
STATUTORY INSTRUMENTS

1997 No. 291

Act of Sederunt (Child Care and Maintenance Rules) 1997

CHAPTER 2

ADOPTION OF CHILDREN

PART VI

HUMAN FERTILISATION AND EMBRYOLOGY

Interpretation

2.45 In this Part—

“1990 Act” means the Human Fertilisation and Embryology Act 1990(1);

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

“the Regulations” means the Parental Orders (Human Fertilisation and Embryology) (Scotland) Regulations 1994(2).

Form of application and productions

2.46.—(1) An application shall be made by petition in Form 22.

(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;
- (c) an extract of any entry in the register of marriages relating to the marriage of the petitioners; and
- (d) any other document founded on by the petitioners in support of the terms of the petition.

Confidentiality

2.47.—(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.

(1) 1990 c. 37.

(2) S.I. 1994/2804.

Agreements to parental order

2.48.—(1) An agreement for the purposes of section 30(5) of the 1990 Act (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, if given in writing, be in Form 23.

(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; or

(b) where it is executed furth of the United Kingdom—

(i) 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

2.49.—(1) The sheriff 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 sheriff may make such order as he thinks fit.

Protection of identity of petitioners

2.50.—(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 1990 Act, they may, before presenting a petition, apply to the sheriff clerk for a serial number to be assigned to them.

(2) On receipt of an application for a serial number, the sheriff 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 sheriff;

(b) any agreement under section 30(5) of the 1990 Act 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.

Appointment of reporting officer and curator *ad litem*

2.51.—(1) On the presentation of the petition, the sheriff shall appoint a reporting officer and a curator *ad litem* and the same person may be appointed as reporting officer and curator *ad litem* in the same petition, if the sheriff considers that doing so is appropriate in the circumstances.

(2) Where the curator *ad litem* is not also the reporting officer, the sheriff may order the reporting officer to make available to the curator *ad litem* any report or information in relation to the child.

(3) A married couple may, before presenting the petition, apply to the sheriff for the appointment of a reporting officer.

- (4) An application under paragraph (3) shall—
 - (a) be made by letter setting out the reasons for which the appointment is sought; and
 - (b) not require to be intimated to any person.

Selection of reporting officer and curator *ad litem*

2.52 The reporting officer and curator *ad litem* appointed by the sheriff shall be selected from a panel established under regulations made by virtue of section 101 of the 1995 Act unless the sheriff considers that it would be appropriate to appoint a person who is not on the panel.

Duties of reporting officer and curator *ad litem*

- 2.53.**—(1) A reporting officer appointed under rule 2.51(1) shall, where appropriate—
- (a) enquire into the facts and circumstances averred in the petition;
 - (b) ascertain whether the conditions in subsections (2) to (7) of section 30 of the 1990 Act have been satisfied;
 - (c) witness any execution in Scotland of any agreement under section 30(5) of the 1990 Act, 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 said section 30(5) is witnessed in accordance with rule 2.48(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 responsibilities will vest in the petitioners;
 - (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; and
 - (i) draw to the attention of the court any matter which may be of assistance;

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 rule 2.51(1) shall—
- (a) safeguard generally the interests of the child;
 - (b) enquire, so far as he considers necessary, into the facts and circumstances averred in the petition;
 - (c) ascertain whether any money or other benefit which is prohibited by section 30(7) of the 1990 Act (prohibition on gift or receipt of money or other benefit) has been received or agreed upon;
 - (d) establish that the petitioners understand that the nature and effect of a parental order is to transfer the parental rights and responsibilities 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 life;
 - (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; and
 - (g) perform such other duties as appear to him to be necessary or as the court may require;
- and 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) The reporting officer shall, on completion of his report in terms of paragraph (1), in addition send to the sheriff clerk—
- (a) a copy of his report for each party; and
 - (b) any agreement for the purposes of section 30(5) of the 1990 Act.
- (4) The curator *ad litem* shall, on completion of his report in terms of paragraph (2), in addition send a copy for each party to the sheriff clerk.

Hearing

- 2.54.**—(1) On receipt of the reports referred to in rule 2.53, the sheriff shall fix a hearing.
- (2) The sheriff may—
- (a) order any person whose agreement is required to be given to attend the hearing;
 - (b) order intimation of the date of the hearing to any person not mentioned in paragraph (3) (a), (b) or (c); and
 - (c) order the reporting officer or curator *ad litem* to perform additional duties to assist him in determining the petition.
- (3) The petitioners shall intimate the date of the hearing in Form 24 by registered post or recorded delivery letter 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 2.51(1);
 - (c) the curator *ad litem* appointed under rule 2.51(1); and
 - (d) any person on whom intimation has been ordered under paragraph (2)(b).
- (4) At the hearing—
- (a) the petitioners, the reporting officer and the curator *ad litem* shall, if required by the sheriff, appear and may be represented;
 - (b) any other person required by the sheriff 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.

Applications for return, removal or prohibition of removal of child

- 2.55.**—(1) An application under section 29 of the Act, 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 the Act as so modified and applied (restriction on removal of child where application for parental order

pending), or under section 27(1) of the Act as so modified and applied for leave to remove a child, shall be made by minute in the process of the petition for a parental order to which it relates.

(2) A minute under paragraph (1) shall include an appropriate crave and statement of facts.

(3) On receipt of the minute, the sheriff shall order a hearing to be fixed and ordain the minuter to send a notice of such hearing in Form 25 and a copy of the minute by registered post or recorded delivery letter to the reporting officer and the curator *ad litem* and to such other persons as the sheriff thinks fit.

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

2.56.—(1) An application under paragraph 3(1) of Schedule 1 to the Act, 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 to the court which pronounced the order.

(2) The sheriff may order the petitioners to intimate the petition to such persons as he thinks fit.

Registration of certified copy interlocutor

2.57 On the sheriff 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 sheriff clerk shall send a certified copy of that interlocutor to the Registrar General in a sealed envelope marked “confidential”.

Extract of order

2.58 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.

Final procedure

2.59.—(1) After a certified copy of an interlocutor mentioned in rule 2.57 has been sent to the Registrar General, the sheriff clerk shall forthwith—

- (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 16 years;
- (b) any other person or body entitled under subsection (5) of section 45 of the Act, 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 subsection (4) of that

section, 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.