1959 No. 762 (S. 32)

Act of Sederunt (Rules of Court Amendment No. 3) 1959

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

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 11 of the Adoption Act, 1958(a) and of all other powers competent to them in that behalf do hereby enact and declare as follows:—

SECTION 4

ADOPTION OF CHILDREN

(ADOPTION ACT, 1958)

1. The Rules of the Court of Session(b), shall be amended by deleting Section 4 of Chapter IV comprising Rules 237 to 243 inclusive and Forms 26 and 27 of the Appendix and substituting therefor the following Rules and Forms:—

237. 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*) The petition shall be presented to the Inner House and shall be intimated in the minute book as may be directed (provided that the names only of the parties shall be entered therein). The petition shall not be intimated on the walls.

(*b*) 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 consentor whose signature shall be proved or attested in accordance with the provisions of Section 6 of the said 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.

(*c*) 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:—

(i) 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;

(ii) 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.

(*d*) 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;

(a) 7 & 8 Eliz. 2. c. 5. (b) S.I. 1948/1691 (1948 I, p. 3778).

(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 any of the 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.

(*e*) In every such Petition the petitioner shall state:

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

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

(iii) 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;

(iv) 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

(v) 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.

(*f*) 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.

238. *Identity of Petitioner not disclosed*:

If any person proposing to present a Petition 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 Court 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.

238A. 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.

239. *Curator ad litem: duties: report.* (*a*) 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 possible 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 safe-guarding 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 :—

(i) 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;

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

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

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

(v) 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;

(vi) 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;

(vii) 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;

(viii) 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;

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

(x) 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 any particular terms or conditions or to require the petitioner to make any particular provision for the infant and (if so) what provision;

(xi) Whether in his opinion there is any person other than those mentioned in Rule 239 upon whom service of notice in form 27A should be made;

(xii) 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.

(*b*) The person to be appointed curator *ad litem* may be either

(i) 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

(ii) 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 a right and power of a parent of the infant or has taken part in the arrangements for the adoption of the infant.

239. *Service of Notice of Hearing.* 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 27A 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 Section 3 of the Children Act, 1948(b) or section 79 of the Children and Young Persons (Scotland) Act, 1937(c), or paragraph 12 (1) of the Second Schedule to that Act, or sections 5 or 10 of the Matrimonial Proceedings (Children) Act, 1958(d);

(*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 the hearing of the petition.

239A. *Additional Evidence.* 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.

239B. *Personal attendance of petitioner and infant.* 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 27A has been served shall attend and shall be interviewed privately by the Court.

239C. *Where former application refused.* 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.

239D. *One of joint petitioners' adoptive parent.* 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.

(a) 23 & 24 Geo. 5. c. 12. (b) 11 & 12 Geo. 6. c. 43. (c) 1 Edw. 8 & 1 Geo. 6. c. 37. (d) 6 & 7 Eliz. 2. c. 40.

240. *Proceedings in camera and confidential.* All proceedings before the Court in relation to an Adoption Order, 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 the 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.

241. *Remit.* The Division before which the petition is pending may, at any stage of the proceedings, remit the petition and whole proceedings to one of its own number, who shall, after having heard and (if he thinks it expedient) interviewed the parties and the child, and taken all the proceedings he thinks necessary for the disposal of the case, report to the Division orally or in writing, and give his own opinion thereon.

242. *Vacation or Recess.* An order for service or an order appointing a curator *ad litem* may be pronounced in vacation or recess by the Vacation Judge.

243. *Registration; minute book; extract; expenses.*

(*a*) The communication to the Registrar General for Scotland of any Adoption Order, amendment to an Adoption Order or revocation of an 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 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.

(*b*) The record of an Adoption Order in the minute book shall contain only the name or names of the petitioner or petitioners, the name and surname (as adopted) of the child to whom the Adoption Order relates, and the date of the Adoption Order.

(*c*) No extract of an Adoption Order shall be issued except by authority of the Inner House obtained by petition setting forth the reasons for which the extract is required.

(*d*) Immediately upon the communication referred to in paragraph (*a*) of this rule being made, or, (in the event of an extract being issued in terms of paragraph (*c*) of this rule), immediately upon the issue of such extract, the clerk or the Extractor (as the case may be) shall send to the Keeper of the Registers and Records of Scotland the Petition and whole process in a sealed envelope marked "confidential", bearing the name or names only of the petitioner or petitioners, the name and surname (as adopted) of the infant to whom the Adoption Order relates, and the date of the Order; and the said envelope shall not be opened by nor made accessible to any person within 40 years next after the date of the Adoption Order, except to an adopted child who has attained the age of 17 years, and to whom such Order refers, or by authority of the Inner House obtained on petition and setting forth the reasons for which access to the process is required.

(*e*) 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.

(*f*) 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.

(*g*) The provisions regarding intimation and confidentiality contained in paragraph (*a*) of Rule 237 and in Rule 240 shall *mutatis mutandis* apply to the proceedings on petitions presented under paragraphs (*c*), (*d*) and (*e*) of this rule.

2. This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 3) 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.

FORM 26

Form of petition for adoption order as filled in on official printed form

Unto the Right Honourable the Lords of Council and Session

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. This petition is presented under the provisions of the Adoption Act, 1958, and Chapter IV of the Rules of Court, Rules 237 to 243.

May it therefore please your Lordships to dispense with intimation other than in the Minute Book and to order notice of this petition to be served by registered letter post or otherwise on such person or persons as your Lordships (or the Court) may think proper, and to appoint a curator *ad litem* to ..... the infant sought to be adopted in terms of the said Act and relative Rules of Court and direct him to report and thereafter, on resuming consideration hereof, together with the report by the said curator *ad litem* 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 your Lordships 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 name ..... as the Christian and ..... as the surname of the said E.F. in column 2 of the said Schedule; and, further, upon proof to the satisfaction of your Lordships in the course of the proceedings to follow hereon, to find 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 of ..... in the County of ..... relates, and to direct the said Registrar-General to cause such birth entry to be marked with the word "adopted" and (*inserted only where the infant was born in Scotland*) 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 your Lordships may think fit.

FORM 27

Form of Consent relative to Petition for Adoption Order

In PETITION

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). I do not desire any further intimation of the petition proceedings nor to be heard in relation thereto. 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 infant is proposed 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, giving names, designations and addresses*).

FORM 27A

FORM OF NOTICE OF HEARING

In PETITION

A.B. for adoption order adopting E.F.

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

FORM 27B

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

Address

Date

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of Court to make provision for proceedings under the Adoption Act 1958.