
STATUTORY INSTRUMENTS

1994 No. 2805 (S.142)

SHERIFF COURT, SCOTLAND

**Act of Sederunt (Sheriff Court Parental Orders
(Human Fertilisation and Embryology) Rules) 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 32 of the Sheriff Courts (Scotland) Act 1971⁽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, having approved, with modifications, draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Parental Orders (Human Fertilisation and Embryology) Rules) 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.

Sheriff court parental orders rules

2. The provisions of the Schedule to this Act of Sederunt shall have effect for the purpose of providing rules in relation to parental orders under section 30 of the Human Fertilisation and Embryology Act 1990 and applications for such orders.

Edinburgh,
21st October 1994

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

(1) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12 and by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4).
(2) 1978 c. 28.
(3) 1990 c. 37.
(4) S.I. 1994/2804.

SCHEDULE

Paragraph 2

SHERIFF COURT PARENTAL ORDERS (HUMAN
FERTILISATION AND EMBRYOLOGY) RULES

Citation and application

1.—(1) These Rules may be cited as the Sheriff Court Parental Orders (Human Fertilisation and Embryology) Rules 1994.

(2) These Rules apply in relation to parental orders under section 30 of the Human Fertilisation and Embryology Act 1990 and applications for such orders.

Interpretation

2.—(1) In these Rules, 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(5), the regular air force as defined in section 223 of the Air Force Act 1955(6) and the Queen Alexandra’s Royal Naval Nursing Services;

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

(2) Unless the context otherwise requires, a reference to a specified rule or form is a reference to the rule or form in the Appendix so specified in these Rules; and a reference to a specified paragraph, sub-paragraph or head is a reference to that paragraph of the rule or form, that sub-paragraph of that paragraph or that head of that sub-paragraph, in which the reference occurs.

(3) Where there is a reference in these Rules to the use of a form, that form in the Appendix to these Rules, or a form substantially to the same effect, shall be used with such variation as circumstances may require.

Applications for parental order

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

(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 of documents in process

4. Unless the sheriff otherwise directs—

(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 sheriff, the parties, the reporting officer and the curator *ad litem*; and

(5) 1955 c. 18.

(6) 1955 c. 19.

- (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.

Agreements to parental order

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, if given in writing, be in Form 2.

(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) 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 c ountry where the agreement is executed, to administer an oath for any legal purpose.

Orders for evidence

6.—(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.

Expenses

7. The sheriff 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 he thinks fit.

Protection of identity of petitioners

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 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 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.

Appointment of reporting officer and curator ad litem

9.—(1) On the presentation of the petition, the sheriff shall appoint—

- (a) a reporting officer; and
- (b) a curator *ad litem*.

(2) The sheriff shall, where it is practicable to do so, appoint the same person to be the curator *ad litem* and the reporting officer.

(3) 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.

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

(5) An application under paragraph (4) 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

10. The reporting officer and curator *ad litem*

appointed by the sheriff shall be selected from a panel established under the Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 1984(7) 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

11.—(1) A reporting officer appointed under rule 9(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 2 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 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;
- (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

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

- 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 sheriff may specify.
- (2) A curator *ad litem* appointed under rule 9(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 sheriff may specify.
- (3) The reporting officer shall, on completion of his report, send to the sheriff 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 sheriff clerk.

Hearing

- 12.—(1) On receipt of the reports referred to in rule 11, 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 3 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 9(1)(a);
 - (c) the curator *ad litem* appointed under rule 9(1)(b); 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 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.

Supervision by or committal to care of local authority

13.—(1) Where the sheriff 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 sheriff 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 in the process of the petition for a parental order to which it relates.

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

(4) 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 4 and a copy of the minute by registered post or recorded delivery letter to the petitioners, the reporting office and the curator *ad litem* and to such other persons as the sheriff thinks fit.

Applications for return, removal or prohibition of removal of child

14.—(1) An application under section 29 of the Act of 1978⁽⁸⁾, 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⁽⁹⁾ as so modified and applied (restriction 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 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 5 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

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 to the court which pronounced the order.

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

⁽⁸⁾ 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.

⁽⁹⁾ Section 27 was amended by the said Act of 1983, Schedule 2, paragraph 43.

Registration of certified copy interlocutor

16. 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 for Scotland in a sealed envelope marked “confidential”.

Extract of order

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.

Final procedure

18.—(1) After a certified copy of an interlocutor mentioned in rule 16 has been sent to the Registrar General for Scotland, 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 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.

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EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt provides for rules in the sheriff court in relation to parental orders under section 30 of the Human Fertilisation and Embryology Act 1990 and applications for such orders.

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 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.