

2001 No. 142

SHERIFF COURT

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Adults with Incapacity) 2001

Made

30th March 2001

Coming into force

2nd April 2001

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and section 2(4) of the Adults with Incapacity (Scotland) Act 2000(b) 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 (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Adults with Incapacity) 2001 and shall come into force on 2nd April 2001.

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

Interpretation

2. In this Act of Sederunt—

"the principal Rules" means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(c).

Amendment of the principal Rules

3.—(1) The principal Rules shall be amended in accordance with the following paragraphs.

(2) In Chapter 3 (rules on applications under specific statutes), after Part XV (Race Relations Act 1976)(d), insert—

(a) 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) and the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 13.

(b) 2000 asp 4.

(c) S.I. 1999/929, as amended by S.S.I. 2000/148 and 387.

(d) Inserted by S.S.I. 2000/148.

Interpretation

3.16.1 In this Part—

“the 1984 Act” means the Mental Health (Scotland) Act 1984(a);

“the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000;

“adult” means a person who has attained the age of 16 years and who is the subject of an application under the 2000 Act;

“authorised establishment” has the meaning ascribed to it in section 35(2) of the 2000 Act;

“continuing attorney” means a person on whom there has been conferred a power of attorney granted under section 15(1) of the 2000 Act;

“incapable” has the meaning ascribed to it at section 1(6) of the 2000 Act, and “incapacity” shall be construed accordingly;

“managers” has the meaning ascribed to it in paragraph 1 of Schedule 1 to the 2000 Act;

“nearest relative” means, subject to section 87(2) of the 2000 Act, the person who would be, or would be exercising the functions of, the adult’s nearest relative under sections 53 to 57 of the 1984 Act if the adult were a patient within the meaning of that Act and notwithstanding that the person neither is or was caring for the adult for the purposes of section 53(3) of that Act;

“power of attorney” includes a faculty and commission;

“primary carer” means the person or organisation primarily engaged in caring for an adult;

“Public Guardian” shall be construed in accordance with section 6 of the 2000 Act; and

“welfare attorney” means a person on whom there has been conferred a power of attorney granted under section 16(1) of the 2000 Act.

Appointment of hearing

3.16.2 On an application or other proceedings being submitted under or in pursuance of the 2000 Act the sheriff shall—

- (a) fix a hearing;
- (b) order answers to be lodged (where he considers it appropriate to do so) within a period that he shall specify; and
- (c) appoint service and intimation of the application or other proceedings.

Place of any hearing

3.16.3 The sheriff may, where he considers it appropriate in all the circumstances, appoint that the hearing of an application or other proceedings shall take place in a hospital or other place.

Service of application

3.16.4—(1) Service of the application or other proceedings shall be made in Form 20 on—

- (a) the adult;
- (b) the nearest relative of the adult;
- (c) the primary carer of the adult (if any);
- (d) any guardian, continuing attorney or welfare attorney of the adult who has any power relating to the application or proceedings;
- (e) the Public Guardian; and

(a) 1984 c.36.

- (f) any other person directed by the sheriff.
- (2) Where the applicant is an individual person without legal representation service shall be effected by the sheriff clerk.
- (3) Where the adult is in an authorised establishment the person effecting service shall not serve Form 20 on the adult under paragraph (1)(a) but shall instead serve Forms 20 and 21, together with Form 22, on the managers of that authorised establishment by—
 - (a) first class recorded delivery post; or
 - (b) personal service by a sheriff officer.
- (4) On receipt of Forms 20 and 21 in terms of paragraph (3) the managers of the authorised establishment shall, subject to rule 3.16.5—
 - (a) deliver the notice in Form 20 to the adult; and
 - (b) as soon as practicable thereafter complete and return to the sheriff clerk a certificate of such delivery in Form 22.
- (5) Where the application or other proceeding follows on a remit under rule 3.16.9 the order for service of the application shall include an order for service on the Public Guardian or other party concerned.

Dispensing with service on adult

3.16.5—(1) Where, in relation to any application or proceeding under or in pursuance of the 2000 Act, two medical certificates are produced stating that intimation of the application or other proceeding, or notification of any interlocutor relating to such application or other proceeding, would be likely to pose a serious risk to the health of the adult the sheriff may dispense with such intimation or notification.

(2) Any medical certificates produced under paragraph (1) shall be prepared by medical practitioners independent of each other.

(3) In any case where the incapacity of the adult is by reason of mental disorder, one of the two medical practitioners must be a medical practitioner approved for the purposes of section 20 of the 1984 Act as having special experience in the diagnosis or treatment of mental disorder.

Hearing

3.16.6—(1) A hearing to determine any application or other proceeding shall take place within 28 days of the interlocutor fixing the hearing under rule 3.16.2.

(2) At the hearing referred to in paragraph (1) the sheriff may determine the application or other proceeding or may order such further procedure as he thinks fit.

Prescribed forms of application

3.16.7—(1) An application submitted to the sheriff under or in pursuance of the 2000 Act, other than an appeal or remitted matter, shall be in Form 23.

(2) An appeal to the sheriff under or in pursuance of the 2000 Act shall be in Form 24.

Subsequent applications

3.16.8—(1) Any application or proceedings subsequent to an initial application or proceeding considered by the sheriff shall take the form of a minute lodged in the process.

(2) Where any subsequent application or proceedings under paragraph (1) above are made to a court in another sheriffdom the sheriff clerk shall transmit the court process to the court dealing with the current application or proceeding.

(3) Transmission of the process in terms of paragraph (2) shall be made within 4 days of it being requested by the sheriff clerk of the court in which the current application or proceedings have been raised.

Remit of applications by the Public Guardian etc.

3.16.9 Where an application is remitted to the sheriff by the Public Guardian or by any other party authorised to do so under the 2000 Act the party remitting the application shall, within 4 days of the decision to remit, transmit the papers relating to the application to the sheriff clerk of the court where the application is to be considered.”.

(3) In Schedule 1 to the principal Rules, after Form 19, insert the forms as set out in the Schedule to this Act of Sederunt.

Rodger of Earlsferry
Lord President,
I.P.D.

Edinburgh
30th March 2001

SCHEDULE

FORM 20

FORM OF NOTICE OF AN APPLICATION UNDER THE ADULTS WITH
INCAPACITY (SCOTLAND) ACT 2000

To *(insert name and address)*

Attached to this notice is a copy of an application for *(insert type of application)* under the Adults with Incapacity (Scotland) Act 2000.

The hearing will be held at *(insert place)* on *(insert date)* at *(insert time)*

You may appear personally at the hearing of this application.

In any event, if you are unable or do not wish to appear personally you may appoint a legal representative to appear on your behalf.

If you are uncertain as to what action to take you should consult a solicitor. You may be eligible for legal aid, and you can obtain information about legal aid from any solicitor. You may also obtain information from any Citizens Advice Bureau or other advice agency.

If you do not appear personally or by legal representative, the sheriff may consider the application in the absence of you or your legal representative.

(insert place and date)

(signed)

Sheriff Clerk
or
[P.Q.], Sheriff Officer
or
[X.Y.], Solicitor

FORM 21

Rule 3.16.4(3)

FORM OF NOTICE TO MANAGERS

To *(insert name and address of manager)*

A copy of an application made under the Adults with Incapacity (Scotland) Act 2000 and notice of hearing is sent with this notice.

1. You are requested to deliver it personally to *(name of adult)* and to explain the contents of it to him or her.
2. You are further requested to complete and return to the sheriff clerk in the enclosed envelope the certificate (Form 22) appended hereto before the date of the hearing.

(insert place and date)

(signed)

Sheriff Clerk
or
[P.Q.], Sheriff Officer
or
[X.Y.], Solicitor

FORM 22

Rule 3.16.4(4)

FORM OF CERTIFICATE OF DELIVERY BY MANAGER

I, *(insert name and designation)*, certify that—

I have on *(insert date)* personally delivered to *(name of adult)* a copy of the application and the intimation of the hearing and have explained the contents to him/her.

Date *(insert date)*

(signed)

Manager

(add designation and address)

FORM 23

Rule 3.16.7(1)

SUMMARY APPLICATION UNDER THE ADULTS WITH INCAPACITY
(SCOTLAND) ACT 2000

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of Sheriff Court)*

[A.B.] *(design and state capacity in which the application is made)*, Pursuer

The applicant craves the court *(state here the specific order(s) sought by reference to the provisions in the Adults with Incapacity (Scotland) Act 2000.)*

STATEMENTS OF FACT

(State in numbered paragraphs the facts on which the application is made, including:

1. *The designation of the adult concerned (if other than the applicant).*
2. *The designation of:*
 - (a) *the adult's nearest relative;*
 - (b) *the adult's primary carer;*
 - (c) *any guardian, continuing attorney or welfare attorney of the adult; and*
 - (d) *any other person who may have an interest in the application.*
3. *The adult's place of habitual residence and/or the location of the property which is the subject of the application.)*

(insert place and date)

(signed)

[A.B.], Pursuer

or

[X.Y.], *(state designation and
business address)*

Solicitor for the Pursuer

Note. This Form should not be used for appeals to the Sheriff. Appeals should be made in Form 24.

FORM 24

Rule 3.16.7(2)

APPEAL TO THE SHERIFF UNDER THE ADULTS WITH INCAPACITY
(SCOTLAND) ACT 2000

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of Sheriff Court)*

[A.B.] *(design and state capacity in which the appeal is being made)*, Pursuer

This appeal is made in respect of *(state here the decision concerned, the date on which it was intimated to the pursuer, and refer to the relevant provisions in the Adults with Incapacity (Scotland) Act 2000)*.

A copy of the decision is produced.

(State here, in numbered paragraphs:

1. *The designation of the adult concerned (if other than the applicant).*
2. *The designation of:*
 - (a) *the adult's nearest relative;*
 - (b) *the adult's primary carer;*
 - (c) *any guardian, continuing attorney or welfare attorney of the adult; and*
 - (d) *any other person who may have an interest in the application.*
3. *The adult's place of habitual residence and/or the location of the property which is the subject of the application.)*

The pursuer appeals against the decision on the following grounds *(state here in separate paragraphs the grounds on which the appeal is made)*.

The pursuer craves the court *(state here orders sought in respect of appeal)*.

(insert place and date)

(signed)

[A.B.], Pursuer

or

[X.Y.], *(state designation and business address)*

Solicitor for the Pursuer

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (“the principal Rules”) by inserting into Chapter 3 a new Part (Part XVI).

Rule 3(2) inserts into the principal Rules the new Part containing specific provisions in relation to the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”). The new rules provide as follows–

- (a) rule 3.16.1 provides a number of definitions for use in that Part of the principal Rules;
- (b) rule 3.16.2 provides for the appointment of a hearing where an application or other proceeding has been submitted under the 2000 Act, whilst new rule 3.16.3 allows the Sheriff to appoint that the hearing take place outwith the sheriff court, including in a hospital, where he considers it appropriate in the circumstances. Under new rule 3.16.6 any hearing is to take place within 28 days of the interlocutor fixing the hearing;
- (c) rule 3.16.4. paragraph (1) provides a list of parties on whom the application is to be served in the specified form, including the adult in question and the nearest relative of that adult. Paragraph (3) provides that where the adult is in an authorised establishment, the managers of that establishment are to be served with the relevant form instead of the adult. Paragraph (4) provides that the managers are then to deliver the notice to the adult, unless service is to be dispensed with under rule 3.16.5, and thereafter return to the sheriff clerk a certificate of delivery in the specified form;
- (d) rule 3.16.5 allows the sheriff to dispense with service of an application or proceeding on an adult where two medical certificates state that service would be likely to pose a serious risk to the health of the adult;
- (e) rule 3.16.7 prescribes the forms of application and appeal to the sheriff under the 2000 Act, whilst new rule 3.16.8 provides for any subsequent applications or proceedings to take the form of a minute lodged in the process; and
- (f) rule 3.16.9 provides for the transmission of papers relating to the application to the sheriff clerk where that application is remitted to the sheriff by the Public Guardian or any other party authorised to do so.

Rule 3(3) inserts into the principal Rules the following forms, set out in the Schedule to this Act of Sederunt–

- (a) Form 20, the form of notice to be served of an application under the 2000 Act;
- (b) Form 21, the form of notice to managers which is to accompany Form 20 where the adult is in an authorised establishment;
- (c) Form 22, the form of certificate of delivery of Form 20 to an adult by a manager;
- (d) Form 23, the form of summary application to be used for applications under the 2000 Act; and
- (e) Form 24, the form of appeal to the sheriff for appeals under the 2000 Act.

£2.50

© Crown Copyright 2001

Published and printed in the UK by The Stationery Office Limited under the authority and
superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and
Queen's Printer of Acts of Parliament

200

04/01

19593

