
SCOTTISH STATUTORY INSTRUMENTS

2003 No. 44

SHERIFF COURT

**Act of Sederunt (Child Care and Maintenance Rules)
Amendment (1993 Hague Convention Adoption) 2003**

Made - - - - 23rd January 2003

Coming into force - - 1st June 2003

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), and section 91 of the Children (Scotland) Act 1995(3), and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Child Care and Maintenance Rules) Amendment (1993 Hague Convention Adoption) 2003, and shall come into force on 1st June 2003.

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

Interpretation

2. In this Act of Sederunt, unless the context otherwise requires, “the Rules” means the Act of Sederunt (Child Care and Maintenance Rules) 1997(4).

Amendment of the Rules

3. The Rules shall be amended in accordance with articles 4 to 7 of this Act of Sederunt.

(1) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13, and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43, and was extended by the Child Support Act 1991 (c. 48), sections 39(2) and 49.

(2) 1978 c. 28; section 59 was amended by the Children (Scotland) Act 1995 (c. 36), Schedule 2, paragraph 27.

(3) 1995 c. 36.

(4) S.I. 1997/291, amended by S.I. 1998/2130 and S.S.I. 2000/388.

Amendment of Rule 2.25

4. At rule 2.25 (Appointment of curator *ad litem* and reporting officer), in paragraph (2) omit from “save” to the end of that paragraph.

Amendment of Rule 2.26

5. At rule 2.26 (Duties of reporting office and curator *ad litem*), in the heading for “office” substitute “officer”.

Part IVA of Chapter 2 of the Rules

6. After Part IV of Chapter 2 of the Rules, insert–

“PART IVA CONVENTION ADOPTION ORDERS

Interpretation

2.36A. In this Part, unless the context otherwise requires–

“accredited body” means any authority, body or person approved by a Convention country for the purpose of exercising in that country work in the field of intercountry adoption;

“central authority” means any authority, body (including an accredited body) or person, nominated by a Convention country to exercise in that country the duties imposed on a central authority by the Convention;

“the Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993⁽⁵⁾;

“Convention adoption order” means an adoption made in accordance with section 17 of the Act;

“Convention country” means any country or territory in which the Convention is in force;

“the receiving State” has the same meaning as in Article 2 of the Convention;

“Scottish accredited body” means any registered adoption service or local authority authorised, by registration under Parts 1 and 2 respectively of the Registration of Care (Scotland) Act 2001⁽⁶⁾, to provide facilities for a Convention adoption or Convention adoption order;

“Scottish central authority” means the Scottish Ministers⁽⁷⁾, or any authority, body (including a Scottish accredited body) or person nominated by the Scottish Ministers to exercise the functions in Scotland of a central authority; and

“the State of origin” has the same meaning as in Article 2 of the Convention.

(5) The text of the Convention, so far as material, is set out in Schedule 1 to the Adoption (Intercountry Aspects) Act 1999 (c. 18) (“the 1999 Act”).

(6) 2001 asp 8.

(7) The 1999 Act, section 2(1)(a), will provide on commencement that the Secretary of State shall discharge in Scotland the functions of a central authority under the Convention. The functions of the Secretary of State are prospectively transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c. 46), section 53, and the 1999 Act, section 16(2).

Application for a Convention adoption order

2.36B. An application for a Convention adoption order shall be made under and in accordance with the provisions of this Part.

Process and form of application

2.36C.—(1) An application for a Convention adoption order shall be made by petition in Form 11A.

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

- (a) a certificate, register extract, or other proof of date of birth relating to the child who is the subject of the application, issued or authenticated by the applicable Convention country authority;
- (b) in the case of a joint petition by a married couple, a certificate, register extract, or other proof of their marriage, issued or authenticated by the applicable Convention country authority;
- (c) any other document founded on by the petitioner in support of the petition;
- (d) where appropriate, a translation into English of any certificate, extract, document or report referred to in paragraphs (a) to (c) above, together with the certificate referred to in paragraph (3) below;
- (e) any report by the local authority required by section 22 of the Act (notification to local authority of adoption application);
- (f) any report by an adoption agency, being a Scottish accredited body, required by section 23 of the Act (reports where child placed by agency);
- (g) where appropriate, an extract of the order freeing the child for adoption; and
- (h) a letter by the Scottish central authority confirming an agreement between the receiving State and State of origin in terms of Article 17(c) that the proposed adoption may proceed.

(3) A translation referred to in paragraph (2)(d) must be certified by the person making it as being in conformity with the original document, and the certificate must confirm the full name, address and qualifications of the translator.

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

- (a) a description of the petitioner's background, including his family history, medical history, his social environment, his reasons for wishing to adopt, his eligibility and suitability to adopt, and in particular his suitability for a Convention adoption order;
- (b) a description of the child's background, including his family history, his medical history and that of his family, his social environment, his physical and mental health (including any special needs), and his emotional, behavioural and educational development;
- (c) information about the mutual suitability of the petitioner and the child for the relationship created by the adoption, and the ability of the petitioner to bring up the child, including an assessment of the personalities of the petitioner and of the child;
- (d) particulars of all the members of the household of the petitioner, and their relationship to the petitioner;
- (e) a description of the accommodation in the home of the petitioner;

- (f) in a petition by one of two spouses, why the other spouse has not joined in the petition;
- (g) 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;
- (h) whether the means and standing of the petitioner are such as to enable him to maintain and bring up the child suitably, and whether the child has any right or interest in property;
- (i) whether any payment or other reward, other than an approved adoption allowance, has been received or agreed in consideration of the proposed adoption;
- (j) what insurance has been offered on the life of the child;
- (k) the religious persuasion, if any, of the petitioner and the religious persuasion, if any, racial origin, and cultural and linguistic background of the child;
- (l) considerations arising from the difference in age between the petitioner and the child if this is more or less than the normal difference between parents and children;
- (m) whether adoption is likely to safeguard and promote the welfare of the child throughout his life;
- (n) where the child has not been freed for adoption, evidence that all consents to the proposed adoption required by Article 4 have been obtained; and
- (o) any other information which may be of assistance to the court.

(5) If no report required from a local authority or adoption agency under paragraph (2) (e) or (f) is available to be lodged along with the petition, the sheriff shall pronounce an interlocutor requiring the local authority or adoption agency 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.

(6) In this rule, a reference to an Article is a reference to an Article of the Convention.

Application of Part IV of Chapter 2 to Convention adoption orders

2.36D. Rules 2.23, 2.25, 2.26 (other than sub-paragraph (2)(o)), 2.27, 2.28, 2.29, 2.30, 2.31, 2.32, 2.33, 2.34 and 2.36 of Part IV of Chapter 2 shall apply to an application under this Part, so far as they are not inconsistent with this Part, and subject to the modifications in rules 2.36E to 2.36G.

Appointment of curator *ad litem* and reporting officer

2.36E. In rule 2.25 (Appointment of curator *ad litem* and reporting officer)–

(a) in paragraph (1)–

(i) for “paragraph (2)” substitute “paragraphs (2) and (6)”; and

(ii) for “rule 2.21” substitute “rule 2.36C”; and

(b) after paragraph (5) insert–

“(6) Where a petition is for a Convention adoption order the sheriff shall not at any time appoint a reporting officer.”.

Hearing

2.36F. In rule 2.28 (Hearing)–

- (a) in paragraph (1), for “reports of the reporting officer and” substitute “report of”; and
- (b) in paragraph (3), for sub-paragraphs (a) and (b) substitute—
 - “(a) the curator *ad litem*;
 - (b) any person or body who has care or possession of the child; and
 - (c) any local authority or adoption agency that has prepared a report under sections 22 or 23 of the Act.”.

Communications to the Registrar General

2.36G. For rule 2.31 (Communications to the Registrar General), substitute—

“Communications to the Registrar General and the Scottish central authority

2.31.—(1) The making or revocation of a Convention adoption order shall be intimated in accordance with this rule to the Registrar General and the Scottish central authority by the sheriff clerk.

(2) A certified copy of the order making, or as the case may be revoking, a Convention adoption order shall be sent to the Registrar General and the Scottish central authority either by recorded delivery post in an envelope marked “Confidential”, or by personal delivery by the sheriff clerk in a sealed envelope marked “Confidential”.”

Form 11A

7. In Schedule 1 to the Rules, after Form 11 there shall be inserted Form 11A as set out in the Schedule to this Act of Sederunt.

Edinburgh
23rd January 2003

W DOUGLAS CULLEN
Lord President I.P.D.

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

SCHEDULE

Rule 7

FORM 11 APETITION FOR CONVENTION ADOPTION ORDER UNDER SECTION 17 OF THE ADOPTION (SCOTLAND) ACT 1978

Petition of

A.B, (full name)

[and (full name of spouse, including maiden surname and any previous married surname)]

residing at (full address or addresses)

for authority to adopt the child

(Full name of child as shown on birth certificate), born on

(Child's date of birth), and residing at

(Child's present address)

The petitioner(s) crave(s) the court [(1)] to make a Convention adoption order in his/her/their favour under section 17 of the Adoption (Scotland) Act 1978, in relation to the child [; and (2) to dispense with the agreement and consent of the child on the ground that he/she is incapable of giving such consent,]

and condescends as follows:

1. (a) The petitioner(s) reside(s) at.
- (b) The occupation(s) of the petitioner(s) is/are.
- (c) The petitioner(s) is/are married [or unmarried or a widow or a widower]. (If married, state whether spouse resides with, or apart, from, the petitioner)
- (d) The petitioner(s) is/are [respectively] [and] years of age.
- (e) The petitioner(s) is/are [a] United Kingdom/(name other Convention country) [national(s)].
- (f) The petitioner(s) is/are habitually resident in the British Islands/(name other Convention country).
- (g) The petitioner(s) has residing/have resident, with him/her/them the following persons, namely
- (h) The child was received into the home of the petitioner(s) on (date).
- (i) The child has continuously had his home with the petitioner(s) since the date shown above.
- (j) *Intimation in terms of section 22 of the Adoption (Scotland) Act 1978 has been made to (name local authority).
- (k) *Arrangements for placing the child in the care of the petitioner(s) were made by (give full name and address of agency or authority or person making such arrangements) and therefore notification in terms of section 22(1) of the Adoption (Scotland) Act 1978 is not required.
- (l) *An order freeing the child for adoption was made at Sheriff Court on (date) [or an order declaring the child free for adoption has not been made].
- (m) *All persons, institutions and authorities whose consent to the adoption of the child in (name Convention country) is required, have freely given such consent in writing.
- (n) *All persons who have consented to the adoption of the child have been duly informed about the effect of such consent, and have been counselled as necessary
- (o) *The petitioner(s) has/have had such counselling as is necessary in respect of the adoption of the child.
(*Delete as appropriate)

- (p) The child is, or will be after adoption by the petitioner(s), authorised to enter and reside permanently in the United Kingdom/(name other Convention country).
- (q) No reward or payment has been given or received by the petitioner(s) for or in consideration of the adoption of the child, or the giving of consent to the making of an adoption order, other than an approved adoption allowance.
2. (a) The child is years of age, having been born on the day of .
- (b) The child is not and never has been married and is male/female
- (c) The child's natural mother is (full name and address).
- (d) *The child's natural father is (full name and address).
- (e) *Paternity of the child has not been admitted or established by decree of any court (*Delete either (d) or (e) as appropriate)
- (f) The child is of United Kingdom/(name other Convention country) nationality.
- (g) The child has his/her habitual residence in the British Islands/(name other Convention country).
- (h) The child is entitled to the following property, namely
- (i) The child has the following guardian(s). (Either give full name(s) and address(es) or delete the paragraph if it does not apply).
3. (insert details) is/are liable to contribute to the support of the child.
4. The child has not been the subject of an adoption order or of a petition for an adoption order save that.
5. The petitioner(s) is/are prepared to undertake, if any order is made on this petition, to make for the said child the following provisions, namely—
6. There is lodged along with this application the following documents:—
- (i) extract birth certificate/(name equivalent document of other Convention country) relating to the child
 - (ii) extract marriage certificate /(name equivalent document of other Convention country) relating to the petitioner(s)
(Note, this need be lodged only in the case of a joint application by spouses)
 - (iii) *medical certificate relating to the health of the male petitioner
 - (iv) *medical certificate relating to the health of the female petitioner
 - (v) *agreement to the adoption by the child's natural mother
 - (vi) *agreement to the adoption by the child's natural father
 - (vii) *consent to the adoption by the child
 - (viii) *extract of the order freeing the child for adoption
 - (ix) *report by (name local authority) in terms of section 22 of the Adoption (Scotland) Act 1978
 - (x) *report by (name adoption agency) in terms of section 23 of the Adoption (Scotland) Act 1978
 - (xi) letter by the Scottish central authority under Article 17 of the Convention
 - (xii) *any other document not referred to above (for example, a translation certificate)
- (*Delete as appropriate)
7. (insert details) has/have taken part in the arrangements for placing the child in the care of the petitioner(s)

The petitioner(s) crave(s) the court to dispense with intimation and to order notice of this petition to be served on such persons, if any, as the court may think proper, and thereafter, on resuming consideration hereon, to make a Convention adoption order in favour of the petitioner(s) under section 17 of the Adoption (Scotland) Act 1978 on such terms and conditions (if any) as the court may think fit, and to direct the Registrar General for Scotland to make an entry marked "Convention order" regarding the adoption in the Adopted Children Register in the form prescribed by him, giving as the forename(s), and the surname of the adopter(s) as the surname of in the form; and further, upon proof to the satisfaction of the court in the course of the proceedings to follow hereon, that (name of child) was born on the day of in the year and is identical with the to whom any entry numbered and made on the day of in the year, in the

Register of Births for the Registration District of in the relates, to direct the said Registrar General to cause such birth entry to be marked with the word "adopted" and to include the above mentioned date of birth in the entry recording the adoption in the manner indicated in the Schedule to the said Act and to pronounce such other or further orders or directions upon such matters including the expenses of this petition, as the court may think fit.

.....

Signature of [first] petitioner

.....

[Signature of second petitioner]

[or

.....

Signature of solicitor with designation and address]

.....

EXPLANATORY NOTE

(This note is not part of the instrument)

This Act of Sederunt amends the 1997 rules of the Sheriff Court relating to child care and maintenance ("the principal rules").

Rule 4 amends rule 2.25 of the principal rules, so that in no circumstances is a reporting officer appointed in a petition for adoption where there is already an order freeing the child for adoption.

Rule 5 makes one minor amendment to correct a typographical error.

Rule 6 inserts a new Part IVA into Chapter 2 (Adoption of Children) of the principal rules. Part IVA makes provisions in relation to the Adoption (Intercountry Aspects) Act 1999 ("the 1999 Act").

The 1999 Act gives effect to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption concluded on 29th May 1993 ("the Convention"), in part by amending the Adoption (Scotland) Act 1978 ("the 1978 Act").

The rules in Part IVA provide as follows:—

- (i) rule 2.36A provides a number of definitions for use in that Part;
- (ii) rule 2.36B provides that an application under section 17 of the 1978 Act shall be made under that Part;
- (iii) rule 2.36C makes provision in respect both of the type and content of documents that must be lodged with a petition for a Convention adoption, and introduces the form of petition for such an adoption;

- (iv) rule 2.36D applies some of the rules in Part IV(Adoption Orders) of the principal rules to an application for a Convention adoption;
- (v) rule 2.36E provides that a reporting officer shall not be appointed in a petition for a Convention adoption;
- (vi) rule 2.36F makes provision for those bodies or persons who should receive notice of any hearing that is fixed under that Part; and
- (vii) rule 2.36G provides for notice of the making or revocation of an adoption under that Part to be intimated to the Registrar General, and to the Scottish central authority for the purposes of the Convention.

Rule 7 inserts the new Form 11A in the Schedule into the Schedule of forms in the principal rules.