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STATUTORY INSTRUMENTS

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**1996 No. 2149 (S.173)**

**SHERIFF COURT, SCOTLAND**

**Act of Sederunt (Mental Health Rules) 1996**

*Made* - - - - *13th August 1996*

*Coming into force* - - *9th September 1996*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971<sup>(1)</sup> and of all other powers enabling them in that behalf, having approved, with modifications, draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

**Citation, commencement, interpretation and revocation**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Mental Health Rules) 1996 and shall come into force on 9th September 1996.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

(3) Words and expressions used in this Act of Sederunt which are also used in the Mental Health (Scotland) Act 1984<sup>(2)</sup> (referred to in this Act of Sederunt as “the Act of 1984”) shall, unless the context otherwise requires, have the same meaning as in that Act.

(4) Where there is a reference to a form in this Act of Sederunt, that form so numbered in the Schedule to this Act of Sederunt, or a form substantially to the same effect, shall be used with such variation as circumstances may require.

(5) The Act of Sederunt (Mental Health (Scotland) Act 1984) 1986<sup>(3)</sup> is hereby revoked.

**Service of notice and appointment of hearing of applications**

2.—(1) In an application to the sheriff under section 21<sup>(4)</sup> (hospital order), section 35A<sup>(5)</sup> (community care order), or section 40 (guardianship order) of the Act of 1984—

(a) the sheriff shall appoint a hearing; and

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(1) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2).

(2) 1984 c. 36.

(3) S.I.1986/545.

(4) Section 21 was amended by the Mental Health (Detention) (Scotland) Act 1991, (c.47), section 2.

(5) Section 35A of the Act of 1984 was inserted by the Mental Health (Patients in the Community) Act 1995 (c. 52), section 4.

(b) the sheriff clerk shall serve on the person who is the subject of such proceedings a copy of the application (with the exception of any medical recommendations) and a notice in Form 1.

(2) The sheriff may appoint that the hearing of such an application shall take place in a hospital or other place, where he considers this to be appropriate in all the circumstances.

(3) Where the nearest relative of the person who is the subject of such an application lodges with the sheriff clerk an objection to such application, the sheriff clerk shall intimate to that nearest relative the date appointed under paragraph (1)(a) above.

(4) Intimation shall be given by the sheriff clerk of the date appointed under paragraph (1)(a) above to such other persons as the sheriff may direct.

### **Methods of service**

**3.—**(1) Where the person who is the subject of the application to which paragraph (1) of rule 2(1) above applies is not already a patient in a hospital, the notice and copy application referred to in sub-paragraph (b) of that paragraph shall be served on him personally by a sheriff officer.

(2) Where the person who is the subject of such an application is a patient in a hospital, the notice and copy application referred to in rule 2(1)(b) above shall be served—

(a) by post by the first class recorded delivery service by the sheriff clerk,

or

(b) personally by a sheriff officer,

on his responsible medical officer and shall be accompanied by a further notice in Form 2 addressed to the responsible medical officer.

(3) Where the person who is the subject of an application under section 21 of the Act of 1984 (hospital order) is also the subject of a guardianship order, the notice and copy application referred to in rule 2(1)(b) above (including any medical recommendations) shall, in addition to any other requirement for service required by this rule, be served on the guardian—

(a) by post by the first class recorded delivery service by the sheriff clerk,

or

(b) personally by a sheriff officer.

### **Duties of medical officers**

**4.—**(1) On receipt by him of a notice under rule 3(2) above (service on responsible medical officer), the responsible medical officer shall, subject to rule 5(1) (service prejudicial to patient) below—

(a) deliver the notice and copy application referred to in rule 2(1)(b) above to the patient;

and

(b) as soon as practicable thereafter, complete and return to the court a certificate of such delivery in Form 3.

(2) Where, in the opinion of the medical officer mentioned below, it would be prejudicial to the patient's health or treatment if the patient were to be present during the proceedings—

(a) in an application to which rule 3(2) above applies, the responsible medical officer shall set forth his reasons for his opinion in the certificate to be completed by him in terms of paragraph (1)(b) of this rule; and

- (b) in any other case, the responsible medical officer or the special medical officer, as the case may be, shall set forth his reasons for his opinion in writing and send them to the sheriff clerk.

#### **Appointment of curator *ad litem***

**5.**—(1) Where, in an application to which rule 2(1) above applies, two medical certificates are produced stating that it would be prejudicial to the health or treatment of the person who is the subject of the application if personal service were effected on him by virtue of paragraph (1) of rule 3 (methods of service) or rule 4 (duties of medical officers) above, the sheriff—

- (a) may dispense with such service; and
- (b) if he does so, shall appoint a curator *ad litem* to receive the application and represent the interests of that person.

(2) Where, in an application to which rule 2(1) above applies, the sheriff is satisfied that—

- (a) the person who is the subject of the application should be excluded from the whole or any part of the proceedings under section 113(2) of the Act of 1984, or
- (b) in any other case, it is in all the circumstances appropriate for him to do so,

he may appoint a curator *ad litem* to represent the interests of the person who is the subject of the application.

(3) Service of an application on a curator *ad litem* shall be effected by the sheriff clerk handing, or sending by post by the first class recorded delivery service, to him a copy of the application (including any medical recommendations) and of the order appointing him.

#### **Appointment of solicitor by court**

**6.** Where, in an application to which rule 2(1) above applies, the person who is the subject of the application has indicated that he wishes to be represented at the hearing but has not nominated a representative, the sheriff may appoint a solicitor to take instructions from that person.

#### **Intimation to representatives**

**7.** Where, in an application to which rule 2(1) above applies, the sheriff clerk becomes aware that—

- (a) the person who is the subject of the application is represented by any person, and
- (b) that representative would not otherwise receive intimation of any diet,

a copy of the notice served on the person who is the subject of the application shall be intimated to the representative by the sheriff clerk by post by the first class recorded delivery service.

#### **Service by sheriff officer**

**8.**—(1) Where a copy of an application and any notice has been served personally by a sheriff officer under this Act of Sederunt, he shall prepare and return to the court an execution of such service setting forth in detail the manner and circumstances of such service.

(2) Where a sheriff officer has been unable to effect personal service under this Act of Sederunt, he shall report to the court the reason why such service was not effected.

### **Variation of conditions of a community care order**

**9.**—Where, after consulting the persons referred to in subsections (1) and (2) of section 35D(6)(variation of conditions in community care order) of the Act of 1984, an application is made by the special medical officer for the variation of a community care order under that section, the special medical officer shall—

- (a) complete Form 22 in Schedule 2 to the Mental Health (Prescribed Forms) (Scotland) Regulations 1996(7); and
- (b) lodge that form with the sheriff clerk, together with the community care order to which that application for variation relates or a certified copy of it.

### **Hearing**

**10.**—(1) Any hearing to determine any application under rule 9 above shall take place within 28 days after receipt by the sheriff clerk of Form 22 and the community care order referred to in that rule.

(2) Intimation of the date of the hearing referred to in paragraph (1) above shall be given by the sheriff clerk by post by the first class recorded delivery service to such persons as the sheriff may direct; and any intimation of such date to the patient shall be made personally by sheriff officer.

### **Appeal against a community care order**

**11.** An application by way of appeal for the revocation of a community care order under section 35F(8) of the Act of 1984 shall be in Form 4.

Edinburgh  
13th August 1996

*Hope of Craighead*  
Lord President, I.P.D.

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(6) Section 35D of the Act of 1984 was inserted by the Mental Health (Patients in the Community) Act 1995, section 4.

(7) S.I. 1996/743.

(8) Section 35F of the Act of 1984 was inserted by the Mental Health (Patients in the Community) Act 1995, section 4.

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SCHEDULE

Rule 2(1)(b)

**FORM 1 Form of notice to be served on person who is subject of hospital order, guardianship order or community care order proceedings**

Rule 2(1)(b)

To: *(name and address)*

Attached is a copy of:-

- \*an application to the managers of *[name of hospital]* for your admission to that hospital in accordance with section 21 of the Mental Health (Scotland) Act 1984.
- \*an application to the *[name of local authority]* for your reception into guardianship in accordance with section 40 of the Mental Health (Scotland) Act 1984.
- \*an application to the sheriff at *[name of sheriff court]* for a Community Care Order in accordance with section 35A of the Mental Health (Scotland) Act 1984.

**The hearing will be held at *(place)* on *(date)* at *(time)***

You may appear personally at the hearing of this application unless the court decides otherwise on medical recommendations.

In any event, if you are unable or do not wish to appear personally you may request any person to appear on your behalf.

If you do not appear personally or by representative, the sheriff will consider the application in the absence of you or your representative.

*(Signed)*  
Sheriff Clerk

*(Place and date)*

\*delete as appropriate

**FORM 2 Form of notice to responsible medical officer**

Rule 3(2)

To: *(name and address)*

In accordance with the Mental Health (Scotland) Act 1984, a copy of the application and notice of hearing is sent with this notice.

1. You are requested to deliver it personally to *(name of patient)* and explain the contents of it to him.
2. You are also required to arrange if the patient so wishes, for the attendance of *(name of patient)* at the hearing at *(place of hearing)* on *(date)* so that he may appear and be heard in person.
3. You are further requested to complete and return to me in the enclosed envelope the certificate appended hereto before the date of the hearing.
4. If in your opinion it would be prejudicial to the patient's health or treatment for him to appear and be heard personally you may so recommend in writing, with reasons on the certificate.

*(Signed)*  
Sheriff Clerk

*(Place and date)*

**FORM 3 Form of certificate of delivery by responsible medical officer**

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Rule 4(1)(b)

I, *[name and designation]*, certify that -

1. I have on the \_\_\_\_\_ day of \_\_\_\_\_ personally delivered to *[name of patient]* a copy of the application and the intimation of the hearing; and have explained the contents or purport to him *[or her]*.
2. The patient does *[not]* wish to attend the hearing.
3. The patient does *[not]* wish to be represented at the hearing *[and has nominated *[name and address of representative]* to represent him]*.
4. I shall arrange for the attendance of the patient at the hearing *[or in my view it would be prejudicial to the patient's health or treatment for him *[or her]* to appear and be heard in person for the following reasons *[give reasons]*]*.

*(Signature and designation)*

*(Address and date)*

**FORM 4 Form of appeal for revocation of a community care order under section 35F of the Mental Health (Scotland) Act 1984**

Rule 11

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert name of sheriff court)*

I, *(insert name and address of applicant)*,

appeal to the sheriff for revocation of a community care order made on *(insert date of order)* on the following grounds:-

*(state grounds on which appeal is to proceed).*

The community care order was renewed under section 35C(5) of the Mental Health (Scotland) Act 1984 on *(insert date of renewal)* and is still in force.

The special medical officer specified in the community care order is *(insert name and address of special medical officer)*.

*(Signed)*  
Applicant  
*[or Solicitor for Applicant]*  
*(insert designation and address)*

Date:

**EXPLANATORY NOTE**

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt consolidates the Act of Sederunt (Mental Health (Scotland) Act 1984) 1986, and extends the provisions relating to hospital orders to community care orders, which were introduced by section 4 of the Mental Health (Patients in the Community) Act 1995. This Act of Sederunt also

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provides rules relating to the variation of community care orders, provides a form of appeal against a community care order, and repeals the Act of Sederunt (Mental Health (Scotland) Act 1984) 1986.