



Adults with Incapacity (Scotland) Act 2000

2000 asp 4

PART 1

GENERAL

Judicial proceedings

2 Applications and other proceedings and appeals

- (1) This section shall apply for the purposes of any application which may be made to and any other proceedings before the sheriff under this Act.
- (2) An application to the sheriff under this Act shall be made by summary application.
- (3) Unless otherwise expressly provided for, any decision of the sheriff at first instance in any application to, or in any other proceedings before, him under this Act may be appealed to the sheriff principal, and the decision upon such appeal of the sheriff principal may be appealed, with the leave of the sheriff principal, to the Court of Session.
- (4) Rules made under section 32 of the Sheriff Courts (Scotland) Act 1971 (c.58) may make provision as to the evidence which the sheriff shall take into account when deciding whether to give a direction under section 11(1).

3 Powers of sheriff

- (1) In an application or any other proceedings under this Act, the sheriff may make such consequential or ancillary order, provision or direction as he considers appropriate.
- (2) Without prejudice to the generality of subsection (1) or to any other powers conferred by this Act, the sheriff may—
 - (a) make any order granted by him subject to such conditions and restrictions as appear to him to be appropriate;
 - (b) order that any reports relating to the person who is the subject of the application or proceedings be lodged with the court or that the person be

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- assessed or interviewed and that a report of such assessment or interview be lodged;
- (c) make such further inquiry or call for such further information as appears to him to be appropriate;
 - (d) make such interim order as appears to him to be appropriate pending the disposal of the application or proceedings.
- (3) On an application by any person (including the adult himself) claiming an interest in the property, financial affairs or personal welfare of an adult, the sheriff may give such directions to any person exercising—
- (a) functions conferred by this Act; or
 - (b) functions of a like nature conferred by the law of any country,
- as to the exercise of those functions and the taking of decisions or action in relation to the adult as appear to him to be appropriate.
- (4) In an application or any other proceedings under this Act, the sheriff—
- (a) shall consider whether it is necessary to appoint a person for the purpose of safeguarding the interests of the person who is the subject of the application or proceedings; and
 - (b) without prejudice to any existing power to appoint a person to represent the interests of the person who is the subject of the application or proceedings may, if he thinks fit, appoint a person to act for the purpose specified in paragraph (a).
- (5) Safeguarding the interests of a person shall, for the purposes of subsection (4), include conveying his views so far as they are ascertainable to the sheriff; but if the sheriff considers that it is inappropriate that a person appointed to safeguard the interests of another under this section should also convey that other's views to the sheriff, the sheriff may appoint another person for that latter purpose only.
- [^{F1}(5A) In determining an application or any other proceedings under this Act, the sheriff shall, without prejudice to the generality of section 1(4)(a), take account of the wishes and feelings of the adult who is the subject of the application or proceedings so far as they are expressed by a person providing independent advocacy services.
- (5B) In subsection (5A), “independent advocacy services” has the same meaning as it has in section 259(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).]
- (6) The sheriff may, on an application by—
- (a) the person authorised under the order;
 - (b) the adult; or
 - (c) any person entitled to apply for the order,
- make an order varying the terms of an order granted under subsection (2)(a).

Textual Amendments

- F1** [S. 3\(5A\)\(5B\)](#) inserted (5.10.2007) by Adult Support and Protection (Scotland) Act 2007, {ss. 55}, 79; [S.S.I. 2007/334](#), [art. 2\(b\)](#), [Sch. 2](#) (with savings in [arts. 4-6](#))

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4 Power of Court of Session or sheriff with regard to nearest relative

- (1) ^{F2} . . . the court may, having regard to section 1 and being satisfied that to do so will benefit [^{F3}an adult with incapacity], make an order that—
- (a) certain information shall not be disclosed, or intimation of certain applications shall not be given, to the nearest relative of the adult;
 - (b) the functions of the nearest relative of the adult shall, during the continuance in force of the order, be exercised by a person, specified in the [^{F4}order] , who is not the nearest relative of the adult but who—
 - (i) is a person who would otherwise be entitled to be the nearest relative in terms of this Act;
 - (ii) in the opinion of the court is a proper person to act as the nearest relative; and
 - (iii) is willing to so act; or
 - (c) no person shall, during the continuance in force of the order, exercise the functions of the nearest relative.
- (2) An order made under subsection (1) shall apply only to the exercise of the functions under this Act of the nearest relative.
- (3) The court may ^{F5} . . . make an order varying the terms of an order granted under subsection (1).
- [^{F6}(3A) The court may make an order under subsection (1) or (3) only on the application of—
- (a) the adult to whom the application relates; or
 - (b) any person claiming an interest in that adult's property, financial affairs or personal welfare.
- (3B) The court may dispose of an application for an order under subsection (1) or (3) by making—
- (a) the order applied for; or
 - (b) such other order under this section as it thinks fit.]
- (4) ^{F7}

Textual Amendments

- F2** Words in s. 4(1) repealed (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 56\(2\)\(a\)](#), 79; S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)
- F3** Words in s. 4(1) substituted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 56\(2\)\(b\)](#), 79; S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)
- F4** Words in s. 4(1) substituted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 56\(2\)\(c\)](#), 79; S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)
- F5** Words in s. 4(3) repealed (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 56\(3\)](#), 79; S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)
- F6** S. 4(3A)(3B) inserted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 56\(4\)](#), 79; S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)
- F7** S. 4(4) repealed (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 56\(5\)](#), 79; S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)

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5 Safeguarding of interests in Court of Session appeals or proceedings

- (1) In determining any appeal or in any other proceedings under this Act the Court of Session—
- (a) shall consider whether it is necessary to appoint a person for the purpose of safeguarding the interests of the person who is the subject of the appeal or other proceedings; and
 - (b) without prejudice to any existing power to appoint a person to represent the interests of the second mentioned person, may if it thinks fit appoint a person to act for the purpose specified in paragraph (a).
- (2) Safeguarding the interests of a person shall, for the purposes of subsection (1), include conveying his views so far as they are ascertainable to the court; but if the court considers that it is inappropriate that a person appointed to safeguard the interests of another under this section should also convey that other's views to the court, the court may appoint another person for that latter purpose only.

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