

STATUTORY INSTRUMENTS

1986 No. 515 (S. 49)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 2) (Custody of Children) 1986

Made - - - - 11th March 1986

Coming into Operation 1st April 1986

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 16 of the Administration of Justice (Scotland) Act 1933(a), section 47(6) and 48(1) of the Children Act 1975(b) and of all other powers enabling them in that behalf, do hereby enact and declare—

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 2) (Custody of Children) 1986 and shall come into operation on 1st April 1986.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session (c) shall be amended as follows.

(2) For rule 170C (interdict prohibiting removal of child) (d), substitute the following rule:—

“170C Restriction on removal of child

(1) An application under section 13 of the Act of 1958 for *interim* interdict prohibiting the removal of a child furth of Scotland or out of the control of the person in whose custody the child is, shall be made by motion.

(2) An application by virtue of section 51(1) of the Children Act 1975 by a person other than a party to the cause to remove a child from the custody of the person claiming custody in the cause, shall be made by minute.”

(3) After section 14 of Chapter IV (application for judicial review) (e), insert the following section:—

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- (a) 1933 c. 41.
(b) 1975 c. 72.
(c) S.I. 1965/321.
(d) Inserted by S.I. 1976/1994.
(e) Inserted by S.I. 1985/500.

"SECTION 15

*PETITIONS FOR CUSTODY OF CHILDREN***260C Application and interpretation**

- (1) This section applies to a petition for custody of a child.
- (2) In this section, unless the context otherwise requires, "the Act of 1975" means the Children Act 1975.
- (3) Words and expressions which are used in this section and are also used in the Act of 1975 have the same meaning as in that Act.
- (4) In this section, a form referred to by number means the form so numbered in the Appendix or a form substantially to the like effect, with such variation as circumstances may require.

260D Procedure in petition for custody

- (1) Subject to paragraph (2) of this rule, rules 191 to 198 apply to a petition under this section.
- (2) On making an order for intimation and service under rule 195, the court shall make an order requiring the petitioner to give notice—
 - (a) at the same time to each known parent of the child in the form set out in Form 53 together with, where the petitioner is a relative, step-parent or foster parent of the child, a consent form as set out in Form 54; and
 - (b) where the petitioner is a relative, step-parent or foster parent of the child and he resides in Scotland when the petition is presented, within seven days to the local authority within whose area the petitioner resides in Form 55; or
 - (c) where the petitioner is a relative, step-parent or foster parent of the child and he does not reside in Scotland when the petition is presented, within such time as the court shall determine to such local authority as the court shall specify in Form 55.
- (3) Where a parent or guardian consents to the petitioner being granted custody of a child, he shall—
 - (a) complete and sign a consent form as set out in Form 54;
 - (b) have his signature witnessed; and
 - (c) return the form to the petitioner.
- (4) At any stage of the cause, where it appears to the court to be desirable in the circumstances of the case in order to safeguard the interests of a child, the court shall appoint a curator *ad litem*.
- (5) A curator *ad litem* appointed under rule 260D(4) shall have the following duties:—
 - (a) to enquire into, so far as he considers necessary, the matters averred in the petition and in any report by a local authority under rule 260D(6);
 - (b) to enquire into any other matters which appear to him to be relevant;

- (c) to consider whether the granting of custody to the petitioner is in the interests of the child;
 - (d) to perform such other duties as appear to him to be necessary or as the court may require; and
 - (e) to prepare a report in relation to the exercise of the above duties.
- (6) On completion of a report under section 49(2) of the Act of 1975, the local authority shall—
- (a) lodge three copies of the report in process; and
 - (b) where a curator *ad litem* has been appointed, send a copy of the report to him.
- (7) The curator *ad litem* shall, on completion of his report, lodge three copies of it in process.
- (8) On receipt of the report of the local authority, and, where a curator *ad litem* has been appointed, the report of the curator *ad litem*, the Petition Department shall—
- (a) inform the petitioner that a report has been lodged; and
 - (b) make available to the petitioner, and to any other party, a copy of each report.
- (9) After the Petition Department has informed the petitioner that all reports have been lodged, the petition shall proceed as an ordinary petition.

260E Applications to be made in the process of the petition

- (1) An application, by a person concerned, to vary or discharge an interlocutor pronounced in a petition under this section shall—
- (a) if made before a final interlocutor, be made by motion unless the court directs the application to be made by minute in the process of the petition; or
 - (b) if made after a final interlocutor, be made by minute in the process of the petition.
- (2) An application to remove a child from the custody of the petitioner by virtue of section 51(1) of the Act of 1975 by a person other than a respondent who has lodged answers shall be made by minute in the process of the petition.
- (3) An application under section 52(b) of the Act of 1975 by a person who is not a party to the petition shall be made by minute in the process of the petition.”
- (4) In the Appendix, after Form 52, insert Forms 53 to 55 as set out in the Schedule to this Act of Sederunt.

Emslie,
Lord President,
I.P.D.

Edinburgh.
11th March 1986.

SCHEDULE

FORM 53

rule 260D(2)(a)

Notice to parent of presentation of petition for custody of a child

IN THE COURT OF SESSION

in

PETITION

of

A.B. (*address*)

for

Custody of the child E.F.

To (*name and address*)

TAKE NOTICE

1. That the petitioner has presented a petition to the Court of Session for custody of the child E.F. A copy of the petition is attached to this notice.

2. That the petitioner, being a relative [*or step-parent*] of the child, has the consent of [*or seeks the consent of*] (*name of parent or guardian*) who is a parent [*or guardian*] of the child, and has had care and possession of the child for the three months preceding the presentation of this petition on (*date*).

or

2. That the petitioner, has the consent of [*or seeks the consent of*] (*name of a parent or guardian*) who is a parent [*or guardian*] of the child and has had care and possession of the child for a period or periods before presentation of this petition which amounted to at least twelve months including the three months preceding the presentation of this petition on (*date*).

or

2. That the petitioner has had care and possession of the child for a period or periods before the presentation of this petition which amounted to at least three years including the three months preceding the presentation of this petition on (*date*).

or

2. That the petitioner intends to establish the following as showing cause why the petitioner should be granted custody of the child (*state briefly the grounds on which custody is sought or refer to the relevant paragraphs of the petition*).

[3. That if you wish to consent to the petitioner being granted custody of the child if the court approves, you should complete the form which is enclosed.

or

3. That (*name of parent or guardian*) has consented to the petitioner being granted custody of the child if the court approves.]

4. That if you wish to oppose this petition, and oppose the granting of custody of the child to the petitioner, you must lodge answers to the petition. If you propose to lodge answers, you are required to do so within days from the date of this notice. The period within which you are required to lodge answers begins to run 24 hours after the date of this notice.

[5. That the petition states that the child has been in the care and possession of the petitioner for a period or periods which amount to three years and accordingly, if that is correct, it is an offence to remove the child from the custody of the petitioner against the will of the petitioner except with the authority of the court or under the authority of any enactment or on the lawful arrest of the child].

Dated the day of 19

(Signed)
(Address)

[Solicitor for petitioner]

YOU ARE ADVISED TO CONSULT A SOLICITOR ABOUT THIS MATTER IMMEDIATELY.

NOTE. Both alternative paragraphs 3 should be struck out if the petitioner is a parent or guardian.

Consent of a parent or guardian to the granting of custody of a child to the petitioner

UNTO THE RIGHT HONOURABLE
THE LORDS OF COUNCIL AND SESSION

in

PETITION

of

A.B. (*address*)

for

Custody of the child E.F.

I, _____, of (*address*), being a parent [*or guardian*] of the child E.F.,
hereby state—

(1) That I understand that if I consent to the granting of custody to the petitioner,
the care, possession and control of the child may be granted by the court to the petitioner.

(2) That I consent to the petitioner being granted custody of the child, if the court
approves.

(Signed by parent or guardian)

Dated the _____ day of _____ 19 ____ .

(Signed by witness)

(Signed by witness)

Full name of witness

Full name of witness

Designation

Designation

Address

Address

.....

.....

This Form, if completed, should be returned to [the Solicitor for the Petitioner,] *name and address*).

FORM 55

rule 260D(2)(b) and (c)

Notice to local authority of presentation of petition for custody of a child under section 49(1) of the Children Act 1975

IN THE COURT OF SESSION

in

PETITION

of

A.B. (*address*)

for

Custody of the child E.F.

To (*name and address*)

TAKE NOTICE

1. That the petitioner has presented a petition to the Court of Session for custody of the child E.F. A copy of the petition is attached.
2. That you are required under section 49(2) of the Children Act 1975 to submit to the court a report on all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child.
3. That you are required to prepare the report without delay.
4. That on completion of your report you are required under rule 260D(6) of the Rules of the Court of Session to lodge three copies of the report in process in the Petition Department, Court of Session, Parliament Square, Edinburgh [and to send a copy of the report to (*name and address*), the curator *ad litem* to the child].

Dated the day of 19 .

(Signed)
(Address)

[Solicitor for Petitioner]

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session in relation to (a) a petition for the custody of a child and (b) restrictions on the removal of a child from the control of the person claiming custody, in consequence of the coming into force of Part II of the Children Act 1975 (sections 47 to 55); and amends the rules in consistorial causes in relation to the method of application under section 13 of the Matrimonial Proceedings (Children) Act 1958 (c.40) interdicting the removal of a child from the person in whose custody the child is.

This Act of Sederunt comes into force on 1st April 1986 which is the date on which Part II of the Children Act 1975 comes into force.

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