

## STATUTORY INSTRUMENTS

1986 No. 545 (S. 54)

## SHERIFF COURT, SCOTLAND

## Act of Sederunt (Mental Health (Scotland) Act 1984) 1986

*Made - - - -*

14th March 1986

*Coming into Operation*

7th April 1986

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and of all other powers enabling them in that behalf, do hereby enact and declare:—

*Citation and commencement*

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Mental Health (Scotland) Act 1984) 1986 and shall come into operation on 7th April 1986.

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

(3) The words and expressions used in this Act of Sederunt which are also used in the Mental Health (Scotland) Act 1984(b) (referred to in this Act of Sederunt as “the 1984 Act”) shall, unless the context otherwise requires, have the same meaning as in that Act.

*Service of notice*

2.—(1) In an application to the sheriff for admission of a patient to a hospital under section 21, or of a patient into guardianship under section 40, of the 1984 Act—

(a) the sheriff shall appoint a hearing; and

(b) the sheriff clerk shall serve or cause to be served upon the person who is the subject of such proceedings a copy of the application (with the exception of any medical recommendations) together with a notice as nearly as may be in accordance with Form 1 in the Schedule to this Act of Sederunt.

(2) The sheriff may appoint that the hearing of an application to which paragraph 2(1) applies shall take place in a hospital or other place, where he considers this to be appropriate in all the circumstances.

3.—(1) Where the person who is the subject of the application is not already a patient in a hospital, the notice and copy application referred to in paragraph 2(1) shall be served on him personally by a sheriff officer.

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(a) 1971 c. 58.

(b) 1984 c. 36.

(2) Where the person who is the subject of the application is a patient in a hospital, the notice and copy application referred to in paragraph 2(1) shall be served—

- (a) by recorded delivery post by the sheriff clerk; or
- (b) personally by a sheriff officer,

on his responsible medical officer and shall be accompanied by a further notice as nearly as may be in accordance with Form 2 in the Schedule to this Act of Sederunt addressed to the responsible medical officer.

(3) Where the person who is the subject of the application is already the subject of a guardianship order, the notice and copy application (including any medical recommendations) shall, in addition to any other service required by this paragraph, be served on the guardian—

- (a) by recorded delivery post by the sheriff clerk; or
- (b) personally by a sheriff officer.

*Duties of responsible medical officer*

4.—(1) On receipt by him of a notice under paragraph 3(2), the responsible medical officer shall, subject to paragraph 5(1)—

- (a) deliver the notice referred to in paragraph 2(1) to the patient; and
- (b) as soon as practicable thereafter, complete and return to the court a certificate of such delivery as nearly as may be in accordance with Form 3 in the Schedule to this Act of Sederunt.

(2) Where, in the opinion of the responsible medical officer, it would be prejudicial to the patient's health or treatment if the patient were to be present during the proceedings, he shall set forth his reasons for his opinion in the certificate referred to in sub-paragraph (1).

*Appointment of curator ad litem*

5.—(1) Where, in an application to which paragraph 2(1) applies, two medical certificates are produced stating that it would be prejudicial to the health or treatment of the person who is the subject of the application if personal service were effected upon him in terms of paragraph 3(1) or 4(1), the sheriff—

- (a) may dispense with such service; and
- (b) if he does so, shall appoint a *curator ad litem* to receive the application and represent the interests of that person.

(2) Where, in an application to which paragraph 2(1) applies, the sheriff is satisfied that—

- (a) the person who is the subject of the application should be excluded from the whole or any part of the proceedings under section 113(2) of the 1984 Act; or
- (b) in any other case, it is in all the circumstances appropriate for him to do so,

he may appoint a *curator ad litem* to represent the interests of the person who is the subject of the application.

(3) Service of an application upon a *curator ad litem* shall be effected by the sheriff clerk handing, or sending by recorded delivery post, to him a copy of the application (including any medical recommendations) and of the order appointing him.

*Appointment of solicitor by court*

6. Where in an application to which paragraph 2(1) applies, the person who is the subject of the application has indicated that he wishes to be represented at the hearing but has not nominated a representative, the sheriff may appoint a solicitor to take instructions from that person.

*Intimation to representatives*

7. Where in any proceedings under the 1984 Act, the sheriff clerk is aware that the person who is the subject of the application is represented by any person and that representative would not otherwise receive intimation of any diet, a copy of the notice served on the person who is the subject of the application shall be intimated to the representative by the sheriff clerk by recorded delivery post.

*Service by sheriff officer*

8.—(1) Where a copy of an application and any notice has been served personally by a sheriff officer under this Act of Sederunt, he shall prepare and return to the court an execution of such service setting forth in detail the manner and circumstances of such service.

(2) Where a sheriff officer has been unable to effect personal service under this Act of Sederunt, he shall report to the court the reason why service was not effected.

*Emslie,*  
Lord President.  
I.P.D.

Edinburgh  
14th March 1986.

## SCHEDULE

*para. 2(1)*

## FORM 1

**Notice to be served on person who is the subject of admission or guardianship proceedings**To (*name and address*)

Attached to this notice is a copy of—

an application to the managers of (*name of hospital*) for your admission to that hospital in accordance with Part V of the Mental Health (Scotland) Act 1984.

[or

an application to the (*name of local authority*) for your reception into guardianship in accordance with Part V of the Mental Health (Scotland) Act 1984.]

The Hearing will be held at \_\_\_\_\_ on \_\_\_\_\_ 19 \_\_\_\_ at \_\_\_\_\_

You may appear personally at the hearing of this application unless the court decides otherwise on medical recommendations.

In any event, if you are unable or do not wish to appear personally you may request any person to appear on your behalf.

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

(*Signed*)  
Sheriff Clerk

(*Place and date*)

*para. 3(2)*

## FORM 2

**Notice to responsible medical officer**To (*name and address*)

In accordance with the Mental Health (Scotland) Act 1984 a copy of the application and notice of hearing is sent with this notice.

1. You are requested to deliver it personally to .....  
..... (*name of patient*) and to explain the contents of it to him.

2. You are also required to arrange if the patient so wishes, for the attendance of (*name of patient*) at the hearing at (*place of hearing*) on (*date*) so that he may appear and be heard in person.

3. You are further requested to complete and return to me in the enclosed envelope the certificate appended hereto before the date of the hearing.

If in your opinion it would be prejudicial to the patient's health or treatment for him to appear and be heard personally you may so recommend in writing, with reasons on the certificate.

(Signed)  
Sheriff Clerk

(Place and date)

FORM 3

para. 4(1)

**Certificate of delivery by responsible medical officer**

I, (name and designation), certify that—

1. I have on the                      day of                      personally delivered to (name of patient) a copy of the application and the intimation of the hearing; and have explained the contents or purport to him [or her].
2. The patient does [not] wish to attend the hearing.
3. The patient does [not] wish to be represented at the hearing [and has nominated (name and address of representative) to represent him].
4. I shall arrange for the attendance of the patient at the hearing [or in my view it would be prejudicial to the patient's health or treatment for him [or her] to appear and be heard in person for the following reasons (give reasons)].

(Address and date)

(Signature and designation)

## EXPLANATORY NOTE

*(This Note is not part of the Act of Sederunt.)*

This Act of Sederunt makes provision for rules of procedure in the sheriff court in relation to applications to the sheriff for approval for admission of a patient to a hospital or for approval of a patient being received into guardianship under the Mental Health (Scotland) Act 1984.

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