
STATUTORY INSTRUMENTS

1999 No. 929

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999

CHAPTER 3

RULES ON APPLICATIONS UNDER SPECIFIC STATUTES

PART VIII

MENTAL HEALTH (SCOTLAND) ACT 1984

Interpretation and application

- 3.8.1.**—(1) In this Part, “the Act” means the Mental Health (Scotland) Act 1984(1).
(2) This Part applies to—
(a) applications for admission submitted to a sheriff under section 21 of the Act(2);
(b) guardianship applications submitted to a sheriff under section 40 of the Act(3); and
(c) community care applications submitted under section 35A of the Act(4).

Appointment of hearing

- 3.8.2.**—(1) On an application being submitted, the sheriff shall appoint a hearing subject, in the case of an application for admission, to section 21(3A) of the Act(5).
(2) The sheriff may, where he considers it appropriate in all the circumstances, appoint that the hearing of an application shall take place in a hospital or other place.

Service of application

- 3.8.3.**—(1) The sheriff clerk shall serve or cause to be served on the patient a copy of the application, with the exception of any medical recommendation, together with a notice in Form 12.
(2) Where the patient is not a resident patient in a hospital, the notice and copy application shall be served on him personally by sheriff officer.
(3) Where the patient is a resident patient in a hospital, the notice and copy application shall be served together with a notice in Form 13 on his responsible medical officer—
(a) by first class recorded delivery service; or
(b) personally by sheriff officer.

(1) 1984 c. 36.
(2) Section 21 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 51(2), and by the Mental Health (Detention) (Scotland) Act 1991 (c. 47), section 2.
(3) Section 40 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 51(2).
(4) Section 35A was inserted by the Mental Health (Patients in the Community) Act 1995 (c. 52), section 4.
(5) Subsection (3A) of section 21 was inserted by the Mental Health (Detention) (Scotland) Act 1991 (c. 47), section 2.

(4) Where the patient 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 rule, be served on the guardian—

- (a) by first class recorded delivery service; or
- (b) personally by a sheriff officer.

Duties of responsible medical officer

3.8.4.—(1) On receipt of a notice in Form 13 the responsible medical officer shall, subject to rule 3.8.5(1)—

- (a) deliver the notice in Form 12 to the patient; and
- (b) as soon as practicable thereafter, complete and return to the court a certificate of such delivery in Form 14.

(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—

- (a) in an application to which rule 3.8.3(3) applies, the responsible medical officer shall set forth his reasons for his opinion in the certificate in Form 14; and
- (b) in any other case, the responsible medical officer or the special medical officer, as the case may be, shall set forth his reasons for his opinion in writing and send them to the sheriff clerk.

Appointment of curator *ad litem*

3.8.5.—(1) Where two medical certificates are produced stating that it would be prejudicial to the health or treatment of the patient if personal service were effected in terms of rule 3.8.3(2) or 3.8.4(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 interest of that patient.

(2) The sheriff may appoint a curator *ad litem* to represent the interests of the patient where he is satisfied that—

- (a) the patient should be excluded from the whole or any part of the proceedings under section 113(2) of the Act; or
- (b) in any other case, it is in all the circumstances appropriate to do so.

(3) The sheriff clerk shall serve the application on the curator *ad litem* by handing, or sending by first class recorded delivery service, to him a copy of the application and of the order appointing him as the curator.

Appointment of solicitor by court

3.8.6 Where the patient 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 the patient.

Intimation to representatives

3.8.7 Where in any proceedings under the Act, the sheriff clerk is aware that the patient is represented by any person and that representative would not otherwise receive intimation of any diet, a copy of the notice served on the patient shall be intimated to the representative by the sheriff clerk by first class recorded delivery service.

Service by sheriff officer

3.8.8.—(1) Where a copy of an application and any notice has been served personally by sheriff officer, 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 Part, he shall report to the court the reason why service was not effected.

Variation of conditions of community care order

3.8.9.—(1) Where, after consulting the persons referred to in subsections (1) and (2) of section 35D of the Act (variation of conditions of community care order)(**6**), an application is made by the special medical officer for the variation of a community care order under that section, the special medical officer shall—

- (a) complete Form 22 in Schedule 2 to the Mental Health (Prescribed Forms) (Scotland) Regulations 1996(**7**); and
- (b) lodge that form with the sheriff clerk, together with a certified copy of the community care order to which the application for variation relates.

Hearing

3.8.10.—(1) Any hearing to determine an application under rule 3.8.9 shall take place within 28 days after receipt by the sheriff clerk of Form 22 and the community care order referred to in that rule.

(2) Intimation of the date of the hearing referred to in paragraph (1) shall be given by the sheriff clerk by first class recorded delivery service to such persons as the sheriff may direct; and any intimation of such date to the patient shall be made personally by sheriff officer.

Appeal against community care order

3.8.11 An application by way of appeal for the revocation of a community care order under section 35F of the Act(**8**) shall be in Form 15.

(6) Section 35D was inserted by the Mental Health (Patients in the Community) Act 1995 (c. 52), section 4.

(7) S.I. 1996/743.

(8) Section 35F was inserted by the Mental Health (Patients in the Community) Act 1995 (c. 52), section 4.