
STATUTORY INSTRUMENTS

1997 No. 853

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

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

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

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

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

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

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

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

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

(3) For rule 67.4 substitute—

“Selection of reporting officer or curator ad litem

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

(4) After rule 67.4 as so substituted insert—

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

67.4A.—(1) A timetable shall be drawn up forthwith under section 25A of the Act of 1978⁽³⁾ by the court when any of the following occurs—

(a) there is presented to it a petition with a crave for any agreement of the parent or guardian of a child to be dispensed with on a ground specified in section 16(2) of that Act;⁽⁴⁾

(b) it appears to the court, from the report of an adoption agency, local authority or reporting officer that the question of dispensing with such agreement on a ground so specified arises; or

(c) such agreement (being agreement which, if not given, it would be competent to dispense with on a ground so specified) is given but is afterwards withdrawn.

⁽¹⁾ S.I.1994/1443.

⁽²⁾ 1995 c. 36.

⁽³⁾ Section 25A was inserted by section 98(1) of, and paragraph 18 of Schedule 2 to, the Act of 1995.

⁽⁴⁾ Subsection (2) of section 16 was substituted by section 98(1) of, and paragraph 10(a) of Schedule 2 to, the Act of 1995.

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

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

(6) After rule 67.5 insert–

“Consideration of views of child and of certain reports

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

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

(7) After rule 67.6 insert–

“Children who may require compulsory measures of supervision

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

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

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

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

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

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

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

- (iii) entering into an agreement with the mother under section 4(1) of that Act (natural father's acquisition of parental responsibilities etc. by agreement); and
- (b) after sub-paragraph (s), insert—
 - “(ss) ascertain whether the child is subject to a supervision requirement;”.
- (10) In rule 67.11(2) (duties of curator *ad litem* as respects application for order freeing a child for adoption)—
 - (a) after sub-paragraph (b), insert—
 - “(bb) ascertain from the child whether he wishes to express any views as respects the petition;
 - (bc) ascertain whether it would be better for the child that an order were made under section 18(1) of the Act of 1978((6) than that it were not made”; and
 - (b) after sub-paragraph (h) (and before the word “and” which immediately follows that sub-paragraph) insert—
 - “(hh) in performing his duties under this paragraph, regard the need to safeguard and promote the welfare of the child throughout the child's life as the paramount consideration;”.
- (11) In rule 67.12 (declaration of preference not to be involved)—
 - (a) in paragraph (1), for the words “67.12” substitute “67.12-A; and any withdrawal of either such declaration shall be in Form 67.12-B.”; and
 - (b) at the end add—
 - “(5) Where a withdrawal such as is referred to in paragraph (1) is lodged, it shall be recorded in an interlocutor pronounced by the court and then intimated forthwith to the adoption agency by the clerk of court.”.
- (12) In rule 67.13 (hearing of freeing for adoption petition)—
 - (a) in paragraph (2)(b)(ii), for the words “(3)(a), (b) or (c)” substitute “(3)(a), (aa), (b) or (c)”; and
 - (b) in paragraph (3), after sub-paragraph (a) insert—
 - “(aa) where the child's mother is not married to his father, any person whose whereabouts are so known and who, being a person who claims to be the child's father, is neither the child's guardian nor a person with regard to whom an order in relation to parental responsibilities as respects the child has been made under section 11(1) of the Act of 1995;”; and
 - (c) in paragraph (4)(c), for the words “(3)(a) or (d)” substitute “(3)(a), (aa) or (d)”.
- (13) After rule 67.13 insert—

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

67.13A. Where on making an order under section 18 of the Act of 1978 in relation to a child who is subject to a supervision requirement the court makes a determination under subsection (9) of that section((7) (that is to say, a determination that the child shall forthwith cease to be subject to that requirement), the clerk of court shall intimate the determination to the Principal Reporter.”.

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

(6) Section 18 was amended by section 98(1) of, and paragraph 11 of Schedule 2 to, the 1995 Act.

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

- (a) in paragraph (1), for the words “section 20(1)” substitute “section 20(1) or (1A)”⁽⁸⁾
- (b) in paragraph (2)–
 - (i) in sub-paragraph (a)(i), for the word “petitioner” substitute “relevant parent if the application is under section 20(1A)”⁽⁸⁾; and
 - (ii) for sub-paragraph (a)(iii) substitute–
 - “(iii) the adoption agency (or any substitute adoption agency) having the parental responsibilities and parental rights in relation to the child if the application is under section 20(1)”⁽⁸⁾; and
- (c) in paragraph (5)–
 - (i) after sub-paragraph (a) insert–
 - “(aa) ascertain from the child whether he wishes to express any views as respects the application”⁽⁸⁾;
 - (ii) for sub-paragraph (c) substitute–
 - “(c) where the application is under–
 - (i) subsection (1) of section 20 of the Act of 1978 and a previous application under that subsection was refused; or
 - (ii) subsection (1A) of that section and a previous application under that subsection was refused,
 inquire whether there has been any change of circumstances, or there is any other reason for the current application, of which the court should be aware in determining the note; and
 - (iii) after sub-paragraph (f) (and before the word “and” which immediately follows that sub-paragraph) insert–
 - “(ff) in performing his duties under this paragraph, regard the need to safeguard and promote the welfare of the child throughout the child’s life as the paramount consideration”⁽⁸⁾.”
- (15) After rule 67.15 insert–

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

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

- (16) For rule 67.17 substitute–

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

67.17. An application under section 21 of the Act of 1978⁽⁹⁾ (variation of order under section 18 of that Act so as to substitute one adoption agency for another) shall be made by note.”.

⁽⁸⁾ Subsection (1A) was added by section 98(1) of, and paragraph 13(b) of Schedule 2 to, the 1995 Act.

⁽⁹⁾ Section 21 was amended by section 98(1) of, and paragraph 14 of Schedule 2 to, the 1995 Act.

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

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

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

(b) for sub-paragraph (q) substitute–

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

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

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

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

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

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

(b) in sub-paragraph (f)–

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

(ii) for the words “rights and duties will vest in” substitute “responsibilities and parental rights will (with that exception) be transferred to”; and

(c) after sub-paragraph (j) insert–

“(jj) ascertain whether the child is subject to a supervision requirement;”.

(20) In rule 67.24(2) (duties of curator *ad litem* as respects application for adoption order)–

(a) after sub-paragraph (b) insert–

“(bb) ascertain from the child whether he wishes to express any views as respects the petition;

(bc) ascertain whether it would be better for the child that an adoption order were made than that it were not made;”;

(b) in sub-paragraph (i), for the words “rights and duties” substitute “responsibilities and parental rights”;

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

(d) in sub-paragraph (m), for the words “for custody” substitute “such as is mentioned in section 11(2)(b) of the Act of 1995 (imposing parental responsibilities or giving parental rights)”;

(e) for sub-paragraph (p) substitute–

“(p) ascertain the religious persuasion (if any), social origin and cultural and linguistic background both of the child and of the petitioner;” and

(f) omit sub-paragraphs (s) and (t); and

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

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

(21) In rule 67.25 (hearing to determine adoption petition)–

- (a) in paragraph (2)(b)(ii), for the words “(3)(a), (b), (c) or (d)” substitute “(3)(a) to (dc)”;
- (b) in paragraph (3), after sub-paragraph (d) (and before the word “and” which immediately follows that sub-paragraph) insert—
 - “(da) any person keeping the child by virtue of a child protection order, of a supervision requirement or of a warrant granted by a children’s hearing;
 - (db) any person to whom the parental responsibilities and parental rights in relation to the child have been transferred by a parental responsibilities order or an order under section 11 of the Act of 1995;
 - (dc) any person having parental responsibility (within the meaning of the Children Act 1989⁽¹⁰⁾) for the child by virtue of section 5 of that Act or of a care order or residence order within the meaning of that Act;”.
- (22) After rule 67.25 insert—

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

67.25A. Where on making an adoption order in relation to a child who is subject to a supervision requirement the court makes a determination under section 12(9) of the Act of 1978⁽¹¹⁾ (that is to say, a determination that the child shall forthwith cease to be subject to that requirement), the clerk of court shall intimate the determination to the Principal Reporter.”.

- (23) Omit rule 67.26.
- (24) In rule 67.32(2)(a) (age at which adopted person may open or inspect process), for the word “17” substitute “16”.

⁽¹⁰⁾ 1989 c. 41.

⁽¹¹⁾ cf. note (a) on page 5.