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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 132**

**Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Curators ad litem) 2017**

**Amendment of the Ordinary Cause Rules 1993**

2.—(1) The Ordinary Cause Rules 1993(1) are amended in accordance with this paragraph.

(2) In rule 33.1(2) (interpretation of Chapter 33)(2), after the definition of “Gender Recognition Panel”, insert—

““incapable” means incapable, by reason of mental disorder, of—

- (a) acting;
- (b) making decisions;
- (c) communicating decisions;
- (d) understanding decisions; or
- (e) retaining the memory of decisions,

but a person is not incapable by reason only of a lack of deficiency in a faculty of communication where that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise);”.

(3) In rule 33.16 (appointment of curators *ad litem* to defenders)(3)—

- (a) in paragraph (1), for “is suffering from”, substitute “has”;
- (b) in paragraph (2)—
  - (i) after “shall”, insert “, after the expiry of the period for lodging a notice of intention to defend”; and
  - (ii) for subparagraph (b), substitute—
    - “(b) make an order requiring the curator *ad litem* to lodge in process a report, based on medical evidence, stating whether or not, in the opinion of a suitably qualified medical practitioner, the defender is incapable of instructing a solicitor to represent the defender’s interests.”;
- (c) for paragraph (4), substitute—
  - “(4) On lodging a report under paragraph (2)(b), the curator *ad litem* must intimate that this has been done to—
    - (a) the pursuer; and
    - (b) the solicitor for the defender, if known.”;
- (d) for paragraph (5), substitute—

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(1) The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and was last amended by S.S.I. 2017/130.  
(2) Rule 33.1(2) was last amended by S.S.I. 2006/207.  
(3) Rule 33.16 was last amended by S.S.I. 2012/188.

“(5) Within 14 days after the report required under paragraph (2)(b) has been lodged, the curator *ad litem* must lodge in process one of the writs mentioned in paragraph (6).”;

(e) for paragraph (8), substitute—

“(8) At such intervals as the curator *ad litem* considers reasonable having regard to the nature of the defender’s mental disorder, the curator *ad litem* must review whether there appears to have been any change in the defender’s capacity to instruct a solicitor, in order to ascertain whether it is appropriate for the appointment to continue.

(8A) If it appears to the curator *ad litem* that the defender may no longer be incapable, the curator *ad litem* must by motion seek the sheriff’s permission to obtain an opinion on the matter from a suitably qualified medical practitioner.

(8B) If the motion under paragraph (8A) is granted, the curator *ad litem* must lodge in process a copy of the opinion as soon as possible.

(8C) Where the opinion concludes that the defender is not incapable of instructing a solicitor, the curator *ad litem* must seek discharge from appointment by minute.”; and

(f) in paragraph (9)(c), for “is not suffering from mental disorder”, substitute “is not incapable of instructing a solicitor”.

(4) In rule 33A.1(2) (interpretation of Chapter 33A)(4), after the definition of “Gender Recognition Panel”, insert—

““incapable” means incapable, by reason of mental disorder, of—

- (a) acting;
- (b) making decisions;
- (c) communicating decisions;
- (d) understanding decisions; or
- (e) retaining the memory of decisions,

but a person is not incapable by reason only of a lack of deficiency in a faculty of communication where that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise);”.

(5) In rule 33A.16 (appointment of curators *ad litem* to defenders)(5)—

(a) in paragraph (1), for “is suffering from”, substitute “has”;

(b) in paragraph (2)—

(i) after “shall”, insert “, after the expiry of the period for lodging a notice of intention to defend”; and

(ii) for subparagraph (b), substitute—

“(b) make an order requiring the curator *ad litem* to lodge in process a report, based on medical evidence, stating whether or not, in the opinion of a suitably qualified medical practitioner, the defender is incapable of instructing a solicitor to represent the defender’s interests.”;

(c) for paragraph (4), substitute—

“(4) On lodging a report under paragraph (2)(b), the curator *ad litem* must intimate that this has been done to—

- (a) the pursuer; and

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(4) Chapter 33A was inserted by [S.S.I. 2005/638](#). Rule 33A.1 was last amended by [S.S.I. 2006/207](#).

(5) Rule 33A.16 was last amended by [S.S.I. 2012/188](#).

- (b) the solicitor for the defender, if known.”;
- (d) for paragraph (5), substitute—

“(5) Within 14 days after the report required under paragraph (2)(b) has been lodged, the curator *ad litem* must lodge in process one of the writs mentioned in paragraph (6).”;
- (e) for paragraph (8), substitute—

“(8) At such intervals as the curator *ad litem* considers reasonable having regard to the nature of the defender’s mental disorder, the curator *ad litem* must review the defender’s capacity to instruct a solicitor, in order to ascertain whether it is appropriate for the appointment to continue.

(8A) If it appears to the curator *ad litem* that the defender may no longer be incapable, the curator *ad litem* must by motion seek the sheriff’s permission to obtain an opinion on the matter from a suitably qualified medical practitioner.

(8B) If the motion under paragraph (8A) is granted, the curator *ad litem* must lodge in process a copy of the opinion as soon as possible.

(8C) Where the opinion concludes that the defender is not incapable of instructing a solicitor, the curator *ad litem* must seek discharge from appointment by minute.”; and
- (f) in paragraph (9)(c), for “is not suffering from mental disorder”, substitute “is not incapable of instructing a solicitor”.
- (6) In Appendix 1(forms)—
  - (a) in Form F31 (form of simplified divorce application under section 1(2)(d) of the Divorce (Scotland) Act 1976)(6), in question 8 of Part 1, for “Does”, substitute “As far as you are aware, does”;
  - (b) in Form F33 (form of simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976)(7), in question 9 of Part 1, for “Does”, substitute “As far as you are aware, does”;
  - (c) in Form F33A (form of simplified divorce application under section 1(1)(b) of the Divorce (Scotland) Act 1976)(8), in question 8 of Part 1, for “Does”, substitute “As far as you are aware, does”;
  - (d) in Form CP29 (form of simplified dissolution of civil partnership application under section 117(3)(c) of the Civil Partnership Act 2004)(9), in question 8 of Part 1, for “Does”, substitute “As far as you are aware, does”;
  - (e) in Form CP30 (form of simplified dissolution of civil partnership application under section 117(3)(d) of the Civil Partnership Act 2004)(10), in question 9 of Part 1, for “Does”, substitute “As far as you are aware, does”; and
  - (f) in Form CP31 (form of simplified dissolution of a civil partnership application on grounds under section 117(2)(b) of the Civil Partnership Act 2004)(11), in question 8 of Part 1, for “Does”, substitute “As far as you are aware, does”.

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(6) Form F31 was last amended by S.S.I. 2014/302.

(7) Form F33 was last amended by S.S.I. 2014/302.

(8) Form F33A was inserted by S.S.I. 2006/207 and was last amended by S.S.I. 2014/302.

(9) Form CP29 was inserted by S.S.I. 2005/638 and was last amended by S.S.I. 2006/207.

(10) Form CP30 was inserted by S.S.I. 2005/638 and was last amended by S.S.I. 2006/207.

(11) Form CP31 was inserted by S.S.I. 2005/638 and was last amended by S.S.I. 2006/207.