

SHERIFFDOM OF GLASGOW AND STRATHKELVIN

PRACTICE NOTE NO 2, 2015

APPLICATIONS UNDER THE ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

I, CRAIG A. L. SCOTT QC, Sheriff Principal of Glasgow and Strathkelvin, for the purpose of regulating practice in the Sheriff Court at Glasgow in pursuance of the powers conferred under Section 27(2) and (4) of the Court Reform (Scotland) Act 2014 and all common law powers enabling in that behalf Order and Direct as follows:-

1. This Practice Note applies to all applications under the Adults with Incapacity (Scotland) Act 2000, lodged at Glasgow Sheriff Court on and after 2 November 2015. It supersedes paragraph 6 of the Practice Note dated 3 July 2006.
2. In all summary applications under the Adults with Incapacity (Scotland) Act 2000 (the “2000 Act”) –
 - (a) The crave of the writ must specify the current address and date of birth of the adult;
 - (b) Where application is made for the grant of both welfare and financial powers, these must be grouped separately from each other;
 - (c) When an application is lodged, to assist with the drafting of any order granted by the court, the craves of the writ must also be

emailed (in Word format rather than as a pdf) to the following email address at Glasgow Sheriff Court: glasgowawi@scotcourts.gov.uk

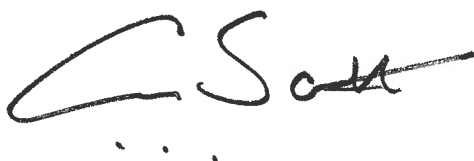
- (d) Where application is being made for the appointment of Joint Guardians, the writ must contain averments in respect of each proposed guardian which satisfy the requirements of section 62(2) of the 2000 Act, or enable the court to be so satisfied;
- (e) The writ must contain details of the names and addresses of all known next of kin of the adult, or, if there are no known next of kin, averments to that effect;
- (f) Where interim powers are being sought, the writ must contain averments specifying the reasons therefor;
- (g) Except in cases where the application seeks appointment of the chief social work officer of a local authority, 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 or substitute guardian, 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;
- (h) Except in cases where the application seeks appointment of the chief social work officer of a local authority, the writ 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 guardian), and if such a check has been carried out, the result thereof. A copy of any certificate issued in respect of the proposed guardian (or any substitute guardian) should be produced. Where no such check has been carried out the application must contain averments in respect of any convictions of any criminal offence in Scotland or elsewhere applying to the proposed guardian (or any substitute guardian) and

must specify whether any proposed guardian (or any substitute guardian) has at any time been formally barred from working with children or vulnerable adults;

- (i) Where application is being made for the grant of financial powers, the writ must contain averments as to the known existence or otherwise of any existing Power of Attorney granted by the adult;
- (j) Where application is being made for the grant of financial powers, the writ must contain details of the extent and value, if known, of all heritable and moveable property belonging to the adult;
- (k) Where an application seeks powers in relation to heritable property, a reference to the Land Registry number, failing which a full conveyancing description, must be provided in the crave of the writ;
- (l) Where the application is for the appointment of a solicitor as financial guardian, the report as to the suitability of the solicitor nominated to be appointed guardian shall be from a person who is not a partner, consultant or employee of the solicitor.
- (m) Where application is being made for the grant of financial powers, the writ must contain averments as to whether or not any proposed financial guardian or substitute guardian (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, (5) is or has ever been subject to an inhibition or arrestment other than on the dependence of an action or has ever been made subject to any similar order or taken such similar steps in Scotland or elsewhere and, if so, must include details thereof;
- (n) Where application is being made for the grant of financial powers, the issue of whether caution is to be found and, if so, in what

amount, should be dealt with in the application. Where the court may require the applicant to find caution, steps must be taken in advance of the hearing fixed by the court to make application for such caution and attempt to secure the processing of any such application, in so far as possible.

- (o) The issues of the duration of any order sought and the basis of any award of expenses sought, should be dealt with in applications;
- (p) Pleas-in-law are not necessary;
- (q) There must be a schedule setting out accurately the names, addresses and designations of all those on whom intimation of the application is sought;
- (r) In relation to service of an application, a certificate of citation must be lodged.
- (s) 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 or agreement to dispense with any period of notice relative thereto.



C.A.L. Scott QC
Sheriff Principal of Glasgow and Strathkelvin
Glasgow, 30 September 2015