

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE

PRACTICE NOTE

No 1 of 2018

APPLICATIONS UNDER THE

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Introduction

1. The purpose of this practice note is to inform parties and their agents of the court's approach to, and expectations for, the submission and consideration of all applications for guardianship orders and intervention orders and all minutes for renewal and/or variation of guardianship orders and for appointment of additional guardians lodged under the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act") in any court within the Sheriffdom of Tayside Central and Fife on and after 03 January 2018.

Preliminary

2. When an application is lodged, the craves of the writ must also be emailed (in Word format rather than as a pdf) to the appropriate Sheriff Clerk's Office no later than two clear working days before the first hearing assigned in relation to the application.
3. Where interim orders are sought the writ must contain specific averments outlining the reasons therefor.
4. If a hearing on crave/s for interim order/s is sought prior to service, this should be made clear in a covering letter to the court.

5. Pleas-in-law are not necessary.

The Adult

6. The crave of the writ must specify the current address and date of birth of the adult.
7. If the adult is resident in an “authorised establishment” as defined in section 35(2) of the 2000 Act the writ must crave warrant for service in terms of paragraph 3.16.4(3) of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals Etc. Rules 1999 (SI 1999/929) (“SAR”) and detail the full name and address of the establishment together with any known details about the managers thereof.
8. The writ must contain averments as to the known existence or otherwise of any existing power of attorney granted by the adult and the nature and extent of the powers granted in terms thereof. Where available, a copy should be submitted with the application.
9. The writ must include averments as to the present and past wishes and feelings of the adult so far as they can be ascertained. If it is not possible to ascertain them, the writ 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.

Applicants

10. Where application is being made for the appointment of joint guardians, the writ must contain averments which enable the court to be satisfied in relation to the requirements of section 62(2) of the 2000 Act.
11. If an application seeks the appointment of a substitute guardian, the crave should specify that this is to be in the event of death, incapacity or resignation of the original

guardian and should also set out in full the particular powers sought to be conferred on the proposed substitute guardian.

12. Except in cases where the application solely seeks appointment of the Chief Social Work Officer of a local authority, the writ should be accompanied by a letter from each person whose appointment is sought as guardian, substitute guardian or intervener specifying whether or not he or she has at any time (a) been formally 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.
13. Where financial powers of any kind are sought the writ (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, substitute guardian or intervener and should be accompanied by such letters of reference as may be considered appropriate (commensurate with the powers sought and the level of the Adult's estate), in order that the court can be satisfied as to suitability for appointment.
14. Where application is being made for the grant of property and/or financial powers, the writ must contain averments as to whether or not any proposed financial guardian, substitute 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, should include details thereof.

15. Where the application is for the appointment of a solicitor as financial guardian or substitute financial guardian, the report as to the suitability of the solicitor nominated to be appointed guardian or substitute 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.

Powers

16. Where application is made for the grant of both welfare powers and property and/or financial powers, these must be grouped separately from each other.
17. Where application is made for specific welfare powers seeking the imposition of particular restrictions on the day to day freedom of the adult, the writ must contain specific averments regarding the nature of these restrictions and the reasons why they are sought.
18. Where application is being made for the grant of property and/or financial powers, the writ must contain details of the extent and value, if known, of all heritable and moveable property belonging to the adult;
19. Where an application seeks powers in relation to heritable property, a reference to the title number in the Land Register for Scotland if available, failing which a full conveyancing description, must be provided in the crave of the writ.
20. Where an application is made for the grant of general property and/or financial powers the writ should contain (i) specific averments regarding the need for each power sought, (ii) the reason each power is sought, (iii) the manner in respect of which each power will be exercised to the benefit of the Adult and (iv) why less restrictive powers, e.g. by way of specific intervention in the Adult's affairs is not appropriate.

Intimation

21. The writ must include averments setting out accurately details of all persons referred to at SAR paragraph 3.16.4(1) including 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 writ 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 writ must contain averments to that effect.
22. The writ must also include a separate crave detailing 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).
23. 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.
24. 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”) showing receipt must, if available, be lodged no later than two clear working days before any hearing to which the intimation relates.
25. In relation to service of an application, or any other step in process, an interested party, or a solicitor on his or her behalf, may intimate acceptance of service thereof or agreement to dispense with any period of notice relative thereto.

Caution

26. Where application is being made for powers in relation to property and/or financial affairs, the issue of whether caution is to be found and, if so, in what amount should be fully dealt with in the application;
27. Where it is anticipated it will take longer than 4 weeks for the applicant/s to find caution the reasons for this should be fully detailed and a longer period requested.

Dispensing with Management Plan

28. Where application is being made for powers in relation to property and/or financial affairs and request is made to dispense with the lodging of a Management Plan with the Office of the Public Guardian the reason for seeking dispensation should be made clear in the application.

Duration

29. The question of the duration of any order sought should be dealt with in the application; and specifically if an order of longer than 3 years is sought a full explanation of the reasons for this should be provided in the application.

Expenses

30. Likewise, the basis of any award of expenses sought should be dealt with in the application, particularly if an award is sought against the Adult's estate.

Safeguarder

31. Where 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 him or her as such safeguarder or curator *ad litem*.

Renewal applications

32. The crave in a minute for renewal should set out in full the powers sought to be renewed.

Marysia W Lewis
Sheriff Principal of Tayside, Central and Fife

PERTH, 6 December 2017