
SCOTTISH STATUTORY INSTRUMENTS

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 Rules of the Court of Session 1994

3.—(1) The Rules of the Court of Session 1994⁽¹⁾ are amended in accordance with this paragraph.

(2) In rule 49.1(2) (interpretation of Chapter 49)⁽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 49.17 (appointment of curators *ad litem* to defenders)⁽³⁾—

(a) in paragraph (1)—

- (i) for “an action of divorce, separation, dissolution of a civil partnership, or separation of civil partners”, substitute “a family action”; and
- (ii) for “is suffering from”, substitute “has”;

(b) for paragraph (2)(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—

(1) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2017/131).
(2) Rule 49.1(2) was last amended by S.S.I. 2014/302.
(3) Rule 49.17 was last amended by S.S.I. 2006/206.

- “(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 court’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 the Appendix (forms)—
- (a) in Form 49.73-A (form of simplified divorce application under section 1(2)(d) of the Divorce (Scotland) Act 1976)(4), in question 8 of Part 1—
- (i) for “MENTAL DISABILITY”, substitute “MENTAL DISORDER”; and
- (ii) for “Is your spouse incapable of managing his/her affairs because of a mental disorder”, substitute “As far as you are aware, does your spouse have any mental disorder”;
- (b) in Form 49.73-B (form of simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976)(5), in question 9 of Part 1—
- (i) for “MENTAL DISABILITY”, substitute “MENTAL DISORDER”; and
- (ii) for “is your spouse incapable of managing his/her affairs because of a mental disorder”, substitute “does your spouse have any mental disorder”;
- (c) in Form 49.73-C (form of simplified divorce application under section 1(1)(b) of the Divorce (Scotland) Act 1976)(6), in question 8 of Part 1—
- (i) for “MENTAL DISABILITY”, substitute “MENTAL DISORDER”; and
- (ii) for “is your spouse incapable of managing his/her affairs because of a mental disorder”, substitute “does your spouse have any mental disorder”;
- (d) in Form 49.80B-A (form of simplified dissolution of civil partnership application under section 117(3)(c) of the Civil Partnership Act 2004)(7), in question 8 of Part 1—
- (i) for “MENTAL DISABILITY”, substitute “MENTAL DISORDER”; and
- (ii) for “Is your civil partner incapable of managing his/her affairs because of a mental disorder”, substitute “As far as you are aware, does your civil partner have any mental disorder”;
- (e) in Form 49.80B-B (form of simplified dissolution of civil partnership application under section 117(3)(d) of the Civil Partnership Act 2004)(8), in question 9 of Part 1—

(4) Form 49.73-A was last amended by [S.S.I. 2014/302](#).

(5) Form 49.73-B was last amended by [S.S.I. 2014/302](#).

(6) Form 49.73-C was last amended by [S.S.I. 2014/302](#).

(7) Form 49.80B-A was inserted by [S.S.I. 2005/632](#) and was last amended by [S.S.I. 2006/206](#).

(8) Form 49.80B-B was inserted by [S.S.I. 2005/632](#) and was last amended by [S.S.I. 2007/7](#).

- (i) for “MENTAL DISABILITY”, substitute “MENTAL DISORDER”; and
 - (ii) for “is your civil partner incapable of managing his/her affairs because of a mental disorder”, substitute “does your civil partner have any mental disorder”; and
- (f) in Form 49.80B-C (form of simplified dissolution of civil partnership application under section 117(2)(b) of the Civil Partnership Act 2004)(9), in question 8 of Part 1—
- (i) for “MENTAL DISABILITY”, substitute “MENTAL DISORDER”; and
 - (ii) for “is your civil partner incapable of managing his/her affairs because of a mental disorder”, substitute “does your civil partner have any mental disorder”.