SCOTTISH STATUTORY INSTRUMENTS

2003 No. 44

SHERIFF COURT

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

Made - - - -	*23rd January 2003*
Coming into force - -	*1st June 2003*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(**1**), section 59 of the Adoption (Scotland) Act 1978(**2**), and section 91 of the Children (Scotland) Act 1995(**3**), and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

Citation and commencement

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

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

Interpretation

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

Amendment of the Rules

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

(**1**) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13, and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43, and was extended by the Child Support Act 1991 (c. 48), sections 39(2) and 49.
(**2**) 1978 c. 28; section 59 was amended by the Children (Scotland) Act 1995 (c. 36), Schedule 2, paragraph 27.
(**3**) 1995 c. 36.
(**4**) S.I. 1997/291, amended by S.I. 1998/2130 and S.S.I. 2000/388.

Amendment of Rule 2.25

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

Amendment of Rule 2.26

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

Part IVA of Chapter 2 of the Rules

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

"PART IVA

CONVENTION ADOPTION ORDERS

Interpretation

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

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

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

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

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

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

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

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

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

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

(**5**) The text of the Convention, so far as material, is set out in Schedule 1 to the Adoption (Intercountry Aspects) Act 1999 (c. 18) ("the 1999 Act").
(**6**) 2001 asp 8.
(**7**) The 1999 Act, section 2(1)(a), will provide on commencement that the Secretary of State shall discharge in Scotland the functions of a central authority under the Convention. The functions of the Secretary of State are prospectively transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c. 46), section 53, and the 1999 Act, section 16(2).

Application for a Convention adoption order

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

Process and form of application

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

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

(a) a certificate, register extract, or other proof of date of birth relating to the child who is the subject of the application, issued or authenticated by the applicable Convention country authority;

(b) in the case of a joint petition by a married couple, a certificate, register extract, or other proof of their marriage, issued or authenticated by the applicable Convention country authority;

(c) any other document founded on by the petitioner in support of the petition;

(d) where appropriate, a translation into English of any certificate, extract, document or report referred to in paragraphs (a) to (c) above, together with the certificate referred to in paragraph (3) below;

(e) any report by the local authority required by section 22 of the Act (notification to local authority of adoption application);

(f) any report by an adoption agency, being a Scottish accredited body, required by section 23 of the Act (reports where child placed by agency);

(g) where appropriate, an extract of the order freeing the child for adoption; and

(h) a letter by the Scottish central authority confirming an agreement between the receiving State and State of origin in terms of Article 17(c) that the proposed adoption may proceed.

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

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

(a) a description of the petitioner's background, including his family history, medical history, his social environment, his reasons for wishing to adopt, his eligibility and suitability to adopt, and in particular his suitability for a Convention adoption order;

(b) a description of the child's background, including his family history, his medical history and that of his family, his social environment, his physical and mental health (including any special needs), and his emotional, behavioural and educational development;

(c) information about the mutual suitability of the petitioner and the child for the relationship created by the adoption, and the ability of the petitioner to bring up the child, including an assessment of the personalities of the petitioner and of the child;

(d) particulars of all the members of the household of the petitioner, and their relationship to the petitioner;

(e) a description of the accommodation in the home of the petitioner;

(f) in a petition by one of two spouses, why the other spouse has not joined in the petition;

(g) whether the petitioner understands the nature and effect of an adoption order and in particular that the order, if made, will make the petitioner responsible for the maintenance and upbringing of the child;

(h) whether the means and standing of the petitioner are such as to enable him to maintain and bring up the child suitably, and whether the child has any right or interest in property;

(i) whether any payment or other reward, other than an approved adoption allowance, has been received or agreed in consideration of the proposed adoption;

(j) what insurance has been offered on the life of the child;

(k) the religious persuasion, if any, of the petitioner and the religious persuasion, if any, racial origin, and cultural and linguistic background of the child;

(l) considerations arising from the difference in age between the petitioner and the child if this is more or less than the normal difference between parents and children;

(m) whether adoption is likely to safeguard and promote the welfare of the child throughout his life;

(n) where the child has not been freed for adoption, evidence that all consents to the proposed adoption required by Article 4 have been obtained; and

(o) any other information which may be of assistance to the court.

(5) If no report required from a local authority or adoption agency under paragraph (2)(e) or (f) is available to be lodged along with the petition, the sheriff shall pronounce an interlocutor requiring the local authority or adoption agency to prepare and lodge such a report in court within 4 weeks from the date of the interlocutor, or within such other period as the sheriff in his discretion may allow.

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

Application of Part IV of Chapter 2 to Convention adoption orders

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

Appointment of curator *ad litem* and reporting officer

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

(a) in paragraph (1)–

(i) for "paragraph (2)" substitute "paragraphs (2) and (6)"; and

(ii) for "rule 2.21" substitute "rule 2.36C"; and

(b) after paragraph (5) insert–

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

Hearing

2.36F. In rule 2.28 (Hearing)–

(a) in paragraph (1), for "reports of the reporting officer and" substitute "report of"; and

(b) in paragraph (3), for sub-paragraphs (a) and (b) substitute–

"(a) the curator *ad litem*;

(b) any person or body who has care or possession of the child; and

(c) any local authority or adoption agency that has prepared a report under sections 22 or 23 of the Act.".

Communications to the Registrar General

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

"**Communications to the Registrar General and the Scottish central authority**

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

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

Form 11A

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

Edinburgh
23rd January 2003

W DOUGLAS CULLEN
Lord President I.P.D.