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STATUTORY INSTRUMENTS

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**1994 No. 2806 (S.143)**

**COURT OF SESSION, SCOTLAND**

**Act of Sederunt (Rules of the Court of Session  
1994 Amendment No.2) (Human Fertilisation  
and Embryology) (Parental Orders) 1994**

*Made - - - - 21st October 1994*

*Coming into force in accordance with paragraph 1(1)*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Court of Session Act 1988(1), section 59 of the Adoption (Scotland) Act 1978(2) as modified and applied in relation to parental orders under section 30 of the Human Fertilisation and Embryology Act 1990(3) and applications for such orders by paragraph 15 of Schedule 1 to the Parental Orders (Human Fertilisation and Embryology) (Scotland) Regulations 1994(4), and of all other powers enabling them in that behalf, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 Amendment No.2) (Human Fertilisation and Embryology) (Parental Orders) 1994 and shall come into force on the date of coming into force of the Parental Orders (Human Fertilisation and Embryology) (Scotland) Regulations 1994.

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

**Amendment of the Rules of the Court of Session**

2.—(1) The Rules of the Court of Session 1994(5) shall be amended in accordance with the following sub-paragraphs.

(2) After Chapter 80, insert Chapter 81 as set out in Schedule 1 to this Act of Sederunt.

(3) In the appendix, after Form 77.11, insert the forms in Schedule 2 to this Act of Sederunt.

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(1) 1988 c. 36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(3).  
(2) 1978 c. 28.  
(3) 1990 c. 37.  
(4) S.I.1994/2804.  
(5) S.I. 1994/1443.

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Edinburgh,  
21st October 1994

*J.A.D. Hope*  
Lord President, I.P.D.

SCHEDULE 1

Paragraph 2(2)

CHAPTER 81

APPLICATIONS FOR PARENTAL ORDERS UNDER THE  
HUMAN FERTILISATION AND EMBRYOLOGY ACT 1990

**Application and interpretation of this Chapter**

**81.1.**—(1) This Chapter applies to applications for parental orders under section 30 of the Human Fertilisation and Embryology Act 1990.

(2) In this Chapter, unless the context otherwise requires—

“the act of 1978” means the Adoption (Scotland) Act 1978;

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

“Her Majesty’s Forces” means the Royal Navy, the regular armed forces as defined in section 225 of the Army Act 1955(6), the regular air force as defined in section 223 of the Air Force Act 1955(7) and the Queen Alexandra’s Royal Naval Nursing Services;

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

**Disapplication of certain rules to this Chapter**

**81.2.** Unless otherwise provided in this Chapter, the following rules shall not apply to a petition or note to which this Chapter applies:—

rule 14.5 (first order in petitions),

rule 14.6(1)(d) (period of notice for lodging answers where service by advertisement),

rule 14.7 (intimation and services of petitions),

rule 14.8 (procedure where answers lodged),

rule 14.9 (unopposed petitions).

**Confidentiality of documents in process**

**81.3.** Unless the court otherwise directs, in any cause to which this Chapter applies—

(a) any document lodged in process, including a report by a reporting officer or a curator *ad litem*, shall be treated as confidential and open only to the court, the parties, the reporting officer and the curator *ad litem*; and

(b) a reporting officer or curator *ad litem* shall treat any information obtained by him in relation to the cause as confidential, and shall not disclose any such information to any person unless it is necessary for the proper execution of his duties.

**Selection of reporting officer or curator *ad litem***

**81.4.** Where the court appoints a reporting officer or a curator *ad litem*, such person shall be selected from a panel established under the Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 1984(8) unless the court considers that it would be appropriate to appoint a person who is not on the panel.

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(6) 1955 c. 18.

(7) 1955 c. 19.

(8) S.I. 1984/566, amended by S.I. 1985/1556.

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### **Form of agreements to parental order**

**81.5.**—(1) An agreement for the purposes of section 30(5) of the Act of 1990 (agreement to parental order by a father who is not the husband of the female petitioner or by the woman who carried the child) shall be in Form 81.5.

- (2) An agreement referred to in this rule which is executed furth of Scotland shall be witnessed—
- (a) where it is executed in England, Wales or Northern Ireland, by a justice of the peace or commissioner for oaths;
  - (b) where it is executed furth of the United Kingdom—
    - (i) in the case of a person who is serving in Her Majesty’s Forces, by an officer holding a commission in those forces; or
    - (ii) by a British consular official or any person authorised, by the law of the country where the agreement is executed, to administer an oath for any legal purpose.

### **Orders for evidence**

**81.6.**—(1) In a cause to which this Chapter applies, the court may, before determining the cause, order—

- (a) production of further documents (including affidavits); or
- (b) parole evidence.

(2) A party may apply by motion for the evidence of a person to be received in evidence by affidavit; and the court may make such order as it thinks fit.

### **Expenses**

**81.7.** In a cause to which this Chapter applies, the court may make such order as to expenses, including the expenses of a reporting officer, a curator*ad litem*, or any other person who attended a hearing, as it thinks fit.

### **Protection of identity of petitioners**

**81.8.**—(1) Where a married couple, who seek to apply for a parental order, wish to prevent their identity being disclosed to any person whose agreement is required under section 30(5) of the Act of 1990 (agreement to parental order by a father who is not the husband of the female petitioner or by the woman who carried the child), they may, before presenting a petition, apply by letter to the Deputy Principal Clerk for a serial number to be assigned to them.

(2) On receipt of such a letter, the Deputy Principal Clerk shall assign a serial number to the applicants and shall enter a note of it opposite the names of the applicants in a register of serial numbers.

- (3) Where a serial number has been assigned under paragraph (2)—
- (a) the record of the serial number and the persons to whom it applies shall be treated as confidential and disclosed only to the court;
  - (b) any agreement under section 30(5) of the Act of 1990 shall not name or design the petitioners but shall refer to them by means of the serial number; and
  - (c) it shall be used to name or design the petitioners for all purposes connected with the petition.

### **Applications for a parental order**

**81.9.**—(1) An application for a parental order shall be made by petition in Form 81.9.

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- (2) On presentation of the petition, there shall be lodged in process as productions—
  - (a) an extract of any entry in the register of births relating to the birth of the child;
  - (b) extracts of any entries in the register of births relating to the birth of each of the petitioners; and
  - (c) an extract of any entry in the register of marriages relating to the marriage of the petitioners.

#### **Appointment of reporting officer and curatorad litem**

**81.10.**—(1) On presentation of the petition, the court shall appoint—

- (a) a reporting officer; and
- (b) a curatorad litem where it appears desirable in order to safeguard the interests of the child.

(2) Where a curatorad litem is appointed under paragraph (1) and is not also the reporting officer, the court may order the reporting officer to make available to the curatorad litem any report or information in relation to the child.

(3) A married couple may, before presenting the petition, apply by letter to the Deputy Principal Clerk for the appointment of a reporting officer.

(4) An application under paragraph (3) shall—

- (a) set out the reasons for which the appointment is sought;
- (b) not require to be intimated to any person;
- (c) be accompanied by an interlocutor sheet; and
- (d) be placed by the Deputy Principal Clerk before the Lord Ordinary for his decision.

(5) The Deputy Principal Clerk shall give written intimation to the applicant under paragraph (3) of the decision of the Lord Ordinary.

(6) The decision of the Lord Ordinary on an application under paragraph (3) shall be final and not subject to review.

(7) The letter and the interlocutor sheet in an application under paragraph (3) shall be kept in the Petition Department and subsequently placed in the process of the petition.

#### **Duties of reporting officer and curatorad litem**

**81.11.**—(1) A reporting officer appointed under rule 81.10(1)(a) shall, where appropriate—

- (a) inquire into the facts and circumstances averred in the petition;
- (b) ascertain whether the conditions in subsections (2) to (7) of section 30 of the Act of 1990 have been satisfied;
- (c) witness any execution in Scotland of any agreement in Form 81.5 under section 30(5) of the Act of 1990 (agreement to parental order by a father who is not the husband of the female petitioner or by the woman who carried the child), and investigate whether the agreement is given freely, unconditionally and with full understanding of what is involved;
- (d) where a person whose agreement is required is furth of Scotland, confirm his views in writing, ensure that any agreement under section 30(5) of the Act of 1990 is witnessed in accordance with rule 81.5(2) and investigate whether the agreement is given freely, unconditionally and with full understanding of what is involved;
- (e) ensure that each person whose agreement is required understands that in agreeing to the parental order he is giving up all future claims to the child and that all parental rights and duties will vest in the petitioners;

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- (f) investigate whether there are any other persons with a relevant interest and whether they should be informed of the petition;
  - (g) ascertain from any person whose agreement is required and who can be found whether alternatives to a parental order have been discussed with him;
  - (h) ensure that any person whose agreement is required is aware of the date (if known) of the hearing to determine the application if he wishes to appear, and confirm that any such person understands that he may withdraw his agreement at any time before a parental order is made;
  - (i) draw to the attention of the court any matter which may be of assistance; and
  - (j) prepare a report in relation to the exercise of his duties within such period as the court may specify.
- (2) A curator *ad litem* appointed under rule 81.10(1)(b) shall—
- (a) safeguard generally the interests of the child;
  - (b) inquire, so far as he considers necessary, into the facts and circumstances averred in the petition;
  - (c) ascertain whether any money or other benefit has been received or agreed upon which is prohibited by section 30(7) of the Act of 1990 (prohibition on gift or receipt of money or other benefit);
  - (d) establish that the petitioners understand that the nature and effect of a parental order is to transfer the parental rights and duties in relation to the child to the petitioners and make them responsible for the maintenance and upbringing of the child;
  - (e) ascertain whether the proposed parental order is likely to safeguard and promote the welfare of the child throughout his childhood;
  - (f) ascertain whether it may be in the interests of the child that the court should make a parental order subject to particular conditions including the making of special provision for the child;
  - (g) perform such other duties as appear to him to be necessary or as the court may require; and
  - (h) prepare a report in relation to the exercise of his duties within such period as the court may specify.
- (3) The reporting officer shall, on completion of his report, send to the Deputy Principal Clerk—
- (a) the report and a copy of it for each party; and
  - (b) any agreement for the purposes of section 30(5) of the Act of 1990.
- (4) The curator *ad litem* shall, on completion of his report, send the report and a copy of it for each party, to the Deputy Principal Clerk.

## Hearing

- 81.12.**—(1) On receipt of the reports referred to in rule 81.11, the Deputy Principal Clerk shall—
- (a) cause the reports and any other documents to be lodged in process;
  - (b) give written intimation to each party of the lodging of those documents and make them available to each party; and
  - (c) within 7 days thereafter, cause—
    - (i) the petition to be put out on the By Order Roll before the Lord Ordinary; and
    - (ii) written intimation of the date of the hearing on the By Order Roll to be given to each party.

- (2) At the hearing on the By Order Roll, the court—
  - (a) shall pronounce an interlocutor appointing the petition to a hearing to determine the petition; and
  - (b) may, in such interlocutor—
    - (i) order any person whose agreement is required to be given to attend the hearing;
    - (ii) order intimation of the date of the hearing to any person not mentioned in paragraph (3)(a), (b) or (c); and
    - (iii) order the reporting officer or curator *ad litem* to perform additional duties to assist the court in determining the petition.
- (3) The petitioners shall intimate the date of the hearing ordered under paragraph (2)(a) in Form 81.12 to—
  - (a) every person whose whereabouts are known to them and whose agreement is required to be given;
  - (b) the reporting officer appointed under rule 81.10(1)(a);
  - (c) any curator *ad litem* appointed under rule 81.10(1)(b); and
  - (d) any person on whom intimation has been ordered under paragraph (2)(b)(ii).
- (4) At the hearing ordered under paragraph (2)(a)—
  - (a) the petitioners, the reporting officer and, where one has been appointed, the curator *ad litem* shall, if required by the court, appear and may be represented;
  - (b) any person required by the court to attend the hearing shall appear and may be represented;
  - (c) any other person to whom intimation was made under paragraph (3)(a) or (d) may appear or be represented.

### **Supervision by or committal to care of local authority**

**81.13.**—(1) Where the court refuses to make a parental order and considers—

- (a) that the child should be placed under the supervision of a specified local authority, or
- (b) that the child should be committed to the care of a specified local authority,

the court shall order intimation of the terms of the proposed order to be made to the local authority and give the local authority an opportunity to make representations.

(2) Any representations of the local authority shall be made by minute.

(3) On the expiry of the period allowed for answers to a minute under paragraph (2), the cause shall be put out on the By Order Roll before the Lord Ordinary for a hearing to determine the matter.

### **Applications for return, removal or prohibition of removal of child**

**81.14.**—(1) An application under section 29 of the Act of 1978<sup>(9)</sup>, as modified and applied in relation to applications for parental orders by Schedule 1 to the Regulations (order to return a child to, or not to remove a child from, the care of the applicants), in relation to a breach of section 27(1) of that Act<sup>(10)</sup> as so modified and applied (restrictions on removal of child where application for parental order pending), or under section 27(1) of that Act as so modified and applied for leave to remove a child, shall be made by note.

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<sup>(9)</sup> Section 29 of the Act of 1978 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraphs 43 and 44 and by the Children Act 1989 (c. 41), Schedule 10, paragraph 39.

<sup>(10)</sup> Section 27 was amended by the said Act of 1983, Schedule 2, paragraph 43.

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(2) Subject to paragraph (3), rule 81.2 (disapplication of certain rules to this Chapter) shall not apply to an application mentioned in paragraph (1) of this rule.

(3) An application mentioned in paragraph (1) shall not be intimated on the walls of the court or advertised.

#### **Applications to amend, or revoke a direction in, a parental order**

**81.15.**—(1) An application under paragraph 3(1) of Schedule 1 to the Act of 1978, as modified and applied in relation to parental orders by Schedule 1 to the Regulations (amendment, or revocation of a direction in, a parental order), shall be made by petition.

(2) Subject to paragraph (3), rule 81.2 (disapplication of certain rules to this Chapter) shall not apply to an application mentioned in paragraph (1) of this rule.

(3) An application mentioned in paragraph (1) shall not be intimated on the walls of the court or advertised.

#### **Registration of certified copy interlocutor**

**81.16.** On the court pronouncing an interlocutor making—

- (a) a parental order,
- (b) an amendment to, or revocation of a direction in, a parental order, or
- (c) a revocation of a parental order,

the clerk of court shall send a certified copy of that interlocutor to the Registrar General for Scotland in a sealed envelope marked “confidential”.

#### **Extract of order**

**81.17.** An extract of a parental order shall not be issued except by order of the court on an application to it—

- (a) where there is a petition for the parental order depending before the court, by motion in that process; or
- (b) where there is no such petition depending before the court, by petition.

#### **Procedure after intimation to Registrar General or issue of extract**

**81.18.**—(1) After a certified copy of an interlocutor mentioned in rule 81.16 has been sent to the Registrar General for Scotland, the clerk of court or the Extractor, as the case may be, shall—

- (a) place the whole process in an envelope bearing only—
  - (i) the name of the petitioners;
  - (ii) the full name of the child to whom the process relates; and
  - (iii) the date of the order; and
- (b) seal the envelope and mark it “confidential”.

(2) No person shall open a process referred to in paragraph (1) or inspect its contents within 100 years after the date of the parental order, except—

- (a) the person in respect of whom the parental order was made after he has reached the age of 17 years;
- (b) any other person or body entitled under section 45(5) of the Act of 1978, as modified and applied in relation to parental orders and applications for such orders by Schedule 1 to the Regulations, to access to the registers and books kept under section 45(4) of that Act, as

so modified and applied, with the written authority of the person in respect of whom the parental order was made;

- (c) by order of the court on an application made by petition presented by another court or authority (whether within the United Kingdom or not) having the power to make a parental order for the purpose of obtaining information in connection with an application to it for such an order;
- (d) by order of the court on an application made by petition presented by any person; and
- (e) a person who is authorised in writing by the Secretary of State to obtain information from the process for the purpose of research designed to improve the working of human fertilisation and embryology law and practice.

SCHEDULE 2

Paragraph 2(3)

**FORM 81.5 Form of agreement under section 30(5) of the Human Fertilisation and Embryology Act 1990**

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Rule 81.5(1)

IN THE COURT OF SESSION

in the PETITION of

[A.B.] (designation and address)

and

[C.D.] (designation and address)

[or serial number where one has been assigned]

for

A Parental Order under the Human Fertilisation and Embryology Act 1990

in respect of

[E.F.] (name as in birth certificate)

I, (name and address) being the father of the child by virtue of section 28 of the Human Fertilisation and Embryology Act 1990 [or otherwise] [or the woman who carried the child] hereby state

(1) That I understand that the effect of the parental order for which application has been made will be to deprive me permanently of parental rights and duties relating to the child and to vest them in the petitioners; and, in particular, I understand that, if an order is made, I shall have no right to see or get in touch with the child or to have him [or her] returned to me.

(2) That I understand that the court cannot make a parental order in relation to the child without my agreement and the agreement of the woman who carried the child [or the father of the child, where he is not one of the petitioners] unless the court dispenses with an agreement on the ground that the person concerned cannot be found or is incapable of giving agreement.

(3) That I understand that when the hearing of the petition to determine the application for a parental order in relation to the child is heard, this document may be used as evidence of my agreement to the making of the order unless I inform the court that I no longer agree.

(4) That I freely, and with full understanding of what is involved, agree unconditionally to the making of a parental order in relation to the child.

(5) That I have not received or given any money or benefit, other than for expenses reasonably incurred, for or in consideration of-

- (a) the making of a parental order,
- (b) the execution of this agreement,
- (c) the handing over of the child to the petitioners, or
- (d) the making of any arrangements with a view to the making of a parental order,

[other than (state any money or other benefit given or received by authority of the court and specify such authority)].

I have signed this agreement at (place of signing) on the \_\_\_\_\_ day of \_\_\_\_\_

(Signed by father of the child or woman who carried the child)

This agreement was signed by \_\_\_\_\_ before me at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

(Signed)  
Reporting Officer  
[or Witness  
(full name and address)]

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**FORM 81.9 Form of petition for parental order under section 30 of the Human Fertilisation and Embryology Act 1990**



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(d) the making of any arrangements with a view to the making of the order.  
[other than (state any money or other benefit given or received by authority of the court and specify such authority)].

[[11.] That the father of the child [and] [or] [the woman who carried the child] cannot be found (state the efforts which have been made to find the person(s) concerned) [or is [or are] incapable of giving agreement by reason of (state reasons)].]

MAY IT THEREFORE please your Lordships to dispense with intimation and to order notice of the petition to be served on such person or persons as the court thinks fit; to appoint a reporting officer and, if necessary, curator *ad litem*, to the child and direct them to report; [to dispense with the agreement of [the father of the child] [and] [or] [the woman who carried the child] [who cannot be found] [who is [or are] incapable of giving agreement];] on resuming consideration of this petition and the report by the reporting officer and the curator *ad litem*, if one is appointed, to make a parental order in their favour under section 30 of the Human Fertilisation and Embryology Act 1990 in respect of the child; to direct the Registrar General for Scotland to make an entry regarding the parental order in the Parental Order Register in the form prescribed by him giving as the forename(s) and as the surname of the child; and on proof to the satisfaction of the court in the course of the proceedings to follow hereon, to find that the child was born on the day of in the year and is identical with the child to whom an entry numbered and made on the day of in the year, in the register of births for the registration district of relates; and to direct the Registrar General for Scotland to cause such birth entry to be marked with the words "Parental Order" and to include the above mentioned date of birth in the entry recording the parental order in the manner indicated in that form; to pronounce such other or further orders or directions upon such matters, including the expenses of this petition, as the court thinks fit.

ACCORDING TO JUSTICE ETC.

(Signed)

Solicitor [or Agent] for petitioners  
(Address)

[or (Signed)  
Counsel or other person having a right of audience]

**FORM 81.12 Form of intimation of hearing of application for a parental order under section 30 of the Human Fertilisation and Embryology Act 1990**

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Rule 81.12(3)

**IN THE COURT OF SESSION**

in the

**PETITION**

of

[A.B.] (*designation and address*)

and

[C.D.] (*designation and address*)  
(*or serial number where one has been assigned*);

for

A Parental Order under section 30 of the Human  
Fertilisation and Embryology Act 1990

in respect of

[E.F.] (*name as in birth certificate*)

Date: (*date of posting or other method of intimation*)

To: (*name and address*)

**TAKE NOTICE**

1. That the hearing on this petition to determine the application for a parental order will come before the Lord Ordinary in the Court of Session, Parliament House, Edinburgh on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock and that you may then appear and be heard personally or by counsel or other person having a right of audience on the question whether a parental order should be made.
2. That you are [*not*] obliged to attend the hearing [unless you wish to do so].
3. That while the petition is pending you must not, except with the leave of the court, remove the child from the custody of the petitioners.
4. That the court has been requested to dispense with your agreement to the making of an order on the ground[s] that (*specify ground(s)*).

(Signed)

Messenger-at-Arms  
[*or Solicitor [or Agent] for petitioners*]  
(Address)

## 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 by providing rules for applications for parental orders under section 30 of the Human Fertilisation and Embryology Act 1990.

The rules are consequential upon the coming into force of the Parental Orders (Human Fertilisation and Embryology) (Scotland) Regulations 1994 (“the Regulations”) under section 30 of the Act. That section makes provision for a parental order in respect of a child who is born as a result of a surrogacy arrangement. The Regulations apply, with modifications, various provisions of the Adoption (Scotland) Act 1978 to parental orders under section 30 of the Act and applications for such orders.

The rules include provisions for an application for a parental order, the appointment and duties of a reporting officer and curator *ad litem* in relation to such an application and the notification to the Registrar General for Scotland of the making of a parental order.