
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 146

**Act of Sederunt (Summary Applications,
Statutory Applications and Appeals etc. Rules)
Amendment (No. 3) (Adults with Incapacity) 2002**

Amendment of the Summary Applications Rules

2.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999⁽¹⁾ shall be amended in accordance with the following paragraphs.

(2) In Chapter 3, in Part XVI (Adults with Incapacity (Scotland) Act 2000)⁽²⁾—

(a) in rule 3.16.1 (interpretation)—

(i) after the definition of “continuing attorney” insert—

““guardianship order” means an order made under section 58(4) of the 2000 Act;”;

(ii) after the definition of “incapable” insert—

““intervention order” means an order made under section 53(1) of the 2000 Act;

“local authority” has the meaning ascribed to it by section 87(1) of the 2000 Act;”;

(iii) after the definition of “managers” insert—

“Mental Welfare Commission” has the meaning ascribed to it by section 87(1) of the 2000 Act;”;

(b) in rule 3.16.4 (service of application)—

(i) at the end of paragraph (1)(e) omit “and”;

(ii) after paragraph (1)(e) insert—

“(ea) where appropriate, the Mental Welfare Commission;

(eb) where appropriate, the local authority; and”;

(iii) after paragraph (5) insert—

“(6) Where the application is for an intervention order or a guardianship order, copies of the reports lodged in accordance with section 57(3) of the 2000 Act (reports to be lodged in court along with application) shall be served along with Form 20, or Forms 20, 21 and 22 as the case may be.”;

(c) in rule 3.16.6(1) (hearing) after “rule 3.16.2” insert “unless any person upon whom the application is to be served is outside Europe”;

(d) in rule 3.16.8 (subsequent applications)—

(i) in paragraph (1)—

⁽¹⁾ S.I.1999/929, as amended by S.S.I. 2000/148 and 387, 2001/142 and 2002/7, S.S.I. 2002/129 and S.S.I. 2002/130.

⁽²⁾ Part XVI was inserted by S.S.I. 2001/142.

- (aa) for “Any” substitute “Unless otherwise prescribed in this Part or under the 2000 Act, any”; and
- (bb) after “considered by the sheriff” insert “, including an application to renew an existing order.”;
- (ii) after paragraph (1) insert—
 - “(1A) Except where the sheriff otherwise directs, any such minute shall be lodged in accordance with, and regulated by, Chapter 14 of the Ordinary Cause Rules.”; and
- (iii) after paragraph (3) insert—
 - “(4) Where the application is for renewal of a guardianship order, copies of the reports lodged in accordance with section 57(3) shall be served along with the minute.”; and
- (e) after rule 3.16.9 (remit of applications by Public Guardian etc.) insert—

“Caution

3.16.10.—(1) Where the sheriff requires a person authorised under an intervention order or any variation of an intervention order, or appointed as a guardian, to find caution he shall specify the amount and period within which caution is to be found in the interlocutor authorising or appointing the person or varying the order (as the case may be).

(2) The sheriff may, on application made by motion before the expiry of the period for finding caution and on cause shown, allow further time for finding caution in accordance with paragraph (1).

(3) Caution shall be lodged with the Public Guardian.

(4) Where caution has been lodged to the satisfaction of the Public Guardian he shall notify the sheriff clerk.

(5) The sheriff may at any time while a requirement to find caution is in force—

- (a) increase the amount of, or require the person to find new, caution; or
- (b) authorise the amount of caution to be decreased.

Appointment of interim guardian

3.16.11 An application under section 57(5) of the 2000 Act (appointment of interim guardian) may be made in the crave of the application for a guardianship order to which it relates or, if made after the submission of the application for a guardianship order, by motion in the process of that application.

Registration of intervention order or guardianship order relating to heritable property

3.16.12 Where an application for an intervention order or a guardianship order seeks to vest in the person authorised under the order, or the guardian, as the case may be, any right to deal with, convey or manage any interest in heritable property which is recorded or capable of being recorded in the General Register of Sasines or is registered or capable of being registered in the Land Register of Scotland, the applicant must specify the necessary details of the property in the application to enable it to be identified in the Register of Sasines or the Land Register of Scotland, as the case may be.

Non-compliance with decisions of guardians with welfare powers

3.16.13.—(1) Where the court is required under section 70(3) of the 2000 Act to intimate an application for an order or warrant in relation to non-compliance with the decision of a guardian with welfare powers, the sheriff clerk shall effect intimation in Form 20 in accordance with paragraphs (2) and (3).

(2) Intimation shall be effected—

- (a) where the person is within Scotland, by first class recorded delivery post, or, in the event that intimation by first class recorded delivery post is unsuccessful, by personal service by a sheriff officer; or
- (b) where the person is furth of Scotland, in accordance with rule 2.12 (service on persons furth of Scotland).

(3) Such intimation shall include notice of the period within which any objection to the application shall be lodged.”.