



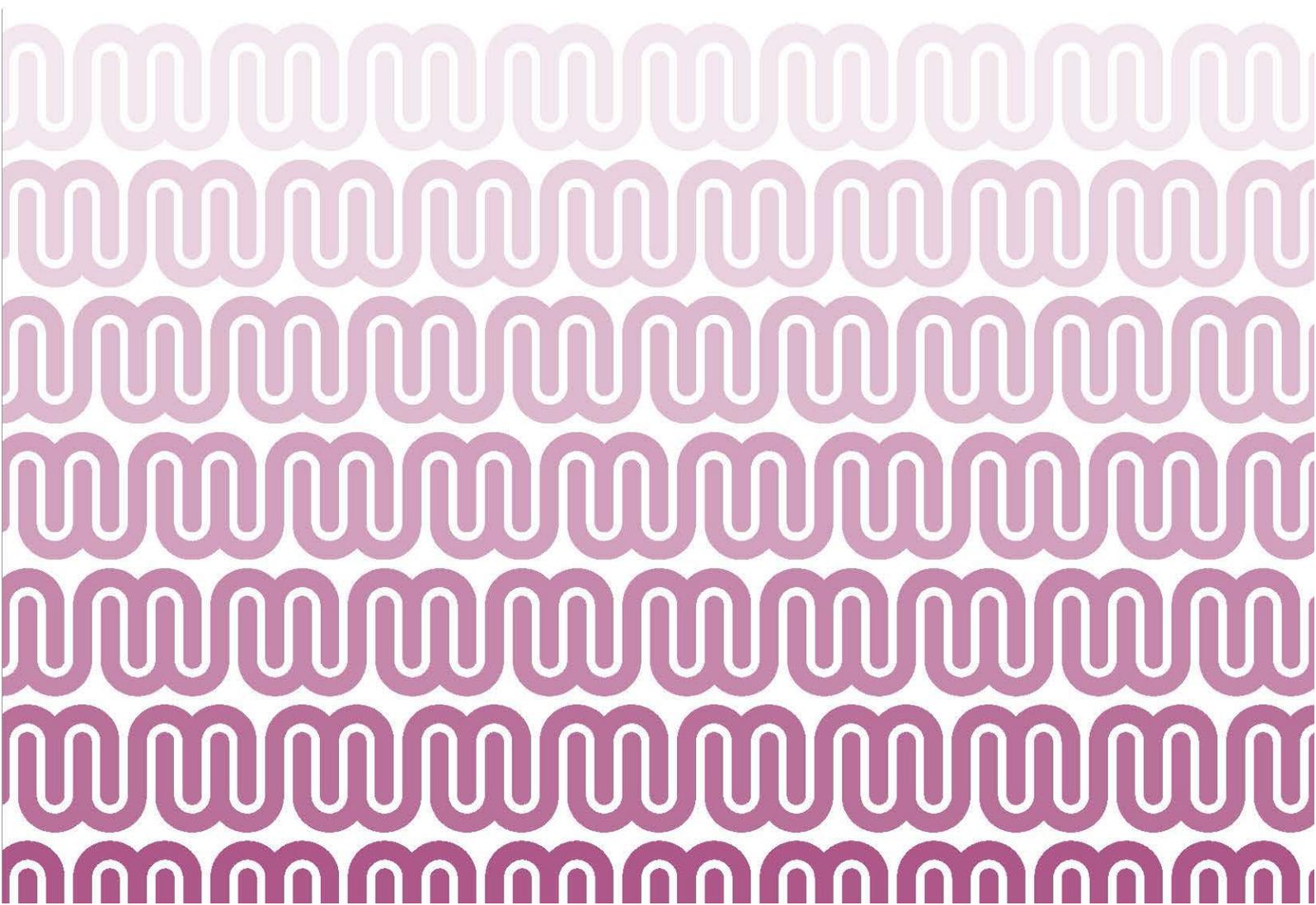
mental welfare
commission for scotland

Completion and return of Form 22 to Sheriff Clerks (the legal form used for guardianship court processes)

Guidance for managers of authorised establishments:
NHS hospital, care home, independent hospital, private psychiatric hospital, State Hospital and limited registration service

Advice note

February 2026



Our mission and purpose

Our Mission

To be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice.

Our Purpose

We protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.

Our Priorities

To achieve our mission and purpose over the next three years we have identified four strategic priorities.

- To challenge and to promote change
- Focus on the most vulnerable
- Increase our impact (in the work that we do)
- Improve our efficiency and effectiveness

Our Activity

- Influencing and empowering
- Visiting individuals
- Monitoring the law
- Investigations and casework
- Information and advice

Completion and return of Form 22 (the legal form used in guardianship processes) to Sheriff Clerks

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Relevant legislation

- [Adults with Incapacity \(Scotland\) Act 2000](#) (AWI Act)
- Rule 3.16.4(1) - (4) and Rule 3.16.18(1) of Chapter 3, Part XVI of the [Act of Sederunt \(Summary Applications, Statutory Applications and Appeals etc. Rules\) 1999](#)

Intended audience

Hospital managers, care home managers, charge nurses, nurse managers, ward managers, registered service managers.

Context

Definitions

This guidance will use the following definitions:

Adult: the person, aged 16+, who is the subject of the application, renewal or recall of guardianship.

Authorised establishment: defined by section 35(2) AWI Act as:

- NHS hospital
- Care home
- Independent hospital
- Private psychiatric hospital
- State Hospital
- Limited registration service

Manager: the care home manager, hospital manager, unit manager, ward manager or charge nurse of the authorised establishment.

Background

The process for considering guardianship applications, renewals and recalls under the AWI Act can be complex and lengthy. There are several points within the process at which delay can occur. One such point is when legal papers are intimated on an adult who is in an authorised establishment and a Form 22 requires to be completed and returned to the Sheriff Clerk.

Sheriffs who regularly determine applications under the AWI Act, and who are working to improve the efficiency of AWI courts, have raised concerns with the Mental Welfare Commission about the completion and return of Form 22 in guardianship processes where the adult is in hospital or living in a care home including supported accommodation. These delays can result in unnecessary postponement of hearings.

It has been noted an increasing number of establishments are indicating the paperwork has not been gone over with the adult on the basis the adult would not understand the information.

This guidance outlines what managers of authorised establishments must do when receiving guardianship application, renewal or recall paperwork, helping to prevent unnecessary delays.

Service

Rule 3.16.4 (1) - (4) of Chapter 3 Part XVI of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 sets out the procedure for service of documentation.

Where an adult who is the subject of a guardianship application, renewal or recall is in an authorised establishment, the paperwork is sent to the manager of the authorised establishment.

The manager has a statutory role in ensuring the adult is:

- given the relevant notice, and
- made aware of the application, renewal or recall and the date of the hearing, so far as this is reasonably practicable.

This is confirmed to the court by completion and return of Form 22.

Paperwork

When a guardianship application, renewal or recall is being made, the manager will receive paperwork either by Royal Mail or by service of a Sheriff Officer. Depending on the process, this may include:

- Summary Application
- Medical reports
- Mental health officer report
- Form 20: Form of Notice of Application under the Adults with Incapacity (Scotland) Act 2000
- Form 21: Form of Notice to Managers
- Form 22: Form of Certificate of Delivery by Manager
- A pre-addressed envelope for return of Form 22

What the manager must do

Upon receipt of the paperwork, the manager must:

1. Give Form 20 to the adult immediately.
2. Go over the paperwork with the adult, explaining:
 - an application has been made,
 - what it is about (in general terms), and
 - the date of the court hearing.
3. Use appropriate communication methods, depending on the adult's needs.
4. Complete Form 22 to confirm that:
 - the paperwork has been delivered to the adult, and
 - the hearing date and paperwork have been gone over with them.
5. Return Form 22 to the Sheriff Clerk as soon as possible and in any event before the hearing date.

Failure to return Form 22 timeously may result in the hearing being delayed.

Form 22

It is important to be clear about the purpose of Form 22.

- Form 22 does NOT confirm that the adult understands the process or paperwork.
- No assessment of the adult's capacity or understanding is required by the manager.

Form 22 simply confirms that:

- the adult has been given the paperwork, and
- the paperwork and hearing date have been gone over with them as far as reasonably practicable.

If, during the court process, it has already been determined the adult should not receive the paperwork or be informed of the hearing date, then the paperwork will not be sent to the manager for delivery to the adult.

Any issues about the adult's capacity to understand the process are considered at other stages and are not the responsibility of the manager completing Form 22.

If you have questions

If managers have any questions about the process or what is required, they should contact the Sheriff Clerk's office at their local Sheriff Court. You can find details on the [Scottish Courts and Tribunals Service website](#).

Why this is important

Unnecessary delays in guardianship processes are not in accordance with the principles of the AWI Act. The process involves multiple steps and agencies, and delays at any stage can prevent timely decision-making.

Managers of authorised establishments therefore play a crucial role in ensuring that matters proceed without avoidable delay by:

- carrying out their duties promptly, and
- correctly completing and returning Form 22 as soon as possible.

Summary and key messages

- Managers of authorised establishments have a statutory role in the guardianship application, renewal and recall process.
- When paperwork is received, the manager must:
 - give Form 20 to the adult,
 - go over the paperwork and hearing date with them, and
 - complete and return Form 22 promptly.
- Form 22 does not require the manager to assess the adult's understanding or capacity.
- Prompt return of Form 22 supports the timeous consideration of guardianship processes and helps avoid unnecessary delays.

The Mental Welfare Commission for Scotland thanks Scottish Court and Tribunal Service for their insights and expertise, which have been instrumental in shaping this advice note.

Appendices

1. Form 20

Form 20 **Form of notice of an application under the Adults with Incapacity (Scotland) Act 2000**

Rule 3.16.4(1) To *(insert name and address)*

Attached to this notice is a copy of an application for *(insert type of application)* under the Adults with Incapacity (Scotland) Act 2000.

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

You may appear personally at the hearing of this application.

In any event, if you are unable or do not wish to appear personally you may appoint a legal representative to appear on your behalf.

If you are uncertain as to what action to take you should consult a solicitor. You may be eligible for legal aid, and you can obtain information about legal aid from any solicitor. You may also obtain information from any Citizens Advice Bureau or other advice agency.

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

(insert place and date)

(signed)

Sheriff Clerk

or

[P.Q.] Sheriff Officer

or

[X.Y.], Solicitor

2. Form 21

Form 21 Form of notice to managers

Rule 3.16.4(3) To *(insert name and address of manager)*

A copy of an application made under the Adults with Incapacity (Scotland) Act 2000 and notice of hearing is sent with this notice.

1. You are requested immediately on receipt to deliver it personally to (name of adult) and to explain the contents of it to him or her.

2. You are further requested to complete and return to the sheriff clerk in the enclosed envelope the certificate (Form 22) appended hereto before the date of the hearing.

(insert place and date)

(signed)

Sheriff Clerk

or

[P.Q.], Sheriff Officer

or

[X.Y.], Solicitor

3. Form 22

Form 22 **Form of certificate of delivery by manager**

Rule 3.16.4(4) I, *(insert name and designation)*, certify that-

I have on *(insert date)* personally delivered to (name of adult) a copy of the application and the intimation of the hearing and have explained the contents to him/her.

Date *(insert date)*

(signed)

Manager

(add designation and address)



If you have any comments or feedback on this publication, please contact us:

Mental Welfare Commission for Scotland
Thistle House,
91 Haymarket Terrace,
Edinburgh,
EH12 5HE
Tel: 0131 313 8777
Fax: 0131 313 8778
Freephone: 0800 389 6809
mwc.enquiries@nhs.scot
www.mwcscot.org.uk