to the Adoption (Scotland) Act 1978, particularly section 16, by the Adoption and Children Act 2002.





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