
STATUTORY INSTRUMENTS

1997 No. 291

Act of Sederunt (Child Care and Maintenance Rules) 1997

CHAPTER 2

ADOPTION OF CHILDREN

PART IV

ADOPTION ORDERS

Application for adoption order

2.21.—(1) An application for an adoption order, or for an order vesting parental responsibilities and rights relating to a child under section 49(1) of the Act (adoption of children abroad)(1), shall be made by petition in Form 11 or 12 as appropriate.

(2) There shall be lodged in process along with the petition—

- (a) an extract of the entry in the Register of Births relating to the child who is the subject of the application;
- (b) in the case of a joint petition by a married couple, an extract of the entry in the Register of Marriages relating to their marriage;
- (c) where the child was not placed for adoption with the applicant by an adoption agency, three copies of a medical report showing the physical and mental health of the child (including any special needs) and his emotional, behavioural and educational development;
- (d) any report by the local authority required by section 22(2) of the Act (investigation by local authority on receipt of notice of intention to apply for adoption order);
- (e) any report by an adoption agency required by section 23 of the Act (report on the suitability of the applicants);
- (f) where appropriate, an extract of the order freeing the child for adoption; and
- (g) any other document founded upon by the petitioner in support of the terms of his petition.

(3) A report by a local authority under section 22(2), or an adoption agency under section 23, of the Act shall include the following matters:—

- (a) information about how the needs of the child came to the notice of the agency;
- (b) the family circumstances of the child;
- (c) where the child was placed for adoption by an adoption agency, a description of the physical and mental health of the child (including any special needs) and his emotional, behavioural and educational development;
- (d) an account of the discussion with the parents or guardians of the child and, if appropriate, with the child about their wishes and the alternatives to adoption;
- (e) the position of other relatives or persons likely to be involved;

(1) Section 49 was amended by the Children Act 1989 (c. 41), Schedule 10, paragraph 42(a).

- (f) an account of the search for a parent or guardian who cannot be found;
- (g) information about the mutual suitability of the petitioner and the child for the relationship created by adoption and the ability of the petitioner to bring up the child including an assessment of the personality of the petitioner and, where appropriate, that of the child;
- (h) particulars of all members of the household of the petitioner and their relationship to the petitioner;
- (i) a description of the accommodation in the home of the petitioner;
- (j) in a petition by one of two spouses, why the other spouse has not joined in the petition;
- (k) whether the petitioner understands the nature and effect of an adoption order and in particular that the order, if made, will make the petitioner responsible for the maintenance and upbringing of the child;
- (l) whether the means and standing of the petitioner are such as to enable him to maintain and bring up the child suitably, and what right or interest in property the child has;
- (m) whether any payment or other reward in consideration of the adoption, other than an approved adoption allowance, has been received or agreed upon;
- (n) what insurance has been offered on the life of the child;
- (o) the religious persuasion, if any, of the petitioner and the religious persuasion, if any, racial origin and cultural and linguistic background of the child;
- (p) considerations arising from the difference in age between the petitioner and the child if this is more or less than the normal difference in age between parents and children;
- (q) whether adoption is likely to safeguard and promote the welfare of the child throughout its life; and
- (r) any other information which may be of assistance to the court.

(4) A report by a local authority under section 22(2) of the Act shall also specify whether the child was placed with the applicant in contravention of section 11 of the Act (restriction on arranging adoptions).

(5) If no report by an adoption agency or local authority under paragraph (2)(d) or (e) is available to be lodged along with the petition, the sheriff shall pronounce an interlocutor requiring the adoption agency or local authority concerned to prepare and lodge such a report in court within 4 weeks from the date of the interlocutor, or within such other period as the sheriff in his discretion may allow.

Additional requirements where child to be adopted abroad

2.22.—(1) In a petition for an order under section 49(1) of the Act, the petitioner shall, in addition to complying with rule 2.21, adduce evidence of the law of adoption in the country in which he is domiciled.

(2) The evidence of the law of adoption required under paragraph (1) may be in the form of an affidavit by a person who is conversant with the law of adoption of that country and who practises or has practised law in that country or is a duly accredited representative of the government of that country in the United Kingdom.

Consents and agreements to adoption orders

2.23.—(1) A consent to an order required by section 12(8) of the Act (need for child's consent)(2), or an agreement required by section 16(1) of the Act (parental agreement)(3), or such an agreement

(2) Section 12(8) was substituted by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), section 2(3)(a).

(3) Section 16(1) was amended by the Children Act 1989 (c. 41), Schedule 10, paragraph 34.

where the application is made by a person to whom section 15(1)(aa) of the Act (adoption by one person)(4) applies, if given in writing shall be in Form 4, 13 or 14 as appropriate and such form duly executed shall be sufficient evidence of such consent or agreement.

(2) A form of consent or agreement executed outwith the United Kingdom shall be sufficient evidence of such consent or agreement 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 diplomatic or consular officer, or any person authorised to administer an oath or affirmation under the law of the place where the consent or agreement is executed.

Protection of identity of petitioner

2.24.—(1) When any person who proposes to apply under rule 2.21 wishes to prevent his identity being disclosed to any person whose agreement to the order is required, he may, before presenting the petition, apply to the sheriff clerk for a serial number to be assigned to him for all purposes connected with the petition.

(2) On receipt of an application for a serial number, the sheriff clerk shall assign such a number to the applicant and shall enter a note of it opposite the name of the applicant in a register of such serial numbers.

(3) The contents of the register of serial numbers and the names of the persons to whom each number relates shall be treated as confidential by the sheriff clerk and shall not be disclosed to any person other than the sheriff.

(4) Where a serial number has been assigned to an applicant in terms of paragraph (2), any form of agreement to an adoption order which is required shall not contain the name or designation of the petitioner but shall refer to him by means of the serial number assigned to him and shall specify the year in which, and by which court, the serial number has been assigned.

Appointment of curator *ad litem* and reporting officer

2.25.—(1) Subject to paragraph (2) the sheriff shall, after the lodging of a petition under rule 2.21, 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) Where an order freeing the child for adoption has been made, the sheriff shall not appoint a reporting officer save for the purpose specified in rule 2.26(1)(a).

(3) 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 curator *ad litem* or a reporting officer.

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

(5) An application for an appointment under paragraph (4) 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*

2.26.—(1) Subject to rule 2.25(2), a reporting officer appointed under this Part shall—

(4) Section 15(1)(aa) was inserted by the Children (Scotland) Act 1995, section 97(2)(a).

- (a) 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;
- (b) ascertain that each parent or guardian who is not a petitioner and whose agreement is required or may be dispensed with understands the effect of the adoption order;
- (c) where a parent or guardian whose agreement is required or may be dispensed with can be found, ascertain whether alternatives to adoption have been discussed with him;
- (d) ascertain whether there is any person other than those mentioned in the petition upon whom notice of the petition should be served;
- (e) ascertain whether the child is subject to a supervision requirement; and
- (f) confirm that each parent or guardian whose agreement is required understands that he may withdraw his agreement at any time before an order is made,

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 whose adoption is the subject of the petition;
- (b) where the child in respect of whom an adoption order is sought 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;
- (c) ascertain whether the facts stated in the petition are correct and if they are not establish the true facts;
- (d) obtain particulars of accommodation in the home of the petitioner and the condition of the home;
- (e) obtain particulars of all members of the household of the petitioner and their relationship to the petitioner;
- (f) in the case of a petition by only one of two spouses, ascertain the reason of the other spouse for not joining in the application;
- (g) ascertain whether the means and status of the petitioner are sufficient to enable him to maintain and bring up the child suitably;
- (h) ascertain what rights or interests in property the child has;
- (i) establish that the petitioner understands the nature and effect of an adoption order and in particular that the making of the order will render him responsible for the maintenance and upbringing of the child;
- (j) where appropriate, ascertain when the mother of the child ceased to have the care and possession of the child and to whom care and possession was then transferred;
- (k) ascertain whether any payment or other reward in consideration of the adoption has been given or agreed upon;
- (l) establish whether the adoption is likely to safeguard and promote the welfare of the child throughout his life;
- (m) ascertain whether the life of the child has been insured and if so for what sum;
- (n) ascertain whether it may be in the interests of the welfare of the child that the sheriff should make any interim order or make the adoption order subject to particular terms and conditions or require the petitioner to make special provision for the child and if so what provision;

- (o) where the petitioner is not ordinarily resident in the United Kingdom, establish whether a report has been obtained on the home and living conditions of the petitioner from a suitable agency in the country in which he is ordinarily resident;
- (p) establish the reasons of the petitioner for wishing to adopt the child;
- (q) establish to which religion, if any, the petitioner subscribes and the religious persuasion, if any, racial origin and cultural and linguistic background of the child;
- (r) assess the considerations which might arise where the difference in ages as between the petitioner and the child is greater or less than the normal difference in age as between parents and their children;
- (s) consider such other matters, including the personality of the petitioner and, where appropriate, that of the child, which might affect the suitability of the petitioner and the child for the relationship created by adoption and affect the ability of the petitioner to bring up the child;
- (t) ascertain whether it would be better for the child that the court should make the order than it should not make the order; and
- (u) 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,

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 2.27(1)(a), the views of the child ascertained in terms of paragraph (2)(u) may, if the curator *ad litem* considers appropriate, be conveyed to the sheriff orally.

Procedure where child wishes to express a view

2.27.—(1) Where a child has indicated his wish to express his views the sheriff, without prejudice to rule 2.26(2)(u)—

- (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 2.26(2)(u), 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.

Hearing

2.28.—(1) On receipt of the reports of the reporting officer and the curator *ad litem* in respect of a child who is not free for adoption, the sheriff shall fix a diet of hearing.

(2) On receipt of the report of the curator *ad litem* in respect of a child who is free for adoption, the sheriff may fix a diet of hearing.

(3) The petitioner shall intimate in Form 7 the diet of hearing referred to in paragraphs (1) and (2) to—

- (a) in a petition for an adoption order, 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
 - (b) in a petition for an order under section 49(1) of the Act, every person who can be found and whose agreement to the making of such an order would be required if the application were for an adoption order.
- (4) The sheriff may, if he considers it appropriate, ordain the petitioner to serve notice of the date of the hearing in Form 7 on—
- (a) any person or body having the rights and powers of a parent of the child or having the custody or care of the child or a local authority having the child committed to its care by virtue of sections 11, 54 or 86 of the 1995 Act or sections 5, 8 or 31 of the Children Act 1989⁽⁵⁾;
 - (b) any person liable by virtue of any order or agreement to contribute to the maintenance of the child;
 - (c) the local authority to whom the petitioner has given notice of his intention to apply for an adoption order;
 - (d) any other person or body who in the opinion of the sheriff ought to be served with notice of the hearing.
- (5) Subject to paragraph (7), if no person entitled to appear at such a hearing appears to be heard, the sheriff may grant an adoption order on the motion of the petitioner.
- (6) Subject to paragraph (7), 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 such a diet shall be given in the presence of the petitioner or his solicitor.
- (7) Before making an order, the sheriff shall consider any report received by him in terms of section 73(14) of the 1995 Act.

Insufficient evidence

2.29 If the sheriff is not satisfied that the facts stated in the petition are supported by the documents lodged with it or by the reports of the curator *ad litem* and reporting officer, or if for any other reason he considers it appropriate, he may order the production of further documents or that oral evidence be led.

Confidentiality

2.30.—(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 all persons involved in, or party to, the proceedings and by the sheriff clerk.

(2) The reporting officer and the 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 2.27(2).

Communications to the Registrar General

2.31 The communication to the Registrar General of an adoption order or order for the revocation of an adoption order required to be made by the sheriff clerk shall be made by sending a certified copy of the order to the Registrar General either by recorded delivery post in an envelope

(5) 1989 c. 41; section 31 was amended by the Children (Scotland) Act 1995, Schedule 4, paragraph 48(2).

marked “Confidential”, or by personal delivery by the sheriff clerk in a sealed envelope marked “Confidential”.

Adoption orders

2.32.—(1) An adoption order granted by the sheriff shall specify the name and address of the adoption agency, if any, which has taken part in the arrangements for placing the child in the care of the petitioner.

(2) No extract of an adoption order shall be issued except with the authority of the sheriff who made the order or, in that sheriff’s absence, of the sheriff principal.

(3) The authority required by paragraph (2) shall be obtained by lodging a petition setting forth the reasons for which the extract is required.

Final procedure

2.33.—(1) After the granting of an order under this Part the court process shall, immediately upon the communication under rule 2.31 being made or, in the event of an extract of the order being issued under rule 2.32, immediately upon the issue of such extract, be sealed by the sheriff clerk in an envelope marked “Confidential”.

(2) The envelope referred to in paragraph (1) 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 adoption order except—

- (a) to an adopted child who has attained the age of sixteen years and to whose adoption the process refers;
- (b) to the sheriff clerk, on an application made to him by an adoption agency and with the consent of the adopted person 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;
- (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.

(3) The sheriff clerk shall—

- (a) where an adoption order includes a determination under section 12(9) of the Act, intimate the making of that determination to the Principal Reporter; and
- (b) where appropriate, intimate the making of an adoption order to the court by which an order freeing the child for adoption was made.

Amendment of adoption order

2.34.—(1) An application under paragraph 4(1) of Schedule 1 to the Act (amendment of orders and rectification of registers) shall be by petition to the court which pronounced the adoption order.

(2) The sheriff may order the petitioner to intimate the petition to such persons as to the sheriff may seem appropriate.

Revocation of adoption order

2.35.—(1) An application under section 46(1) of the Act (revocation of adoption order where adoptive parent marries other parent)(6) shall be by petition to the court which pronounced the adoption order.

(2) On lodging of a petition under this rule, the sheriff shall order such service as he considers appropriate.

Application for removal of child pending adoption

2.36.—(1) An application under section 27(1) (restrictions on removal where adoption agreed or application made under section 18(1)), section 28 (restrictions on removal where applicant has provided home for five years), section 29 (return of child taken away in breach of section 27 or 28) or section 30(2) (return of children placed for adoption) of the Act(7) shall be made by minute lodged in the process of the original adoption petition.

(2) A minute under paragraph (1) shall set forth the relevant facts and the crave which the minuter wishes to make.

(3) On receipt of the minute the sheriff shall order a diet of hearing to be fixed and shall ordain the minuter to send a notice of such hearing in Form 15 together with a copy of the minute by registered post or by recorded delivery letter to the petitioner in the original petition, to the curator *ad litem* in the original petition, to any person who may have care and possession of the child and to such other persons as the sheriff may deem appropriate.

(6) Section 46(1) was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 1, paragraph 18(3).
(7) Sections 27(1), 28 and 29 were amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraphs 42 to 44 ; section 29 was also amended by the Children Act 1989, Schedule 10, paragraph 39.