
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 283

Act of Sederunt (Rules of the Court of Session Amendment No.7) (Adoption and Children (Scotland) Act 2007) 2009

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.7) (Adoption and Children (Scotland) Act 2007) 2009 and comes into force on 28th September 2009.

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

Amendment of the Rules of the Court of Session

2.—(1) Subject to paragraph 3, the Rules of the Court of Session 1994⁽¹⁾ are amended in accordance with the following subparagraphs.

(2) For Chapter 67 (Applications under the Adoption (Scotland) Act 1978) substitute—

“CHAPTER 67

APPLICATIONS UNDER THE ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

PART 1

GENERAL

Application and interpretation

67.1.—(1) In this Chapter –

“the 1995 Act” means the Children (Scotland) Act 1995⁽²⁾;

“the 2002 Act” means the Adoption and Children Act 2002⁽³⁾;

“the 2007 Act” means the Adoption and Children (Scotland) Act 2007⁽⁴⁾;

“the 2009 Regulations” means the Adoptions with a Foreign Element (Scotland) Regulations 2009⁽⁵⁾;

“adoption agency” means—

(a) a local authority;

(b) a registered adoption service within the meaning of section 2(3) of the 2007 Act;

(1) [S.I.1994/1443](#), last amended by [S.S.I. 2009/135](#).

(2) [1995 c.36](#).

(3) [2002 c.38](#).

(4) [2007 asp 4](#).

(5) [S.S.I. 2009/182](#).

- (c) an adoption agency within the meaning of section 2(1) of the 2002 Act (adoption agencies in England and Wales); or
 - (d) an adoption agency within the meaning of article 3 of the Adoption (Northern Ireland) Order 1987⁽⁶⁾;
- “Her Majesty’s Forces” means the regular forces as defined in section 374 of the Armed Forces Act 2006⁽⁷⁾;
- “Principal Reporter” has the same meaning as in section 93(1) of the 1995 Act;
- “Registrar General” means the Registrar General of Births, Deaths and Marriages for Scotland.

Disapplication of certain rules to this Chapter

67.2. Unless otherwise provided in this Chapter, the following rules shall not apply to a petition or note to which this Chapter applies:—

- rule 14.5 (first order in petitions);
- rule 14.6 (period of notice for lodging answers);
- rule 14.7 (intimation and service of petitions);
- rule 14.8 (procedure where answers lodged);
- rule 14.9 (unopposed petitions).

Confidentiality of documents in process

67.3.—(1) Unless the court otherwise directs, in any cause to which this Chapter applies all documents lodged in process, including the reports by the curator *ad litem* and reporting officer—

- (a) are to be available only to the court, the curator *ad litem*, the reporting officer and the parties; and
 - (b) shall be treated as confidential by any persons involved in, or a party to, the proceedings and by the clerk of court.
- (2) The reporting officer and the curator *ad litem*—
- (a) must treat all information obtained in the exercise of their duties as confidential; and
 - (b) must not disclose any such information to any person unless disclosure of such information is necessary for the purpose of their duties.

Selection of reporting officer or curator *ad litem*

67.4. Where the court appoints a reporting officer or a curator *ad litem* under this Chapter 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.

Orders for evidence

67.5.—(1) In a cause to which this Chapter applies, the court may, before determining the cause, order—

- (a) production of further documents (including affidavits);
- (b) parole evidence.

⁽⁶⁾ S.I. 1987/203.

⁽⁷⁾ 2006 c.52.

(2) A party may apply by motion for the evidence of a person to be received in evidence by affidavit; and the court may make such order as it thinks fit.

Intimation to Principal Reporter

67.6. Where, under section 54(1) of the 1995 Act (question arising as to whether compulsory measures of supervision are necessary) a matter is referred to the Principal Reporter—

- (a) the interlocutor making the reference shall specify which of the conditions referred to in that subsection it appears to the court has been satisfied; and
- (b) the clerk of court shall intimate that interlocutor forthwith to the Principal Reporter.

Expenses

67.7. In a cause to which this Chapter applies, the court 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 it thinks fit.

PART 2

ADOPTION ORDERS

Application for adoption order

67.8.—(1) An application for an adoption order under section 29 (adoption by certain couples) or 30 (adoption by one person) of the 2007 Act is to be made by petition in Form 67.8-A.

(2) An application for an order vesting parental responsibilities and parental rights relating to a child under section 59(1) of the 2007 Act (preliminary order where child to be adopted abroad) is to be made by petition in Form 67.8-B.

(3) The following documents must be lodged in process along with a petition under paragraph (1) or (2):—

- (a) an extract of the entry in the Register of Births relating to the child who is the subject of the application;
- (b) in the case of an application under section 29 of the 2007 Act by a relevant couple who are married to each other, an extract or a certified copy of the entry in the Register of Marriages relating to their marriage;
- (c) in the case of an application under section 29 of the 2007 Act by a relevant couple who are civil partners of each other, an extract or a certified copy of the entry in the Register of Civil Partners relating to their civil partnership;
- (d) any report by the local authority required by section 19(2) (investigation by local authority on receipt of notice of intention to apply for adoption order) of the 2007 Act, if available;
- (e) any report by an adoption agency required by section 17 (report on the suitability of the applicants and other matters) of the 2007 Act, if available;
- (f) where appropriate, an extract of the order freeing the child for adoption;
- (g) where appropriate, an extract of the permanence order made in respect of the child under section 80 of the 2007 Act;
- (h) where appropriate, the consent under section 19(1) (placing children with parental consent: England and Wales) of the 2002 Act of each parent or guardian to the child being placed for adoption, in the form prescribed under section 52(7) of that Act, if available;

- (i) where appropriate, the consent under section 20(1) (advance consent to adoption: England and Wales) of the 2002 Act of each parent or guardian to the making of a future adoption order, in the form prescribed under section 52(7) of that Act, if available;
 - (j) any notice given under section 20(4) (notice that information about application for adoption order not required: England and Wales) of the 2002 Act by a parent or guardian of the child to an adoption agency, if available;
 - (k) a certified copy of any placement order made under section 21(1) (placement orders: England and Wales) of the 2002 Act, if available; and
 - (l) any other document founded upon by the petitioner in support of the terms of the petition.
- (4) A report by a local authority under section 19(2) or an adoption agency under section 17 of the 2007 Act must be in numbered paragraphs and include the following matters:—
- (a) information about how the needs of the child came to the notice of the authority or agency;
 - (b) the family circumstances of the child;
 - (c) where the child was placed for adoption by an adoption agency, a description of the physical and mental health of the child, (including any special needs) and his emotional, behavioural and educational development;
 - (d) an account of the discussion with the parents or guardians of the child and, if appropriate, with the child about their wishes and the alternatives to adoption;
 - (e) the position of other relatives or persons likely to be involved;
 - (f) an account of any search for a parent or guardian who cannot be found;
 - (g) information about the mutual suitability of the petitioner and the child for the relationship created by adoption and the ability of the petitioner to bring up the child including an assessment of the personality of the petitioner and, where appropriate, that of the child;
 - (h) particulars of all members of the household of the petitioner and their relationship to the petitioner;
 - (i) a description of the accommodation in the home of the petitioner;
 - (j) in a petition by one only one member of a relevant couple within the meaning of section 29(3) of the 2007 Act, why the other member of that couple has not joined in the application;
 - (k) 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;
 - (l) whether the means and standing of the petitioner are such as to enable him to maintain and bring up the child suitably;
 - (m) whether the child has any right or interest in property and, if so, what right or interest;
 - (n) whether any payment or other reward in consideration of the adoption, other than an approved adoption allowance, has been received or agreed upon;
 - (o) what insurance has been offered on the life of the child;
 - (p) the religious persuasion, racial origin and cultural and linguistic background of the child and of the petitioner;
 - (q) considerations arising from the difference in age between the petitioner and the child if this is more or less than the normal difference in age between parents and children;
 - (r) whether adoption is likely to safeguard and promote the welfare of the child throughout his life;

- (s) whether the child is subject to a supervision requirement and, if so, what steps have been taken to comply with section 73(4)(c), (5) and (13) (duration and review of supervision requirement) of the 1995 Act;
 - (t) where paragraph (5) applies, the information mentioned in paragraph (6);
 - (u) whether there has been a contravention of section 75 of the 2007 Act in relation to the child;
 - (v) whether there has been a failure to comply with section 76(2) of the 2007 Act in relation to the child;
 - (w) any other matters relevant to the operation of section 14 of the 2007 Act in relation to the application;
 - (x) where appropriate, information about whether—
 - (i) in an application under section 29(1) of the 2007 Act, the petitioners are a relevant couple within the meaning of section 29(3)(c) or (d) of the 2007 Act;
 - (ii) in an application under section 30(1) of the 2007 Act, the petitioner is a member of a relevant couple within the meaning of section 29(3)(c) or (d) of the 2007 Act;
 - (y) in the case of a petition under paragraph (2) to which regulation 50 of the 2009 Regulations applies, the details referred to in paragraph (7); and
 - (z) any other information which may be of assistance to the court.
- (5) This paragraph applies where—
- (a) the child was placed for adoption under section 19(1) (placement with parental consent: England and Wales) of the 2002 Act;
 - (b) the child was placed for adoption under a placement order made under section 21(1) (placement orders: England and Wales) of the 2002 Act; or
 - (c) each parent or guardian has consented under section 20(1) (advance consent to adoption: England and Wales) of the 2002 Act to the making of a future adoption order.
- (6) The information referred to in paragraph (4)(t) is any available information about whether—
- (a) any placement order has been revoked;
 - (b) any of the consents referred to in section 31(8) or (9) of the 2007 Act have at any time been withdrawn;
 - (c) a parent or guardian of the child wishes to seek leave to oppose the petition; and
 - (d) there has been any change of circumstances since the consent of the parent or guardian was given or, as the case may be, the order under section 21(1) (placement orders: England and Wales) of the 2002 Act was made.
- (7) The details mentioned in paragraph (4)(y) are—
- (a) details of any reviews carried out under regulation 10 of the Adoption Agencies (Scotland) Regulations 2009(8); and
 - (b) details of any visits carried out under regulation 25(1)(a) of those Regulations.
- (8) If a report mentioned in paragraph (3)(d) or (e) is unavailable to be lodged along with the petition, the court shall pronounce an interlocutor requiring the adoption agency or local authority concerned to prepare and lodge such a report in court within 2 weeks from the date of the interlocutor, or within such other period as the court in its discretion may allow.
- (9) If any of the documents required to be lodged in process under paragraph (3)(f), (g), (h), (i), (j) or (k) is unavailable to be lodged by reason of its being in the possession of an adoption agency,

the court shall pronounce an interlocutor requiring the agency to lodge the document within 4 weeks from the date of the interlocutor, or within such other period as the court in its discretion may allow.

Additional requirements where child to be adopted abroad

67.9.—(1) The additional requirements in this Rule apply to a petitioner in an application for an order under section 59 of the 2007 Act.

(2) In the case of an application to which regulation 7 of the 2009 Regulations applies, the petitioner must lodge along with the petition—

- (a) the confirmation required under regulation 7(3)(a)(i) of the 2009 Regulations;
- (b) copies of the confirmations to the adoption agency referred to in regulations 7(3)(b)(i), (iii) and (iv) of the 2009 Regulations;
- (c) a copy of the report mentioned in regulation 7(3)(b)(ii) of the 2009 Regulations;
- (d) a copy of the confirmation to the adoption agency referred to in regulation 7(3)(c) or (d), as the case may be, of the 2009 Regulations; and
- (e) the documents mentioned in regulation 8 of those Regulations.

(3) In the case of an application to which regulation 50 of the 2009 Regulations applies, the petitioner must lodge along with the petition the reports, confirmations and other documents or, where appropriate, copies thereof, referred to in regulation 50(3)(a) to (d), (f) and (g) of those Regulations.

(4) Where appropriate the petitioner must also lodge in process a translation into English of any document referred to in paragraph (2) or (3) together with the certificate referred to in paragraph (5).

(5) The certificate mentioned in paragraph (4) is a certificate by the translator—

- (a) certifying that the translation is in conformity with the original document; and
- (b) giving the full name, address, and qualifications of the translator.

(6) The petitioner must adduce evidence of the law of adoption in the country or territory in which it is intended to adopt the child.

(7) The evidence of the law of adoption required under paragraph (6) may be in the form of an affidavit by a person who is conversant with that law and who—

- (a) practices or has practised law in that country or territory; or
- (b) is a duly accredited representative of the government of that country or territory in the United Kingdom.

Protection of identity of petitioner

67.10.—(1) When any person who proposes to apply under rule 67.8 wishes to prevent his identity being disclosed to any person whose consent to the order is required, he may, before presenting the petition, apply by letter to the Deputy Principal Clerk for a serial number to be assigned to him for all purposes connected with the petition.

(2) On receipt of an application under paragraph (1), the Deputy Principal Clerk shall—

- (a) assign a serial number to the applicant; and
- (b) enter a note of the number opposite the name of the applicant in a register of serial numbers.

(3) The contents of the register of serial numbers and the names of the persons to whom each number relates shall be treated as confidential by the Deputy Principal Clerk and disclosed only to the court.

(4) Where a serial number has been assigned to an applicant under paragraph (2) any form of consent to an adoption order or order under section 59 of the 2007 Act—

- (a) must refer to the applicant by means of the serial number assigned to him;
- (b) must not contain the name and designation of the applicant; and
- (c) must specify the year in which the serial number was assigned.

Appointment of curator *ad litem* and reporting officer

67.11.—(1) The court shall, on the presentation of a petition under rule 67.8 appoint a curator *ad litem* and reporting officer.

(2) But, subject to paragraph (3), the court shall not appoint a reporting officer where one or more of the following applies—

- (a) an order freeing the child for adoption has been made;
- (b) a permanence order with provision granting authority for the child to be adopted has been granted under section 80 of the 2007 Act;
- (c) the petition is founded on one or other or both of section 31(8) (advance consent to adopt) or (9) (placement of child: England and Wales) of the 2007 Act.

(3) Notwithstanding paragraph (2), a reporting officer shall be appointed—

- (a) in any case in which the petition is founded on the condition in section 31(2) of the 2007 Act, whether or not it is also founded on section 31(8) or (9) of that Act; or
- (b) where the child who is the subject of the application is aged 12 or over, for the purpose of witnessing that child's consent, where that consent is to be executed in Scotland.

(4) The same person may be appointed as curator *ad litem* and reporting officer in the same petition, if the court considers that doing so is appropriate in the circumstances.

(5) A person may, before presenting the petition, apply by letter to the Deputy Principal Clerk for the appointment of a reporting officer.

(6) An application under paragraph (5) shall—

- (a) set out the reasons for which the appointment is sought;
- (b) not require to be intimated to any person;
- (c) be accompanied by an interlocutor sheet; and
- (d) be placed by the Deputy Principal Clerk before the Lord Ordinary for his decision.

(6) The Deputy Principal Clerk shall intimate the appointment of a curator *ad litem* and reporting officer under paragraph (1) or (5) to the petitioner and to the person or persons appointed.

(7) The decision of the Lord Ordinary on an application under paragraph (5) shall be final and not subject to review.

(8) The letter and the interlocutor sheet in an application under paragraph (5) shall be kept in the Petition Department and subsequently placed in the process of the petition.

Duties of reporting officer and curator *ad litem*

67.12.—(1) The other duties of a reporting officer appointed under this Part, other than under rule 67.11(3)(b), which are prescribed for the purposes of section 108(1)(b) of the 2007 Act are—

- (a) to ascertain the whereabouts of all persons whose consent to the making of an adoption order or order under section 59 of the 2007 Act in respect of the child is required;
- (b) to ascertain whether there is any person other than those mentioned in the petition upon whom notice of the petition should be served;

- (c) in the case of each person who is not a petitioner and whose consent to the making of an adoption order or order under section 59 of the 2007 Act is required or may be dispensed with—
 - (i) to ascertain whether that person understands the effect of the adoption order or order under section 59 of the 2007 Act;
 - (ii) to ascertain whether alternatives to adoption have been discussed with that person;
 - (iii) to confirm that that person understands that he may withdraw his consent at any time before an order is made;
 - (iv) to ascertain whether that person suffers or appears to suffer from a mental disorder within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁹⁾;
 - (d) to report in writing on the matters mentioned in subparagraphs (a) to (c) to the court within 4 weeks from the date of the interlocutor appointing the reporting officer, or within such other period as the court may allow.
- (2) References in paragraph (1) to “consent” are to consent within the meaning of section 31(2)(a) or 32(1) of the 2007 Act, as the case may be.
- (3) A curator *ad litem* appointed under this Part must—
- (a) have regard to safeguarding the interests of the child as his paramount duty;
 - (b) inquire, so far as he considers necessary, into the facts and circumstances averred in the petition and in the report mentioned in rule 67.8(4);
 - (c) obtain particulars of accommodation in the home of the petitioner and the condition of the home;
 - (d) obtain particulars of all members of the household of the petitioner and their relationship to the petitioner;
 - (e) in the case of a petition by only one member of a relevant couple within the meaning of section 29(3) of the 2007 Act, ascertain the reason of the other member of the couple for not joining the application;
 - (f) ascertain whether the means and status of the petitioner are sufficient to enable him to maintain and bring up the child suitably;
 - (g) ascertain what rights or interests in property the child has;
 - (h) establish that the petitioner understands the nature and effect of an adoption order and in particular that the making of the order will render him responsible for the maintenance and upbringing of the child;
 - (i) where appropriate, ascertain when the mother of the child ceased to have the care and possession of the child and to whom care and possession was then transferred;
 - (j) ascertain whether any payment or other reward in consideration of the adoption has been given or agreed upon;
 - (k) ascertain whether the child is subject to a supervision requirement under section 70 of the 1995 Act;
 - (l) ascertain whether the life of the child has been insured and if so for what sum;
 - (m) ascertain whether it may be in the interests of the welfare of the child that the court should make the adoption order or order under section 59 of the 2007 Act subject to particular terms and conditions or require the petitioner to make special provision for the child and, if so, what provision;

(9) 2003 asp 13.

- (n) where the petitioner is not ordinarily resident in the United Kingdom, establish whether a report has been obtained on the home and living conditions of the petitioner from a suitable agency in the country in which he is ordinarily resident;
- (o) establish the reasons of the petitioner for wishing to adopt the child;
- (p) establish the religious persuasion, racial origin and cultural and linguistic background of the child and of the petitioner;
- (q) assess the considerations which might arise where the difference in age as between the petitioner and the child is greater or less than the normal difference in age between parents and their children;
- (r) consider such other matters, including the personality of the petitioner and, where appropriate, that of the child, which might affect the suitability of the petitioner and the child for the relationship created by adoption and affect the ability of the petitioner to bring up the child;
- (s) ascertain whether it would be better for the child that the court should make the order than it should not make the order;
- (t) ascertain whether the adoption is likely to safeguard and promote the welfare of the child throughout his life; and
- (u) ascertain from the child whether he wishes to express a view and, where a child indicates his wish to express a view, ascertain that view.

(4) Subject to paragraph (5) the curator *ad litem* must report in writing on the matters mentioned in paragraph (3) to the court within 4 weeks from the date of the interlocutor appointing the curator, or within such other period as the court in its discretion may allow.

(5) Subject to any order made by the court under rule 67.16(1)(a), the views of the child ascertained in terms of paragraph (3)(u) may, if the curator *ad litem* considers appropriate, be conveyed to the court orally.

Consents

67.13.—(1) The consent of a parent or guardian to an order required by section 31(2)(a) of the 2007 Act is to be in Form 67.13-A.

(2) The consent of the child required by section 32(1) of the 2007 Act is to be in Form 67.13-B.

(3) A form of consent mentioned in paragraph (1) or (2) must be witnessed—

- (a) where it is executed in Scotland, by the reporting officer appointed under rule 67.11;
- (b) where it is executed outwith Scotland but within the United Kingdom, by a justice of the peace or a commissioner for oaths; or
- (c) where it is executed outwith the United Kingdom—
 - (i) if the person who executes the form is serving in Her Majesty's forces, by an officer holding a commission in any of those forces; or
 - (ii) in any other case, by a British diplomatic or consular official or any person authorised to administer an oath or affirmation under the law of the place where the consent is executed.

Intimation and hearing of adoption petition

67.14.—(1) On the lodging of a petition under rule 67.8—

- (a) the Deputy Principal Clerk shall cause the petition to be put on the By Order Roll before the Lord Ordinary not less than 6 and not more than 8 weeks thereafter;

- (b) in the case of a petition under rule 67.8(1), the petitioner or, where a serial number has been assigned under rule 67.10, the Deputy Principal Clerk shall intimate a copy of the petition along with a notice of intimation in Form 67.14-A to—
 - (i) every person who can be found and whose consent to the making of the order is required to be given or dispensed with under the 2007 Act;
 - (ii) if no such person can be found, a relative of the child within the meaning of section 119(1) of the 2007 Act, unless the address of such a relative is not known to the petitioner and cannot reasonably be ascertained;
 - (iii) every person who has consented to the making of the order under section 20 of the 2002 Act (and has not withdrawn the consent) unless the person has given a notice under subsection (4)(a) of that section which has effect; and
 - (iv) every person who, if leave were given under section 31(12) of the 2007 Act, would be entitled to oppose the making of the order;
 - (c) in the case of a petition under rule 67.8(2), the petitioner or, where a serial number has been assigned under rule 67.10, the Deputy Principal Clerk shall intimate a copy of the petition along with a notice of intimation in Form 67.14-A to every person who can be found and whose consent to the making of the order would be required if the application were for an adoption order (other than a Convention adoption order);
 - (d) in the case of a petition under rule 67.8(1) the petitioner or, where a serial number has been assigned under rule 67.10, the Deputy Principal Clerk shall intimate a copy of the petition along with a notice of intimation in Form 67.14-B to the father of the child if he does not have, and has never had, parental responsibilities or parental rights in relation to the child and if he can be found;
 - (e) the Deputy Principal Clerk shall intimate the date of the hearing on the By Order Roll to the curator *ad litem* and to any reporting officer appointed by the court under rule 67.11.
- (2) A notice of intimation under paragraph (1)(b) or (c) must state—
- (a) that an application for adoption has been made;
 - (b) the date on which, and place where, the By Order hearing will be held;
 - (c) the fact that the person is entitled to be heard on the application;
 - (d) the fact that, unless the person wishes, or the court requires, the person need not attend the hearing.
- (3) A notice of intimation under paragraph (1)(d) must state the matters mentioned in paragraph (2)(a) and (b).

Order for intimation

67.15. In any petition for an adoption order or order under section 59 of the 2007 Act, the court may at any time order intimation to be made in such terms as it considers appropriate on any person who in its opinion ought to be given notice of the application.

Procedure where child wishes to express a view

67.16.—(1) Where a child has indicated his wish to express his views the court, without prejudice to rule 67.12(3)(u)—

- (a) may order such procedural steps to be taken as he considers appropriate to ascertain the views of that child; and
- (b) must not make an order under this Part unless an opportunity has been given for the views of that child to be obtained or heard.

(2) Where the views of the child, whether under this rule or under rule 67.12, have been recorded in writing, the court may direct that such a written record is to—

- (a) be sealed in an envelope marked “Views of the child – confidential”;
- (b) be available to the court only;
- (c) not be opened by any other person; and
- (d) not form a borrowable part of process.

Hearing on By Order Roll

67.17.—(1) At the hearing on the By Order Roll appointed under rule 67.14 the court shall—

- (a) if no party indicates his intention to oppose the petition, dispose of the cause or make such other order as it considers appropriate;
- (b) in any other case—
 - (i) ascertain from the parties the anticipated length of any proof that may be required;
 - (ii) fix a diet of proof not less than 12 and not more than 16 weeks after the date of the hearing on the By Order Roll unless, on cause shown, a longer period is appropriate;
 - (iii) give such directions as to the preparation for the proof as he considers appropriate;
 - (iv) order answers and any other documents to be lodged within 21 days of the date of the hearing on the By Order Roll or such other period as it considers appropriate;

(2) Paragraph (1)(b)(ii) shall not require a proof to be held when the court is in vacation unless the court otherwise directs.

(3) At the hearing on the By Order Roll the court may—

- (a) if it is not satisfied that the facts stated in the petition are supported by the documents lodged with it or by the reports of the curator *ad litem* and reporting officer, order the production of further documents;
- (b) where it considers it appropriate to do so, fix a pre-proof hearing not less than 2 and not more than 6 weeks before the diet of proof; and
- (c) make such other order as it considers appropriate for the expeditious progress of the case.

Pre-proof hearing

67.18.—(1) If the court appoints a pre-proof hearing under rule 67.17(3), the parties must provide the court with sufficient information to enable it to conduct the hearing as provided for in this rule.

(2) At the pre-proof hearing the court must ascertain, so far as is reasonably practicable, whether the cause is likely to proceed to proof on the date fixed for that purpose.

(3) For the purposes of paragraph (2), the court must consider—

- (a) the state of preparation of the parties;
- (b) the extent to which the parties have complied with any orders made by the court under rule 67.17.

(4) At the pre-proof hearing the court may—

- (a) discharge the proof and fix a new date for such proof;
- (b) adjourn the pre-proof hearing;
- (c) order the lodging of joint minutes of agreement, affidavits, expert reports and any other documents within such period as it considers appropriate;
- (d) make such other order as it thinks fit to secure the expeditious progress of the cause.

Communication to the Registrar General

67.19. The communication to the Registrar General of an adoption order required to be made by the clerk of court under paragraph 4(1) of Schedule 1 to the 2007 Act is to be made by sending a certified copy of the order to the Registrar General in a sealed envelope marked “Confidential”.

Adoption orders

67.20.—(1) An adoption order granted by the court must specify the name and address of the adoption agency, if any, which has taken part in the arrangements for placing the child in the care of the petitioner.

(2) No extract of an adoption order is to be issued except by order of the court on an application to it—

- (a) where there is a petition for the adoption order or order under section 59 of the 2007 Act, as the case may be, depending before the court, by motion; or
- (b) where there is no such petition depending before the court, by petition.

Final procedure

67.21.—(1) Immediately after the communication is made under rule 67.19 or immediately upon a extract of the order being issued under rule 67.20 the clerk of court or the Extractor, as the case may be, shall—

- (a) place the whole process in an envelope bearing only—
 - (i) the name of the petitioner;
 - (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) The envelope referred to in paragraph (1) is not to be unsealed by the clerk of court or any other person having control of the records of the court, and the process is not to be made accessible to any person for one hundred years after the date of the granting of the order, except—

- (a) to an adopted child who has attained the age of 16 and to whose adoption the process refers;
- (b) to the Deputy Principal Clerk, on an application being made to him by an adoption agency, and with the consent of the adopted person for the purpose only of ascertaining the name of the agency, if any, responsible for the placement of that person and informing the applicant of that name;
- (c) to a person on an application made by petition presented by him to the court setting forth the reason for which access to the process is required;
- (d) to a court, public authority or administrative board (whether in the United Kingdom or not) having power to authorise an adoption, on petition to it by the court requesting that information be made available from the process for the purpose of discharging its duties in considering an application for adoption and specifying the precise reason for which access to the process is required;
- (e) to a person who is authorised by the Scottish Ministers to obtain information for the purposes of such research as is intended to improve the working of adoption law and practice.

(3) The clerk of court must—

- (a) where the court also makes an order under section 36(2) (revocation of supervision requirement) of the 2007 Act, intimate that order to the Principal Reporter; and

- (b) where appropriate, intimate the making of an adoption order or order under section 59 of the 2007 Act to the court by which—
 - (i) an order freeing the child for adoption was made; or
 - (ii) a permanence order with provision granting authority for the child to be adopted was made.

Amendment of adoption order

67.22.—(1) An application under paragraph 7 of Schedule 1 to the 2007 Act (amendment of orders and rectification of registers) shall be made by petition.

(2) The court may order the petitioner to intimate the petition to such persons as it considers appropriate.

(3) Subject to paragraph (4), rule 67.2 (disapplication of certain rules to this Chapter) shall not apply to an application mentioned in paragraph (1).

(4) An application mentioned in paragraph (1) shall not be intimated on the walls of court or advertised.

Applications under sections 20 to 24 of the 2007 Act

67.23.—(1) An application under section 20(2) (leave to remove child placed for adoption with consent), 21(3) (leave to remove child where notice of intention to adopt given), 22(3) (leave to remove child where application for adoption order pending), 23(3) (leave to remove child looked after by local authority), 24(1) (return of child removed in breach of certain conditions) or 24(2) (order directing person not to remove child) of the 2007 Act shall be made—

- (a) if there is pending in respect of the child an application for an adoption order, by note in the process of that application; or
- (b) in any other case, by petition.

(2) Subject to paragraph (3), rule 67.2 (disapplication of certain rules to this Chapter) shall not apply to a petition under paragraph (1)(b).

(3) A petition under paragraph (1)(b) shall not be intimated on the walls of court or advertised.

PART 3

CONVENTION ADOPTION ORDERS

Interpretation

67.24. In this Part, unless the context otherwise requires—

“Central Authority” means the Scottish Executive;

“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;

“Convention adoption order” means an adoption which, by virtue of regulation 53(2) of the 2009 Regulations, is made as a Convention adoption order;

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

Application for a Convention adoption order

67.25.—(1) An application for a Convention adoption order is to be made by petition in Form 67.25.

(2) The following documents must be lodged in process along with a petition under paragraph (1):

- (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) in the case of a joint petition by a couple who are civil partners of each other, a certificate, register extract or other proof of their civil partnership, issued or authenticated by the applicable Convention country authority;
 - (d) any report by the local authority required by section 19(2) (investigation by local authority on receipt of notice of intention to apply for adoption order) of the 2007 Act, if available;
 - (e) any report by an adoption agency, being a Scottish accredited body, required by section 17 (report on the suitability of the applicants and other matters) of the 2007 Act, if available;
 - (f) where appropriate, an extract of the order freeing the child for adoption;
 - (g) where appropriate, an extract of the permanence order made in respect of the child under section 80 of the 2007 Act;
 - (h) in the case of a petition to which the provisions of Chapter 1 of Part 3 of the 2009 Regulations apply—
 - (i) copies of the Article 16 Information and the Agreement under Article 17(c) of the Convention referred to in regulation 34(c) of those Regulations; and
 - (ii) the confirmation referred to in regulation 34(d) of those Regulations;
 - (i) in the case of a petition to which the provisions of Chapter 2 of Part 3 of the 2009 Regulations apply—
 - (i) copies of the Article 16 Report and the Agreement under Article 17(c) of the Convention referred to in regulation 51(c) of those Regulations; and
 - (ii) the confirmation referred to in regulation 51(d) of those Regulations;
 - (j) any other document founded on by the petitioner in support of the petition;
 - (k) where appropriate, a translation into English of any document referred to in subparagraphs (a) to (j), together with the certificate referred to in paragraph (3).
- (3) The certificate mentioned in paragraph (2)(k) is a certificate by the translator—
- (a) certifying that the translation is in conformity with the original document; and
 - (b) giving the full name, address and qualifications of the translator.
- (4) A report by a local authority under section 19(2), or an adoption agency under section 17 of the 2007 Act must be in numbered paragraphs and 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 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 only one member of a relevant couple within the meaning of section 29(3) of the 2007 Act, why the other member of that couple has not joined in the application;
 - (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;
 - (i) whether the child has any right or interest in property and, if so, what right or interest;
 - (j) whether any payment or other reward in consideration of the proposed adoption, other than an approved adoption allowance has been received or agreed;
 - (k) what insurance has been offered on the life of the child;
 - (l) the religious persuasion, racial origin, and cultural and linguistic background of the child and of the petitioner;
 - (m) 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;
 - (n) whether adoption is likely to safeguard and promote the welfare of the child throughout his life;
 - (o) whether the child is subject to a supervision requirement under section 70 of the 1995 Act and, if so, what steps have been taken to comply with section 73(4)(c), (5) and (13) (duration and review of supervision requirement) of that Act;
 - (p) whether there has been a contravention of section 75 of the 2007 Act in relation to the child;
 - (q) whether there has been a failure to comply with section 76(2) of the 2007 Act in relation to the child;
 - (r) any other matters relevant to the operation of section 14 of the 2007 Act in relation to the application;
 - (s) where appropriate, information about whether—
 - (i) in an application under section 29(1) of the 2007 Act, the petitioners are a relevant couple within the meaning of section 29(3)(c) or (d) of the 2007 Act
 - (ii) in an application under section 30(1) of the 2007 Act, the petitioner is a member of a relevant couple within the meaning of section 29(3)(c) or (d) of the 2007 Act;
 - (t) in the case of a petition to which the provisions of Chapter 1 of Part 3 of the 2009 Regulations apply, the confirmation, the date and the details referred to respectively in regulation 33(a), (b) and (c) of those Regulations;
 - (u) any other information which may be of assistance to the court.
- (5) If no report mentioned in paragraph (2)(d) or (e) is available to be lodged with the petition, the court shall pronounce an interlocutor requiring the local authority or adoption agency to prepare and lodge such a report in court within 2 weeks from the date of the interlocutor, or within such other period as the court in its discretion may allow.

Application of Part 2 to this Part

67.26. Rules 67.11 to 67.23 (other than paragraph (3)(n) of rule 67.12) of Part 2 are to apply to an application under this Part, so far as they are not inconsistent with this Part, except that—

- (a) rule 67.11 (appointment of curator *ad litem* and reporting officer) is to be read as if—
 - (i) in paragraph (1), for “rule 67.8” there were substituted “rule 67.25”;
 - (ii) in paragraph (1) “and reporting officer” were omitted; and
 - (iii) for paragraphs (2) and (3) there were substituted—
 - “(2) Subject to paragraph (3), the court must not appoint a reporting officer.
 - (3) A reporting officer must be appointed where the child who is the subject of the application is aged 12 or over, for the purposing of witnessing that child’s consent where that consent is executed in Scotland.”;
- (b) rule 67.14 (intimation and hearing of adoption petition) is to be read as if—
 - (i) in paragraph (1), for “rule 67.8” there were substituted “rule 67.25”;
 - (ii) for paragraph (1)(b) there were substituted—
 - “(b) the petitioner must intimate a copy of the petition along with a notice of intimation in Form 67.14-A to—
 - (i) the curator *ad litem* and reporting officer;
 - (ii) any person or body who has care or possession of the child; and
 - (iii) any local authority or adoption agency that has prepared a report under section 17 or 19(2) of the 2007 Act.”;
 - (iii) paragraph 1(c) and (d) were omitted.
- (c) rule 67.19 (communication to the Registrar General) is to be read as if for it there were substituted—

“Communication to the Registrar General and the Central Authority

67.19.—(1) The making of a Convention adoption order is to be intimated in accordance with this rule to the Registrar General and the Central Authority by the clerk of court.

(2) A certified copy of the order making a Convention adoption order must be sent to the Registrar General and the Central Authority in a sealed envelope marked “Confidential”.

Annulment etc. of overseas adoptions

67.27.—(1) This rule applies to an application for—

- (a) an order under section 68 (annulment and recognition) of the 2007 Act; and
- (b) a decision under section 68(2)(b) of the 2007 Act.

(2) Where the adopted person is under the age of 18 years on the date of the making of an application to which this rule applies, the court shall appoint a curator *ad litem* with the duties mentioned in rule 67.12(3).

(3) On the court granting an application to which this rule applies, the Deputy Principal Clerk shall send a notice of the order to the Registrar General specifying—

- (a) the date of the adoption;
- (b) the name and address of the authority which granted the adoption;
- (c) the names of the adopter or adopters and of the adopted person as given in that petition;

- (d) the country in which the petition was granted;
- (e) the country of which the adopted person is a national; and
- (f) the country in which the adopted person was born.

PART 4

PERMANENCE ORDERS

Application for permanence order

67.28.—(1) An application for a permanence order under section 80 of the 2007 Act is to be made by petition in Form 67.28.

(2) The following documents must be lodged in process along with a petition under paragraph (1):

- (a) an extract of the entry in the Register of Births relating to the child who is the subject of the application;
- (b) a report by the petitioner in numbered paragraphs which deals with the following matters:
 - (i) how the needs of the child came to the notice of the petitioner;
 - (ii) any relevant family circumstances of the child;
 - (iii) a description of the physical and mental health of the child (including any special needs) and his emotional, behavioural and educational development;
 - (iv) an account of the discussion by the petitioner with the parents or guardians of the child and, if appropriate, with the child about their wishes and the alternatives to a permanence order;
 - (v) where appropriate, whether the father of the child has been given notice and provided with the prescribed information under section 105(2) of the 2007 Act;
 - (vi) the knowledge of the petitioner of the position of other relatives or persons likely to be involved;
 - (vii) an account of the search by the petitioner for any parent or guardian who cannot be found;
 - (viii) the arrangements of the petitioner to care for the child after the making of a permanence order (including the arrangements for contact between the child and any other person);
 - (ix) the child's religious persuasion, racial origin and cultural and linguistic background;
 - (x) the likely effect on the child of the making of a permanence order;
 - (xi) whether there is a person who has the right mentioned in section 2(1)(a) of the 1995 Act to have the child living with the person or otherwise to regulate the child's residence and, where there is such a person, evidence that the child's residence with the person is or is likely to be seriously detrimental to the welfare of the child;
 - (xii) whether the child is or has been married or a civil partner;
 - (xiii) in the case of a petition containing a request that the order include provision granting authority for the child to be adopted, the matters mentioned in paragraph (3);
 - (xiv) in the case of a petition in respect of a child who is aged 12 or over, whether the child consents to the making of the order or is incapable of doing so;

- (xv) whether the child is subject to a supervision requirement under section 70 of the 1995 Act;
 - (xvi) any other information which may be of assistance to the court having regard, in particular, to sections 83 (if appropriate) and 84 of the 2007 Act;
 - (c) any other document founded upon by the petitioner in support of the terms of the petition.
- (3) The matters referred to in paragraph (2)(xiii) are—
- (a) whether the child has been, or is likely to be, placed for adoption;
 - (b) whether each parent or guardian of the child understands what the effect of making an adoption order would be and consents to the making of such an order in relation to the child, or the grounds on which such consent should be dispensed with.
- (4) If the report mentioned in paragraph (2)(b) is unavailable to be lodged with the petition, the court shall pronounce an interlocutor requiring the petitioner to prepare and lodge such a report within 2 weeks of the date of the interlocutor, or within such other period as the court in its discretion may allow.

Appointment of curator *ad litem* and reporting officer

67.29.—(1) The court must, on the lodging of a petition under rule 67.28 appoint a curator *ad litem* and reporting officer.

(2) Subject to paragraph (3), the court must not appoint a reporting officer where the petition does not request that the order include provision granting authority for the child to be adopted.

(3) Notwithstanding paragraph (2), a reporting officer must be appointed where the child who is the subject of the application is aged 12 or over for the purpose of witnessing that child's consent where that consent is to be executed in Scotland.

(4) The same person may be appointed as curator *ad litem* and reporting officer in the same petition if the court considers that doing so is appropriate in the circumstances

(5) A person may, before presenting the petition, apply by letter to the Deputy Principal Clerk for the appointment of a reporting officer.

(6) An application under paragraph (4) shall—

- (a) set out the reasons for which the appointment is sought;
- (b) not require to be intimated to any person;
- (c) be accompanied by an interlocutor sheet; and
- (d) be placed by the Deputy Principal Clerk before the Lord Ordinary for his decision.

(7) The Deputy Principal Clerk shall intimate the appointment of a curator *ad litem* and reporting officer under paragraph (1) or (5) to the petitioner and to the person or persons appointed.

(8) The decision of the Lord Ordinary on an application under paragraph (5) shall be final and not subject to review.

(9) The letter and the interlocutor sheet in an application under paragraph (5) shall be kept in the Petition Department and subsequently placed in the process of the petition.

Intimation of application

67.30.—(1) On the lodging of a petition under rule 67.28—

- (a) the Deputy Principal Clerk must cause the petition to be put on the By Order Roll before the Lord Ordinary not less than 6 and not more than 8 weeks thereafter;

- (b) where the petition does not contain a request that the order include provision granting authority for the child to be adopted, the petitioner must intimate a copy of the petition along with a notice of intimation in Form 67.30-A to—
 - (i) any person who has parental responsibilities or parental rights in relation to the child; and
 - (ii) any person who claims to have an interest;
 - (c) where the petition contains such a request—
 - (i) the petitioner must intimate a copy of the petition along with a notice of intimation in Form 67.30-A to the persons mentioned in paragraph (2); and
 - (ii) the petitioner must intimate a copy of the petition along with a notice of intimation in Form 67.30-B to the father of the child if he does not have, and never has had, parental responsibilities and parental rights in relation to the child;
 - (d) the Deputy Principal Clerk must intimate the date of the hearing on the By Order Roll to the curator *ad litem* and to any reporting officer appointed under rule 67.29;
 - (e) the court may order the petitioner to intimate the application to such other person as it considers appropriate.
- (2) The persons referred to in paragraph (1)(c)(i) are—
- (a) every person who can be found and whose consent to the making of the order is required to be given or dispensed with under the 2007 Act;
 - (b) if no such person can be found, a relative of the child within the meaning of section 119(1) of the 2007 Act unless the address of such a relative is not known to the petitioner and cannot reasonably be ascertained.
- (3) A notice of intimation under paragraph (1)(c)(i) must include the following matters:—
- (a) that an application for a permanence order containing a request that the order include provision granting authority for the child to be adopted has been made;
 - (b) the date on which and place where the By Order hearing will be held;
 - (c) the fact that the person is entitled to be heard on the application;
 - (d) the fact that, unless the person wishes, or the court requires, the person need not attend the hearing.
- (4) A notice of intimation under paragraph (1)(c)(ii) must include the matters mentioned in paragraphs (3)(a) and (b).

Hearing on the By Order Roll

- 67.31.**—(1) At the By Order hearing appointed under rule 67.30 the court must—
- (a) if no party indicates his intention to oppose the petition, dispose of the cause or make such other order as it considers appropriate; or
 - (b) in any other case—
 - (i) ascertain from the parties the anticipated length of any proof that may be required;
 - (ii) fix a diet of proof not less than 12 and not more than 16 weeks after the date of the hearing on the By Order Roll unless, on cause shown, a longer period is appropriate;
 - (iii) give such directions as to the preparation for the proof as it considers appropriate;
 - (iv) order answers and any other documents to be lodged within 21 days of the date of the hearing on the By Order Roll or such other period as it considers appropriate.

(2) Paragraph (1)(b)(ii) shall not require a proof to be held when the court is in vacation unless the court otherwise directs.

(3) At the By Order hearing the court may—

- (a) if it is not satisfied that the facts stated in the petition are supported by the documents lodged with it or by the reports of the curator *ad litem* and reporting officer, order the production of further documents; and
- (b) where it considers it appropriate to do so, fix a pre-proof hearing not less than 2 and not more than 6 weeks before the diet of proof;
- (c) make such other order as it considers appropriate for the expeditious progress of the case.

Pre-proof hearing

67.32.—(1) If the court appoints a pre-proof hearing under rule 67.31, the parties must provide the court with sufficient information to enable it to conduct the hearing as provided for in this rule.

(2) At the pre-proof hearing the court must ascertain, so far as is reasonably practicable, whether the cause is likely to proceed to proof on the date fixed for that purpose and, in particular, the court must consider—

- (a) the state of preparation of the parties;
- (b) the extent to which the parties have complied with any orders made by the court under rule 67.31.

(3) At the pre-proof hearing the court may—

- (a) discharge the proof and fix a new date for such proof;
- (b) adjourn the pre-proof hearing;
- (c) order the lodging of joint minutes of agreement, affidavits and expert reports within such period as it considers appropriate;
- (d) make such other order as it considers appropriate to secure the expeditious progress of the cause.

Final procedure

67.33.—(1) Where a permanence order has been granted, the Deputy Principal Clerk must—

- (a) after the expiry of 14 days from the date of, or date of confirmation of, the order without an appeal having been taken, issue an extract of the order to the petitioner;
- (b) where the court has also made an order under section 89(2) (revocation of supervision requirement) of the 2007 Act, intimate the making of that order to the Principal Reporter.

(2) Where the permanence order includes provision granting authority for the child to be adopted, the Deputy Principal Clerk must, after complying with paragraph (1), seal the process in an envelope marked “Confidential”.

(3) The envelope referred to in paragraph (2) must not be unsealed by the clerk of court or any other person having control of the records of that or any court, and the process shall not be made accessible to any person for one hundred years after the date of the granting of the order except—

- (a) to the person to whom the permanence order relates once he has attained the age of 16 years;
- (b) to the Deputy Principal Clerk, on an application made to him by an adoption agency, with the consent of the person to whom the process relates, for the purpose only of ascertaining the name of the agency, if any, responsible for the placement of that person and informing the applicant of that name;

- (c) to a person, on an application made by him to the court setting forth the reasons for which access to the process is required;
- (d) to a court, public authority or administrative board (whether in the United Kingdom or not) having power to authorise an adoption, on petition by it to the court which granted the original order requesting that information be made available from the process for the purpose of discharging its duties in considering an application for adoption and specifying the precise reasons for which access to the process is required; or
- (e) to a person who is authorised by the Scottish Ministers to obtain information from the process for the purpose of such research as is intended to improve the working of adoption law and practice.

Variation of ancillary provisions in order

67.34.—(1) An application under section 92(2) of the 2007 Act (application for variation of ancillary provisions) is to be made by note.

(2) A note under paragraph (1) must contain—

- (a) the name and address of the applicant;
- (b) the applicant's relationship to and interest in the child;
- (c) the name and address of the local authority on whose application the permanence order was granted;
- (d) details of the original application;
- (e) details of any other person affected by the order;
- (f) the grounds on which variation is sought;
- (g) details of whether the child is subject to a supervision requirement under section 70 of the 1995 Act;
- (h) details of the order sought by the applicant.

(3) On presentation of a note under paragraph (1) the court must—

- (a) order the applicant to intimate the note to—
 - (i) the petitioner in the original application, where it is not the applicant;
 - (ii) any other person affected by the order; and
 - (iii) such other persons as the court considers appropriate; and
- (b) appoint a curator *ad litem*.

(4) Any person to whom intimation is given under paragraph (2) may, within 14 days after the date on which intimation is made, lodge answers to the note.

(5) Where answers have been lodged under paragraph (4) the court must order a hearing to be fixed.

(6) Where no answers have been lodged under paragraph (4) the court may order a hearing to be fixed.

(7) Where the court orders a hearing to be fixed under paragraph (5) or (6) it may also order a pre-proof hearing to be fixed not less than 2 and not more than 6 weeks before the hearing.

(8) Rule 67.32 is to apply, with any necessary modifications, to any pre-proof hearing fixed under paragraph (7).

(9) The court shall order the applicant to intimate any hearing fixed under paragraph (5), (6) or (7) to the petitioner in the original application, where it is not the applicant, to any other person affected by the order and to such other persons as the court considers appropriate.

Amendment of order to grant authority for child to be adopted

67.35.—(1) An application under section 93(2) (amendment of order to include provision granting authority for child to be adopted) of the 2007 Act is to be made by note.

(2) A note under paragraph (1) must contain—

- (a) the name and address of the applicant;
- (b) details of the original application;
- (c) details of the following matters:—
 - (i) whether the child has been, or is likely to be, placed for adoption;
 - (ii) whether each parent or guardian of the child understands what the effect of making an adoption order would be and consents to the making of such an order in relation to the child, or the grounds on which such consent should be dispensed with;
 - (iii) the child’s religious persuasion, racial origin and cultural and linguistic background;
 - (iv) whether the child is subject to a supervision requirement under section 70 of the 1995 Act;
 - (v) the likely effect on the child of the making of the order.

(3) On the lodging of a note under paragraph (1)—

- (a) the Deputy Principal Clerk must cause the note to be put on the By Order Roll before the Lord Ordinary not less than 6 and not more than 8 weeks after the date of lodging the application;
- (b) the applicant must intimate a copy of the note along with a notice of intimation in Form 67.35-A to every person who can be found and whose consent to the making of the order is required to be given or dispensed with under the 2007 Act;
- (c) the applicant must intimate a copy of the note along with a notice of intimation in Form 67.35-B to the father of the child if he does not have, and never has had, parental responsibilities in relation to the child;
- (d) the court may order the applicant to intimate the note to such other persons as it considers appropriate;
- (e) the court must appoint a curator *ad litem* and reporting officer and the same person may be appointed as curator *ad litem* and reporting officer if the court considers that doing so is appropriate in the circumstances.

(4) A notice of intimation under paragraph (3)(b) must state the following matters:—

- (a) that an application has been made;
- (b) the date on which, and place where, the By Order hearing will be heard;
- (c) the fact that the person is entitled to be heard on the application;
- (d) the fact that, unless the person wishes, or the court requires, the person need not attend the hearing.

(5) A notice of intimation under paragraph (3)(c) must state the matters mentioned in paragraph (4)(a) and (b).

(6) Rules 67.31 to 67.33 are to apply, with any necessary modifications, to an application under this rule and they apply to an application under rule 67.28

Revocation

67.36.—(1) An application under section 98(1) (revocation of a permanence order) of the 2007 Act shall be made by note.

- (2) A note under paragraph (1) must contain—
 - (a) the name and address of the applicant;
 - (b) the applicant’s relationship to and interest in the child;
 - (c) the name and address of the local authority on whose application the permanence order was granted;
 - (d) details of the original application;
 - (e) details of any other person affected by the order;
 - (f) the grounds on which revocation is sought;
 - (g) details of whether the child is subject to a supervision requirement under section 70 of the 1995 Act;
 - (h) details of the order sought by the applicant;
 - (i) detailed proposals for the future welfare of the child.
- (3) On the lodging of a note under paragraph (1), the court must—
 - (a) order the applicant to intimate the note to—
 - (i) the petitioner in the original application, where it is not the applicant;
 - (ii) any other person affected by the order; and
 - (iii) such other persons as he considers appropriate; and
 - (b) appoint a curator *ad litem*.
- (4) Any person to whom intimation has been given under paragraph (3) may, within 14 days after the date on which intimation is made, lodge answers to the note.
- (5) Where answers have been lodged under paragraph (4), the court must order a hearing to be fixed.
- (6) Where no answers have been lodged under paragraph (4) the court may—
 - (a) order the relevant local authority to submit a report to him;
 - (b) order a hearing to be fixed;
 - (c) order both such a report and such a hearing.
- (7) Where the court orders a hearing to be fixed under paragraph (5) or (6) it may also order a pre-proof hearing to be fixed not less than 2 and not more than 6 weeks before the hearing.
- (8) Rule 67.32 is to apply, with any necessary modifications, to any pre-proof hearing fixed under paragraph (7).
- (9) The court shall order the applicant to intimate any hearing fixed under paragraph (5), (6) or (7) to the petitioner in the original application, where it is not the applicant, to any other person affected by the order and to such other persons as the court considers appropriate.
- (10) An order made in respect of an application under paragraph (1) may specify the person—
 - (a) on whom parental responsibilities are imposed in consequence of the making of the order; and
 - (b) to whom parental rights are given in consequence of the making of the order.

Protection of address of child

67.37.—(1) Where an applicant under this Part wishes to prevent the address of the child being disclosed to any person whose consent to the making of an order is required, the applicant may apply to the Deputy Principal Clerk for a serial number to be assigned for that purpose.

- (2) On receipt of an application under paragraph (1) the Deputy Principal Clerk must—

- (a) assign a serial number in respect of the child's address; and
 - (b) enter a note of the number opposite the child's address in a register of serial numbers.
- (3) The contents of the register of serial numbers and the addresses of the children to whom each number relates shall be treated as confidential by the sheriff clerk and are not to be disclosed to any person other than the sheriff.
- (4) Where a serial number has been assigned under paragraph (2), any form of consent to a permanence order—
- (a) must refer to the child's address by means of the serial number assigned to it; and
 - (b) must specify the year in which and the court by which the serial number was assigned.

Duties of reporting officer and curator *ad litem*

67.38.—(1) The other duties of a reporting officer appointed under this Part, other than under rule 67.29(3), which are prescribed for the purposes of section 108(1)(b) of the 2007 Act are—

- (a) to ascertain the whereabouts of all persons whose consent to the making of an adoption order in respect of the child is required;
 - (b) to ascertain whether there is any person other than those mentioned in the petition upon whom notice of the petition should be served;
 - (c) in the case of each person whose consent to the making of an adoption order is required or may be dispensed with—
 - (i) to ascertain whether that person understands what the effect of making an adoption order would be;
 - (ii) to ascertain whether alternatives to adoption have been discussed with that person;
 - (iii) to confirm that that person understands that he may withdraw his consent at any time before an order is made;
 - (d) to confirm that each parent or guardian of the child who can be found is aware that he may apply to the court for—
 - (i) variation of the ancillary provisions in the permanence order under section 92 of the 2007 Act; and
 - (ii) revocation of a permanence order under section 98 of the 2007 Act, and of the appropriate procedure for these applications.
 - (e) to report in writing on the matters mentioned in subparagraphs (a) to (d) to the court within 4 weeks from date of interlocutor appointing the reporting officer, or within such other period as the court may allow.
- (2) References in paragraph (1) to “consent” are to consent within the meaning of section 83(1)(c), 84(1) or 93(3) of the 2007 Act as the case may be.
- (3) A curator *ad litem* appointed under this Part must—
- (a) have regard to safeguarding the interests of the child as his paramount duty;
 - (b) inquire, so far as he considers necessary into the facts and circumstances stated in the petition or minute, as the case may be, and in any report lodged under rule 31(2)(b);
 - (c) where appropriate, establish the child's religious persuasion, racial origin and cultural and linguistic background;
 - (d) where appropriate, establish whether the order is likely to safeguard and promote the welfare of the child throughout childhood;

- (e) ascertain whether the child is subject to a supervision requirement under section 70 of the 1995 Act;
- (f) ascertain from the child whether he wishes to express a view and, where the child indicates his wish to express a view, ascertain that view;
- (g) ascertain the likely effect on the child of the making of the order;
- (h) where appropriate, ascertain whether it would be better for the child that the order be made than that it should not be made;
- (i) where appropriate, ascertain whether it would be better for the child if the court were to grant authority for the child to be adopted than if it were not to grant such authority;
- (j) where appropriate, ascertain whether the child has been, or is likely to be, placed for adoption.

(4) Subject to paragraph (5) the curator *ad litem* must report in writing on the matters mentioned in paragraph (3) to the court within 4 weeks from the date of the interlocutor appointing the curator, or within such other period as the court may allow.

(5) Subject to any order made by the court under rule 67.40 the views of the child ascertained in terms of paragraph (3)(f) may, if the curator *ad litem* considers appropriate, be conveyed to the court orally.

Consents

67.39.—(1) The consent of a parent or guardian required by section 83(1)(c) or 93(3) of the 2007 Act is to be in Form 67.39-A.

(2) The consent of the child required under section 84(1) of the 2007 Act is to be in Form 67.39-B.

(3) A form of consent mentioned in paragraph (1) or (2) must be witnessed—

- (a) where it is executed in Scotland, by the reporting officer appointed under this Part;
- (b) where it is executed outwith Scotland but within the United Kingdom, by a justice of the peace or commissioner for oaths; or
- (c) where it is executed outwith the United Kingdom—
 - (i) if the person who executes the form is serving in Her Majesty’s forces, by an officer holding a commission in any of those forces; or
 - (ii) in any other case, by a British diplomatic or consular official or any person authorised to administer an oath or affirmation under the law of the place where the consent is executed.

Procedure where child wishes to express a view

67.40.—(1) Where a child has indicated his wish to express his views the court, without prejudice to rule 67.38(3)(f)—

- (a) may order such procedural steps to be taken as it considers appropriate to ascertain the views of that child; and
- (b) must not make an order under this Part unless an opportunity has been given for the views of that child to be obtained or heard.

(2) Where the views of a child, whether obtained under this rule or under rule 67.38(2)(f), have been recorded in writing, the court may direct that such a written record is to—

- (a) be sealed in a envelope marked “Views of the child – confidential”;
- (b) be available to the court only;

- (c) not be opened by any other person; and
- (d) not form a borrowable part of the process.

Procedure where leave of court required

67.41.—(1) Where leave of the court is required under section 94(4) or 98(2)(b) of the 2007 Act before an application for variation or revocation of a permanence order may be made, the applicant must lodge along with the note a motion stating the grounds upon which leave is sought.

(2) A motion under paragraph (1) shall not be served or intimated unless the court otherwise directs.

(3) The court may hear the applicant on the motion and may grant or refuse it or make such other order in relation to it as it considers appropriate prior to determination.

(4) Where such motion is granted, a copy of the interlocutor shall be intimated along with the note of application.

Intimation to Principal Reporter

67.42. Where an application under this Part is made in respect of a child whose case has been referred to a children's hearing or who is subject to a supervision requirement under the 1995 Act, the Deputy Principal Clerk shall intimate the fact that the application has been made to the Principal Reporter.

Report of children's hearing

67.43.—(1) On receipt of a report from a children's hearing under section 95(2) of the 2007 Act the Deputy Principal Clerk shall—

- (a) lodge the report in the process of the application; and
- (b) send a copy of the report together with a notice in Form 67.43-A to—
 - (i) the parties to the application;
 - (ii) any relevant person in relation to the child within the meaning given by section 93(2) of the 1995 Act; and
 - (iii) such other person as the court considers appropriate.

(2) Any person who receives notice under paragraph (1)(b) and who wishes to oppose the proposals of the children's hearing must lodge a form of response in Form 67.43-B within 7 days of the date notice was given.

(3) Thereafter the court shall consider the report and any form of response lodged under paragraph (2) and decide whether to refer the child's case to the Principal Reporter as mentioned in section 96(3) of the 2007 Act.

(4) Where the court decides to refer the child's case to the Principal Reporter as mentioned in section 96(3) of the 2007 Act, the court shall pronounce an order to this effect which shall narrate in terms that the court is referring the child's case to the Principal Reporter as mentioned in that provision.

(5) Where the court decides not to refer the child's case to the Principal Reporter, it may nevertheless make such other order it considers appropriate for the expeditious progress of the case.

(6) In order to assist it to decide what to do under paragraph (3), the court may order the holding of a hearing.

(7) If the court so decides, it shall fix a date for the hearing which shall be not more than 7 days after the date of the order.

- (8) The Deputy Principal Clerk of Session shall intimate any hearing under paragraph (6) to—
- (a) the parties to the application;
 - (b) any person who lodged a form of response under paragraph (2);
 - (c) any relevant person in relation to the child within the meaning given by section 93(2) of the 1995 Act; and
 - (d) such other person as the court considers appropriate.

(9) The court may allow a continuation of a hearing under paragraph (6) on two occasions only, each for a period not exceeding 14 days.

(10) After the court has made its decision under paragraph (3), the Deputy Principal Clerk of Session shall send a notice in Form 67.43-C to the Principal Reporter.

Interim orders

67.44.—(1) An application for an interim order under section 97 of the 2007 Act is to be made by motion.”.

(3) In the Appendix, for Forms 67.5-A to 67.25 substitute the forms set out in the Schedule to this Act of Sederunt.

Transitional and savings provisions

3.—(1) The provisions of Part II of Chapter 67 (freeing for adoption) as they applied immediately before 28th September 2009 shall continue to have effect—

- (a) for the purpose of any application for a freeing order under section 18 of the Adoption (Scotland) Act 1978 made and not yet determined before that date; and
- (b) for the purpose of any application made under section 20 of the Adoption (Scotland) Act 1978 made before 28th September 2010.

(2) The provisions of Part III (adoption) of Chapter 67 as they applied immediately before 28th September 2009 shall continue to have effect for the purpose of any application—

- (a) an adoption order under section 14 or 15 of the Adoption (Scotland) Act 1978 made and not yet determined before that date;
- (b) an order under section 29 of that Act made in an application mentioned in paragraph (a);
- (c) an order under section 49 of that Act made and not yet determined before that date.

(3) The provisions of Part IV (convention adoption orders) of Chapter 67 and Part III as applied by Part IV as they applied immediately before 28th September 2009 shall continue to have effect for the purpose of any application for—

- (a) a Convention adoption order under section 17 of the 1978 Act made and not yet determined before that date; or
- (b) an order under section 47 of the 1978 Act made and not yet determined before that date.

(4) The provisions of Part 1 (general provisions) of Chapter 67 shall continue to have effect as they did immediately before 28th September 2009 to the extent that they are required for the purposes of paragraphs (1) and (3).

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

Edinburgh
24th July 2009

A.C. HAMILTON
Lord President
I.P.D.