



## **SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES & GALLOWAY**

### **APPLICATIONS UNDER THE ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

#### **Practice Note 1 of 2024**

#### **PART 1 - INTRODUCTION**

1. This Practice Note applies to all applications made to any court within the Sheriffdom of South Strathclyde, Dumfries and Galloway for guardianship orders and intervention orders and all minutes for renewal and/or variation of guardianship orders and for the appointment of additional or replacement guardians under the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act") lodged on and after 4 March 2024.
2. The purpose of this Practice Note is to inform parties and their agents of the court's approach to all applications, minutes and appeals to the sheriff under the 2000 Act.
3. Part 2 of this Practice Note applies to all applications and minutes under the 2000 Act. The term 'application' and 'applicant' shall be interpreted as including 'minute' or 'minuter' unless the context otherwise requires.
4. With the exception of paragraphs 16 , 25 and 26 , Part 2 of this Practice Note also applies to counter-proposals for appointment made by way of craves included in any answers in terms of paragraph 30 .

5. Parts 2 and 3 of this Practice Note apply to applications for renewal of guardianship orders.
6. Part 4 of this Practice Note applies to appeals to the Sheriff under the 2000 Act.

## **PART 2 - APPLICATIONS AND MINUTES**

### **General matters**

7. An application under the Act is a summary application in terms of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals Etc. Rules) 1999 (SI 1999/929) ("SAR") and should be headed "Summary Application under the Adults with Incapacity (Scotland) Act 2000". Pleas in Law are not necessary.
8. All applications for variation and/or renewal are to be made by way of minute in the existing guardianship process. Any minute lodged in terms of section 74(4) of the 2000 Act shall be made under reference to section 57 of the 2000 Act.
9. Upon lodging an application, the applicant is required to provide the court with the craves sought in Word format no later than two working days prior to the first hearing assigned in relation to the application. The word document should be emailed to the email address for the relevant court set out in Schedule 1 to this Practice Note ("Schedule 1").
10. Averments must be in proper form and should set out the facts upon which the party relies.
11. All applications must include detailed averments setting out the basis upon which jurisdiction is founded.
12. Clear averments are required to support a crave for expenses. If there is a legal aid certificate, this should be made clear in the application.

13 . When applications which have been returned for correction are resubmitted to the court (a) the changes made to the original application shall be highlighted; (b) a copy of the amended application in Word format shall be provided to the court; and (c) the applicant shall confirm in a covering letter accompanying the amended application that, save for the highlighted changes, the application remains in its original form.

### **Interim Orders**

14 . Where interim orders are sought the application must contain specific averments outlining the reasons therefor. If a hearing on crave(s) for interim order(s) is sought prior to service, this should be made clear in a covering letter or email to the court. If a hearing on interim powers is sought prior to the hearing assigned, the applicant must make clear in a covering letter to the court which powers are sought *ad interim* and specify the basis for the urgency.

### **Intimation and Productions**

15 . When lodging an application, a full schedule of all parties upon whom intimation is sought must be attached including their full names, addresses and relevant designations and including the Public Guardian, the Mental Welfare Commission (where appropriate) and the relevant local authority (where appropriate); those who are the nearest relative, primary carer etc. should be identified as such. A copy of the schedule should be emailed in Word format to the email address for the relevant court set out in Schedule 1.

16 . Where the adult is resident in an “authorised establishment” as defined in section 35(2) of the 2000 Act, the application must include averments to this effect, detail the full name and address of the establishment together with any known details about the managers thereof and crave warrant for service in terms of paragraph 3.16.4(3) of the SAR.

17 . The full name, address and designation of any proposed substitute guardian requires to be included in the schedule referred to in paragraph 16 above.

18 . Following service of the application, a certificate of citation must, if available, be lodged no later than two clear working days prior to the hearing assigned in respect of the application.

19 . In relation to service of an application, or any other step in process, an interested party, or a solicitor acting on their behalf, may intimate acceptance of service and/or agreement to dispense with any period of notice relative thereto.

20 . Where service of an application (or intimation of any other step in process) is by Royal Mail Tracked 24 or Royal Mail signed for first class, proof of sending demonstrating delivery must, if available, be lodged no later than two clear working days before any hearing to which the intimation relates.

21 . Medical reports and mental health officer and/or suitable person reports must be lodged in an Inventory of Productions submitted with the application.

### **The Adult**

22 . All craves of the application must accurately specify the adult's full name, as well as any other name by which the adult is known, together with the adult's current address and date of birth. All such details should also be accurately specified in any reports obtained throughout the proceedings. Where directed to do so by the court, an extract birth certificate requires to be lodged.

23 . Where application is made for specific welfare powers seeking the imposition of particular restrictions on the day to day freedom of the adult, the application must contain specific averments regarding the nature of these restrictions and the reasons why they are sought.

24 . 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, insofar as they can be ascertained. If it is not possible to ascertain them, the application must include averments as to (a) why this is not possible; and (b) any steps taken (including any assistance and/or support provided) with a view to ascertaining them.

25 . The application must contain averments as to any known extant power of attorney granted by the adult and why, having regard to the terms of the power of attorney, a guardianship order is sought. Where available, a copy should be submitted with the application.

### **Names, Addresses, Designations and Appointments**

26 . The application must include averments setting out:

- (a) the full name, address, and relationship to the adult of the adult's "nearest relative", as defined by section 87(1) of the 2000 Act and section 254 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act");
- (b) the full name, address and designation of the adult's primary carer, as defined in section 87(1) of the 2000 Act;
- (c) 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;
- (d) 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 SAR);
- (e) the full name, address and designation of any person appointed to a position equivalent to that of a guardian, continuing attorney or welfare attorney of the adult in any other jurisdiction; and
- (f) the full name, address and designation of any other person(s) 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 there is no known nearest relative and/or named person, the application must contain averments to that

effect; if the whereabouts of the nearest relative and/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 those concerned.

27 . 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 or substitute, additional or replacement financial guardian (a) is or has ever been sequestrated or been made subject to a bankruptcy restriction order; (b) has ever signed a trust deed for creditors; (c) is or has ever been subject to or applied for a debt payment programme; (d) is or has ever been subject to an order pursuant to the Company Directors Disqualification Act 1986; and (e) is or has ever 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.

28 . Where application is being made 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 and said report shall include details of any findings of professional misconduct made by any regulatory or professional body in respect of the proposed financial guardian.

29 . Where application is being made for the appointment of joint guardians, the application must contain averments in respect of each proposed guardian which enable the court to be satisfied in relation to the requirements of section 62(2) of the 2000 Act.

30 . 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 in a separate crave or craves. Except in cases where the application seeks appointment of the chief social work officer of a local authority, the application should be accompanied by a letter from each person whose appointment is sought as a guardian (or substitute, additional or

replacement guardian or intervener) specifying whether or not they have, at any time, been (i) formally barred from working with vulnerable adults or (ii) convicted of a criminal offence in Scotland or elsewhere and, if so, providing full details thereof.

31. Having regard to the decision of the Inner House in *Aberdeenshire Council v JM* 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 shall be included in the answers. The court will then order intimation of the answers and craves to all interested persons.

32. 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.

### **Powers Sought**

33. Where application is made for the grant of both welfare and financial powers, these must be grouped separately from each other in the craves and all proposed powers should be listed by numbers or letters and not bullet points.

34. Where application is made for the grant of financial powers, the application must contain details of the extent and value, insofar as is known, of all heritable and moveable property belonging to the adult.

35 . Where an application seeks powers in relation to heritable property, a description of the heritable property shall be included in the crave. Such a description requires to include the full postal address of the heritable property (including the post code), together with either the Title Number of the property in the Land Register of Scotland or a full conveyancing description which is sufficient to identify the heritable property in the Register of Sasines.

36 . Where an application is made for the grant of general property and/or financial powers the application should contain averments regarding the need for the powers sought, the manner in respect of which the powers will be exercised to the benefit of the Adult; and why less restrictive powers are not appropriate.

37 . If the principal reason for submitting an application seeking financial powers is to enable the proposed guardian(s) to administer self-directed support or other similar direct payments, the application should address why less restrictive powers are not appropriate.

### **Caution**

38 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.

39 . Where the court identifies any issues which may impact on the obtaining of caution, applicants may be required to take steps, prior to the hearing assigned by the court, to obtain confirmation that caution will be available in the event of the application being granted.

40 . The applicant will be expected to find caution within four weeks. Where, exceptionally, it is anticipated it will take longer than 4 weeks for the applicant(s) to find caution, the reasons therefor should be fully detailed in the application and a longer period requested.

### **Safeguarders and Curators ad Litem**

41 . If a safeguarder or a curator *ad litem* is appointed at any time, the applicant must, unless otherwise directed, 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 of appointment no later than two working days following receipt by them of said interlocutor.

### **Dispensing with Management Plan**

42 . Where an application is 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**

43 . The issue of the duration of any order sought should be dealt with in the application. If an applicant seeks an order for a period other than three years, an explanation of the reasons therefor should be provided in the application to allow the sheriff to determine the period in terms of section 58(4) of the 2000 Act.

## **PART 3 – APPLICATIONS FOR RENEWAL**

44 . Part 2 of the Practice Note also applies to minutes for renewal of a guardianship order.

45 . A minute for renewal must be made before a guardianship order expires to enable the order to continue to have effect until the minute is determined (section 60(1) of the 2000 Act). In the event that an application for renewal is not timeously lodged, a fresh application for a guardianship order shall be required.

46 . If a minute for renewal requires to be returned by the court for correction by the minuter, the original lodging date will be retained, provided the corrected minute is resubmitted to the court within 14 days of receipt by the minuter or their agent. If the corrected minute is resubmitted out with this period, the resubmission date will be treated as the first lodging date.

If this date is after the expiry of the period of the original order, a fresh application for a guardianship order shall be required.

47 . The issue of the duration of any order sought should be dealt with in the minute. If an applicant seeks an order for a period other than five years, an explanation of the reasons therefor should be provided in the minute to allow the sheriff to determine the period in terms of section 60(4)(b) of the 2000 Act.

48 . The minute must be accompanied by one medical report of an examination and assessment of the adult, carried out not more than 30 days before the lodging of the minute for renewal (section 60(3)(a) of the 2000 Act). Where the minute seeks renewal of a welfare guardianship, a report from the mental health officer must also accompany the minute (section 60(3)(b) of the 2000 Act). Where the minute seeks renewal of a financial guardianship, a report from the Public Guardian must also accompany the minute (section 60(3)(c) of the 2000 Act).

49 . Where the renewal of a guardianship order is sought without a hearing (in terms of section 60(4A) of the 2000 Act), the minute should be accompanied by a covering letter setting out an explanation as to why the minute is capable of being determined without a hearing. The sheriff will consider the explanation provided and determine whether a hearing is necessary.

#### **PART 4 – APPEALS**

50 . Paragraphs 7, 9, 15, 16, 18 – 20, 24 -26 and 41 of this Practice Note also apply to appeals to the sheriff made under the 2000 Act

A handwritten signature in black ink that reads "Catherine Dowdalls". The signature is written in a cursive, flowing style.

**Sheriff Principal Catherine Dowdalls KC**

**24 January 2024**

## SCHEDULE 1

Court	Email Address
Airdrie Sheriff Court and Justice of the Peace Court	<a href="mailto:airdriecivil@scotcourts.gov.uk">airdriecivil@scotcourts.gov.uk</a>
Ayr Sheriff Court and Justice of the Peace Court	<a href="mailto:ayrcivil@scotcourts.gov.uk">ayrcivil@scotcourts.gov.uk</a>
Dumfries Sheriff Court and Justice of the Peace Court	<a href="mailto:dumfriescivil@scotcourts.gov.uk">dumfriescivil@scotcourts.gov.uk</a>
Hamilton Sheriff Court and Justice of the Peace Court	<a href="mailto:hamiltoncivil@scotcourts.gov.uk">hamiltoncivil@scotcourts.gov.uk</a>
Lanark Sheriff Court and Justice of the Peace Court	<a href="mailto:lanarkcivil@scotcourts.gov.uk">lanarkcivil@scotcourts.gov.uk</a>
Stranraer Sheriff Court and Justice of the Peace Court	<a href="mailto:stranraer@scotcourts.gov.uk">stranraer@scotcourts.gov.uk</a>