

2002 No. 146

SHERIFF COURT

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

Made

15th March 2002

Coming into force

1st April 2002

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (No. 3) (Adults with Incapacity) 2002 and shall come into force on 1st April 2002.

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

Amendment of the Summary Applications Rules

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

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

(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;”;

and

(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;

(a) 1971 c.58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2) and the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 13.

(b) 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.

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

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

Edinburgh
15th March 2002

W DOUGLAS CULLEN
Lord President I.P.D.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 by amending Part XVI (Adults with Incapacity (Scotland) Act 2000). Part 6 of the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”) to which the amendments largely relate, comes into force on 1st April 2002.

Paragraph 2(2)(a) inserts a number of definitions into rule 3.16.1 for the purposes of applications under Part 6 of the 2000 Act.

Paragraphs 2(2)(b)(i) and (ii) make provision for the service of an application under rule 3.16.4 to be effected upon the Mental Welfare Commission or the relevant local authority in appropriate cases. Paragraph 2(2)(b)(iii) inserts a new paragraph (6) into rule 3.16.4 requiring the reports that require to be prepared in connection with an application for an intervention order or a guardianship order to be served along with the application.

Paragraph 2(2)(c) amends rule 3.16.6(1) so as to disapply the requirement to hold the hearing within twenty-eight days in cases where one of the persons upon whom the application is to be served is outside Europe.

Paragraph 2(2)(d) amends rule 3.16.8. Paragraph (2)(2)(d)(i)(aa) amends rule 3.16.8(1) in consequence of new rule 3.16.11 and section 70(3) of the 2000 Act (which requires the form of applications under that section to be prescribed in regulations). Paragraphs 2(2)(d)(i)(bb) and (iii) amend rule 3.16.8(1) in connection with applications to renew guardianship orders so that (a) an application for the extension of a guardianship order is treated as an application subsequent to an initial application and thereby required to be made by minute; and (b) the reports that require to be prepared in connection with such an application are served along with the application. Paragraph 2(2)(d)(ii) inserts a new paragraph (1A) to provide that unless the sheriff otherwise directs, any minute in connection with a subsequent application is to be lodged in accordance with and regulated by Chapter 14 of the Ordinary Cause Rules.

Paragraph 2(2)(e) inserts new rules 3.16.10, 11, 12 and 13–

- (i) rule 3.16.10 makes provision for the procedure to be followed where a sheriff orders the finding of caution in connection with an intervention order or guardianship order;
- (ii) rule 3.16.11 provides that an application for an interim guardian is to be made in the crave of the application for the guardianship order or by motion;
- (iii) rule 3.16.12 requires that, where an application for an intervention order or a guardianship order seeks to vest a right to deal with heritable property in the authorised person or the guardian, the application shall contain the necessary details to enable the property to be identified in the Register of Sasines or the Land Register of Scotland; and
- (iv) rule 3.16.13 makes provision in connection with the intimation of an application for an order in relation to non-compliance with the decisions of a welfare guardian under section 70 of the 2000 Act.

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