SCOTTISH STATUTORY INSTRUMENTS

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(**1**) 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(**2**) shall be amended in accordance with the following paragraphs.

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

(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–

(**1**) 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.

(**2**) 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.

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

""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;?cq?;

(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;

(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).