

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 1: General

Judicial proceedings

Section 2: Applications and other proceedings and appeals

18. This section covers procedures of the sheriff court that will be the forum for dealing with many applications and other matters under the Act.
19. Subsection (2) says that applications to the sheriff under the Act are to be by summary application, which allows them to be made speedily and simply.
20. Subsection (3) sets out how appeals may be made against any decision made by a sheriff in an application to the courts under the legislation.
21. Subsection (4) allows Sheriff Court rules, which determine in detail how the sheriff court functions, to set out the type of evidence the sheriff is to consider in deciding whether intimations to the adult of application about them should be withheld. In most cases this is likely to be medical evidence.

Section 3: Powers of sheriff

22. This section gives the sheriff wide and flexible powers to deal with matters that come before the court in relation to the affairs of an adult with incapacity.
23. Subsection (1) allows the sheriff to give rulings over and above those which they have initially been asked to consider, provided these are related to the matter before the court.
24. Subsection (2) spells out some of the ways in which sheriffs may exercise their powers. For example, in granting a one-off order that an adult's house should be sold, the sheriff might also, under subsection (2)(a), direct that this should be done as quickly as possible, to release the adult's capital. Subsection (2)(d) allows the sheriff to make an interim order very quickly if the situation warrants it, while taking longer to resolve in full the issue before the court. This might, for example, allow the sheriff to direct that an important document was signed on behalf of the adult, while considering whether it was necessary to appoint a guardian to take charge of a major aspect of the adult's affairs in the longer term.
25. Subsection (3) allows the sheriff to give directions to anyone acting under the Act, such as an attorney or guardian, or those holding equivalent offices under the law of any other country, about how they use their powers. The adult and anybody else with an interest in their affairs are entitled to apply to the court for such a direction.

*These notes relate to the Adults with Incapacity (Scotland)
Act 2000 (asp 4) which received Royal Assent on 9 May 2000*

26. Adults with incapacity may not wish, or be able, to appear themselves in court and even if they do appear, they may not be able fully to protect their own interests. Subsection (4) therefore provides that the sheriff should consider whether to appoint a person to safeguard the adult's interests in any application or other court proceeding. It is already possible to appoint a curator ad litem to represent the adult's views to the court; a curator ad litem is a party to the court proceedings. Subsection (5) says that the safeguarder should if at all possible be responsible for finding out the adult's views about the matter before the court and conveying these, as well as safeguarding the adult's interests. However, if the sheriff thinks it is not possible to combine the functions of conveying views and safeguarding interests, a separate curator ad litem may be appointed to convey the views of the adult to the court.
27. Subsection (6) specifically allows the sheriff to vary orders made under subsection (2).

Section 4: Power of Court of Session or sheriff with regard to nearest relative

28. This section allows an adult to apply to the sheriff to have the person who would otherwise be treated as their nearest relative displaced, for the purposes of the Act. Alternatively, the adult may apply for particular information that would otherwise be given to the nearest relative to be withheld from that person.
29. Subsection (4) clarifies that the adult may only apply to the courts under this section where measures are in operation under the Act because of their incapacity. It is not possible to apply in advance of any incapacity to have the nearest relative displaced or information withheld from them.

Section 5: Safeguarding of interests in Court of Session appeals or proceedings

30. Section 5 ensures that the appointment of a safeguarder is considered in Court of Session proceedings under the Act, in the same way as such an appointment is considered by the sheriff under section 3. Most matters covered by the Act will be dealt with in the sheriff courts, but appeals against sheriffs' decisions may eventually be heard by the Court of Session and certain matters relating to medical treatment under Part 5 will be heard there.