

1978 No. 1373 (S. 124)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 9)
(Convention Adoption Rules) 1978

Made - - - 14th September 1978

Coming into Operation 23rd October 1978

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 11(2) of the Adoption Act 1958(a), as amended by paragraph 23 of Schedule 3 to the Children Act 1975(b), section 12(1) of the Adoption Act 1968(c), as amended by Part III of Schedule 4 to the Children Act 1975, section 16 of the Administration of Justice (Scotland) Act 1933(d), and section 29 of the Administration of Justice Act 1977(e) and all other powers enabling them in that behalf, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 9) (Convention Adoption Rules) 1978 and shall come into operation on 23rd October 1978.

(2) The Interpretation Act 1889(f) shall apply to the interpretation of this Act of Sederunt as it applies to an Act of Parliament.

Amendment of Rules of Court

2. In the Rules of Court(g) in chapter IV (Petitions), after section 4 (Adoption of Children) insert the following section:—

“ Section 4A—Convention Adoption Orders
(Adoption Act 1968; Children Act 1975)

230 A *Interpretation*

(1) In this Section, unless the context otherwise requires—

- (a) “the Act of 1968” means the Adoption Act 1968;
“the Act of 1975” means the Children Act 1975;
“Convention proceedings” means proceedings on an application for a Convention adoption order under section 24 of the Act of 1975 and proceedings under the Act of 1968;
“Registrar General” means the Registrar General of Births, Deaths and Marriages for Scotland;
“regulated adoption” has the meaning given to the expression “convention adoption” in section 5(2) of the Act of 1968;
- (b) Expressions which are used in this Section and are also used in the Act of 1975, have the same meaning as in that Act.

(a) 1958 c.5 (7 & 8 Eliz. 2). (b) 1975 c. 72. (c) 1968 c. 53. (d) 1933 c. 41.
(e) 1977 c. 38. (f) 1889 c. 63. (g) S.I. 1965/321.

- (2) Any reference in this Section to any enactment shall be construed as a reference to that enactment as amended, extended or applied by any other enactment.
- (3) Any reference in this Section to the nationality of a person who is not solely a United Kingdom national means that person's nationality as determined in accordance with section 9 of the Act of 1968.

230 B *Extent and application*

- (1) This Section applies to Convention proceedings.
- (2) Subject to paragraph (1), rules 219 to 230 apply to Convention proceedings as they apply to proceedings in applications under those rules.

230 C *Applications*

- (1) All applications for a Convention Adoption Order shall be by way of petition to the Inner House, and shall, subject to the provisions of this rule, be in the form set out in Form 36 with the substitution for any reference to an Adoption Order of a reference to a Convention Adoption Order.
- (2) A petitioner in a petition under paragraph (1) shall include averments stating—
 - (a) that he is applying for a Convention Adoption Order;
 - (b) the country of which he is a national;
 - (c) the country of which the child he proposes to adopt is a national;
 - (d) the place where he habitually resides and the country in which it is;
 - (e) the place where the child habitually resides and the country in which it is;
 - (f) whether any country mentioned is a Convention country;
 - (g) whether the child is, or has been, married;
 - (h) in a case where the petitioner is a national of a Convention country, or in a case where both petitioners are nationals of the same Convention country, whether there are specified provisions in respect of that country, and if there are, that the adoption is not prohibited by any such specified provision;
 - (i) in a case where the child is not a United Kingdom national, the provisions, if any, relating to consents and consultations of the internal law relating to adoption of the Convention country of which the child is a national.
- (3)
 - (a) Those averments shall be fully investigated by the curator *ad litem* and the results of his investigation shall be included in his report.
 - (b) Where in the course of these investigations the curator *ad litem* requires a report from any authority outside Great Britain, he shall request the local authority to request that other authority to provide that report.

- (4) The prayer of the petition shall request the Court to direct the Registrar-General—
 - (a) to insert the words “Convention Order” in the entry to be made by him in the Adopted Children Register regarding the adoption;
 - (b) to intimate the terms of the order to the authorities mentioned in rule 230H or 230I, as the case may be.

230 D *Documentary evidence*

For the purposes of proceedings in petitions brought under the provisions of this Section, written statements (including affidavits) and reports are admissible in place of parole evidence, if the Court, on the application of the party proposing to rely on such a statement or report, so directs.

230 E *Evidence of nationality*

- (1) Any document which is to be used for the purpose of satisfying the Court as to the nationality of a petitioner or of the child shall be lodged together with the petition, or as soon as possible thereafter.
- (2) Where a petitioner claims that for the purposes of section 24 (2)(a), (4)(a) or (5)(a) of the Act of 1975 he or the child is a national of a Convention country, he shall lodge together with the petition or as soon as possible thereafter, a written statement by an expert in the law of that country as to the law of that country relating to the nationality applicable to that person.

230 F *Evidence of consents etc.*

- (1) This rule applies to Convention proceedings in which the child it is proposed to adopt is not a United Kingdom national.
- (2) A petitioner shall lodge together with the petition, or as soon as possible thereafter, a written statement by an expert in the law of the country of which the child is a national setting out the consents and consultations (if any) required by that law for the purposes of an adoption, and whether and on what conditions they may be dispensed with, and in the case of consents, the form in which they may be given.
- (3) Any document signifying the consent of a person to, or otherwise containing the opinion of a person with respect to the making of, the Convention Adoption Order shall be in a form which complies with the internal law relating to adoption of the Convention country of which the child is a national, but where the Court is not satisfied that a person consents with full understanding of what is involved, it may call for further evidence.
- (4) A document referred to in paragraph (3) shall, if sufficiently attested, be admissible as evidence of the consent or, as the case may be, of the opinion it contains without further proof of the signature of the person by whom it is executed.

- (5) A petitioner in proceedings to which this rule applies, shall, in any case in which a hearing is ordered, serve a notice of hearing in terms of Form 38 upon—
- (a) all persons whose consent to the making of the order is required and who are not petitioners;
 - (b) all persons who, in accordance with the internal law relating to adoption of the country of which the child is a national, have to be consulted about, but do not have to consent to, the adoption.
- (6) For the purposes of section 24(7)(a) of the Act of 1975, the proper officer of the Court to whom any person whose consent is required under or who is consulted in pursuance of the internal law relating to adoption of the Convention country of which the child is a national may communicate his opinion on the adoption is the Deputy Principal Clerk of the Court of Session.

230 G *Dispensing power*

Where under rule 230 F any consent or consultation is not duly signified to the Court as having been given or undertaken, and the Court is satisfied that under the internal law of the country concerned that consent or consultation could properly be dispensed with, the Court may dispense with that consent or consultation in accordance with the provisions of that law.

230 H *Notice to Registrar General*

- (1) The Deputy Principal Clerk shall send to the Registrar General—
- (a) together with any Convention Adoption Order made under the provisions of this Section, a notice specifying and requesting him to inform the authorities mentioned in paragraph 2 of the terms of the order;
 - (b) together with any order made under section 26(1)(a) of the Adoption Act 1958 revoking a Convention Adoption Order, a notice specifying and requesting him to inform the authorities mentioned in paragraph 3 of the terms of the order.
- (2) The authorities referred to in paragraph (1)(a) are the designated authorities of any Convention country—
- (a) of which the child is a national;
 - (b) in which the child was born;
 - (c) in which a petitioner habitually resides;
 - (d) of which a petitioner is a national.
- (3) The authorities referred to in paragraph (1)(b) are the designated authorities of any Convention country—
- (a) of which the adopted person is a national;
 - (b) in which the adopted person was born.

230 I *Revocation etc. of regulated adoptions*

- (1) This rule applies to applications for an order under section 6 of the Act of 1968.
- (2) An application shall be made by way of petition to the Inner House.
- (3) An application under section 6(1) of the Act of 1968 (annulment) shall not, except with the leave of the Court, be made later than 2 years after the date of the regulated adoption to which it relates.
- (4) Where the adopted person is under the age of 18 on the date of the presentation of a petition under this rule, rule 221 (curator *ad litem*) shall apply to the petition as it applies to a petition under that rule.
- (5) (a) Where the Court has ordered that a regulated adoption be annulled or revoked or that an overseas adoption or a determination shall cease to be valid in Great Britain, the Deputy Principal Clerk shall serve notice of the order on the Registrar General, and shall specify in the notice—
 - (i) the date of the adoption;
 - (ii) the name and address of the authority which granted the adoption;
 - (iii) the names of the adopter or adopters and of the adopted person as given in the petition;
 - (iv) the country in which the adoption was granted;
 - (v) the country of which the adopted person is a national;
 - (vi) the country in which the adopted person was born, and where any country so specified is a Convention country shall request the Registrar General to inform the designated authorities of that country of the terms of the order.

230 J *Order*

Where the applicant is a national or both applicants are nationals of a Convention country, the Court shall take account of any specified provision (as defined in section 24(8) of the Act of 1975) of the internal law of that country before any decision is made to postpone the determination of the application and to make an interim order.

230 K *Attestation*

A document shall be sufficiently attested for the purpose of this Section if it is attested by any of the following persons:—

- (a) if it is executed in the United Kingdom—
 - (i) a justice of the peace; or
 - (ii) if it is executed in Scotland, a sheriff; or
 - (iii) if it is executed in England or Wales, an officer of a county court appointed for the purposes of section 87 of the County Courts Act 1959(a), or a justice's clerk within the meaning of section 21 of the Justices of the Peace Act 1949(b);
- (b) if it is executed elsewhere, any person mentioned in rule 219(c).

(a) 1959 c.22

(b) 1949 c.101

230 L Translations

Where any document is served outside the United Kingdom in a country in which English is not an official language, the petitioner shall provide and send with the document a translation of it in the official language of the country in which service is to be effected or, if there is more than one official language of the country, in any one of those languages which is appropriate to the place in that country where service is to be effected.”

3. In the Appendix to the Rules of Court, in Form 38, after the words “Provisional Adoption Order” insert the words “or Convention Adoption Order”.

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

G. C. Emslie,
I.P.D.

Edinburgh,
14th September 1978

EXPLANATORY NOTE.

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt makes provision in the Rules of the Court of Session for proceedings under Section 24 of the Children Act 1975 and Section 6 of the Adoption Act 1968 which relates principally to the Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions.

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