

2019 No. 147

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session 1994 and Child
Care and Maintenance Rules 1997 Amendment) (Parental
Orders) 2019**

<i>Made</i> - - - -	<i>24th April 2019</i>
<i>Laid before the Scottish Parliament</i>	<i>26th April 2019</i>
<i>Coming into force</i> - -	<i>24th May 2019</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 and Child Care and Maintenance Rules 1997 Amendment) (Parental Orders) 2019.

(2) It comes into force on 24th May 2019.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session 1994

2.—(1) The Rules of the Court of Session 1994(c) are amended in accordance with this paragraph.

(2) In rule 97.1 (application and interpretation)(d)—

(a) in paragraph (1), after “section 54”, insert “or 54A(e)”;

(b) in paragraph (2), in the definition of “parental order”, after “section 54”, insert “or 54A”.

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(b) 2014 asp 18.

(c) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2019/146).

(d) Chapter 97 and associated forms were inserted by S.S.I. 2010/136.

(e) Section 54A was inserted by S.I. 2018/1413.

(3) In rule 97.7(4) (protection of identity of petitioners), after “section 54(6)”, insert “or 54A(5)”.

(4) In rule 97.9 (duties of a reporting officer and curator ad litem)(a)—

(a) in paragraph (1)—

(i) in sub-paragraph (c), after “section 54(6)”, insert “or 54A(5)”;

(ii) in sub-paragraph (d), for “(8) of section 54”, substitute “(8A) of section 54 or subsections (2) to (8) of section 54A”;

(b) in paragraph (2)(d), after “section 54(8)”, insert “or 54A(7)”;

(c) in paragraph (5)(b), after “section 54(6)”, insert “or 54A(5)”.

(5) In rule 97.10(1) (agreement), after “section 54(6)”, insert “or 54A(5)”.

(6) In rule 97.11(1) (procedure where child wishes to express a view), after “section 54(11)”, insert “or 54A(11)”.

(7) In the Appendix (forms)—

(a) in Form 97.3 (form of petition for parental order under section 54 of the Human Fertilisation and Embryology Act 2008)—

(i) in the heading, after “section 54”, insert “or 54A”;

(ii) in the instance, after “section 54”, insert “[or 54A]”;

(iii) in the prayer, after “section 54”, insert “[or 54A]”;

(iv) in the signing docquet, after “Counsel or other person having a right of audience]”, on the next line, insert—

“

or (Signed)

(Signed)

Petitioners]

”;

(v) at the end of the form, insert—

“ *[Note – where the petitioner is a single applicant under section 54A of the Human Fertilisation and Embryology Act 2008, references throughout this form to “the petitioners” should be amended to “the petitioner”. Paragraph 1 of the statement of facts should be omitted in petitions by a single applicant. Text in other paragraphs and the signing docquet should be amended as appropriate.]*

”;

(b) in Form 97.10 (form of agreement to a parental order under section 54(6) of the Human Fertilisation and Embryology Act 2008)—

(i) in the heading, after “section 54(6)”, insert “or 54A(5)”;

(ii) in the instance, after “section 54”, insert “or [54A]”;

(iii) at the end of the form, insert—

(a) Rules 97.9 and 97.10 were amended by S.S.I. 2010/205.

“ [Note – where the petition is made by a single applicant under section 54A of the Human Fertilisation and Embryology Act 2008, references throughout this form to “the petitioners” should be amended to “the petitioner”.]

”;

- (c) in Form 97.12 (form of intimation of hearing of application for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008)—
 - (i) in the heading, after “section 54”, insert “or 54A”;
 - (ii) in the instance, after “section 54”, insert “[or 54A]”;
 - (iii) in paragraph 3, after “the petitioners”, insert “[or petitioner]”;
 - (iv) in the signing docquet—
 - (aa) after “for petitioners”, insert “[or petitioner]”;
 - (bb) after “[Deputy Principal Clerk*]”, insert “or [Petitioner[s]]”.

Amendment of the Act of Sederunt (Child Care and Maintenance Rules) 1997

3.—(1) The Act of Sederunt (Child Care and Maintenance Rules) 1997(a) is amended in accordance with this paragraph.

(2) In rule 2.45 (interpretation)(b), in the definition of “parental order”, after “section 54”, insert “or 54A(5)”.

(3) In rule 2.49(4) (protection of identity of petitioners), after “section 54(6)”, insert “or 54A(5)”.

(4) In rule 2.51 (duties of reporting officer and curator ad litem)(c)—

(a) in paragraph (1)—

(i) in sub-paragraph (c), after “section 54(6)”, insert “or 54A(5)”;

(ii) in sub-paragraph (d), for “(8) of section 54”, substitute “(8A) of section 54 or subsections (2) to (8) of section 54A”;

(b) in paragraph (2)(d), after “section 54(8)”, insert “or 54A(7)”;

(c) in paragraph (5)(b), after “section 54(6)”, insert “or 54A(5)”.

(5) In rule 2.52(1) (agreement), after “section 54(6)”, insert “or 54A(5)”.

(6) In rule 2.53(1) (procedure where child wishes to express a view), after “section 54(11)”, insert “or 54A(11)”.

(7) In schedule 1 (forms)—

(a) in Form 22 (form of petition for parental order under section 54 of the Human Fertilisation and Embryology Act 2008)(d)—

(i) in the heading, after “SECTION 54”, insert “OR 54A”;

(ii) in the instance, after “section 54”, insert “[or 54A]”;

(iii) in crave 4, after “section 54”, insert “[or 54A]”;

(iv) at the end of the form, insert—

(a) S.I. 1997/291, last amended by S.S.I. 2016/194.

(b) Part VI of Chapter 2 was substituted, and associated forms inserted, by S.S.I. 2010/137.

(c) Rules 2.51 and 2.52 were amended by S.S.I. 2010/279.

(d) Form 22 was amended by S.S.I. 2012/188.

“ [Note – where the petitioner is a single applicant under section 54A of the Human Fertilisation and Embryology Act 2008, references throughout this form to “the petitioners” should be amended to “the petitioner”. Paragraph 1 of the statement of facts should be omitted in petitions by a single applicant. Text in other paragraphs and the signing docquet should be amended as appropriate.]

”;

(b) in Form 23 (form of agreement to a parental order under section 54(6) of the Human Fertilisation and Embryology Act 2008)—

(i) in the heading, after “SECTION 54(6)”, insert “OR 54A(5)”;

(ii) at the end of the form, insert—

“ [Note – where the petition is made by a single applicant under section 54A of the Human Fertilisation and Embryology Act 2008, references throughout this form to “the petitioners” should be amended to “the petitioner.”]

”;

(c) in Form 24 (form of intimation of diet of the hearing of application for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008)—

(i) in the heading, after “SECTION 54”, insert “OR 54A”;

(ii) after “section 54”, insert “or 54A”;

(iii) after “the petitioners”, insert “[or petitioner]”;

(iv) at the end of the form, insert—

“ [Note – where the petition is made by a single applicant under section 54A of the Human Fertilisation and Embryology Act 2008 and the form is to be signed by the petitioner, the signing docquet should be amended as appropriate.]

”.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
24th April 2019

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session 1994 (“the RCS”) and the Act of Sederunt (Child Care and Maintenance Rules) 1997 (“the CCMR”) in consequence of the enactment of section 54A of the Human Fertilisation and Embryology Act 2008 by the Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413).

Section 54A extends to single applicants the right to apply for parental orders that was previously available only to couples.

Paragraph 2(2) to (6) inserts into Chapter 97 of the RCS references to the relevant provisions of section 54A. Paragraph 2(7) makes consequential amendments to Forms 97.3, 97.10 and 97.12.

Paragraph 3 makes similar amendments to the CCMR.

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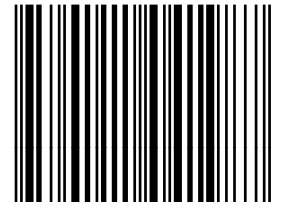
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