1959 No. 763 (S. 33)

Act of Sederunt (Adoption of Children) 1959

Made - - - -	*25th March*, 1959
Coming into Operation	*1st April*, 1959

The Lords of Council and Session, considering that it is necessary to regulate proceedings in applications in the Sheriff Court and Juvenile Court under the Adoption Act, 1958(a) (hereinafter referred to as " the Act ") and in pursuance of the powers contained in Section 11 thereof enact and declare as follows :—

1. All applications for an Adoption Order or for a provisional Adoption Order shall be by Petition at the instance of the proposed adopter, and shall be in accordance with the form appended hereto with such variations as the circumstances may require :—

(*a*) All consents required under Section 4 of the Act shall be in writing and shall be in accordance with the form appended hereto and shall be signed by the consenter whose signature shall be proved or attested in accordance with the provisions of Section 6 of the Act. Such consents shall be lodged in process along with the Petition itself, or, if not obtained until after lodging the Petition, as soon thereafter as may be practicable.

(*b*) For the purposes of subsection 3 of Section 6 of the Act a document executed outside the United Kingdom shall be sufficiently attested if it is attested as follows :—

(1) If the person by whom the document is executed is serving in Her Majesty's Forces, by any officer holding a commission in any of those Forces ;

(2) In any other case by a British Consular Officer or by any person for the time being authorised by the law of the place of execution to administer an oath for any judicial or legal purpose.

There shall be lodged in process along with the Petition itself :—

(i) An extract of the entry if any in the Register of Births relating to the birth of the infant ;

(ii) In the case of a Joint Petition by spouses, an Extract in the Register of Marriages relating to their marriage ;

(iii) A medical certificate as to the health of the petitioner or each of the joint petitioners, except where the petitioner or one of the joint petitioners is a parent of the infant ;

(iv) Any other document founded on by the petitioner for the purpose of vouching the particulars stated in the Petition.

2. In every such Petition the petitioner shall state :

(*d*) the date upon which the infant was received into his care and possession ;

(a) 7 & 8 Eliz. 2 c. 5.

(*b*) whether the infant has since that date been continuously in his care and possession;

(*c*) the date upon which he notified the Local Authority for the area in which he was then residing of his intention to apply for an Adoption Order in respect of the infant;

(*d*) whether he has received or given any reward or payment for or in consideration of the adoption of the infant or for giving consent to the making of the Adoption Order; and

(*e*) what persons have taken part in the arrangements for placing the infant in his care.

These statements shall be investigated by the curator *ad litem* and the results of his investigation shall be included in his report.

3. In a petition for a provisional Adoption Order the petitioner shall, in addition to complying with the requirements of paragraphs (1) and (2) hereof adduce evidence of the law of adoption in the country in which he is domiciled. The Court may accept as evidence of that law an affidavit sworn by a person who is conversant with it and who practises or has practised as a barrister or advocate in that country or is a duly accredited representative of the government of that country in the United Kingdom.

4. If any person proposing to present a Petition to any Court for an Adoption Order desires that his identity shall not be disclosed to any person whose consent to the order is required, he may before presenting such petition apply to the Clerk of the Court in which the petition is to be presented for a serial number to be assigned to him for the purpose of the proposed petition and such number shall be assigned to him accordingly. The record of such serial numbers and of the persons to whom they apply shall be treated as confidential and shall be open only to the Court.

5. Where the identity of the person in whose favour an Adoption Order is to be granted is not known to a consenting party, the document signifying such consent for the purposes of Section 6 of the Act shall not name such person as petitioner, but shall refer to him as the petitioner to whom such serial number has been assigned and shall specify the year in which and the Court by which such serial number has been assigned.

6. On presentation of the petition or as soon as may be thereafter the Court shall appoint a curator *ad litem* to the infant in terms of subsection 4 of Section 11 of the Act, whose duty shall be to investigate as fully as possibly and to report to the Court on all the circumstances of the infant and the petitioner and all other matters relevant to the proposed adoption with a view to safeguarding the interests of the infant and, in particular, it shall be his duty to include in his investigation, and to report to the Court upon the following questions and matters:—

(*a*) Whether the statements in the petition are true and *inter alia* whether, and if so what steps he has found himself able to take for the purposes of ascertaining that the infant's parent or parents, in giving their consent (if any) to the proposed adoption, understood that the effect of the Adoption Order will be to deprive them permanently of their parental rights;

(*b*) Particulars of all members of the petitioner's household and their relationship (if any) to the petitioner;

(*c*) Particulars of the accommodation in the petitioner's home and the condition of the home;

(*d*) Why in the case of a petition by one of two spouses the other spouse does not join in the petition;

(*e*) Whether the means and status of the petitioner are such as to enable him to maintain and bring up an infant suitably, and what right or interest in property the infant has;

(*f*) Whether the petitioner understands the nature and effect of an Adoption Order and, in particular, that the Order, if made, will render him responsible for the maintenance and upbringing of the infant;

(*g*) When the mother of the infant ceased to have the care and possession of the infant and to whom the care and possession was transferred;

(*h*) Whether any payment or other reward in consideration of the adoption has been received or agreed upon and whether the adoption is consistent with the welfare of the infant;

(*i*) What insurance (if any) has been effected on the life of the infant;

(*j*) Whether it is desirable for the welfare of the infant that the Court should be asked to make an interim order or to impose in making an Adoption Order particular terms or conditions or to require the petitioner to make any particular order for the infant and (if so) what provision;

(*k*) Whether in his opinion there is any person other than those mentioned in paragraph 8 hereof upon whom service of notice in Form C should be made;

(*l*) If the applicant is not ordinarily resident in Great Britain, whether a report has been obtained on the applicant's home and living conditions from a suitable agency in the country in which he is ordinarily resident.

7. The person to be appointed curator *ad litem* may be either

(*a*) if the local authority concerned consents, the children's officer of a local authority or an officer or servant of that authority who assists the children's officer in the exercise of his functions; or

(*b*) any other person whom the Court considers to be a fit and proper person for the office.

Provided that no person shall be appointed curator *ad litem* if

(i) he has the rights and powers of a parent of the infant or has taken part in the arrangements for the adoption of the infant; or

(ii) he is a member, officer or servant of a local authority, Adoption Society or other body which has the right and power of a parent of the infant or has taken part in the arrangements for the adoption of the infant.

8. Upon receipt by the Court of the report of the curator *ad litem* and on a date for the hearing, if any, being fixed the Court may in its discretion ordain the petitioner to serve a notice in Form C upon any of the following persons:—

(*a*) Every person not being a petitioner whose consent to the making of the order is required under subsection 1 of section 4 of the Act;

(*b*) Any person or body having the rights and powers of a parent of the infant by virtue of Section 75 of the Children and Young Persons Act, 1933(**a**), or paragraph 12 (1) of the Fourth Schedule to that Act or

(**a**) 23 & 24 Geo. 5. c. 12.

Section 3 of the Children Act, 1948(a) or Section 79 of the Children and Young Persons (Scotland) Act, 1937(b) or paragraph 12 (1) of the Second Schedule to that Act, or Sections 5 or 10 of the Matrimonial Proceedings (Children) Act, 1958(c);

(*c*) Any person liable by virtue of any order or agreement to contribute to the maintenance of the infant;

(*d*) The local authority to whom the petitioner has given notice of his intention to apply for an Adoption Order under subsection 2 of Section 3 of the Act;

(*e*) Any local authority or adoption society named in the application or in a form of consent as having taken part in the arrangements for the adoption of the infant;

(*f*) Any other person or body who in the opinion of the Court ought to be served with notice of hearing of the petition.

9. If the Court is not satisfied with the verification of the statements in the petition provided by the documents lodged or by the report of the curator *ad litem* or if for any reason the Court thinks it right and proper the Court may refuse to pronounce an Adoption Order, provisional Adoption Order or interim Order without further production of documents or without oral evidence; and the Court may order such production to be made or appoint such evidence to be led accordingly.

10. The Court may also refuse to pronounce an Adoption Order or a provisional Adoption Order or an interim Order unless the petitioner and the infant are in personal attendance and the Court may direct that the petitioner and the infant or either of them shall be interviewed privately by the Court and that any party upon whom notice in Form C has been served shall attend and shall be interviewed privately by the Court.

11. All proceedings before the Court in a Petition for an Adoption Order and in a Petition under paragraphs 16 or 17 hereof shall, unless the Court otherwise directs, be heard and determined *in camera*; and unless the Court otherwise directs all documents lodged in process, including the report by the curator *ad litem*, shall be open only to the Court, the curator *ad litem*, and the parties, and shall be treated as confidential by all parties concerned and by the Clerk of Court; and the curator *ad litem* appointed by the Court shall regard all information obtained in the course of his investigations or otherwise as confidential, and shall not divulge any part of it to any person save as in his judgment may be necessary for the proper execution of his duty.

12. If it appears that the petitioner has made a previous application for an Adoption Order in respect of the same infant and that such application has been refused the Court shall not make an Adoption Order or a provisional Adoption Order or an interim Order unless there has been a substantial change in the circumstances.

13. It shall be competent for two spouses to petition for an Adoption Order in respect of an infant who has already been adopted by one of the spouses.

14. The communication to the Registrar General for Scotland of any Adoption Order, amendment to an Adoption Order or revocation of an

(a) 11 & 12 Geo. 6. c. 43. (b) 1 Edw. 8 & 1 Geo. 6. c. 37.
(c) 6 & 7 Eliz. 2. c. 40.

Adoption Order required respectively by subsection 6 of Section 23, subsection 2 of Section 24 and subsection 2 of Section 26 of the Act to be made by the Clerk of the Court, shall be made by sending to the said Registrar General a certified copy of the Order in a prepaid registered postal envelope marked "Confidential" or by personal delivery by the said Clerk to the said Registrar General of such certified copy in a sealed envelope so marked.

15. In the case of an application to any Court the process shall, immediately upon the communication referred to in paragraph 13 hereof being made, or, in the event of an extract being issued in terms of paragraph 15 hereof, immediately upon the issue of such extract, be enclosed by the Clerk of Court in a sealed envelope, docqueted as aforesaid, and the said envelope shall not be opened by the said Clerk nor by any person having control of the records of any Court, nor shall the process be made accessible to any person within 40 years next after the date of the Adoption Order except;

(i) to an adopted child who has attained the age of 17 years, and to whom such order refers or

(ii) by authority of the Court in which the Order was pronounced obtained on petition to said Court and setting forth the reasons for which access to the process is required.

16. No extract of an Adoption Order shall be issued except by the authority of the Court by whom the Order was pronounced, obtained by petition setting forth the reasons for which the extract is required.

17. Any application under subsection 1 of Section 24 of the Act for the amendment of an Adoption Order or the revocation of a direction to the Registrar General for Scotland and any application for the revocation of an Adoption Order under subsection 1 of section 26 of the Act shall be by petition to the Court which pronounced the Adoption Order. In any such petition the Court may order such intimation as appears necessary, and in the case of a petition for the revocation of an Adoption Order the Court shall not grant such petition unless it is satisfied that the petition has been served on every living parent of the infant.

18. The Court may make such orders with regard to the expenses of the petition or of any of the parties thereto, including the expenses of the curator *ad litem* as it thinks fit, and may modify such expenses or direct them to be taxed on such scale as it may determine.

19. The Act of Sederunt (Adoption of Children) 1930(a), the Act of Sederunt (Adoption of Children) 1950(b) and the Act of Sederunt (Adoption of Children) (No. 2) 1950(c) are hereby repealed.

20. This Act of Sederunt may be cited as the Act of Sederunt (Adoption of Children) 1959 and shall come into operation on 1st April 1959.

And the Lords appoint this Act of Sederunt to be entered in the Books of Sederunt.

J. L. Clyde,
I.P.D.

Edinburgh, 25th March, 1959.

(a) S.R. & O. 1930/891 (Rev III, p. 922: 1930, p. 3).
(b) S.I. 1950/62 (1950 I, p. 265). (c) S.I. 1950/2142 (1950 I, p. 266)

APPENDIX

FORM A

PETITION

of

A.B. (name, designation and address), and (if wife also petitioner) C.D. (name, designation and address)

for

AUTHORITY TO ADOPT

E.F. (name, as in birth certificate, or name by which infant is ordinarily known, and address).

HUMBLY SHEWETH,—

1. The petitioner (or petitioners) is (or are) desirous of adopting the said E.F. under the provisions of the Adoption Act, 1958.

2. The petitioner (or petitioners) is (or are) domiciled in and resides (or reside) at .

3. The petitioner(s) occupation(s) is (or are) .

4. The petitioner(s) is (or are) married (or unmarried), widow or widower. If married, state whether spouse resides with, or apart from, the petitioner).

5. The petitioner is years of age (and, if wife also a petitioner, the said C.D. is years of age).

6. The petitioner (or petitioners) has (or have) resident with him (or them) the following persons namely, .

7. The petitioner (and his wife) is (or are respectively) related to the said E.F. as follows :—(or the petitioner(s) is not (are not, nor is either of them) related to the said E.F.).

8. The said E.F. (is)—

(*a*) of the sex,

(*b*) unmarried,

(*c*) a child of and ,

(*d*) of British or nationality

(*e*) years of age, having been born on day of 19 at in the County of

(*f*) was received into the care and possession of the petitioner on

(*g*) has been continuously in his care and possession since

(*h*) has the following tutors, curators or guardians (names and addresses),

(*i*) entitled to the following property, namely,

9. The petitioner notified the Council on of his intention to petition for an adoption in respect of E.F.

10. of in the County of (and of in the County of) is (are) liable to contribute to the support of the said E.F.

11. The said E.F. has not been the subject of an Adoption Order or of a Petition for an Adoption Order, save that (state Order and Petition if any).

12. The petitioner(s) is (or are) prepared to undertake, if an order is made on this petition, to make for the said E.F. the following provision, namely:—

(The petitioner(s) will, if required, secure the above provision by bond or otherwise as the Court may require.)

13. Consents to this Petition have been obtained from the following persons, namely:—

(*a*) [E.F., if a minor]

(*b*) [Parents]

(*c*) [Tutor or Curator]

(*d*) [Spouse of petitioner.]

14. The petitioner(s) has not (have not nor has either of them) received or agreed to receive and no person has made or agreed to make or give to the petitioner(s) (or either of them) any payment or reward in consideration of the adoption of the said E.F. except as follows, viz.:—

15. have taken part in the arrangements for placing E.F. in the care of the petitioner.

The petitioner(s) humbly 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 hereof, to pronounce an order authorising the petitioner(s) to adopt the said E.F. in terms of the Adoption Act, 1958 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 regarding the said adoption in the Adopted Children Register in the form set out in the Schedule to the said Act, giving the surname of the adopter(s) as the surname of the said E.F. in column 2 of the said Schedule; and, further, upon proof to the satisfaction of the Court in the course of the proceedings to follow hereon, that the said E.F. was born on the said day of in the year and is identical with the said E.F. to whom an entry numbered and made on the day of in the year in the Register of Births for the Registration District (define the district), 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.

Form B

Form of Consent relative to Petitions of A.B. for Adoption Order adopting E.F.

I (full name, designation and address) being

(*a*) the said E.F. if a minor,

(*b*) the father of the said E.F.

(*c*) the mother of the said E.F.

(*d*) tutor, curator, or guardian of the said E.F.

(*e*) the spouse of the petitioner,

hereby state that I understand the nature and effect of the Adoption Order for which application is made [and (in the case of the father and mother) that I understand that the effect of the order will be permanently to deprive me of my parental rights.] And I hereby consent to the making of an Adoption Order in favour of the petitioner(s) [on condition that the religious persuasion in which the child is prepared to be brought up is].

In witness whereof I have signed this consent on the day of 19 at .

(Signature)

Signed in the presence of two witnesses (names, designation and addresses).

FORM C

NOTICE OF HEARING

in

PETITION

of

A.B. (name, designation and address), and (if wife also petitioner) C.D. (name, designation and address)

for

AUTHORITY TO ADOPT

E.F. (Name, as in birth certificate, or name by which child is ordinarily known, and address.)

Notice is hereby given that a hearing in this Petition will take place in the Court at on the day of 19 at o'clock when, if so advised, you may appear and be heard, personally or by solicitor or counsel.

FORM D

I hereby certify on soul and conscience that I have examined on (state whether he suffers or has suffered from any serious mental or physical illness or from any serious congenital disease). I have formed the opinion that he is physically, mentally and emotionally suitable to adopt an infant.

Signature

Qualifications Date

Address

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt but is intended to indicate its general purport.)

This Act of Sederunt makes provision for procedure in the Sheriff Court and Juvenile Court in petitions for Adoption Orders under the Adoption Act, 1958.