

## CHAPTER 81

### APPLICATIONS FOR PARENTAL ORDERS UNDER HUMAN FERTILISATION AND EMBRYOLOGY ACT 1990

#### Application and interpretation of this Chapter

**81.1.**-(1) This Chapter applies to an applications for parental orders under section 30 of the Human Fertilisation and Embryology Act 1990.

(2) In this Chapter, unless the context otherwise requires-  
"the Act of 1978" means the Adoption (Scotland) Act 1978;  
"the Act of 1990" means the Human Fertilisation and Embryology Act 1990;  
"Her Majesty's Forces" means the Royal Navy, the regular armed forces as defined in section 225 of the Army Act 1955(a), the regular airforce as defined in section 223 of the Air Force Act 1955(b) and the Queen Alexandra's Royal Naval Nursing Services;  
"the Regulations" means the Parental Orders (Human Fertilisation and Embryology) (Scotland) Regulations 1994.

#### Disapplication of certain rules to this Chapter

**81.2.** 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(1)(d) (period of notice for lodging answers where service by advertisement),
- rule 14.7 (intimation and services of petitions),
- rule 14.8 (procedure where answers lodged),
- rule 14.9 (unopposed petitions).

#### Confidentiality of documents in process

**81.3.** Unless the court otherwise directs, in any cause to which this Chapter applies-

- (a) any document lodged in process, including a report by a reporting officer or a curator *ad litem*, shall be treated as confidential and open only to the court, the parties, the reporting officer and the curator *ad litem*; and
- (b) a reporting officer or curator *ad litem* shall treat any information obtained by him in relation to the cause as confidential, and shall not disclose any such information to any person unless it is necessary for the proper execution of his duties.

#### Selection of reporting officer or curator *ad litem*

**81.4.** 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.

#### Form of agreements to parental order

**81.5.**-(1) An agreement for the purposes of section 30(5) of the Act of 1990 (agreement to parental order by a father who is not the husband of the female petitioner or by the woman who carried the child) shall be in Form 81.5.

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(a) 1955 c.18.

(b) 1955 c.19.

(2) An agreement referred to in this rule which is executed furth of Scotland shall be witnessed-

- (a) where it is executed in England, Wales or Northern Ireland, by a justice of the peace or commissioner for oaths;
- (b) where it is executed furth of the United Kingdom-
  - (i) in the case of a person who is serving in Her Majesty's Forces, by an officer holding a commission in those forces; or
  - (ii) by a British consular official or any person authorised, by the law of the country where the agreement is executed, to administer an oath for any legal purpose.

### **Orders for evidence**

**81.6.**-(1) In a cause to which this Chapter applies, the court may, before determining the cause, order-

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

(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.

### **Expenses**

**81.7.** 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.

### **Protection of identity of petitioners**

**81.8.**-(1) Where a married a couple, who seek to apply for a parental order, wish to prevent their identity being disclosed to any person whose agreement is required under section 30(5) of the Act of 1990 (agreement to parental order by a father who is not the husband of the female petitioner or by the woman who carried the child), they may, before presenting a petition, apply by letter to the Deputy Principal Clerk for a serial number to be assigned to them.

(2) On receipt of such a letter, the Deputy Principal Clerk shall assign a serial number to the applicants and shall enter a note of it opposite the names of the applicants in a register of serial numbers.

- (3) Where a serial number has been assigned under paragraph (2)-
  - (a) the record of the serial number and the persons to whom it applies shall be treated as confidential and disclosed only to the court;
  - (b) any agreement under section 30(5) of the Act of 1990 shall not name or design the petitioners but shall refer to them by means of the serial number; and
  - (c) it shall be used to name or design the petitioners for all purposes connected with the petition.

### **Applications for a parental order**

**81.9.**-(1) An application for a parental order shall be made by petition in Form 81.9.

- (2) On presentation of the petition, there shall be lodged in process as productions-
  - (a) an extract or a certified copy of any entry in the register of births relating to the birth of the child;
  - (b) extracts or certified copies of any entries in the register of births relating to the birth of each of the petitioners; and

- (c) an extract or a certified copy of any entry in the register of marriages relating to the marriage of the petitioners.

### **Appointment of reporting officer and curator *ad litem***

**81.10.**-(1) On presentation of the petition, the court shall appoint-

- (a) a reporting officer; and
- (b) a curator *ad litem* where it appears desirable in order to safeguard the interests of the child.

(2) Where a curator *ad litem* is appointed under paragraph (1) and is not also the reporting officer, the court may order the reporting officer to make available to the curator *ad litem* any report or information in relation to the child.

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

(4) An application under paragraph (3) 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.

(5) The Deputy Principal Clerk shall give written intimation to the applicant under paragraph (3) of the decision of the Lord Ordinary.

(6) The decision of the Lord Ordinary on an application under paragraph (3) shall be final and not subject to review.

(7) The letter and the interlocutor sheet in an application under paragraph (3) shall be kept in the Petition Department and subsequently placed in the process of the petition.

### **Duties of a reporting officer and curator *ad litem***

**81.11.**-(1) A reporting officer appointed under rule 81.10(1)(a) shall, where appropriate-

- (a) inquire into the facts and circumstances averred in the petition;
- (b) ascertain whether the conditions in subsections (2) to (7) of section 30 of the Act of 1990 have been satisfied;
- (c) witness any execution in Scotland of any agreement in Form 81.5 under section 30(5) of the Act of 1990 (agreement to parental order by a father who is not the husband of the female petitioner or by the woman who carried the child), and investigate whether the agreement is given freely, unconditionally and with the full understanding of what is involved;
- (d) where a person whose agreement is required is furth of Scotland, confirm his views in writing, ensure that any agreement under section 30(5) of the Act of 1990 is witnessed in accordance with rule 81.5(2) and investigate whether the agreement is given freely, unconditionally and with full understanding of what is involved;
- (e) ensure that each person whose agreement is required understands that in agreeing to the parental order he is giving up all future claims to the child and that all parental responsibilities and parental rights will vest in the petitioners;
- (f) investigate whether there are any other persons with a relevant interest and whether they should be informed of the petition;
- (g) ascertain from any person whose agreement is required and who can be found whether alternatives to a parental order have been discussed with him;
- (h) ensure that any person whose agreement is required is aware of the date (if known) of the hearing to determine the application if he wishes to appear, and confirm that any such

person understands that he may withdraw his agreement at any time before a parental order is made;

- (i) draw to the attention of the court any matter which may be of assistance; and
- (j) prepare a report in relation to the exercise of his duties within such period as the court may specify.

(2) A curator *ad litem* appointed under rule 81.10(1)(b) shall-

- (a) safeguard generally the interests of the child;
- (b) inquire, so far as he considers necessary, into the facts and circumstances averred in the petition;
- (c) ascertain whether any money or other benefit has been received or agreed upon which is prohibited by section 30(7) of the Act of 1990 (prohibition on gift or receipt of money or other benefit);
- (d) establish that the petitioners understand that the nature and effect of a parental order is to transfer the parental responsibilities and parental rights in relation to the child to the petitioners and make them responsible for the maintenance and upbringing of the child;
- (e) ascertain whether the proposed parental order is likely to safeguard and promote the welfare of the child throughout his childhood;
- (f) ascertain whether it may be in the interests of the child that the court should make a parental order subject to particular conditions including the making of special provision for the child;
- (g) perform such other duties as appear to him to be necessary or as the court may require; and
- (h) prepare a report in relation to the exercise of his duties within such period as the court may specify.

(3) The reporting officer shall, on completion of his report, send to the Deputy Principal Clerk-

- (a) the report and a copy of it for each party; and
- (b) any agreement for the purposes of section 30(5) of the Act of 1990.

(4) The curator *ad litem* shall, on completion of his report, send the report and a copy of it for each party, to the Deputy Principal Clerk.

## Hearing

**81.12.**-(1) On receipt of the reports referred to in rule 81.11, the Deputy Principal Clerk shall-

- (a) cause the reports and any other documents to be lodged in process;
- (b) give written intimation to each party of the lodging of those documents and make them available to each party; and
- (c) within 7 days thereafter, cause-
  - (i) the petition to be put out on the By Order Roll before the Lord Ordinary; and
  - (ii) written intimation of the date of the hearing on the By Order Roll to be given to each party.

(2) At the hearing on the By Order Roll, the court-

- (a) shall pronounce an interlocutor appointing a petition to a hearing to determine the petition; and
- (b) may, in such interlocutor-
  - (i) order any person whose agreement is required to be given to attend the hearing; and
  - (ii) order intimation of the date of the hearing to any person not mentioned in paragraph (3)(a), (b) or (c); and
  - (iii) order the reporting officer or curator *ad litem* to perform additional duties to assist the court in determining the petition.

(3) The petitioners shall intimate the date of the hearing ordered under paragraph (2)(a) in Form 81.12 to-

- (a) every person whose whereabouts are known to them and whose agreement is required to be given;
- (b) the reporting officer appointed under rule 81.10(1)(a);
- (c) any curator *ad litem* appointed under rule 81.10(1)(b); and
- (d) any person on whom intimation has been ordered under paragraph (2)(b)(ii).

(4) At the hearing ordered under paragraph (2)(a)-

- (a) the petitioners, the reporting officer and, where one has been appointed, the curator *ad litem* shall, if required by the court, appear and may be represented;
- (b) any person required by the court to attend the hearing shall appear and may be represented;
- (c) any person to whom intimation was made under paragraph (3)(a) or (d) may appear or be represented.

### **Applications for return, removal or prohibition of removal of child**

**81.14.**-(1) An application under section 29 of the Act of 1978(a), as modified and applied in relation to applications for parental orders by Schedule 1 to the Regulations (order to return a child to, or not to remove a child from, the care of the applicants), in relation to a breach of section 27(1) of that Act(b) as so modified and applied (restrictions on removal of child where application for parental order pending), or under section 27(1) of that Act as so modified and applied for leave to remove a child, shall be made by note in the process of the petition for a parental order to which it relates.

(2) Subject to paragraph (3), rule 81.2 (disapplication of certain rules to this Chapter) shall not apply to an application mentioned in paragraph (1) of this rule.

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

### **Applications to amend, or revoke a direction in, a parental order**

**81.15.**-(1) An application under paragraph 3(1) of Schedule 1 to the Act of 1978, as modified and applied in relation to parental orders by Schedule 1 to the Regulations (amendment, or revocation of a direction in, a parental order), shall be made by petition.

(2) Subject to paragraph (3), rule 81.2 (disapplication of certain rules to this Chapter) shall not apply to an application mentioned in paragraph (1) of this rule.

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

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(a) Section 29 of the Act of 1978 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 2, paragraphs 43 and 44 and by the Children Act 1989 (c.41), Schedule 10, paragraph 39.

(b) Section 27 was amended by the said Act of 1983, Schedule 2, paragraph 43.

### **Registration of certified copy interlocutor**

**81.16.** On the court pronouncing an interlocutor making-

- (a) a parental order,
- (b) an amendment to, or revocation of a direction in, a parental order, or
- (c) a revocation of a parental order,

the clerk of court shall send a certified copy of that interlocutor to the Registrar General for Scotland in a sealed envelope marked "confidential".

### **Extract of order**

**81.17.** An extract of a parental order shall not be issued except by order of the court on an application to it-

- (a) where there is a petition for the parental order depending before the court, by motion in that process; or
- (b) where there is no such petition depending before the court, by petition.

### **Procedure after intimation to the Register General or issue of extract**

**81.18.**-(1) After a certified copy of an interlocutor mentioned in rule 81.16 has been sent to the Registrar General for Scotland, 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 petitioners;
  - (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) No person shall open a process referred to in paragraph (1) or inspect its contents within 100 years after the date of the parental order, except-

- (a) the person in respect of whom the parental order was made after he has reached the age of 16 years;
- (b) any other person or body entitled under section 45(5) of the Act of 1978, as modified and applied in relation to parental orders and applications for such orders by Schedule 1 to the Regulations, to access to the registers and books kept under section 45(4) of that Act, as so modified and applied, with the written authority of the person in respect of whom the parental order was made;
- (c) by order of the court on an application made by petition presented by another court or authority (whether within the United Kingdom or not) having the power to make a parental order for the purpose of obtaining information in connection with an application to it for such an order;
- (d) by order of the court on an application made by petition presented by any person; and
- (e) a person who is authorised in writing by the Secretary of State to obtain information from the process for the purpose of research designed to improve the working of human fertilisation and embryology law and practice.