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STATUTORY INSTRUMENTS

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**1997 No. 291**

**Act of Sederunt (Child Care and Maintenance Rules) 1997**

**CHAPTER 2**

**ADOPTION OF CHILDREN**

**PART II**

**APPLICATION FOR AN ORDER DECLARING A CHILD FREE FOR ADOPTION**

**Petition**

**2.5.**—(1) An application under section 18(1) of the Act (freeing child for adoption)(1) for an order declaring a child free for adoption shall be made by petition in Form 1.

(2) There shall be lodged in process at the same time as the lodging of a petition under paragraph (1)—

- (a) an extract of the entry in the Register of Births relating to the child who is the subject of the application;
- (b) a report of the adoption agency which deals with the following matters:—
  - (i) how the needs of the child came to the notice of the petitioner;
  - (ii) any relevant family circumstances of the child;
  - (iii) a description of the physical and mental health of the child (including any special needs) and his emotional, behavioural and educational development;
  - (iv) an account of the discussion by the petitioner with the parents or guardians of the child and, if appropriate, with the child about their wishes and the alternatives to adoption;
  - (v) the knowledge of the petitioner of the position of other relatives or persons likely to be involved;
  - (vi) an account of the search by the petitioner for any parent or guardian who cannot be found;
  - (vii) the likelihood of placement of the child for adoption and whether a petition for an adoption order is likely in the near future;
  - (viii) the arrangements of the petitioner to care for the child after the granting of the prayer of the petition for an order freeing the child for adoption;
  - (ix) whether the petitioner has given each parent or guardian who can be found an opportunity to make a declaration under section 18(6) of the Act(2) that he prefers not to be involved in future questions concerning the adoption of the child;

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(1) Section 18(1) was amended by the Children (Scotland) Act 1995, Schedule 2, paragraph 11(a).

(2) Section 18(6) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraph 40.

- (x) an account of the enquiries by the petitioner into the circumstances of any reputed father;
  - (xi) the intentions of the petitioner about giving notice to a former parent or guardian under section 19(2) and (3) of the Act (progress reports to former parent)<sup>(3)</sup>; and
  - (xii) any other information which may be of assistance to the Court; and
- (c) any other document founded upon by the petitioner in support of the terms of the petition.

(3) Where an adoption agency which proposes to apply under paragraph (1) wishes to prevent the address of the child being disclosed to any person whose agreement or consent is required by section 18(1)(a) or (2) of the Act respectively, the agency may apply to the sheriff clerk for a serial number to be assigned for that purpose.

### **Agreement and consents to order freeing child for adoption**

**2.6.**—(1) An agreement required by section 18(1)(a), or a consent required by section 18(2) or 18(8) of the Act<sup>(4)</sup>, if given in writing shall be in Form 2, 3 or 4 as appropriate and such form, duly executed, shall be sufficient evidence of such agreement or consent.

(2) A form of agreement or of consent executed outwith the United Kingdom shall be sufficient evidence of such agreement or consent if it is witnessed—

- (a) where the person who executes the form is serving in Her Majesty's Forces, by an officer holding a commission in any of those forces; or
- (b) in any other case, by a British consular official, or by any person for the time being authorised by the law of the country in which the form is executed to administer an oath for any judicial or legal purpose.

### **Appointment of curator *ad litem* and reporting officer**

**2.7.**—(1) The sheriff shall, after the lodging of a petition under rule 2.5(1), appoint a curator *ad litem* and reporting officer and the same person may be appointed as curator *ad litem* and reporting officer in the same petition, if the sheriff considers that doing so is appropriate in the circumstances.

(2) The sheriff may appoint a person who is not a member of a panel established under regulations made by virtue of section 101 of the 1995 Act to be a curator *ad litem* or a reporting officer.

(3) The sheriff may, on cause shown, appoint a reporting officer prior to the lodging of a petition.

(4) An application for an appointment under paragraph (3) shall be made by letter addressed to the sheriff clerk specifying the reasons for the appointment, and shall not require to be intimated to any other person.

### **Duties of reporting officer and curator *ad litem***

**2.8.**—(1) A reporting officer appointed under this Part shall—

- (a) witness any consent to the making of an application for an order freeing a child for adoption executed within the United Kingdom by a parent or guardian of the child and shall lodge the consent in process;
- (b) witness any agreement executed within the United Kingdom by a parent or guardian of a child to the making of an adoption order in respect of the child and lodge the agreement in process;

(3) Subsections (2) and (3) of section 19 were amended by the Children (Scotland) Act 1995, Schedule 2, paragraph 12(b) and (c).

(4) Section 18(8) was substituted by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), section 2(3)(b).

- (c) ascertain that each parent or guardian who can be found understands that the effect of an adoption order would be to extinguish his parental responsibilities and rights;
- (d) ascertain from any parent or guardian who can be found, whether alternatives to adoption have been discussed with him;
- (e) ascertain whether there is any person other than those mentioned in the petition upon whom notice of the petition should be served;
- (f) ascertain whether the child is subject to a supervision requirement;
- (g) confirm that each parent or guardian who can be found understands the implications of an order freeing the child for adoption;
- (h) confirm that each parent or guardian who has given his agreement and can be found understands that he may withdraw his agreement at any time before an order under section 18(1) of the Act is made;
- (i) confirm that each parent or guardian who can be found is aware that he may in the circumstances set forth in section 20 of the Act (revocation of section 18 order) apply to the court for revocation of any order under section 18(1) of the Act and of the appropriate procedure for such an application;
- (j) confirm that each parent or guardian who can be found has been given an opportunity to make a declaration in terms of section 18(6) of the Act and, where the parent or guardian elects to make such declaration, shall comply with rule 2.10; and
- (k) in the case of a child whose father is not married to the mother, consider the likelihood of any person claiming to be the father of the child—
  - (i) applying for or being refused an order under section 11 of the 1995 Act (court orders relating to parental responsibilities); or
  - (ii) entering into an agreement in terms of section 4(1) of that Act (agreement as to parental responsibilities and rights),and shall report in writing thereon to the sheriff within 4 weeks from the date of the interlocutor appointing the reporting officer, or within such other period as the sheriff in his discretion may allow.

(2) A curator *ad litem* appointed under this Part shall have regard to the welfare of the child as his paramount duty and shall further—

- (a) generally safeguard the interests of the child who is the subject of the petition and ensure that consideration has been given to the interests of the child for the purposes of section 6 of the Act (duty to promote welfare of child)(5);
- (b) ascertain whether the facts stated in the petition are correct except where investigation of such facts falls within the duties of the reporting officer;
- (c) where the child who is sought to be freed for adoption is over the age of 12 years, witness any consent to the order executed by him in the United Kingdom and lodge the consent in process;
- (d) ascertain from the child whether he wishes to express a view and where a child indicates his wish to express a view, ascertain that view;
- (e) ascertain whether an order freeing the child for adoption would safeguard and throughout his life promote the welfare of the child;
- (f) ascertain whether it would be better for the child that the court should make the order than it should not make such order; and
- (g) report on the current circumstances and care of the child,

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(5) Section 6 was substituted by the Children (Scotland) Act 1995, section 95.

and, subject to paragraph (3), shall report in writing thereon to the sheriff within 4 weeks from the date of the interlocutor appointing the curator, or within such other period as the sheriff in his discretion may allow.

(3) Subject to any order made by the sheriff under rule 2.9(1)(a), the views of the child ascertained in terms of paragraph (2)(d) may, if the curator *ad litem* considers appropriate, be conveyed to the sheriff orally.

#### **Procedure where child wishes to express a view**

**2.9.**—(1) Where a child had indicated his wish to express his views the sheriff, without prejudice to rule 2.8(2)(d)—

- (a) may order such procedural steps to be taken as he considers appropriate to ascertain the views of that child; and
- (b) shall not make an order under this Part unless an opportunity has been given for the views of that child to be obtained or heard.

(2) Where the views of a child, whether obtained under this rule or under rule 2.8(2)(d), have been recorded in writing, the sheriff may direct that such a written record shall—

- (a) be sealed in an envelope marked “Views of the child – confidential”;
- (b) be available to a sheriff only;
- (c) not be opened by any person other than a sheriff; and
- (d) not form a borrowable part of the process.

#### **Declaration made under section 18(6) of the Act**

**2.10.**—(1) A declaration made under section 18(6) of the Act (declaration of preference not to be involved in future questions concerning the adoption of the child) shall be in Form 5, be signed by each parent or guardian of the child and shall, subject to paragraph (3), be witnessed by the reporting officer.

(2) The reporting officer shall provide a copy of the form of declaration to each parent or guardian of the child for signature and shall explain to him the consequences of signing the declaration and of the terms of section 19 of the Act (progress reports to former parents).

(3) A declaration executed outwith the United Kingdom shall be witnessed in the manner prescribed by rule 2.6(2)(a) or (b).

(4) The reporting officer shall submit the executed declaration to the sheriff clerk who shall thereafter record the declaration in the manner prescribed in rule 2.13.

(5) A withdrawal of a declaration made under section 18(6) of the Act may be made at any time and shall be made by notice in writing in Form 6 to the sheriff clerk who shall forthwith record the withdrawal in the manner prescribed in rule 2.13 and intimate the withdrawal to the adoption agency.

#### **Hearing**

**2.11.**—(1) When the reports of the reporting officer and the curator *ad litem* have been received by the court, the sheriff shall order a diet of hearing to be fixed.

(2) The petitioner shall intimate the diet of hearing in accordance with Form 7—

- (a) to every person, whose whereabouts are known to him and whose agreement or consent in terms of section 18 of the Act is required or must be dispensed with; and
- (b) in the case of a child whose father is not married to the mother, to any person whose whereabouts are known to him and who claims to be the father of the child but who is

not his guardian and in respect of whom no order relating to parental responsibilities has been made.

(3) Subject to paragraph (5), if no person entitled to appear appears and wishes to be heard, the sheriff may make an order freeing the child for adoption on the motion of the petitioner.

(4) Subject to paragraph (5), if a person entitled to appear appears and wishes to be heard, the sheriff may hear him or may order a further diet to be fixed at which he may be heard and evidence given at any such diet shall be given in the presence of the petitioner or his solicitor.

(5) Before making an order, the sheriff shall consider any report received by him in terms of section 73(14) of the 1995 Act (report by children's hearing).

### **Confidentiality**

**2.12.**—(1) Unless the sheriff otherwise directs, all documents lodged in process including the reports by the curator *ad litem* and the reporting officer shall be available only to the sheriff, the curator *ad litem*, the reporting officer and the parties; and such documents shall be treated as confidential by any persons involved in, or a party to, the proceedings and by the sheriff clerk.

(2) The reporting officer and curator *ad litem* shall treat all information obtained in the exercise of their duties as confidential and shall not disclose any such information to any person unless disclosure of such information is necessary for the proper discharge of their duties.

(3) This rule is subject to rule 2.9(2).

### **Adoption Register**

**2.13.**—(1) The sheriff clerk shall maintain a register known as “the Adoption Register”.

(2) The sheriff clerk shall enter in the Adoption Register any declaration made under section 18(6) of the Act submitted to him by the reporting officer and any withdrawal made in terms of rule 2.10(5).

(3) A declaration under section 19(4) of the Act (declaration by former parent not to be involved in future questions concerning the adoption)(6) shall be made in Form 5 and the adoption agency shall submit the declaration to the sheriff clerk who shall enter it in the Adoption Register.

### **Final procedure**

**2.14.**—(1) Where an order under this Part has been granted the sheriff clerk shall—

- (a) after the expiry of 14 days from the date of, or date of confirmation of, the order without appeal having been taken, issue an extract of the order to the petitioner and thereafter seal the process in an envelope marked “Confidential”; and
- (b) where that order includes a determination under section 18(9) of the Act (cancellation of supervision requirement)(7), intimate the making of that determination to the Principal Reporter.

(2) The envelope referred to in paragraph (1)(a) shall not be unsealed by the sheriff clerk or any other person having control of the records of that or any court, and the process shall not be made accessible to any person, for one hundred years after the date of the granting of the order except—

- (a) to the person freed for adoption by the order once he has attained the age of sixteen years;
- (b) to the sheriff clerk, on an application made to him by an adoption agency, with the consent of the person to whom the process relates, for the purpose only of ascertaining the name of the agency, if any, responsible for the placement of that person and informing the applicant of that name;

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(6) Section 19(4) was amended by the Children (Scotland) Act 1995, Schedule 2, paragraph 12(d).

(7) Section 18(9) was added by the Children (Scotland) Act 1995, Schedule 2, paragraph 11(d).

- (c) to a person, on an application made by him to the sheriff setting forth the reasons for which access to the process is required;
- (d) to a court, public authority or administrative board (whether in the United Kingdom or not) having power to authorise an adoption, on petition by it to the court which granted the original order requesting that information be made available from the process for the purpose of discharging its duties in considering an application for adoption and specifying the precise reasons for which access to the process is required; or
- (e) to a person who is authorised by the Secretary of State to obtain information from the process for the purposes of such research as is intended to improve the working of adoption law and practice.