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STATUTORY INSTRUMENTS

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**1997 No. 853 (S.78)**

**COURT OF SESSION, SCOTLAND**

**Act of Sederunt (Rules of the Court of Session  
Amendment No.2) (Adoption Applications) 1997**

*Made* - - - - - *12th March 1997*  
*Coming into force* - - - - - *1st April 1997*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 59 of the Adoption (Scotland) Act 1978(1) and by section 5 of the Court of Session Act 1988(2) 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 Amendment No.2) (Adoption Applications) 1997 and shall come into force on 1st April 1997.

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

**Amendment of Chapter 67 of the Rules of the Court of Session**

2.—(1) Subject to paragraph 4 below, Chapter 67 of the Rules of the Court of Session 1994(3) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 67.1(2) (interpretation of the Chapter)–

(a) after the definition of “the Act of 1978” insert–

““the Act of 1995” means the Children (Scotland) Act 1995;”(4); and

(b) for the definition of “parental rights” substitute–

““parental responsibilities” has the meaning given by section 1(3) of the Act of 1995;

“parental rights” has the meaning given by section 2(4) of that Act;”.

(3) For rule 67.4 substitute–

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(1) 1978 c. 28; section 59 was amended by section 98(1) of, and paragraph 27 of Schedule 2 to, the Children (Scotland) Act 1995 (c. 36).  
(2) 1988 c. 36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(3) and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 45.  
(3) S.I.1994/1443.  
(4) 1995 c. 36.

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

**67.4.** Where the court appoints a reporting officer or a curator *ad litem* and there is an established panel of persons from whom the appointment may be made, the reporting officer or curator *ad litem* shall be selected from that panel unless the court considers that it would be appropriate to appoint a person who is not on the panel.”.

(4) After rule 67.4 as so substituted insert–

**“Timetable for resolving question as to whether agreement to adoption order etc. should be dispensed with**

**67.4A.**—(1) A timetable shall be drawn up forthwith under section 25A of the Act of 1978<sup>(5)</sup> by the court when any of the following occurs–

- (a) there is presented to it a petition with a crave for any agreement of the parent or guardian of a child to be dispensed with on a ground specified in section 16(2) of that Act;<sup>(6)</sup>
- (b) it appears to the court, from the report of an adoption agency, local authority or reporting officer that the question of dispensing with such agreement on a ground so specified arises; or
- (c) such agreement (being agreement which, if not given, it would be competent to dispense with on a ground so specified) is given but is afterwards withdrawn.

(2) To ensure, so far as is reasonably practicable, that the timetable is adhered to, the court shall give such directions as it considers appropriate.”

(5) In rule 67.5(1) (form of certain agreements), at the end of sub-paragraph (a) add “unless the applicant for the adoption order is such person as is mentioned in section 15(1)(aa) of that Act,<sup>(7)</sup> in which case it shall be in Form 67.5-F”.

(6) After rule 67.5 insert–

**“Consideration of views of child and of certain reports**

**67.5A.** In a cause to which this Chapter applies, the court shall not grant an adoption order or grant or revoke an order freeing a child for adoption–

- (a) where the child has indicated to the court, or to his curator *ad litem* if one has been appointed under this Chapter, a wish to express views on a matter affecting the child unless–
  - (i) an opportunity has been given for those views to be obtained or heard (the court ordering such steps to be taken in that regard as it considers appropriate); and
  - (ii) due weight has been given by the court to such views as the child does express (account being taken of his age and maturity); and
- (b) where a report has been received in relation to the child by virtue of section 73(13) of the Act of 1995 (report of children’s hearing where child subject to supervision requirement), unless the court has first considered the report.”.

(7) After rule 67.6 insert–

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(5) Section 25A was inserted by section 98(1) of, and paragraph 18 of Schedule 2 to, the Act of 1995.

(6) Subsection (2) of section 16 was substituted by section 98(1) of, and paragraph 10(a) of Schedule 2 to, the Act of 1995.

(7) Paragraph (aa) was inserted by section 97(2) of the Act of 1995.

**“Children who may require compulsory measures of supervision**

**67.6A.** Where, under subsection (1) of section 54 of the Act of 1995 (question arising as to whether compulsory measures of supervision are necessary) a matter is referred to the Principal Reporter, the clerk of court shall give him written intimation of the court’s decision, which shall include a certified copy of the interlocutor, and shall specify in the intimation which of the conditions referred to in that subsection it appears to the court has been satisfied.”

(8) In rule 67.9(2) (content of petition in application for order freeing a child for adoption) for sub-paragraphs (l) and (m) substitute–

- “(l) whether the petitioner has considered the position of any person claiming to be the child’s father (being a person who is not married to the mother); and
- (m) whether the petitioner intends to give notice to a relevant parent under section 19(2) and (3) of that Act (progress reports).”

(9) In rule 67.11(1) (duties of reporting officer as respects application for order freeing a child for adoption)–

(a) for sub-paragraphs (j) and (k) substitute–

- “(j) ascertain whether the petitioner has considered the position of any person claiming to be the child’s father (being a person who is not married to the mother);
- (k) where such a person so claiming does not have parental responsibilities or parental rights in relation to the child, ascertain the likelihood of that person–
  - (i) applying for an order under section 11(1) of the Act of 1995 (orders relating to parental responsibilities etc.);
  - (ii) being refused such an order if he does so apply; or
  - (iii) entering into an agreement with the mother under section 4(1) of that Act (natural father’s acquisition of parental responsibilities etc. by agreement);”; and

(b) after sub-paragraph (s), insert–

- “(ss) ascertain whether the child is subject to a supervision requirement;”

(10) In rule 67.11(2) (duties of curator *ad litem* as respects application for order freeing a child for adoption)–

(a) after sub-paragraph (b), insert–

- “(bb) ascertain from the child whether he wishes to express any views as respects the petition;
- (bc) ascertain whether it would be better for the child that an order were made under section 18(1) of the Act of 1978((8) than that it were not made”; and

(b) after sub-paragraph (h) (and before the word “and” which immediately follows that sub-paragraph) insert–

- “(hh) in performing his duties under this paragraph, regard the need to safeguard and promote the welfare of the child throughout the child’s life as the paramount consideration;”

(11) In rule 67.12 (declaration of preference not to be involved)–

- (a) in paragraph (1), for the words “67.12” substitute “67.12-A; and any withdrawal of either such declaration shall be in Form 67.12-B.”; and

(b) at the end add–

“(5) Where a withdrawal such as is referred to in paragraph (1) is lodged, it shall be recorded in an interlocutor pronounced by the court and then intimated forthwith to the adoption agency by the clerk of court.”.

(12) In rule 67.13 (hearing of freeing for adoption petition)–

(a) in paragraph (2)(b)(ii), for the words “(3)(a), (b) or (c)” substitute “(3)(a), (aa), (b) or (c)”;

(b) in paragraph (3), after sub-paragraph (a) insert–

“(aa) where the child’s mother is not married to his father, any person whose whereabouts are so known and who, being a person who claims to be the child’s father, is neither the child’s guardian nor a person with regard to whom an order in relation to parental responsibilities as respects the child has been made under section 11(1) of the Act of 1995;”;

(c) in paragraph (4)(c), for the words “(3)(a) or (d)” substitute “(3)(a), (aa) or (d)”.

(13) After rule 67.13 insert–

**“Intimation of making of order freeing a child for adoption where he is subject to a supervision requirement**

**67.13A.** Where on making an order under section 18 of the Act of 1978 in relation to a child who is subject to a supervision requirement the court makes a determination under subsection (9) of that section((9) (that is to say, a determination that the child shall forthwith cease to be subject to that requirement), the clerk of court shall intimate the determination to the Principal Reporter.”.

(14) In rule 67.14 (application for revocation of order freeing a child for adoption)–

(a) in paragraph (1), for the words “section 20(1)” substitute “section 20(1) or (1A)”((10)

(b) in paragraph (2)–

(i) in sub-paragraph (a)(i), for the word “petitioner” substitute “relevant parent if the application is under section 20(1A)”;

(ii) for sub-paragraph (a)(iii) substitute–

“(iii) the adoption agency (or any substitute adoption agency) having the parental responsibilities and parental rights in relation to the child if the application is under section 20(1);”;

(c) in paragraph (5)–

(i) after sub-paragraph (a) insert–

“(aa) ascertain from the child whether he wishes to express any views as respects the application;”;

(ii) for sub-paragraph (c) substitute–

“(c) where the application is under–

(i) subsection (1) of section 20 of the Act of 1978 and a previous application under that subsection was refused; or

(ii) subsection (1A) of that section and a previous application under that subsection was refused,

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(9) Subsection (9) was added by section 98(1) of, and paragraph 11(d) of Schedule 2 to, the 1995 Act.

(10) Subsection (1A) was added by section 98(1) of, and paragraph 13(b) of Schedule 2 to, the 1995 Act.

inquire whether there has been any change of circumstances, or there is any other reason for the current application, of which the court should be aware in determining the note; and

(iii) after sub-paragraph (f) (and before the word “and” which immediately follows that sub-paragraph) insert–

“(ff) in performing his duties under this paragraph, regard the need to safeguard and promote the welfare of the child throughout the child’s life as the paramount consideration;”.

(15) After rule 67.15 insert–

**“Parental responsibilities and parental rights when order freeing a child for adoption is revoked**

**67.15A.** The court, on revoking an order freeing a child for adoption shall, by order under section 11(1) of the Act of 1995, specify on whom are to be imposed the parental responsibilities, and to whom are to be given the parental rights, in relation to the child; and the clerk of court shall give written intimation accordingly to any person so specified.”.

(16) For rule 67.17 substitute–

**“Applications for transfer of parental responsibilities and parental rights from one adoption agency to another**

**67.17.** An application under section 21 of the Act of 1978<sup>(11)</sup> (variation of order under section 18 of that Act so as to substitute one adoption agency for another) shall be made by note.”.

(17) In rule 67.18 (applications relating to return, removal or prohibition of removal of child), in each of sub-paragraphs (a) and (b), for the words “27(2)” substitute “27(1)”.

(18) In rule 67.21(1) (content of report)–

(a) in sub-paragraph (o), omit the words “, other than an approved adoption allowance;”;

(b) for sub-paragraph (q) substitute–

“(q) information about the religious persuasion (if any), racial origin and cultural and linguistic background both of the child and of the petitioner;”;

(c) in sub-paragraph (s), for the word “childhood” substitute “life”; and

(d) after that sub-paragraph (and before the word “and” which immediately follows that sub-paragraph) insert–

“(ss) whether arrangements for the adoption of the child have been made in contravention of section 11 of the Act of 1978 or the child has been placed for adoption in contravention of that section;”.

(19) In rule 67.24(1) (duties of reporting officer as respects application for adoption order)–

(a) in sub-paragraph (c), after the words “67.5-A” insert “or 67.5-F”;

(b) in sub-paragraph (f)–

(i) after the words “he is” insert “(except where the adoption order falls to be made by virtue of section 15(1)(aa) of the Act of 1978)”; and

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<sup>(11)</sup> Section 21 was amended by section 98(1) of, and paragraph 14 of Schedule 2 to, the 1995 Act.

- (ii) for the words “rights and duties will vest in” substitute “responsibilities and parental rights will (with that exception) be transferred to”; and
- (c) after sub-paragraph (j) insert–
  - “(jj) ascertain whether the child is subject to a supervision requirement;”.
- (20) In rule 67.24(2) (duties of curator *ad litem* as respects application for adoption order)–
  - (a) after sub-paragraph (b) insert–
    - “(bb) ascertain from the child whether he wishes to express any views as respects the petition;
    - (bc) ascertain whether it would be better for the child that an adoption order were made than that it were not made;”;
  - (b) in sub-paragraph (i), for the words “rights and duties” substitute “responsibilities and parental rights”;
  - (c) in sub-paragraph (k), for the word “childhood” substitute “life”;
  - (d) in sub-paragraph (m), for the words “for custody” substitute “such as is mentioned in section 11(2)(b) of the Act of 1995 (imposing parental responsibilities or giving parental rights)”;
  - (e) for sub-paragraph (p) substitute–
    - “(p) ascertain the religious persuasion (if any), social origin and cultural and linguistic background both of the child and of the petitioner;”;
  - (f) omit sub-paragraphs (s) and (t); and
  - (g) after sub-paragraph (w) (and before the word “and” which immediately follows that sub-paragraph) insert–
    - “(ww) in performing his duties under this paragraph, regard the need to safeguard and promote the welfare of the child throughout the child’s life as the paramount consideration;”.
- (21) In rule 67.25 (hearing to determine adoption petition)–
  - (a) in paragraph (2)(b)(ii), for the words “(3)(a), (b), (c) or (d)” substitute “(3)(a) to (dc)”;
  - (b) in paragraph (3), after sub-paragraph (d) (and before the word “and” which immediately follows that sub-paragraph) insert–
    - “(da) any person keeping the child by virtue of a child protection order, of a supervision requirement or of a warrant granted by a children’s hearing;
    - (db) any person to whom the parental responsibilities and parental rights in relation to the child have been transferred by a parental responsibilities order or an order under section 11 of the Act of 1995;
    - (dc) any person having parental responsibility (within the meaning of the Children Act 1989(12)) for the child by virtue of section 5 of that Act or of a care order or residence order within the meaning of that Act;”.
- (22) After rule 67.25 insert–

**“Intimation of making of adoption order where child subject to supervision requirement**

**67.25A.** Where on making an adoption order in relation to a child who is subject to a supervision requirement the court makes a determination under section 12(9) of the Act of

1978((13) (that is to say, a determination that the child shall forthwith cease to be subject to that requirement), the clerk of court shall intimate the determination to the Principal Reporter.”.

(23) Omit rule 67.26.

(24) In rule 67.32(2)(a) (age at which adopted person may open or inspect process), for the word “17” substitute “16”.

### **Amendment of Forms**

**3.**—(1) Subject to paragraph 4 below, the Appendix to the Rules of the Court of Session 1994((14) shall be amended in accordance with the following sub-paragraphs.

(2) In Form 67.5-A (form of agreement of a parent or guardian to an adoption order or an order under section 49 of the Act of 1978)—

- (a) in the first heading, at the end add “(to be used except where Form 67.5-F is appropriate)”;
- (b) in paragraph (1), for the words “rights and duties” substitute “responsibilities and parental rights”;
- (c) in paragraph (2), for sub-paragraphs (a) to (f) substitute—
  - “(a) is not known, cannot be found or is incapable of giving agreement;
  - (b) is withholding agreement unreasonably;
  - (c) has persistently failed, without reasonable cause, to fulfil one or other of the following parental responsibilities in relation to the child—
    - (i) the responsibility to safeguard and promote the child’s health, development and welfare; or
    - (ii) if the child is not living with him, the responsibility to maintain personal relations and direct contact with the child on a regular basis; or
  - (d) has seriously ill-treated the child, whose reintegration into the same household as the parent or guardian is, because of the serious ill-treatment or for other reasons, unlikely.”.

(3) In Form 67.5-B (form of agreement of a parent or guardian to an adoption order in a petition for an order freeing a child for adoption under section 18 of the Act of 1978)—

- (a) in paragraph (1), for the words “rights and duties” substitute “responsibilities and parental rights”;
- (b) in paragraph (2), for sub-paragraphs (a) to (f) substitute—
  - “(a) is not known, cannot be found or is incapable of giving agreement;
  - (b) is withholding agreement unreasonably;
  - (c) has persistently failed, without reasonable cause, to fulfil one or other of the following parental responsibilities in relation to the child—
    - (i) the responsibility to safeguard and promote the child’s health, development and welfare; or
    - (ii) if the child is not living with him, the responsibility to maintain personal relations and direct contact with the child on a regular basis; or
  - (d) has seriously ill-treated the child, whose reintegration into the same household as the parent or guardian is, because of the serious ill-treatment or for other reasons, unlikely.”.

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(13) cf. note (a) on page 5.

(14) cf. note (c) on page 1.

- (4) After Form 67.5-E insert the form set out in Schedule 1 to this Act of Sederunt.
- (5) The Form presently headed “Form 67.12” shall instead be headed “Form 67.12-A”; and after that form insert the form set out in Schedule 2 to this Act of Sederunt.
- (6) In Form 67.22 (form of petition for adoption order or an order under section 49(1) of the Act of 1978)–
- (a) for paragraph 8, substitute–
- “8. That the child–
- (a) is male [*or female*];
- (b) is unmarried;
- (c) is a child of (*name of mother*) [*and name of father, if known*];
- (d) is of British [*or*           ] nationality;
- (e) is            years of age, having been born on the            day of            at in (*local government area*) [*or at*            in (*country or territory outwith United Kingdom*)];
- (f) has had his home with the petitioner since (*day, month and year*);
- (g) has the following guardian[s], namely (*name[s] and address[es]*);]
- (h) has the following judicial factor, namely (*name and address*);] and
- (i) is entitled to the following property, namely,            .”;
- (b) in paragraph 10–
- (i) for the words “rights and duties” in both places where they occur, substitute “responsibilities and parental rights”; and
- (ii) for the words “vested in” substitute “transferred to”;
- (c) in paragraph 11, for the words “rights and duties of a parent or guardian [*or the parental rights and duties*]” substitute “parental responsibilities and parental rights”; and
- (d) in the prayer, for the words “vesting in the petitioner the parental rights and duties” substitute “transferring to the petitioner the parental responsibilities and parental rights”.

### **Saving**

4. Paragraphs 2 and 3 of this Act of Sederunt shall not affect the application of Chapter 67 of the Rules of the Court of Session 1994((15) in relation to any adoption order or any order freeing a child for adoption, where the order in question was applied for before 1st April 1997.

Edinburgh,  
12th March 1997

*Rodger of Earlsferry*  
Lord President, I.P.D.

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(15) cf. note (c) on page 1.

SCHEDULE 1

**Form 67.5—Form of agreement of a natural parent to an adoption order made, by virtue of section 15(1)(aa) of the Adoption (Scotland) Act 1978, on the application of their spouse**

Rule 67.5(1)(a)

**IN THE COURT OF SESSION**

**in the PETITION of**

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

(*or serial number where one has been assigned*)

for

an Adoption Order under the Adoption (Scotland) Act 1978

in respect of

[E.F.] (*address*)

I, \_\_\_\_\_, of (*address*) being a parent of the child [E.F.], hereby state -

(1) That I understand that the effect of an adoption order will be to vest the parental responsibilities and parental rights in relation to the child in my spouse though it will not extinguish my own parental responsibilities and parental rights.

(2) That I understand that the court cannot grant this application in relation to the child without my agreement (unless the court dispenses with that agreement).

(3) That I also understand that when the hearing on the petition to determine the application for an adoption 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 hereby freely, and with full understanding of what is involved, agree unconditionally to the making of an adoption order in relation to the child in this petition.

(5) That I have not received or given any payment or reward for, or in consideration of, the adoption of the child, for any agreement to the making of an adoption order or the making of any arrangements for the adoption of the child, other than a payment to an adoption agency for their expenses incurred in connection with the adoption.]

(*Signed by parent*)

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

(*Signed*;

(*Designation*)

(*Address*) \_\_\_\_\_.]

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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SCHEDULE 2

**Form 67.12—B Form of withdrawal of declaration under section 18(6) or 19(4) of the Adoption (Scotland) Act 1978 of preference not to be involved**

Rule 67.12(1)

**IN THE COURT OF SESSION**

**in the PETITION of**

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

for

An order freeing the child [E.F.] for adoption  
under section 18 of the Adoption (Scotland) Act 1978

I, \_\_\_\_\_, of (*address*) being (*state relationship to child*) of the child [E.F.], hereby withdraw the declaration dated (*insert date of declaration*) that I prefer not to be involved in future questions concerning the adoption of [E.F.].

Dated the \_\_\_\_\_ day of \_\_\_\_\_ .

*(Signed by relevant parent).*

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**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 in relation to applications under the Adoption (Scotland) Act 1978. In particular it makes such provision as is requisite to take account of amendments made to that Act by Part III of, and Schedule 2 to, the Children (Scotland) Act 1995. The amendments to the Rules do not affect such applications if they were applications made before 1st April 1997 (the date on which the Act of Sederunt comes into force).