



SHERIFFDOM OF GLASGOW AND STRATHKELVIN

PRACTICE NOTE NO 1 of 2021

APPLICATIONS UNDER THE ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

I, CRAIG DOUGLAS TURNBULL, Sheriff Principal of Glasgow & Strathkelvin, for the purpose of regulating practice in the Sheriff Court at Glasgow 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. This Practice Note applies to all applications made to Glasgow Sheriff Court under the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act") on and after 1 January 2022, as well as to any other proceedings before the sheriff under said Act (including appeals and counter proposals for the appointment of guardians contained in answers) commenced after said date. It supersedes paragraph 6 of the Practice Note dated 3 July 2006 and Practice Note No 2 of 2015, dated 30 September 2015 each of which is hereby revoked.
2. In all proceedings under the 2000 Act:
 - (a) All craves 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 must also be accurately specified in any reports. Where directed to do so by the court, an extract birth certificate requires to be lodged. Where the adult is resident in an authorised

establishment, as defined by section 35(2) of the 2000 Act, the full name and address of the authorised establishment must be specified in the application.

- (b) The application must include averments setting out (1) 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"), (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"), (5) 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 (6) 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 and 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.
- (c) The application must include averments as to the present and past wishes and feelings of the adult about any order sought, insofar as they can be ascertained and, if it is not possible to ascertain them, the application must include

averments as to (1) why this is not possible; and (2) any steps taken (including any assistance and / or support provided) with a view to ascertaining them.

- (d) A schedule, accurately setting out the names, addresses and designations of all those on whom intimation of the application is sought, must be lodged with the application and a copy of said schedule shall also be sent by email to the AWI clerk when the application is lodged, using the following email address: glasgowawi@scotcourts.gov.uk
- (e) The full name, address and designation of any proposed substitute guardian requires to be included in said schedule, as does the name and address of the manager of any authorised establishment in which the adult is resident.
- (f) When an application is lodged, to assist with the drafting of any order granted by the court, the crave(s) must also be emailed (in Word format) no later than two clear working days before the hearing assigned in respect of the application, to the following email address: glasgowawi@scotcourts.gov.uk. Immediately following any hearing at which the court grants powers which are different to those contained in the application, the amended craves must be emailed to glasgowawi@scotcourts.gov.uk for inclusion in the order granted.
- (g) All averments in applications must be in proper form and are offers to prove the assertions made therein. Averments which commence with the words: "The applicant tells me..." or with similar phraseology are not averments in proper form and will be rejected by the court.
- (h) When applications which have been returned for correction are resubmitted to the court (1) the changes made to the original application must be

highlighted in some way; and (2) confirmation must be provided that, save for the highlighted changes, the application remains in its original form.

- (i) The proposed duration of any order sought and the question of expenses sought should be dealt with in the application.
- (j) Pleas-in-law are not necessary.
- (k) In relation to the service of an application, a certificate of citation must be lodged no later than two clear working days prior to the hearing assigned in respect of the application.
- (l) In relation to the 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 thereof and / or agreement to dispense with any period of notice relative thereto.
- (m) Where service of an application, or intimation of any other step in process, is made by recorded delivery post, copies of the recorded delivery signatures from the Royal Mail website (otherwise known as the "track and trace reports") demonstrating receipt must be lodged no later than two clear working days before the relevant hearing.
- (n) If a safeguarder or a curator *ad litem* is appointed at any time, 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 of appointment no later than two working days following receipt by them of said interlocutor.

3. In all proceedings under part 6 of the 2000 Act:
- (a) 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.
 - (b) If an application seeks the appointment of a substitute guardian, the crave should (1) specify whether the application is made due to the 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.
 - (c) Where application is being made for the appointment of joint guardians and/or substitute guardians, the application must contain averments which satisfy the requirements of section 62(2) of the 2000 Act in respect of each proposed guardian, or enable the court to be so satisfied. Every application for the appointment of joint guardians must contain averments as to whether or not the applicants seek appointment jointly and severally or severally.
 - (d) Where interim powers are sought, the application must contain averments specifying the reasons therefor. If a hearing on interim powers is sought prior to the principal 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.
 - (e) Except in cases where the application seeks appointment of the chief social work officer of a local authority, the application and accompanying reports must contain details as to the character, background and, where appropriate, any relevant financial or investment experience of any person whose appointment is sought as a guardian or as a substitute, additional or replacement guardian or intervener and the application requires to be

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 be satisfied as to suitability for appointment.

- (f) Except in cases where the application seeks appointment of the chief social work officer of a local authority, the application must contain averments as to whether any Disclosure Scotland or Protecting Vulnerable Groups check has been carried out for any purpose in respect of the proposed guardian (or any substitute, additional or replacement guardian or intervener) and, if such a check has been carried out, the result thereof. A copy of any certificate issued after such a check in respect of the proposed guardian (or any substitute, additional or replacement guardian or intervener) should be produced. Where no such check has been carried out the application must (i) contain averments in respect of any convictions for any criminal offence in Scotland or elsewhere applying to the proposed guardian (or any substitute, additional or replacement guardian or intervener); (ii) specify whether any proposed guardian (or any substitute, additional or replacement guardian or intervener) has, at any time, been barred from working with children or vulnerable adults; and (iii) 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 (a) barred from working with vulnerable adults or (b) convicted of a criminal offence in Scotland or elsewhere and, if so, providing full details thereof for consideration by the court.
- (g) Where application is made for the grant of welfare or financial powers or for an intervention order, the application must contain averments as to the known existence or otherwise of any existing power of attorney granted by the adult.

- (h) 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.
- (i) 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.
- (j) Where the application is for the appointment of a solicitor as financial guardian (or as substitute or additional or replacement financial guardian or as intervener) the report as to the suitability of such solicitor and as to the general appropriateness of the order sought requires to be from a person who is not a partner, employer, consultant, associate, employee or fellow employee of such 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.
- (k) Where application is made for the grant of financial powers, the writ must contain averments as to whether or not any proposed financial guardian or substitute, additional or replacement financial 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 has ever 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; and (5) is or has ever been subject to an inhibition or arrestment or has ever been made subject to any similar order or had similar steps taken against them in Scotland or elsewhere and, if so, must include details thereof.

- (l) Where application is made for powers in relation to property and/or financial affairs, the issue of whether caution is to be found or is 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. 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.

- (m) If the principal reason for submitting a guardianship application seeking financial powers is to enable the proposed guardian(s) to administer self-directed support or other similar direct payments, consideration should be given as to whether less extensive financial powers would amount to the least restrictive option in relation to the freedom of the adult, consistent with the purpose of the intervention, in terms of section 1(3) of the 2000 Act.

- (n) If a counter-proposal for the appointment of a different guardian is made in answers to an application, the court will order intimation of the answers to all parties named in the schedule annexed to the application.

- (o) All applications for variation are to be made by way of minute in the existing guardianship process and any such minute lodged in terms of section 74(4) of the 2000 Act shall nonetheless be made under section 57 of the 2000 Act.

- (p) The crave(s) in a minute for renewal require(s) to set out in full the powers which the applicant(s) seek to renew.

- (q) If a renewal application requires to be returned for correction the original lodging date will be retained, provided that the corrected application is resubmitted to the court within 14 days of receipt by the applicant or their agents. However, if the corrected application is resubmitted outwith 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 then the application cannot proceed as a renewal.

Turnbull

Sheriff Principal C D Turnbull
Sheriff Principal of Glasgow & Strathkelvin
Glasgow, 1 December 2021

