

## SCHEDULE 1

Regulation 2

### APPLICATION OF THE ADOPTION (SCOTLAND) ACT 1978 IN RELATION TO PARENTAL ORDERS AND APPLICATIONS FOR SUCH ORDERS

#### General

1.—(1) The following paragraphs set out the provisions of the 1978 Act which have effect, with such modifications (if any) as are specified in those paragraphs, in relation to parental orders and applications for such orders.

(2) Of the modifications referred to in sub-paragraph (1) above, those in paragraphs 2, 3, 5 to 15, 17(2) and 18 are specified by being incorporated in the text of the respective provisions of the 1978 Act set out in those paragraphs.

(3) Any reference in this Schedule to a numbered section or Schedule is, unless otherwise expressly provided, a reference to the section or Schedule bearing that number in the 1978 Act.

#### Section 6

2. Section 6 shall have effect as follows:—

##### “Duty to promote welfare of child

6. In reaching any decision relating to an application for a parental order, a court shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.”.

#### Section 12

3. Section 12(1) shall have effect as follows:—

##### “Parental orders

12.—(1) Without prejudice to section 30(1) of the 1990 Act (which empowers the court to make an order providing for a child to be treated in law as the child of the parties to a marriage), a parental order vests the parental rights and duties relating to the child in the parties to the marriage, namely the husband and the wife.

(2) The parental order does not affect the parental rights and duties so far as they relate to any period before the making of the order.

(3) The making of a parental order operates to extinguish—

(a) any parental right or duty relating to the child which, immediately before the making of the order, was vested in a person (not being either the husband or the wife) who was—

(i) the mother or father of the child by virtue of section 27 or 28 of the 1990 Act, or otherwise; or

(ii) a guardian of the child appointed by a deed or by the order of a court;

(b) any duty owed to or by the child—

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(1) Section 12(3) was amended by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), Schedule 2.

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- (i) to pay or provide aliment in respect of any period occurring after the making of the order;
  - (ii) to make payment arising out of parental rights and duties in respect of such a period.
- (4) Nothing in subsection (3) shall—
- (a) extinguish any duty arising under a deed or agreement which constitutes a trust or which expressly provides that the duty is not to be extinguished by the making of a parental order;
  - (b) of itself terminate the appointment or functions of any judicial factor loco tutoris or curator bonis appointed to administer the whole or any part of the child’s estate.
- (5) A parental order may contain such terms and conditions as the court thinks fit.”.

#### **Section 24**

4. Section 24(1) shall have effect with the following substitutions:—
- (a) for the words “an adoption order”, there shall be substituted the words “a parental order”; and
  - (b) for the words “a British adoption order” there shall be substituted the words “such an order”.

#### **Section 26**

5. Section 26 shall have effect as follows:—

##### **“Care of child on refusal of parental order**

**26.—**(1) Where on an application for a parental order the court refuses to make an order then—

- (a) if it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may order that the child shall be under the supervision of a specified local authority;
- (b) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted either to the person who is the mother or the father of the child by virtue of section 27 or 28 of the 1990 Act, or otherwise, or to any other individual, the court may by order commit the child to the care of a specified local authority.

(2) Where the court makes an order under subsection (1)(b) the order may require the person who is either the mother or the father of the child by virtue of section 27 or 28 of the 1990 Act, or otherwise, to pay to the local authority, while it has the care of the child, such weekly or other periodical sum towards the aliment of the child as the court thinks reasonable.

(3) Subsections (2), (4) and (5) of section 11 of the Guardianship Act 1973(2) (jurisdiction and orders relating to care and custody of children) apply in relation to an order under this section as they apply in relation to an order under that section.”.

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(2) 1973 c. 29.

## Section 27

6. Section 27(1)(3) shall have effect as follows:—

### “Restrictions on removal where application pending

27.—(1) Where an application for a parental order is pending, the person who is either the mother or the father of the child by virtue of section 27 or 28 of the 1990 Act, or otherwise, or any guardian of the child, is not entitled, against the will of the person with whom the child has his home, to remove the child from the care and possession of that person except with the leave of the court.”.

## Section 29

7. Section 29(4) shall have effect as follows:—

### “Return of child taken away in breach of section 27

29.—(1) An authorised court may on the application of a person from whose care and possession a child has been removed in breach of any of the provisions specified in subsection (3) of this section 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 the child from the care and possession of the applicant in breach of any of the provisions specified in subsection (3) of this section by order direct that other person not to remove the child from the care and possession of that applicant in breach of those provisions.

(3) The provisions specified in this subsection are—

- (a) section 27;
- (b) section 27 of the Adoption Act 1976(5) as modified by the Parental Orders (Human Fertilisation and Embryology) Regulations 1994(6); and
- (c) Article 28 of the Adoption (Northern Ireland) Order 1987(7), as modified by the Parental Orders (Human Fertilisation and Embryology) Regulations 1994.”.

## Section 39

8. Section 39(8) shall have effect as follows:—

### “Status conferred by parental order

39.—(1) Without prejudice to section 30(1) of the 1990 Act (which empowers the court to make an order providing for a child to be treated in law as the child of the parties to a marriage), the child who is the subject of the parental order shall be treated in law—

- (a) as if he had been born as the child of the parties to that marriage; and

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(3) Section 27(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraph 43.

(4) Section 29 was amended by the Health and Social Services and Social Security Adjudications Act 1983, Schedule 2, paragraphs 43 and 44, and by the Children Act 1989 (c. 41), Schedule 10, paragraph 39.

(5) 1976 c. 36.

(6) S.I. 1994/2767.

(7) S.I. 1987/2203 (N.I. 22).

(8) Section 39(2) was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 1.

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- (b) as if he were not the child of any person other than the parties to that marriage, namely the husband and wife.
- (2) This section has effect from the date on which the court makes the parental order.
- (3) Subject to the provisions of this Part, this section applies for the construction of enactments or instruments passed or made before or after the date of coming into force of the 1994 Regulations unless the context otherwise requires.”.

## Section 41

9. Section 41(1)(9) and (2)(10) shall have effect with the substitution for subsection (1) of the following:–

### “ Miscellaneous

- (1) Notwithstanding the effect of the making of a parental order but without prejudice to section 39(1)(a), the child who is the subject of that parental order shall be treated for the purposes of determining the forbidden degrees of consanguinity and affinity in respect of the law relating to marriage and in respect of the crime of incest, as if–
  - (a) he were the child of the parties to the marriage who applied for the parental order; and
  - (b) he were also the child of any other person who, prior to the making of the parental order, was the mother or father by virtue of section 27 or 28 of the 1990 Act, or otherwise.”.

## Section 45

10. Section 45(11) shall have effect as follows:–

### “Parental Order Register

45.—(1) The Registrar General for Scotland shall maintain at the General Register Office a register, to be called the Parental Order Register, in which shall be made such entries as may be directed to be made therein by parental orders, but no other entries.

(2) An extract of any entry in the Parental Order Register maintained under this section, if purporting to be sealed or stamped with the seal of the General Register Office, shall, without any further or other proof of that entry, be received as evidence of the parental order to which it relates and, where the entry contains a record of the date of the birth or the country of the birth of the person who is the subject of the said parental order, shall also be received as aforesaid as evidence of that date or country.

(3) The Registrar General for Scotland shall cause an index of the Parental Order Register maintained under this section to be made and kept in the General Register Office; and the Registrar General for Scotland shall–

- (a) cause a search to be made of that index on behalf of any person or permit that person to search the index himself, and
- (b) issue to any person an extract of any entry in that register which that person may require,

in all respects upon and subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Registration of Births, Deaths and

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(9) Section 41(1) was amended by the Incest and Related Offences (Scotland) Act 1986 (c. 36), Schedule 1, paragraph 5.

(10) Section 41(2) was amended by the British Nationality Act 1981 (c. 61), Schedules 7 and 9.

(11) Section 45 was amended by the Children Act 1989 (c. 41), Schedule 10, paragraph 41 and Schedule 15.

Marriages (Scotland) Act 1965(12) in respect of searches in other indexes kept in the General Register Office and in respect of the supply from that office of extracts of entries in the registers of births, deaths and marriages.

(4) The Registrar General for Scotland shall, in addition to the Parental Order Register and the index thereto, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connection between any entry in the register of births which has been marked “Parental Order” pursuant to paragraph 1 of Schedule 1 or any enactment at the time in force and any corresponding entry in the Parental Order Register maintained under this section.

(5) The registers and books kept under subsection (4) shall not be, nor shall any index thereof be, open to public inspection or search, nor, except under an order of the Court of Session or a sheriff, shall the Registrar General for Scotland furnish any information contained in or any copy or extract from any such registers or books to any person other than a person who is the subject of a parental order and who has attained the age of 17 years and to whom that information, copy or extract relates or a local authority or Board falling within subsection (6) or adoption society falling within paragraph (b) of subsection (6B), which is providing counselling for that person.

(6) Where the Registrar General for Scotland furnishes a person, who is the subject of a parental order, with information under subsection (5), he shall advise that person that counselling services are available—

- (a) if the person is in Scotland—
  - (i) from the local authority in whose area he is living;
  - (ii) where the parental order relating to him was made in Scotland, from the local authority in whose area the court which made the order sat; or
  - (iii) from any other local authority in Scotland;
- (b) if the person is in England and Wales—
  - (i) from the local authority in whose area he is living;
  - (ii) where the parental order relating to him was made in England and Wales, from the local authority in whose area the court which made the order sat; or
  - (iii) from any other local authority in England and Wales;
- (c) if the person is in Northern Ireland—
  - (i) from the Board in whose area he is living;
  - (ii) where the parental order relating to him was made in Northern Ireland, from the Board in whose area the court which made the order sat; or
  - (iii) from any other Board.

(6A) Where a person, who is the subject of a parental order and who is in Scotland, is furnished with information under subsection (5), any body mentioned in subsection (6B) to which that person applies for counselling shall have a duty to provide counselling for him.

(6B) The bodies referred to in subsection (6A) are—

- (a) any local authority falling within subsection (6)(a); and
- (b) any adoption society approved under section 3 of the Adoption (Scotland) Act 1978 so far as it is acting in Scotland for the purposes of providing counselling in relation to parental orders.

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(7) Where a person who is the subject of a parental order has arranged to receive counselling from a local authority or Board falling within subsection (6) or an adoption society falling within paragraph (b) of subsection (6B), the Registrar General for Scotland shall, on receipt of a request from the local authority, Board or adoption society, and on payment of the appropriate fee, send to the local authority, Board or adoption society, an extract of the entry relating to that person in the register of births.

(8) The provisions of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 with regard to the correction of errors in entries shall apply to the Parental Order Register maintained by the Registrar General for Scotland and to registration therein in like manner as they apply to any register of births and to registration therein.

(9) Schedule 1 to this Act which, among other things, provides for the registration of parental orders and the amendment of such orders, shall have effect.

(10) In this section—

“Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(13)</sup> and

“local authority”, in relation to England and Wales, means the council of a county (other than a metropolitan county), a metropolitan district, a London borough or the Common Council of the City of London.”.

## Section 55

11. Section 55 shall have effect as follows:—

### “Evidence of agreement or consent

55.—(1) Any agreement or consent which is required by section 30 of the 1990 Act to be given to the making of a parental order or application for an order may be given in writing and, if the document signifying the agreement or consent is witnessed in accordance with rules, it shall be sufficient evidence without further proof of the signature of the person by whom it was executed.

(2) A document signifying such agreement or consent which purports to be witnessed in accordance with rules, shall be presumed to be so witnessed, and to have been executed and witnessed on the date and at the place specified in the document, unless the contrary is proved.”.

## Section 56

12. Section 56 shall have effect as follows:—

### “Courts

56.—(1) In this Act, “authorised court”, as respects an application for a parental order has the same meaning as “the court” has, in relation to Scotland, for the purposes of section 30 of the 1990 Act, namely—

- (a) the Court of Session;
- (b) the sheriff court of the sheriffdom within which the child is.

(2) Subsection (1) does not apply in the case of an application under section 29 but for the purposes of such an application the following are authorised courts:—

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<sup>(13)</sup> S.I. 1972/1265 (N.I. 14).

- (a) if there is pending in respect of the child an application for a parental order, the court in which that application is pending;
- (b) in any other case—
  - (i) the Court of Session;
  - (ii) the sheriff court of the sheriffdom within which the applicant resides.”.

### **Section 57**

13. Section 57 shall have effect as follows:—

#### **“Proceedings to be in private**

57. All proceedings before the court in relation to a parental order or under section 29 shall be heard and determined in private unless the court otherwise directs.”.

### **Section 58**

14. Section 58 shall have effect as follows:—

#### **“Curator ad litem and reporting officers**

58.—(1) For the purpose of any application for a parental order, rules shall provide for the appointment, in such cases as are prescribed—

- (a) of a person to act as curator *ad litem* of the child upon the hearing of the application, with the duty of safeguarding the interests of the child in the prescribed manner; and
- (b) of a person to act as reporting officer for the purpose of witnessing agreements to the parental order and performing such other duties as the rules may prescribe.

(2) A person appointed as reporting officer may be the same person as is appointed as curator *ad litem* but shall not be any person or employee of any person holding a licence granted under section 11 of the 1990 Act.

(3) Rules may provide for the reporting officer to be appointed before the application is made.”.

### **Section 59**

15. Section 59 shall have effect as follows:—

#### **“Rules of procedure**

59. Provision shall be made by act of sederunt with regard to any matter to be prescribed under this Act and generally with regard to all matters of procedure and incidental matters arising out of an application under section 30 of the 1990 Act and out of this Act and for carrying this Act into effect.”.

### **Section 60**

16.—(1) Section 60, except subsection (3), shall have effect with the following modifications.

(2) For subsection (1), there shall be substituted—

“(1) Any power to make regulations conferred by this Act on the Registrar General for Scotland shall be exercisable by statutory instrument.”.

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(3) In subsection (2) the words “except section 3(1)” shall be omitted.

## Section 65

17.—(1) Section 65, except subsections (2) and (3), shall have effect with the following modifications.

(2) For subsection (1)(14), there shall be substituted—

“(1) In this Act, unless the context otherwise requires—

“the 1990 Act” means the Human Fertilisation and Embryology Act 1990;

“the 1994 Regulations” means the Parental Orders (Human Fertilisation and Embryology) (Scotland) Regulations 1994;

“authorised court” shall be construed in accordance with section 56;

“body of persons” means any body of persons, whether incorporated or unincorporated;

“guardian” means a person appointed by deed or will or by a court of competent jurisdiction to be the guardian of the child;

“husband” and “wife” have the same meaning respectively as in section 30 of the 1990 Act;

“local authority” means a regional or islands council;

“parental order” means an order under section 30 of the 1990 Act;

“prescribed” means prescribed by act of sederunt;

“Registrar General for Scotland” means the Registrar General of Births, Deaths and Marriages for Scotland;

“rules” means rules made by act of sederunt;

and any reference to this Act or to any provision of this Act shall be construed as a reference to this Act or to that provision as it has effect, with such modifications (if any) as are specified in Schedule 1 to the 1994 Regulations, in relation to parental orders and applications for such orders.”.

## Schedule 1

18. Schedule 1 shall have effect as follows:—

“SCHEDULE 1

Section 45

REGISTRATION

### Registration of orders

1.—(1) Every parental order shall contain a direction to the Registrar General for Scotland to make in the Parental Order Register maintained by him an entry recording the order in such form as the Registrar General for Scotland may by regulations specify.

(2) For the purposes of compliance with the requirements of sub-paragraph (1)—

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(14) Relevant amendments were made to the meaning of “guardian” by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 1, paragraph 18 and Schedule 2 and the Age of Legal Capacity (Scotland) Act 1991, Schedule 1, paragraph 36.



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- (a) where the precise date of the child's birth is not proved to the satisfaction of the court, the court shall determine the probable date of his birth and the date so determined shall be specified in the order as the date of his birth;
- (b) where the country of birth of the child is not proved to the satisfaction of the court, then, if it appears probable that the child was born within the United Kingdom, the Channel Islands or the Isle of Man, he shall be treated as having been born in Scotland, and in any other case the particulars of the country of birth may be omitted from the order and from the entry in the Parental Order Register;

and the names to be specified in the order as the name and surname of the child shall be the name or names and surname stated in that behalf in the application for the order, or, if no name or surname is so stated, the original name or names of the child and the surname of the husband and wife who applied for the order.

(3) There shall be produced with every application for a parental order in respect of a child whose birth has been registered under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 or under any enactment repealed by that Act an extract of the entry of the birth.

(4) Where on an application to a court for a parental order there is proved to the satisfaction of the court the identity of the child with a child to whom an entry in the register of births relates, any order made in pursuance of the application shall contain a direction to the Registrar General for Scotland to cause the entry in that register to be marked with the words "Parental Order".

(5) Where a parental order is made, the clerk of the court which made the order shall cause the order to be communicated to the Registrar General for Scotland and upon receipt of the communication the Registrar General for Scotland shall cause compliance to be made with the directions contained in the order.

### **Registration of orders made in England, Northern Ireland, the Isle of Man and the Channel Islands**

2.—(1) Where the Registrar General for Scotland is notified by the Registrar General that a parental order has been made by a court in England in respect of a child to whom an entry in the register of births or the Parental Order Register relates, the Registrar General for Scotland shall cause the entry to be marked "Parental Order (England)", or as the case may be, "Parental Order (Wales)".

(2) Where the Registrar General for Scotland is notified by the authority maintaining a register of parental orders in Northern Ireland, the Isle of Man or any of the Channel Islands that an order has been made in that country authorising the parental order in respect of a child to whom an entry in the register of births or the Parental Order Register relates, he shall cause the entry to be marked "Parental Order", followed by the name in brackets of the country in which the order was made.

(3) Where, after an entry has been marked under the foregoing provisions of this paragraph, the Registrar General for Scotland is notified as aforesaid that the order has been quashed, that an appeal against the order has been allowed or that the order has been revoked, he shall cause the marking to be cancelled; and an extract of an entry in any register being an entry the marking of which is cancelled under this sub-paragraph, shall be deemed to be accurate if and only if both the marking and the cancellation are omitted therefrom.

### **Amendment of orders and rectification of registers**

3.—(1) The court by which a parental order has been made may, on the application of the husband and wife who applied for that order or the person who is the subject of that order, amend the order by the correction of any error in the particulars contained therein, and may—

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- (a) if satisfied on such an application that within one year beginning with the date of the order any new name has been given to that person (whether in baptism or otherwise), or taken by him, either in lieu of or in addition to a name specified in the particulars required to be entered in the Parental Order Register in pursuance of the order, amend the order by substituting or adding that name in those particulars, as the case may require;
  - (b) if satisfied on the application of any person concerned that a direction for the marking of an entry in the register of births or the Parental Order Register included in the order in pursuance of sub-paragraph (4) of paragraph 1 above was wrongly so included, revoke that direction.
- (2) Where a parental order is amended or a direction revoked under sub-paragraph (1) above, the clerk of the court shall cause the amendment to be communicated in the prescribed manner to the Registrar General for Scotland who shall as the case may require—
- (a) cause the entry in the Parental Order Register to be amended accordingly; or
  - (b) cause the marking of the entry in the register of births or the Parental Order Register to be cancelled.
- (3) Where a parental order is quashed or an appeal against such an order allowed by any court, the court shall give directions to the Registrar General for Scotland to cancel any entry in the Parental Order Register, and any marking of an entry in that Register, or the register of births as the case may be, which was effected in pursuance of the order.

#### **Marking of entries on re-registration of birth**

4. Without prejudice to any other provision of this Act where, after an entry in the register of births has been marked in accordance with paragraph 2 or 3 above, the birth is re-registered under section 20(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965<sup>(15)</sup> (re-registration of birth in certain cases), the entry made on re-registration shall be marked in like manner.
5. In this Schedule “Registrar General” means the Registrar General for England and Wales.”.

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(15) 1965 c. 49.