



SHERIFFDOM OF LOTHIAN AND BORDERS

PRACTICE NOTE NO 1 of 2022

APPLICATIONS UNDER THE ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

I, MHAIRI MARGARET STEPHEN, QC, Sheriff Principal of Lothian and Borders, for the purpose of regulating practice in the Sheriff Court at Edinburgh in pursuance of the powers conferred by Section 27(2) and (4) of the Courts Reform (Scotland) Act 2014, and all common law powers enabling me on that behalf, Order and Direct as follows:-

1. Subject to paragraph 2 hereof, paragraph 3 of this Practice Note applies to all summary applications (“applications”) for guardianship orders and intervention orders and all minutes for renewal and/or variation of guardianship orders and for appointment of additional or replacement guardians lodged under the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”) at Edinburgh Sheriff Court on and after 3 May 2022 and paragraph 4 of this Practice Note applies to all appeals to the sheriff lodged under the 2000 Act at Edinburgh Sheriff Court on or after said date. It supersedes Practice Note No 1 of 2018 which is hereby revoked.

2. With the exception of parts (g), (i) and (j), paragraph 3 of this Practice Note also applies to counter-proposals for appointment made by way of craves included in answers in terms of paragraph 3(v) below.
3. Subject to paragraph 2 hereof, in all such applications and minutes under the 2000 Act -
 - (a) All craves of the application seeking powers in relation to an adult must specify the full name, as well as any other name by which the adult is known, current address and date of birth of the adult;
 - (b) Where application is made for the grant of both (1) welfare powers and (2) property and/or financial powers, these must be grouped separately from each other. Proposed powers should be listed with numbers or letters and not bullet points;
 - (c) If an application seeks the appointment of a substitute guardian, the crave should (1) specify that this is to be in the event of death, incapacity or resignation of the original guardian and (2) set out in full the proposed powers sought to be conferred on the proposed substitute guardian in a separate crave or craves as appropriate;
 - (d) The crave or craves in a minute for renewal should set out in full the powers sought to be renewed;
 - (e) Where an application seeks powers in relation to heritable property, a full postal address is required. A reference to the title number in the Land Register for Scotland if available, failing which a full conveyancing description which is sufficient to identify the property in the Register of Sasines, must be provided in the crave of the application;
 - (f) To assist with the efficient and accurate production of interlocutors, applicants who are represented are required to produce a complete draft interlocutor to the court in advance of the hearing. Where

changes to the craves have been suggested by the sheriff or safeguarder and accepted by the applicant, these must be incorporated. The draft interlocutor is to be emailed in Word format rather than PDF to the following dedicated email address for AWI cases at Edinburgh Sheriff Court: edinburghawi@scotcourts.gov.uk. Normally, that should be done no later than 12 noon on the Tuesday before the Thursday court, or with equivalent notice should the court sit on a different day. In the case of a proposed renewal without a hearing under section 60(4A) of the 2000 Act, the draft interlocutor should accompany the minute for renewal. Immediately following any hearing at which the court grants powers different from those contained in the draft interlocutor, the sheriff may require an amended draft interlocutor to be supplied.

- (g) The application must include averments setting out (1) the full name, address and designation and relationship to the adult of the adult's "nearest relative" as defined in section 87(1) of the 2000 Act and section 254 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act"), (2) the full name, address and designation of the adult's primary carer as defined in section 87(1) of the 2000 Act, (3) the full name, address and designation of the adult's "named person" (if any) as defined in section 87(1) of the 2000 Act and section 329 of the 2003 Act, (4) the full name, address and designation of any guardian, continuing attorney or welfare attorney of the adult who has any power relating to the application or proceedings as required by rule 3.16.4(1)(e) of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals Etc. Rules 1999 (SI 1999/929)) ("SAR"), and (5) the full name, address and designation of any other person who may have an interest in the application and, if the adult has a number of children or siblings to be specified, specifying them in order of age starting with the oldest. If the whereabouts of the "nearest relative" or any "named person" are not known and cannot reasonably be ascertained, the application must contain averments setting out the steps which have been taken

to trace the “nearest relative” and/or “named person” concerned. Furthermore, if there is no known “nearest relative” or “named person”, the application must contain averments to that effect;

- (h) The application must also include a schedule listing (with numbers or letters and not with bullet-points) the full names, addresses and designations of all those on whom intimation of the application is sought, including the Public Guardian, the Mental Welfare Commission (where appropriate) and the relevant local authority (where appropriate);
- (i) If the adult is in an “authorised establishment” as defined in section 35(2) of the 2000 Act the application must, for the purposes of SAR 3.16.4(3), include averments to this effect and include the full name and address of the establishment together with any known details about the managers of that establishment;
- (j) The application must contain averments as to the known existence or otherwise of any existing power of attorney granted by the adult;
- (k) The application must include averments as to the present and past wishes and feelings of the adult about any order sought and the powers requested so far as they can be ascertained. If it is not possible to ascertain them, the application must include averments (1) as to why this is not possible and (2) as to the steps taken, if any, (including any assistance and/or support provided) with a view to ascertaining them;
- (l) Where application is being made for the grant of property and/or financial powers, the application must contain details of the extent and current value, if known, of all heritable and moveable property belonging to the adult;
- (m) Where interim powers or orders are being sought, the application must contain averments specifying the reasons therefor. In addition,

if a hearing on the crave for interim powers or orders is sought prior to the principal hearing assigned, the applicant should make clear in a covering letter to the court which powers are sought *ad interim* and setting out reasons for any perceived urgency;

- (n) Where application is being made for the appointment of joint guardians, the application must contain averments which satisfy the requirements of section 62(2) of the 2000 Act, or enable the court to be so satisfied;
- (o) Applicants (including those making counter-proposals for appointment by way of craves made in answers) are reminded that to enable the sheriff to determine whether an individual is suitable for appointment as guardian (including substitute, additional or replacement guardians), material requires to be lodged. In addition, except in cases where the application solely seeks appointment of the chief social work officer of a local authority, the application (and accompanying reports) must contain such details as to the character, background, and any relevant financial or investment experience of, any person whose appointment is sought as a guardian (including a substitute, additional or replacement guardian) or intervener accompanied by such letters of reference as may be considered appropriate or which may be required by the court, in order that the court can determine suitability for appointment;
- (p) Except in cases where the application solely seeks appointment of the chief social work officer of a local authority, the application must be accompanied by a letter from each person whose appointment is sought as a guardian (including substitute, additional or replacement guardian) or intervener specifying whether or not he or she has at any time (a) been barred from working with vulnerable adults or (b) been convicted of a criminal offence in Scotland or elsewhere and, if so, providing full details thereof for consideration by the court prior to warranting;

- (q) Where application is being made for the grant of property and/or financial powers, the application must contain averments as to whether or not any proposed financial guardian (including substitute, additional or replacement guardian) or intervener (1) is or has ever been sequestrated or been made subject to a bankruptcy restriction order, (2) has ever signed a trust deed for creditors, (3) is or ever has been subject to or applied for a debt payment programme, (4) is or has ever been subject to an order pursuant to the Company Directors Disqualification Act 1986, (5) is or ever has been subject to an inhibition or arrestment, or has been made subject to any similar order or taken such similar steps in Scotland or elsewhere and, if so, to include details thereof;
- (r) The issues of the duration of any order sought and the basis of any award of expenses sought should be dealt with in the application and a crave or craves in appropriate terms included. If there is a legal aid certificate, this should be made clear;
- (s) Where application is being made for powers in relation to property and/or financial affairs, the issue of whether caution is to be found or sought to be dispensed with and, if to be found, in what amount should be dealt with in the application and a crave in appropriate terms included;
- (t) Where the application is for the appointment of a solicitor as financial guardian or substitute, additional or replacement financial guardian, the report as to the suitability of the solicitor nominated to be appointed guardian or substitute, additional or replacement guardian and as to the general appropriateness of the order sought must be from a person who is not a partner, employer, consultant, associate, employee or fellow employee of the solicitor;
- (u) Pleas-in-law are not necessary;

- (v) For the avoidance of doubt, in the light of the decision of the Inner House in *Aberdeenshire Council v JM* [2017] CSIH 65; 2017 SLT 1181, if a counter-proposal for appointment of a different guardian is sought to be advanced in answers, craves complying with this Practice Note should be included in such answers. The court will then order intimation of the answers including such craves to all interested persons in the same way as has applied to a minute containing such craves;
- (w) All applications for variation (including ones to which section 74(4) of the 2000 Act apply) are to be made by way of a minute in the existing guardianship process. However, a minute in a situation to which section 74(4) applies still falls to be made under reference to section 57 of the 2000 Act;
- (x) In relation to service of an application, a certificate of citation must, if available, be lodged no later than two clear working days before the hearing assigned in relation to said application;
- (y) Where intimation of an application, or any other step in process, is made by recorded delivery post, copies of the recorded delivery signatures from the Royal Mail website (“track and trace reports”) showing receipt must, if available, be lodged no later than two clear working days before any hearing to which the intimation relates;
- (z) In relation to service of an application, or any other step in process, an interested party, or a solicitor on their behalf, may intimate acceptance of service thereof and/or agreement to dispense with any period of notice relative thereto;
- (aa) If a safeguarder or a curator *ad litem* is appointed, the solicitor acting for the applicant must send to the safeguarder or curator *ad litem* a copy of the application and relevant accompanying reports, any answers and a copy of the interlocutor appointing them as such

safeguarder or curator *ad litem* no later than two working days following the return to them of said interlocutor;

4. In all such appeals to the sheriff under the 2000 Act –
 - (a) The crave of the appeal must specify the current address and date of birth of the adult;
 - (b) When an appeal is lodged, to assist with the drafting of any order which the court is being asked to grant, the craves of the appeal must, no later than two clear working days before the hearing assigned in relation to said appeal, also be emailed (in Word format rather than as a pdf) to the following dedicated email address for AWI cases at Edinburgh Sheriff Court:
edinburghawi@scotcourts.gov.uk
 - (c) The appeal must include averments setting out accurately (1) the full name, address and designation and relationship to the adult of the adult's "nearest relative" as defined in section 87(1) of the 2000 Act and section 254 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act"), (2) the full name, address and designation of the adult's primary carer as defined in section 87(1) of the 2000 Act, (3) the full name, address and designation of the adult's "named person" (if any) as defined in section 87(1) of the 2000 Act and section 329 of the 2003 Act, (4) the full name, address and designation of any guardian, continuing attorney or welfare attorney of the adult who has any power relating to the application or proceedings as required by rule 3.16.4(1) of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals Etc. Rules 1999 (SI 1999/929) ("SAR"), and (5) the full name, address and designation of any other person who may have an interest in the application and, if the adult has a number of children or siblings to be specified, specifying them in order of age starting with the oldest. If the whereabouts of the "nearest relative" or any "named person"

are not known and cannot reasonably be ascertained, the appeal must contain averments setting out the steps which have been taken to trace the “nearest relative” and/or “named person” concerned. Furthermore, if there is no known “nearest relative” or “named person”, the appeal must contain averments to that effect;

- (d) The appeal must also include a schedule listing (with numbers or letters and not with bullet-points) the full names, addresses and designations of all those on whom intimation of the appeal is sought, including the Public Guardian, the Mental Welfare Commission (where appropriate) and the relevant local authority (where appropriate);
- (e) If the adult is in an “authorised establishment” as defined in section 35(2) of the 2000 Act the appeal must, for the purposes of SAR 3.16.4(3), include averments to this effect and include the full name and address of the establishment together with any known details about the managers of that establishment;
- (f) The appeal must contain averments as to the known existence or otherwise of any existing power of attorney granted by the adult;
- (g) The appeal must include averments as to the present and past wishes and feelings of the adult about the order sought and the powers requested so far as they can be ascertained. If it is not possible to ascertain them, the writ must include averments as to (1) why this is not possible and (2) as to the steps taken, if any, (including any assistance and/or support provided) with a view to ascertaining them;
- (h) Pleas-in-law are not necessary;
- (i) In relation to service of an appeal, a certificate of citation must, if available, be lodged no later than two clear working days before the hearing assigned in relation to said appeal;

- (j) Where intimation of an appeal, or any other step in process, is made by recorded delivery post, copies of the recorded delivery signatures from the Royal Mail website (“track and trace”) showing receipt must, if available, be lodged no later than two clear working days before any hearing to which the intimation relates;
- (k) In relation to service of an appeal, or any other step in process, an interested party, or a solicitor on his or her behalf, may intimate acceptance of service thereof and/or agreement to dispense with any period of notice relative thereto;
- (l) If a safeguarder or a curator *ad litem* is appointed, the solicitor acting for the appellant must send to the safeguarder or curator *ad litem* a copy of the appeal and relevant accompanying reports, any answers and a copy of the interlocutor appointing him or her as such safeguarder or curator *ad litem* no later than two working days following the return to them of said interlocutor;

I APPOINT this Practice Note to be inserted in the Act Books of all the sheriff courts in the Sheriffdom of Lothian and Borders and to be published on the SCTS website.



Sheriff Principal Mhairi M Stephen QC
Sheriff Principal of Lothian and Borders
Edinburgh, 26 April 2022