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SCOTTISH STATUTORY INSTRUMENTS

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**2001 No. 142**

**SHERIFF COURT**

**Act of Sederunt (Summary Applications,  
Statutory Applications and Appeals etc. Rules)  
Amendment (Adults with Incapacity) 2001**

*Made* - - - - *30th March 2001*

*Coming into force* - - *2nd April 2001*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971<sup>(1)</sup> and section 2(4) of the Adults with Incapacity (Scotland) Act 2000<sup>(2)</sup> 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 Sheriff Courts (Scotland) Act 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 (Adults with Incapacity) 2001 and shall come into force on 2nd April 2001.

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

**Interpretation**

2. In this Act of Sederunt—

"the principal Rules" means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999<sup>(3)</sup>.

**Amendment of the principal Rules**

3.—(1) The principal Rules shall be amended in accordance with the following paragraphs.

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(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) 2000 asp 4.

(3) S.I. 1999/929, as amended by S.S.I. 2000/148 and 387.

(2) In Chapter 3 (rules on applications under specific statutes), after Part XV (Race Relations Act 1976)(4), insert—

## “PART XVI

### ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

#### Interpretation

**3.16.1.** In this Part—

“the 1984 Act” means the Mental Health (Scotland) Act 1984(5);

“the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000;

“adult” means a person who has attained the age of 16 years and who is the subject of an application under the 2000 Act;

“authorised establishment” has the meaning ascribed to it in section 35(2) of the 2000 Act;

“continuing attorney” means a person on whom there has been conferred a power of attorney granted under section 15(1) of the 2000 Act;

“incapable” has the meaning ascribed to it at section 1(6) of the 2000 Act, and “incapacity” shall be construed accordingly;

“managers” has the meaning ascribed to it in paragraph 1 of Schedule 1 to the 2000 Act;

“nearest relative” means, subject to section 87(2) of the 2000 Act, the person who would be, or would be exercising the functions of, the adult’s nearest relative under sections 53 to 57 of the 1984 Act if the adult were a patient within the meaning of that Act and notwithstanding that the person neither is or was caring for the adult for the purposes of section 53(3) of that Act;

“power of attorney” includes a factory and commission;

“primary carer” means the person or organisation primarily engaged in caring for an adult;

“Public Guardian” shall be construed in accordance with section 6 of the 2000 Act; and

“welfare attorney” means a person on whom there has been conferred a power of attorney granted under section 16(1) of the 2000 Act.

#### Appointment of hearing

**3.16.2.** On an application or other proceedings being submitted under or in pursuance of the 2000 Act the sheriff shall—

- (a) fix a hearing;
- (b) order answers to be lodged (where he considers it appropriate to do so) within a period that he shall specify; and
- (c) appoint service and intimation of the application or other proceedings.

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(4) Inserted by S.S.I. 2000/148.

(5) 1984 c. 36

### **Place of any hearing**

**3.16.3.** The sheriff may, where he considers it appropriate in all the circumstances, appoint that the hearing of an application or other proceedings shall take place in a hospital or other place.

### **Service of application**

**3.16.4.—**(1) Service of the application or other proceedings shall be made in Form 20 on—

- (a) the adult;
- (b) the nearest relative of the adult;
- (c) the primary carer of the adult (if any);
- (d) any guardian, continuing attorney or welfare attorney of the adult who has any power relating to the application or proceedings;
- (e) the Public Guardian; and
- (f) any other person directed by the sheriff.

(2) Where the applicant is an individual person without legal representation service shall be effected by the sheriff clerk.

(3) Where the adult is in an authorised establishment the person effecting service shall not serve Form 20 on the adult under paragraph (1)(a) but shall instead serve Forms 20 and 21, together with Form 22, on the managers of that authorised establishment by—

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

(4) On receipt of Forms 20 and 21 in terms of paragraph (3) the managers of the authorised establishment shall, subject to rule 3.16.5—

- (a) deliver the notice in Form 20 to the adult; and
- (b) as soon as practicable thereafter complete and return to the sheriff clerk a certificate of such delivery in Form 22.

(5) Where the application or other proceeding follows on a remit under rule 3.16.9 the order for service of the application shall include an order for service on the Public Guardian or other party concerned.

### **Dispensing with service on adult**

**3.16.5.—**(1) Where, in relation to any application or proceeding under or in pursuance of the 2000 Act, two medical certificates are produced stating that intimation of the application or other proceeding, or notification of any interlocutor relating to such application or other proceeding, would be likely to pose a serious risk to the health of the adult the sheriff may dispense with such intimation or notification.

(2) Any medical certificates produced under paragraph (1) shall be prepared by medical practitioners independent of each other.

(3) In any case where the incapacity of the adult is by reason of mental disorder, one of the two medical practitioners must be a medical practitioner approved for the purposes of section 20 of the 1984 Act as having special experience in the diagnosis or treatment of mental disorder.

## Hearing

**3.16.6.**—(1) A hearing to determine any application or other proceeding shall take place within 28 days of the interlocutor fixing the hearing under rule 3.16.2.

(2) At the hearing referred to in paragraph (1) the sheriff may determine the application or other proceeding or may order such further procedure as he thinks fit.

## Prescribed forms of application

**3.16.7.**—(1) An application submitted to the sheriff under or in pursuance of the 2000 Act, other than an appeal or remitted matter, shall be in Form 23.

(2) An appeal to the sheriff under or in pursuance of the 2000 Act shall be in Form 24.

## Subsequent applications

**3.16.8.**—(1) Any application or proceedings subsequent to an initial application or proceeding considered by the sheriff shall take the form of a minute lodged in the process.

(2) Where any subsequent application or proceedings under paragraph (1) above are made to a court in another sheriffdom the sheriff clerk shall transmit the court process to the court dealing with the current application or proceeding.

(3) Transmission of the process in terms of paragraph (2) shall be made within 4 days of it being requested by the sheriff clerk of the court in which the current application or proceedings have been raised.

## Remit of applications by the Public Guardian etc.

**3.16.9.** Where an application is remitted to the sheriff by the Public Guardian or by any other party authorised to do so under the 2000 Act the party remitting the application shall, within 4 days of the decision to remit, transmit the papers relating to the application to the sheriff clerk of the court where the application is to be considered.”

(3) In Schedule 1 to the principal Rules, after Form 19, insert the forms as set out in the Schedule to this Act of Sederunt.

Edinburgh  
30th March 2001

*Rodger of Earlsferry*  
Lord President, I.P.D.