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## SCHEDULES

### <sup>F1</sup>FIRST SCHEDULE **S**

#### ORDINARY CAUSE RULES 1993

##### Textual Amendments

- F1** Sch. 1 (with appendices 1 and 2) substituted (1.1.1994) for Sch. 1 (with appendix) by [S.I. 1993/1956](#), para. 2, [Sch.1](#).  
Sch. 1 (except rule 29.10) excluded (1.4.1997) by [S.I. 1997/291](#), [rule 3.24](#), Sch. 3  
Sch. 1 extended (14.2.2000) by [S.I. 2000/124](#), [reg. 30\(5\)](#)

### <sup>F1</sup>SPECIAL PROVISIONS IN RELATION TO PARTICULAR CAUSES] **S**

#### CHAPTER 33 **S**

##### FAMILY ACTIONS

###### *PART I*

##### *GENERAL PROVISIONS*

##### *Intepretation of this Chapter*

- 33.1. (1) In this Chapter, “family action” means—
- (a) an action of divorce;
  - (b) an action of separation;
  - (c) an action of declarator of legitimacy;
  - (d) an action of declarator of illegitimacy;
  - (e) an action of declarator of parentage;
  - (f) an action of declarator of non-parentage;
  - (g) an action of declarator of legitimation;
  - <sup>F2</sup>(h) an action or application for, or in respect of, an order under section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.), except—
    - (i) an application for the appointment of a judicial factor mentioned in section 11(2)(g) of the Act of 1995 to which Part I of the Act of Sederunt (Judicial Factors Rules) 1992 applies; and
    - (ii) an application for the appointment or removal of a person as a guardian mentioned in section 11(2)(h) of the Act of 1995 to which paragraph 4 of the Act of Sederunt (Family Proceedings in the Sheriff Court) 1996 applies;]

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- (i) an action of affiliation and aliment;
- (j) an action of, or application for or in respect of, aliment;
- (k) an action or application for financial provision after a divorce or annulment in an overseas country within the meaning of Part IV of the <sup>M1</sup>Matrimonial and Family Proceedings Act 1984;
- (l) an action or application for an order under the Act of 1981;
- (m) an application for the variation or recall of an order mentioned in section 8(1) of the <sup>M2</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1966.

(2) In this Chapter, unless the context otherwise requires—

“the Act of 1975” means the <sup>M3</sup>Children Act 1975;

“the Act of 1976” means the <sup>M4</sup>Divorce (Scotland) Act 1976;

“the Act of 1981” means the <sup>M5</sup>Matrimonial Homes (Family Protection) (Scotland) Act 1981;

“the Act of 1985” means the <sup>M6</sup>Family Law (Scotland) Act 1985;

[<sup>F3</sup>“the Act of 1995” means the Children (Scotland) Act 1995;

“contact order” has the meaning assigned in section 11(2)(d) of the Act of 1995;]

[<sup>F4</sup>“full gender recognition certificate” and “interim gender recognition certificate” mean the certificates issued as such under section 4 or 5 of the Gender Recognition Act 2004 <sup>F5</sup>;

“Gender Recognition Panel” is to be construed in accordance with Schedule 1 to the Gender Recognition Act 2004;]

<sup>F6</sup>  
 . . .

[<sup>F7</sup>“local authority” means a council constituted under section 2 of the <sup>M7</sup>Local Government etc. (Scotland) Act 1994;]

“mental disorder” means mental illness or mental handicap however caused or manifested;

“order for financial provision” means, except in Part VII of this Chapter (financial provision after overseas divorce or annulment), an order mentioned in section 8(1) of the Act of 1985;

[<sup>F8</sup>“parental responsibilities” has the meaning assigned in section 1(3) of the Act of 1995;

“parental rights” has the meaning assigned in section 2(4) of the Act of 1995;

“residence order” has the meaning assigned in section 11(2)(c) of the Act of 1995;

“section 11 order” means an order under section 11 of the Act of 1995.]

(3) For the purposes of rules 33.2 (averments in actions of divorce or separation about other proceedings) and 33.3 (averments where [<sup>F9</sup>section 11 order] sought) and, in relation to proceedings in another jurisdiction, Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973 <sup>F10</sup> (sisting of consistorial actions in Scotland), proceedings are continuing at any time after they have commenced and before they are finally disposed of.

#### Textual Amendments

**F2** Rule 33.1(1)(h) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 4(a)

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- F3** Rule 33.1(2): definitions of "the Act of 1995" and "contact order" inserted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(b)(i)
- F4** Sch. 1 rule 33.1(2): Definition of "full gender recognition certificate" and "interim gender recognition certificate" inserted (4.4.2005) by Act of Sederunt (Ordinary Cause Rules) Amendment (Gender Recognition Act 2004) 2005 (S.S.I. 2005/189), **art. 2(2)**
- F5** 2004 c. 7.
- F6** Rule 33.1(2): definition of "child" omitted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(b)(ii)
- F7** Rule 33.1(2): definition of "local authority" substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(b)(iii)
- F8** Rule 33.1(2): definitions of "parental responsibilities", "parental", "residence order" and "section 11 order" substituted for definition of "parental rights" (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 4(b)(iv)**
- F9** Words in rule 33.1(3) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(c)
- F10** 1973 c.45; Schedule 3 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), **Schedule 1**, paragraphs 19 and 20.

#### Marginal Citations

- M1** 1984 c.42; Part IV was amended by the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraphs 12 and 13.
- M2** 1966 c.19; section 8(1) was amended by the Guardianship Act 1973 (c.29), **Schedule 5**, the Divorce (Scotland) Act 1976 (c.39), **Schedule 1**, the Matrimonial and Family Proceedings Act 1984 (c.42), **Schedule 1**, paragraph 7 and the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraph 5.
- M3** 1975 c.72.
- M4** 1976 c.39.
- M5** 1981 c.59.
- M6** 1985 c.37.
- M7** 1994 c. 39; section 2(2) was amended by the Environment Act 1995 (c.25), **Schedule 22**, paragraph 232(1)

#### *Averments in actions of divorce or separation about other proceedings*

- 33.2. (1) This rule applies to an action of divorce or separation.
- (2) In an action to which this rule applies, the pursuer shall state in the condescendence of the initial writ—
- (a) whether to his knowledge any proceedings are continuing in Scotland or in any other country in respect of the marriage to which the initial writ relates or are capable of affecting its validity or subsistence; and
  - (b) where such proceedings are continuing—
    - (i) the court, tribunal or authority before which the proceedings have been commenced;
    - (ii) the date of commencement;
    - (iii) the names of the parties;
    - (iv) the date, or expected date of any proof (or its equivalent) in the proceedings; and
    - (v) such other facts as may be relevant to the question of whether or not the action before the sheriff should be sisted under Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973 <sup>[F11]</sup> or Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial

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matters and in matters of parental responsibility for children of both spouses].

(3) Where—

- (a) such proceedings are continuing;
- (b) the action before the sheriff is defended; and
- (c) either—
  - (i) the initial writ does not contain the statement referred to in paragraph (2)(a), or
  - (ii) the particulars mentioned in paragraph (2)(b) as set out in the initial writ are incomplete or incorrect,

any defences or minute, as the case may be, lodged by any person to the action shall include that statement and, where appropriate, the further or correct particulars mentioned in paragraph (2)(b).

#### Textual Amendments

**F11** Words in [Sch. 1 rule 33.2\(2\)\(b\)\(v\)](#) inserted (2.4.2001) by [S.S.I. 2001/144](#), [para. 2\(1\)\(2\)](#)

*[<sup>F12</sup>Averments where section 11 order sought]*

33.3. (1) A party to a family action, who makes an application in that [<sup>F13</sup>action for a section 11 order] in respect of a child shall include in his pleadings—

- (a) where that action is an action of divorce or separation, averments giving particulars of any other proceedings known to him, whether in Scotland or elsewhere and whether concluded or not, which relate to the child in respect of whom the [<sup>F14</sup>section 11 order] is sought;
- (b) in any other family action—
  - (i) the averments mentioned in paragraph (a); and
  - (ii) averments giving particulars of any proceedings known to him which are continuing, whether in Scotland or elsewhere, and which relate to the marriage of the parents of that child.

(2) Where such other proceedings are continuing or have taken place and the averments of the applicant for such a [<sup>F14</sup>section 11 order]—

- (a) do not contain particulars of the other proceedings, or
- (b) contain particulars which are incomplete or incorrect,

any defences or minute, as the case may be, lodged by any [<sup>F15</sup>party] to the family action shall include such particulars or such further or correct particulars as are known to him.

(3) In paragraph 1(b)(ii), “child” includes a child of the family within the meaning assigned in section 42(4) of the Family Law Act 1986.

#### Textual Amendments

**F12** Words in [rule 33.3](#) heading substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch.](#), [para. 5\(a\)](#)

**F13** Words in [rule 33.3\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch.](#), [para. 5\(b\)](#)

**F14** Words in [rule 33.3\(1\)\(a\)\(2\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch.](#), [para. 5\(c\)](#)

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**F15** Word in rule 33.3(2) substituted (1.11.1996) by S.I. 1996/2445, para. 3(44)

#### *Averments where identity or address of person not known*

33.4. In a family action, where the identity or address of any person referred to in rule 33.7 as a person in respect of whom a warrant for intimation requires to be applied for is not known and cannot reasonably be ascertained, the party required to apply for the warrant shall include in his pleadings an averment of that fact and averments setting out what steps have been taken to ascertain the identity or address, as the case may be, of that person.

#### *Averments about maintenance orders*

33.5. In a family action in which an order for aliment or periodical allowance is sought, or is sought to be varied or recalled, by any party, the pleadings of that party shall contain an averment stating whether and, if so, when and by whom, a maintenance order (within the meaning of section 106 of the <sup>M8</sup>Debtors (Scotland) Act 1987) has been granted in favour of or against that party or of any other person in respect of whom the order is sought.

#### **Marginal Citations**

**M8** 1987 c.18; section 106 was amended by the Child Support Act 1991 (c.48), Schedule 5, paragraph 8(7).

#### *Averments where aliment or financial provision sought*

33.6. (1) In this rule—

“the Act of 1991” means the <sup>M9</sup>Child Support Act 1991;

“child” has the meaning assigned in section 55 of the Act of 1991;

“crave relating to aliment” means—

(a) for the purposes of paragraph (2), a crave for decree of aliment in relation to a child or for recall or variation of such a decree; and

(b) for the purposes of paragraph (3), a crave for decree of aliment in relation to a child or for recall or variation of such a decree or for the variation or termination of an agreement on aliment in relation to a child;

“ [<sup>F16</sup>“maintenance calculation”]” has the meaning assigned in section [<sup>F17</sup>54] of the Act of 1991.

(2) A family action containing a crave relating to aliment and to which section 8(6), (7), (8) or (10) of the Act of 1991 (top up maintenance orders) applies shall—

(a) include averments stating, where appropriate—

(i) that a maintenance [<sup>F18</sup>calculation] under section 11 of that Act (maintenance assessments) is in force;

(ii) the date of the maintenance [<sup>F18</sup>calculation];

(iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance [<sup>F18</sup>calculation]; and

(iv) the grounds on which the sheriff retains jurisdiction under section 8(6), (7), (8) or (10) of that Act; and

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- (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the party intimating the making of the maintenance [F18calculation] referred to in sub-paragraph (a).
- (3) A family action containing a crave relating to aliment, and to which section 8(6), (7), (8) or (10) of the Act of 1991 does not apply, shall include averments stating—
  - (a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of that Act, is furth of the United Kingdom;
  - (b) that the child is not a child within the meaning of section 55 of that Act; or
  - (c) where the action is lodged for warranting before 7th April 1997, the grounds on which the sheriff retains jurisdiction.
- (4) In an action for declarator of non-parentage or illegitimacy—
  - (a) the initial writ shall include an article of condescendence stating whether the pursuer previously has been alleged to be the parent in an application for a maintenance [F18calculation] under section 4, 6 or 7 of the Act of 1991 (applications for maintenance [F18calculation]); and
  - (b) where an allegation of paternity has been made against the pursuer, the Secretary of State shall be named as a defender in the action.
- (5) A family action involving parties in respect of whom a decision has been made in any application, review or appeal under the Act of 1991 relating to any child of those parties, shall—
  - (a) include averments stating that such a decision has been made and giving details of that decision; and
  - (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the parties intimating that decision.

#### Textual Amendments

- F16** Words in Sch. 1 rule 33.6(1) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(8)(a)(i)
- F17** Word in Sch. 1 rule 33.6(1) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(8)(a)(ii)
- F18** Words in Sch. 1 rule 33.6(2)(4) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(8)(b)

#### Marginal Citations

- M9** 1991 c.48.

#### *Warrants and forms for intimation*

- 33.7. (1) [F19Subject to paragraphs (5) and (7), in the initial writ] in a family action, the pursuer shall include a crave for a warrant for intimation—
- (a) in an action where the address of the defender is not known to the pursuer and cannot reasonably be ascertained, to—

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- (i) every child of the marriage between the parties who has reached the age of 16 years, and
  - (ii) one of the next-of-kin of the defender who has reached that age,unless the address of such a person is not known to the pursuer and cannot reasonably be ascertained, and a notice of intimation in Form F1 shall be attached to the copy of the initial writ intimated to any such person;
- (b) in an action where the pursuer alleges that the defender has committed adultery with another person, to that person, unless—
  - (i) that person is not named in the initial writ and, if the adultery is relied on for the purposes of section 1(2)(a) of the Act of 1976 (irretrievable breakdown of marriage by reason of adultery), the initial writ contains an averment that his or her identity is not known to the pursuer and cannot reasonably be ascertained, or
  - (ii) the pursuer alleges that the defender has been guilty of rape upon or incest with, that named person,and a notice of intimation in Form F2 shall be attached to the copy of the initial writ intimated to any such person;
- (c) in an action where the defender is a person who is suffering from a mental disorder, to—
  - (i) those persons mentioned in sub-paragraph (a)(i) and (ii), unless the address of such person is not known to the pursuer and cannot reasonably be ascertained, and
  - (ii) the curator bonis to the defender, if one has been appointed,and a notice of intimation in Form F3 shall be attached to the copy of the initial writ intimated to any such person;
- (d) in an action relating to a marriage which was entered into under a law which permits polygamy where—
  - (i) one of the decrees specified in section 2(2) of the <sup>M10</sup>Matrimonial Proceedings (Polygamous Marriages) Act 1972 is sought, and
  - (ii) either party to the marriage in question has any spouse additional to the other party,to any such additional spouse, and a notice of intimation in Form F4 shall be attached to the initial writ intimated to any such person;
- (e) in an action of divorce or separation where the sheriff may make [a section 11 order] in respect of a child—
  - (i) who is in the care of a local authority, to that authority and a notice of intimation in Form F5 shall be attached to the initial writ intimated to that authority;
  - (ii) who, being a child of one party to the marriage, has been accepted as a child of the family by the other party to the marriage and who is liable to be maintained by a third party, to that third party, and a notice of intimation in Form F5 shall be attached to the initial writ intimated to that third party; or
  - (iii) in respect of whom a third party [<sup>F20</sup>in fact exercises care or control], to that third party, and a notice of intimation in Form F6 shall be attached to the initial writ intimated to that third party;
- (f) in an action where the pursuer craves [<sup>F21</sup>a section 11 order], to any parent or guardian of the child who is not a party to the action, and a notice of

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- intimation in Form F7 shall be attached to the initial writ intimated to any such parent or guardian;
- (g) in an action where the pursuer craves [<sup>F22</sup>a residence order in respect] of a child and he is—
- (i) not a parent of that child, and
  - (ii) resident in Scotland when the initial writ is lodged,
- to the local authority within which area the pursuer resides, and a notice of intimation in Form F8 shall be attached to the [<sup>F23</sup>initial] writ intimated to that authority;
- [<sup>F24</sup>(h) in an action which includes a crave for a section 11 order, to the child to whom such an order would relate if not a party to the action, and a notice of intimation in Form F9 shall be intimated to that child;]
- (i) in an action where the pursuer makes an application for an order under section 8(1)(aa) of the <sup>M11</sup>Act of 1985(transfer of property) and—
- (i) the consent of a third party to such a transfer is necessary by virtue of an obligation, enactment or rule of law, or
  - (ii) the property is subject to a security,
- to the third party or creditor, as the case may be, and a notice of intimation in Form F10 shall be attached to the initial writ intimated to any such person;
- (j) in an action where the pursuer makes an application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions), to—
- (i) any third party in whose favour the transfer of, or transaction involving, the property is to be or was made, and
  - (ii) any other person having an interest in the transfer of, or transaction involving, the property,
- and a notice of intimation in Form F11 shall be attached to the initial writ intimated to any such person; <sup>F25</sup> . . .
- (k) in an action where the pursuer makes an application for an order under the <sup>M12</sup>Act of 1981—
- (i) where he is a non-entitled partner and the entitled partner has a spouse, to that spouse, or
  - (ii) where the application is under section 2(1)(e), 2(4)(a), 3(1), 3(2), 4, 7, 13 or 18 of that Act, and the entitled spouse or entitled partner is a tenant or occupies the matrimonial home by permission of a third party, to the landlord or the third party, as the case may be,
- and a notice of intimation in Form F12 shall be attached to the initial writ intimated to any such person [<sup>F26</sup>; and]
- [<sup>F27</sup>(l) in an action where the pursuer makes an application for an order under section 8(1)(ba) of the <sup>M13</sup>Act of 1985 (orders under section 12A of the Act of 1985 for pension lump sum), to the trustees or managers of the pension scheme, and a notice of intimation in Form F12A shall be attached to the initial writ intimated to any such person.]
- (2) Expressions used in paragraph (1)(k) which are also used in the Act of 1981 have the same meaning as in that Act.
- (3) A notice of intimation under paragraph (1) shall be on a period of notice of 21 days unless the sheriff otherwise orders; but the sheriff shall not order a period of notice of less than 2 days.



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- (4) In a family action, where the pursuer—
- [<sup>F28</sup>(a) craves a residence order in respect of a child,
  - (b) is not a parent of the child, and
  - (c) is not resident in Scotland when the initial writ is lodged for warranting,]
- he shall include a crave for an order for intimation in form F8 to such local authority as the sheriff thinks fit.
- (5) Where the address of a person mentioned in paragraph (1)(b), (d), (e), (f), (h), (i), (j) [<sup>F29</sup>, (k) or (l)] is not known and cannot reasonably be ascertained, the pursuer shall include a crave in the initial writ to dispense with intimation; and the sheriff may grant that crave or make such other order as he thinks fit.
- (6) Where the identity or address of a person to whom intimation of a family action is required becomes known during the course of the action, the party who would have been required to insert a warrant for intimation to that person shall lodge a motion for a warrant for intimation to that person or to dispense with such intimation.
- [<sup>F30</sup>(7) Where a pursuer considers that to order intimation to a child under paragraph (1)(h) is inappropriate, he shall—
- (a) include a crave in the initial writ to dispense with intimation to that child, and
  - (b) include in the initial writ averments setting out the reasons why such intimation is inappropriate;
- and the sheriff may dispense with such intimation or make such other order as he thinks fit.]

#### Extent Information

- E1** Words in [rule 33.7\(1\)\(e\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, [Sch. para. 6\(a\)\(ii\)](#)

#### Textual Amendments

- F19** Words in [rule 33.7\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, [Sch.](#), para. 6(a)(i)
- F20** Words in [rule 33.7\(1\)\(e\)\(iii\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, [Sch. para. 6\(a\)\(iii\)](#)
- F21** Words in [rule 33.7\(1\)\(f\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, [Sch. para. 6\(a\)\(iv\)](#)
- F22** Words in [rule 33.7\(1\)\(g\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, [Sch. para. 6\(a\)\(v\)](#)
- F23** Word in [rule 33.7\(1\)\(g\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(45\)\(a\)\(i\)](#)
- F24** [Rule 33.7\(1\)\(h\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, [Sch. para. 6\(a\)\(vi\)](#)
- F25** Word in [rule 33.7\(1\)\(j\)](#) omitted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(45\)\(a\)\(ii\)](#)
- F26** [Rule 33.7\(1\)\(k\)](#): “; and” substituted for the full-stop (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(45\)\(a\)\(iii\)](#)
- F27** [Rule 33.7\(1\)\(l\)](#) inserted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(45\)\(a\)\(iv\)](#)
- F28** [Rule 33.7\(4\)\(a\)-\(c\)](#) substituted (1.11.1996) for [rule 33.7\(4\)\(a\)\(b\)](#) by [S.I. 1996/2167](#), para. 2, [Sch. para. 6\(b\)](#)
- F29** Words in [rule 33.7\(5\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(45\)\(b\)](#)
- F30** [Rule 33.7\(7\)](#) inserted (1.11.1996) by [S.I. 1996/2167](#), para. 2, [Sch. para. 6\(c\)](#)

#### Marginal Citations

- M10** 1972 c.38; section 2(2) was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), [Schedule 1](#), paragraphs 13, the Law Reform (Husband and Wife) (Scotland) Act 1984 (c.15), [Schedule 1](#), paragraph 6, the Family Law (Scotland) Act 1985 (c.37), [Schedule 1](#), paragraph 8 and the Statute Law (Repeals) Act 1986 (c.12), [Schedule 1](#), Part I.
- M11** 1985 c.37; section 8(1)(aa) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), [Schedule 8](#), paragraph 34.

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**M12** 1981 c.59.

**M13** 1985 c.37; section 8(1)(ba) was inserted by the Pensions Act 1995 (c.26), section 167(1).

### *Intimation where improper association*

- 33.8. (1) In a family action where the pursuer alleges an improper association between the defender and another named person, the pursuer shall, immediately after the expiry of the period of notice, lodge a motion for an order for intimation to that person or to dispense with such intimation
- (2) In determining a motion under paragraph (1), the sheriff may—
- (a) make such order for intimation as he thinks fit; or
  - (b) dispense with intimation; and
  - (c) where he dispenses with intimation, order that the name of that person be deleted from the condescendence of the initial writ.
- (3) Where intimation is ordered under paragraph (2), a copy of the initial writ and an intimation in Form F13 shall be intimated to the named person.
- (4) In paragraph (1), “improper association” means sodomy, incest or any homosexual relationship.

### *Productions in action of divorce or where <sup>[F31]</sup>section 11 order] may be made*

- 33.9. Unless the sheriff otherwise directs—
- (a) in an action of divorce, a warrant for citation shall not be granted without there being produced with the initial writ an extract of the relevant entry in the register of marriages or an equivalent document; and
  - (b) <sup>[F32]</sup>in a family action which includes a crave for a section 11 order], a warrant for citation shall not be granted without there being produced with the initial writ an extract of the relevant entry in the register of births or an equivalent document.

#### **Textual Amendments**

**F31** Words in rule 33.9 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 7(a)

**F32** Words in rule 33.9(b) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 7(b)

### *Productions in action of divorce on ground of issue of interim gender recognition certificate*

- <sup>[F33]</sup>33.9A. This rule applies where, in an action of divorce, the ground on which decree of divorce may be granted is that an interim gender recognition certificate has, after the date of the marriage, been issued to either party to the marriage.
- (2) Unless the sheriff otherwise directs, a warrant for citation shall not be granted without there being produced with the initial writ—
- (a) where the pursuer is the subject of the interim gender recognition certificate, the interim gender recognition certificate or, failing that, a certified copy of the interim gender recognition certificate; or

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- (b) where the pursuer is the spouse of the person who is the subject of the interim gender recognition certificate, a certified copy of the interim gender recognition certificate.
- (3) For the purposes of this rule, a certified copy of an interim gender recognition certificate shall be a copy of that certificate sealed with the seal of the Gender Recognition Panels and certified to be a true copy by an officer authorised by the President of Gender Recognition Panels.

#### Textual Amendments

**F33** Sch. 1 rule 33.9A 33.9B inserted (4.4.2005) by Act of Sederunt (Ordinary Cause Rules) Amendment (Gender Recognition Act 2004) 2005 (S.S.I. 2005/189), art. 2(3)

#### *Application for corrected gender recognition certificate*

- 33.9B. An application for a corrected gender recognition certificate under section 6 of the Gender Recognition Act 2004 by—
- (a) the person to whom a full gender recognition certificate has been issued; or
  - (b) the Secretary of State,
- shall be made by minute in the process of the action pursuant to which the full gender recognition certificate was issued.]

#### Textual Amendments

**F33** Sch. 1 rule 33.9A 33.9B inserted (4.4.2005) by Act of Sederunt (Ordinary Cause Rules) Amendment (Gender Recognition Act 2004) 2005 (S.S.I. 2005/189), art. 2(3)

#### *Warrant of citation*

- 33.10. The warrant of citation in a family action shall be in Form F14.

#### *Form of citation and certificate*

- 33.11. (1) Subject to rule 5.6 (service where address of person is not known), citation of a defender shall be in Form F15, which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form F26.
- (2) The certificate of citation shall be in Form F16 which shall be attached to the initial writ.

#### *Execution of service on, or intimation to, local authority*

- 33.12. (1) Where a local authority referred to in rule 33.7(1)(g) ([<sup>F34</sup>residence order] sought by non-parent resident in Scotland) or 33.7(4) ([<sup>F34</sup>residence order] sought by pursuer not resident in Scotland) is named as a defender in an initial writ at the time it is lodged, service of the initial writ on that local authority shall be executed within 7 days after the date of granting of the warrant of citation.
- (2) Where in a family action—

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- (a) to which rule 33.7(1)(g) applies, or
- (b) in which a motion under rule 33.7(4) is required,

the local authority referred to in that provision is named as a defender in the initial writ at the time it is lodged, a notice in Form F8 shall be attached to the copy of the initial writ served on that local authority.

[<sup>F35</sup>(3) In any family action, the sheriff may, if he thinks fit, order intimation to a local authority; and such intimation shall be in Form F8.]

[<sup>F36</sup>(4) Where, by virtue of [<sup>F37</sup>paragraph (3) of this rule or rule 33.7(1)(g) or 33.7(4), intimation of an application for a residence order] is to be made to a local authority, intimation to that local authority shall be given within 7 days after the date on which a warrant of citation, or an order for intimation, as the case may be, has been granted.

#### Textual Amendments

- F34** Words in rule 33.12(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(a)
- F35** Rule 33.12(3) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(c)
- F36** Rule 33.12(3) renumbered as rule 33.12(4) (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(b)
- F37** Words in rule 33.12(4) (as renumbered) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(d)

#### *Service in cases of mental disorder of defender*

33.13.(1) In a family action where the defender suffers or appears to suffer from mental disorder and is resident in a hospital or other similar institution, citation shall be executed by registered post or the first class recorded delivery service addressed to the medical officer in charge of that hospital or institution; and there shall be included with the copy of the initial writ—

- (a) a citation in Form F15;
- (b) any notice required by rule 33.14(1);
- (c) a request in Form F17;
- (d) a form of certificate in Form F18 requesting the medical officer to—
  - (i) deliver and explain the initial writ, citation and any notice or form of notice of consent required under rule 33.14(1) personally to the defender; or
  - (ii) certify that such delivery or explanation would be dangerous to the health or mental condition of the defender; and
- (e) a stamped envelope addressed for return of that certificate to the pursuer or his solicitor, if he has one.

(2) The medical officer referred to in paragraph (1) shall send the certificate in Form F18 duly completed to the pursuer or his solicitor, as the case may be.

(3) The certificate mentioned in paragraph (2) shall be attached to the certificate of citation.

(4) Where such a certificate bears that the initial writ has not been delivered to the defender, the sheriff may, at any time before decree—

- (a) order such further medical inquiry, and
- (b) make such order for further service or intimation,

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as he thinks fit.

#### *Notices in certain actions of divorce or separation*

- 33.14. (1) In the following actions of divorce or separation there shall be attached to the copy of the initial writ served on the defender—
- (a) in an action relying on section 1(2)(d) of the <sup>M14</sup>Act of 1976 (no cohabitation for two years with consent of defender to decree)—
    - (i) which is an action of divorce, a notice in form F19 and a notice of consent in form F20;
    - (ii) which is an action of separation, a notice in Form F21 and a form of notice of consent in form F22;
  - (b) in an action relying on section 1(2)(e) of the Act of 1976 (no cohabitation for five years)—
    - (i) which is an action of divorce, a notice in Form F23;
    - (ii) which is an action of separation, a notice in Form F24.
- (2) The certificate of [<sup>F38</sup>citation] of an initial writ in an action mentioned in paragraph (1) shall state which notice or form mentioned in paragraph (1) has been attached to the initial writ.

#### **Textual Amendments**

**F38** Word in rule 33.14(2) substituted (1.11.1996) by S.I. 1996/2445, para. 3(46)

#### **Marginal Citations**

**M14** 1976 c.39.

#### *Orders for intimation*

- [<sup>F39</sup>33. (5)] In any family action, the sheriff may, at any time—
- (a) subject to paragraph (2), order intimation to be made on such person as he thinks fit;
  - (b) postpone intimation, where he considers that such postponement is appropriate and, in that case, the sheriff shall make such order in respect of postponement of intimation as he thinks fit; or
  - (c) dispense with intimation, where he considers that such dispensation is appropriate.
- (2) Where the sheriff is considering whether to make a section 11 order by virtue of section 12 of the Act of 1995 (restrictions on decrees for divorce, separation or annulment affecting children), he shall, subject to paragraph (1)(c) and without prejudice to paragraph (1)(b) of this rule, order intimation in Form F9 to the child to whom the section 11 order would relate unless—
- (a) intimation has been given to the child under rule 33.7(1)(h); or
  - (b) the sheriff considers that the child is not of sufficient age or maturity to express his views.
- (3) Where a party makes a crave or averment in a family action which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, that party shall include a crave in his writ for a warrant for intimation or to dispense with

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such intimation; and rule 33.7 shall, with the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.]

#### Textual Amendments

**F39** Rule 33.15 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 9

#### *Appointment of curators ad litem to defenders*

- 33.16. (1) This rule applies to an action of divorce or separation where it appears to the court that the defender is suffering from a mental disorder.
- (2) In an action to which this rule applies, the sheriff shall—
- (a) appoint a curator ad litem to the defender;
  - (b) where the facts set out in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on—
    - (i) make an order for intimation of the ground of the action to the Mental Welfare Commission for Scotland; and
    - (ii) include in such an order a requirement that the Commission sends to the sheriff clerk a report indicating whether in its opinion the defender is capable of deciding whether or not to give consent to the granting of decree.
- (3) Within 7 days after the appointment of a curator ad litem under paragraph (2)(a), the pursuer shall send to him—
- (a) a copy of the initial writ and any defences (including any adjustments and amendments) lodged; and
  - (b) a copy of [<sup>F40</sup>any notice] in Form G5 sent to him by the [<sup>F41</sup>sheriff] clerk.
- (4) On receipt of a report required under paragraph (2)(b)(ii), the sheriff clerk shall—
- (a) lodge the report in process; and
  - (b) intimate that this has been done to—
    - (i) the pursuer;
    - (ii) the solicitor for the defender, if known; and
    - (iii) the curator ad litem.
- (5) The curator ad litem shall lodge in process one of the writs mentioned in paragraph (6)—
- (a) within 14 days after the report required under paragraph (2)(b)(ii) has been lodged in process; or
  - (b) where no such report is required, within 21 days after the date of his appointment under paragraph (2)(a).
- (6) The writs referred to in paragraph (5) are—
- (a) a notice of intention to defend;
  - (b) defences to the action;
  - (c) a minute adopting defences already lodged; and
  - (d) a minute stating that the curator ad litem does not intend to lodge defences.

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- (7) Notwithstanding that he has lodged a minute stating that he does not intend to lodge defences, a curator ad litem may appear at any stage of the action to protect the interests of the defender.
- (8) If, at any time, it appears to the curator ad litem that the defender is not suffering from mental disorder, he may report that fact to the court and seek his own discharge.
- (9) The pursuer shall be responsible, in the first instance, for payment of the fees and outlays of the curator ad litem incurred during the period from his appointment until—
  - (a) he lodges a minute stating that he does not intend to lodge defences;
  - (b) he decides to instruct the lodging of defences or a minute adopting defences already lodged; or
  - (c) being satisfied after investigation that the defender is not suffering from mental disorder, he is discharged.

#### Textual Amendments

**F40** Words in rule 33.16(3)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(47)(a)

**F41** Word in rule 33.16(3)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(47)(b)

#### *Applications for sist*

- 33.17. An application for a sist, or the recall of a sist, under Schedule 3 to the <sup>M15</sup>Domicile and Matrimonial Proceedings Act 1973 shall be made by written motion.

#### Marginal Citations

**M15** 1973 c.45; Schedule 3 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), Schedule 1, paragraphs 19 and 20.

#### *Notices of consent to divorce or separation*

- 33.18. (1) Where, in an action of divorce or separation in which the facts in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on, the defender wishes to consent to the grant of decree of divorce or separation he shall do so by giving notice in writing in Form F20 (divorce) or Form F22 (separation), as the case may be, to the sheriff clerk.
- (2) The evidence of one witness shall be sufficient for the purpose of establishing that the signature on a notice of consent under paragraph (1) is that of the defender.
  - (3) In an action of divorce or separation where the initial writ includes, for the purposes of section 1(2)(d) of the Act of 1976, an averment that the defender consents to the grant of decree, the defender may give notice by letter sent to the sheriff clerk stating that he has not so consented or that he withdraws any consent which he has already given.
  - (4) On receipt of a letter under paragraph (3), the sheriff clerk shall intimate the terms of the letter to the pursuer.

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- (5) On receipt of any intimation under paragraph (4), the pursuer may, within 14 days after the date of the intimation, if none of the other facts mentioned in section 1(2) of the Act of 1976 is averred in the initial writ, lodge a motion for the action to be sisted.
- (6) If no such motion is lodged, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.
- (7) If a motion under paragraph (5) is granted and the sist is not recalled or renewed within a period of 6 months from the date of the interlocutor granting the sist, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.

### *Procedure in respect of children*

[<sup>F42</sup>33.19. –

- (1) In a family action, in relation to any matter affecting a child, where that child has—
  - (a) returned to the sheriff clerk Form F9, or
  - (b) otherwise indicated to the court a wish to express views on a matter affecting him,
 the sheriff shall not grant any order unless an opportunity has been given for the views of that child to be obtained or heard.
- (2) Where a child has indicated his wish to express his views, the sheriff shall order such steps to be taken as he considers appropriate to ascertain the views of that child.
- (3) The sheriff shall not grant an order in a family action, in relation to any matter affecting a child who has indicated his wish to express his views, unless due weight has been given by the sheriff to the views expressed by that child, having due regard to his age and maturity.]

#### **Textual Amendments**

**F42** Rule 33.19 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 10

### *Recording of views of the child*

- [<sup>F43</sup>33.10) This rule applies where a child expresses a view on a matter affecting him whether expressed personally to the sheriff or to a person appointed by the sheriff for that purpose or provided by the child in writing.
- (2) The sheriff, or the person appointed by the sheriff, shall record the views of the child in writing; and the sheriff may direct that such views, and any written views, given by a child shall—
    - (a) be sealed in an envelope marked “Views of the child—confidential”;
    - (b) be kept in the court process without being recorded in the inventory of process;
    - (c) be available to a sheriff only;
    - (d) not be opened by any person other than a sheriff; and
    - (e) not form a borrowable part of the process.]



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#### Textual Amendments

**F43** Rule 33.20 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 10

#### *Appointment of local authority or reporter to report on a child*

- 33.21. (1) This rule applies where, at any stage of a family action, the sheriff appoints—
- [<sup>F44</sup>(a) a local authority, whether under section 11(1) of the <sup>M16</sup>Matrimonial Proceedings (Children) Act 1958(reports as to arrangements for future care and upbringing of children) or otherwise, or]
  - (b) another person (referred to in this rule as a “reporter”), whether under a provision mentioned in sub-paragraph (a) or otherwise,
- to investigate and report to the court on the circumstances of a child and on proposed arrangements for the care and upbringing of the child.
- (2) On making an appointment referred to in paragraph (1), the sheriff shall direct that the party who sought the appointment or, where the court makes the appointment of its own motion, the pursuer or minuter, as the case may be, shall—
- (a) instruct the local authority or reporter; and
  - (b) be responsible, in the first instance, for the fees and outlays of the local authority or reporter appointed.
- (3) Where a local authority or reporter is appointed—
- (a) the party who sought the appointment, or
  - (b) where the sheriff makes the appointment of his own motion, the pursuer or minuter, as the case may be,
- shall, within 7 days after the date of the appointment, intimate the name and address of the local authority or reporter to any local authority to which intimation of the family action has been made.
- (4) On completion of a report referred to in paragraph (1), the local authority or reporter, as the case may be, shall send the report, with a copy of it for each party, to the sheriff clerk.
- (5) On receipt of such a report, the sheriff clerk shall send a copy of the report to each party.
- (6) Where a local authority or reporter has been appointed to investigate and report in respect of a child, an application for [<sup>F45</sup>a section 11 order in respect] of that child shall not be determined until the report of the local authority or reporter, as the case may be, has been lodged.

#### Textual Amendments

**F44** Rule 33.21(1)(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 11(a)

**F45** Words in rule 33.21(6) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 11(b)

#### Marginal Citations

**M16** 1958 c.40; section 11(1) was amended by the Social Work (Scotland) Act 1968 (c.49), **Schedule 8**, paragraph 43, the Law Reform (Parent and Child) (Scotland) Act 1986 (c.9), **Schedule 2**, the Family

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Law Act 1986 (c.55), **Schedule 1**, paragraph 7 and by the Children (Scotland) Act 1995, Schedule 4, paragraph 9.

### *Referral to family mediation*

[<sup>F46</sup>33.22. In any family action in which an order in relation to parental responsibilities or parental rights is in issue, the sheriff may, at any stage of the action, where he considers it appropriate to do so, refer that issue to a mediator accredited to a specified family mediation organisation.]

#### **Textual Amendments**

**F46** Rules 33.22, 33.22A substituted (1.11.1996) for rule 33.22 by S.I. 1996/2167, para. 2, **Sch.**, para. 12

### *Child Welfare Hearing*

<sup>F47</sup>33.22A. Where—

- (a) on the lodging of a notice of intention to defend in a family action in which the initial writ seeks or includes a crave for a section 11 order, a defender wishes to oppose any such crave or order, or seeks the same order as that craved by the pursuer,
- (b) on the lodging of a notice of intention to defend in a family action, the defender seeks a section 11 order which is not craved by the pursuer, or
- (c) in any other circumstances in a family action, the sheriff considers that a Child Welfare Hearing should be fixed and makes an order (whether at his own instance or on the motion of a party) that such a hearing shall be fixed,

the sheriff clerk shall fix a date and time for a Child Welfare Hearing on the first suitable court date occurring not sooner than 21 days after the lodging of such notice of intention to defend, unless the sheriff directs the hearing to be held on an earlier date.

- (2) On fixing the date for the Child Welfare Hearing, the sheriff clerk shall intimate the date of the Child Welfare Hearing to the parties in Form F41.
- (3) The fixing of the date of the Child Welfare Hearing shall not affect the right of a party to make any other application to the court whether by motion or otherwise.
- (4) At the Child Welfare Hearing (which may be held in private), the sheriff shall seek to secure the expeditious resolution of disputes in relation to the child by ascertaining from the parties the matters in dispute and any information relevant to that dispute, and may—
  - (a) order such steps to be taken, or
  - (b) make such order, if any, or
  - (c) order further procedure,
 as he thinks fit.
- (5) All parties (including a child who has indicated his wish to attend) shall, except on cause shown, attend the Child Welfare Hearing personally.
- (6) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the Child Welfare Hearing.

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#### Textual Amendments

**F47** Rules 33.22, 33.22A substituted (1.11.1996) for rule 33.22 by S.I. 1996/2167, para. 2, Sch., para. 12

#### *Applications for orders to disclose whereabouts of children*

- 33.23. (1) An application for an order under section 33(1) of the <sup>M17</sup>Family Law Act 1986 (which relates to the disclosure of the whereabouts of a child) shall be made by motion.
- (2) Where the sheriff makes an order under section 33(1) of the Family Law Act 1986, he may ordain the person against whom the order has been made to appear before him or to lodge an affidavit.

#### Marginal Citations

**M17** 1986 c.55.

#### *Applications in relation to removal of children*

- 33.24. (1) An application for leave under <sup>M18</sup>section 51(1) of the Act of 1975 (authority to remove a child from the care and possession of the applicant for [<sup>F48</sup>a residence order]) or for an order under section 35(3) of the Family Law Act 1986 (application for interdict or interim interdict prohibiting removal of child from jurisdiction) shall be made—
- (a) by a party to the action, by motion; or
- (b) by a person who is not a party to the action, by minute.
- (2) An application under section 35(3) of the Family Law Act 1986 need not be served or intimated.
- (3) An application under section 23(2) of the <sup>M19</sup>Child Abduction and Custody Act 1985 (declarator that removal of child from United Kingdom was unlawful) shall be made—
- (a) in an action depending before the sheriff—
- (1) by a party, in the initial writ, defences or minute, as the case may be, or by motion; or
- (ii) by any other person, by minute; or
- (b) after final decree, by minute in the process of the action to which the application relates.

#### Textual Amendments

**F48** Words in rule 33.24(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 13

#### Marginal Citations

**M18** Section 51(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), **Schedule 2**, paragraph 25.

**M19** 1985 c.60.

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### *Intimation to local authority before supervised [F49]contact order]*

- 33.25. Where the sheriff, [F50]at his own instance] or on the motion of a party, is considering making [F51]a contact order or an interim contact order] subject to supervision by the social work department of a local authority, he shall ordain the party moving [F52]for such an order] to intimate to the chief executive of that local authority (where not already a party to the action and represented at the hearing at which the issue arises)—
- (a) the terms of any relevant motion;
  - (b) the intention of the sheriff to order that [F53]the contact order] be supervised by the social work department of that local authority; and
  - (c) that the local authority shall, within such period as the sheriff has determined—
    - (i) notify the sheriff clerk whether it intends to make representations to the sheriff; and
    - (ii) where it intends to make representations in writing, to do so within that period.

#### **Textual Amendments**

- F49** Words in rule 33.25 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(a)  
**F50** Words in rule 33.25 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(b)  
**F51** Words in rule 33.25 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(c)  
**F52** Words in rule 33.25 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(d)  
**F53** Words in rule 33.25(b) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(e)

### *Joint minutes*

- 33.26. Where any parties have reached agreement in relation to—
- (a) [F54]a section 11 order],
  - (b) aliment for a child, or
  - (c) an order for financial provision,
- a joint minute may be entered into expressing that agreement; [F55]and, subject to rule 33.19(3) (no order before views of child expressed),the sheriff] may grant decree in respect of those parts of the joint minute in relation to which he could otherwise make an order, whether or not such a decree would include a matter for which there was no crave.

#### **Textual Amendments**

- F54** Words in rule 33.26(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 15(a)  
**F55** Words in rule 33.26 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 15(b)

### *Affidavits*

- 33.27. The sheriff may accept evidence by affidavit at any hearing for an order or interim order.

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### *Applications for European matrimonial certificates*

[<sup>F56</sup>33.17A] The sheriff shall, on the request of any interested party, issue a certificate in Form F42 or Form F43, pursuant to Article 32 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses.

- (2) Any request under paragraph (1) shall be made by the interested party by letter addressed to the sheriff clerk of the court where the decree to which the request relates was granted, and shall be accompanied by any execution of service or intimation of the judgment to the defender.]

#### **Textual Amendments**

**F56** Sch. 1 rule 33.27A inserted (2.4.2001) by S.S.I. 2001/144, para. 2(1)(3)

## *PART II*

### *UNDEFENDED FAMILY ACTIONS*

#### *Evidence in certain undefended family actions*

33.28. (1) This rule—

- (a) subject to sub-paragraph (b), applies to all family actions in which no notice of intention to defend has been lodged, other than a family action—
- (i) for [<sup>F57</sup>a section 11 order or for] aliment;
  - (ii) of affiliation and aliment;
  - (iii) for financial provision after an overseas divorce or annulment within the meaning of Part IV of the <sup>M20</sup>Matrimonial and Family Proceedings Act 1984; or
  - (iv) for an order under the <sup>M21</sup>Act of 1981;
- (b) applies to a family action in which a curator ad litem has been appointed under rule 33.16 where the curator ad litem to the defender has lodged a minute intimating that he does not intend to lodge defences;
- (c) applies to any family action which proceeds at any stage as undefended where the sheriff so directs;
- (d) applies to the merits of a family action which is undefended on the merits where the sheriff so directs, notwithstanding that the action is defended on an ancillary matter.

- (2) Unless the sheriff otherwise directs, evidence shall be given by affidavit.
- (3) Unless the sheriff otherwise directs, evidence relating to the welfare of a child shall be given by affidavit, at least one affidavit being emitted by a person other than a parent or party to the action.
- (4) Evidence in the form of a written statement bearing to be the professional opinion of a duly qualified medical practitioner, which has been signed by him and lodged in process, shall be admissible in place of parole evidence by him.

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#### Textual Amendments

**F57** Words in rule 33.28(1)(a)(i) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 16

#### Marginal Citations

**M20** 1984 c.42; Part IV was amended by the Act of 1985 (c.37), Schedule 1, paragraphs 12 and 13.

**M21** 1981 c.59.

#### *Procedure for decree in actions under rule 33.28*

- 33.29. (1) In an action to which rule 33.28 (evidence in certain undefended family actions) applies, the pursuer shall at any time after the expiry of the period for lodging a notice of intention to defend—
- (a) lodge in process the affidavit evidence; and
  - (b) endorse a minute in Form F27 on the initial writ.
- (2) The sheriff may, at any time after the pursuer has complied with paragraph (1), without requiring the appearance of parties—
- (a) grant decree in terms of the motion for decree; or
  - (b) remit the cause for such further procedure, if any, including proof by parole evidence, as the sheriff thinks fit.

#### *Extracts of undefended decree*

- 33.30. In an action to which rule 33.28 (evidence in certain undefended family actions) applies, the sheriff clerk shall, after the expiry of 14 days after the grant of decree under rule 33.29 (procedure for decree in actions under rule 33.28), issue to the pursuers and the defender an extract decree.

#### *Procedure in undefended family actions for [F58 section 11 order]*

- 33.31. (1) Where no notice of intention to defend has been lodged in a family action for [F59 a section 11 order], any proceedings in the cause shall be dealt with by the sheriff in chambers.
- (2) In an action to which paragraph (1) applies, decree may be pronounced after such inquiry as the sheriff thinks fit.

#### Textual Amendments

**F58** Words in rule 33.31 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 17(a)

**F59** Words in rule 33.31(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 17(b)

#### *No recording of evidence*

- 33.32. It shall not be necessary to record the evidence in any proof in a family action which is not defended.

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### Disapplication of Chapter 15

- 33.33. [F<sup>60</sup>Other than rule 15.1(1),]Chapter 15 (motions) shall not apply to a family action in which no notice of intention to defend has been lodged [F<sup>61</sup>, or to a family action in so far as it proceeds as undefended].

#### Textual Amendments

**F60** Words in rule 33.33 inserted (1.11.1996) by S.I. 1996/2445, para. 3(48)(a)

**F61** Words in rule 33.33 inserted (1.11.1996) by S.I. 1996/2445, para. 3(48)(b)

## PART III

### DEFENDED FAMILY ACTIONS

#### Notice of intention to defend and defences

- 33.34. (1) This rule applies where the defender in a family action seeks—
- (a) to oppose any crave in the initial writ;
  - (b) to make a claim for—
    - (i) aliment;
    - (ii) an order for financial provision within the meaning of section 8(3) of the Act of 1985; or
    - (iii) [F<sup>62</sup>a section 11 order]; or
  - (c) an order—
    - (i) under section 16(1)(b) or (3) of the <sup>M22</sup>Act of 1985(setting aside or varying agreement as to financial provision);
    - (ii) under section 18 of the Act of 1985 (which relates to avoidance transactions); or
    - (iii) under the Act of 1981; or
  - (d) to challenge the jurisdiction of the court.
- (2) In an action to which this rule applies, the defender shall—
- (a) lodge a notice of intention to defend in Form F26 before the expiry of the period of notice; and
  - (b) make any claim or seek any order referred to in paragraph (1), as the case may be, in those defences by setting out in his defences—
    - (i) craves;
    - (ii) averments in the answers to the condescendence in support of those craves; and
    - (iii) appropriate pleas-in-law.
- [F<sup>63</sup>(3) Where a defender intends to make an application for a section 11 order which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, the defender shall include a crave in his notice of intention to defend for a warrant for intimation or to dispense with such intimation; and rule 33.7 shall, with the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.]

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#### Textual Amendments

- F62** Words in rule 33.34(1)(b)(iii) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 18(a)  
**F63** Rule 33.34(3) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 18(b)

#### Marginal Citations

- M22** 1985 c.37.

#### *Abandonment by pursuer*

- 33.35. Notwithstanding abandonment by a pursuer, the court may allow a defender to pursue an order or claim sought in his defences; and the proceedings in relation to that order or claim shall continue in dependence as if a separate cause.

#### *Attendance of parties at Options Hearing*

- 33.36. All parties shall, except on cause shown, attend personally the hearing under rule 9.12 (Options Hearing).

#### *Decree by default*

- 33.37. (1) In a family action in which the defender has lodged a notice of intention to defend, where a party fails—
- (a) to lodge, or intimate the lodging of, any production or part of process,
  - (b) to implement an order of the sheriff within a specified period, or
  - (c) to appear [<sup>F64</sup>or] be represented at any diet,
- that party shall be in default.
- (2) Where a party is in default under paragraph (1), the sheriff may—
- (a) where the family action is one mentioned in rule 33.1(1)(a) to (h), allow that action to proceed as undefended under Part II of this Chapter; or
  - (b) where the family action is one mentioned in rule 33.1(1)(i) to (m), grant decree as craved; or
  - (c) grant decree of absolvitor; or
  - (d) dismiss the family action or any claim made or order sought; and
  - (e) award expenses.
- (3) Where no party appears at a diet in a family action, the sheriff may dismiss that action.
- (4) In a family action, the sheriff may, on cause shown, prorogate the time for lodging any production or part of process, or for intimating or implementing any order.

#### Textual Amendments

- F64** Word in rule 33.37(1)(c) substituted (1.11.1996) by S.I. 1996/2445, para. 3(49)



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*PART IV*

*APPLICATIONS AND ORDERS RELATING TO CHILDREN IN CERTAIN ACTIONS*

*Application and interpretation of this Part*

33.38. <sup>F65</sup> . . . This Part applies to an action of divorce or separation.

<sup>F66</sup>(2) . . . . .

**Textual Amendments**

**F65** Rule 33.38: “-(1)” at the beginning of paragraph (1) is omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 19(a)

**F66** Rule 33.38(2) omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 19(b)

*Applications in actions to which this Part applies*

33.39. (1) An application for an order mentioned in paragraph (2) shall be made—

- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
- (b) where the application is made by a person other than the pursuer or defender, by minute in that action.

(2) The orders referred to in paragraph (1) are:—

- (a) an order for [<sup>F67</sup>a section 11 order]; and
- (b) an order for aliment for a child.

**Textual Amendments**

**F67** Words in rule 33.39(2)(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 20

<sup>F68</sup>33.40. . . . .

**Textual Amendments**

**F68** Rule 33.40 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 21

<sup>F69</sup>33.41. . . . .

**Textual Amendments**

**F69** Rule 33.41 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 22

<sup>F70</sup>33.42. . . . .

**Textual Amendments**

**F70** Rule 33.42 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 23

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### *Applications in depending actions by motion*

- [<sup>F71</sup>33.43. An application by a party in an action depending before the court to which this Part applies for, or for variation of, an order for—
- (a) interim aliment for a child under the age of 18, or
  - (b) a residence order or a contact order,
- shall be made by motion.]

#### **Textual Amendments**

**F71** Rule 33.43 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 24

### *Applications after decree relating to [<sup>F72</sup>a section 11 order]*

- 33.~~4~~<sup>F73</sup>(1) An application after final decree for, or for the variation or recall of, a section 11 order [<sup>F74</sup>or in relation to the enforcement of such an order] shall be made by minute in the process of the action to which the application relates.]
- (2) Where a minute has been lodged under paragraph (1), any party may apply by motion for any interim order which may be made pending the determination of the application.

#### **Textual Amendments**

**F72** Words in rule 33.44 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 25(a)

**F73** Rule 33.44(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 25(b)

**F74** Words Sch. 1 rule 33.44(1) inserted (2.10.2000) by S.S.I. 2000/239, Sch. para. 3(15)

### *Applications after decree relating to aliment*

- 33.45. (1) An application after final decree for, or for the variation or recall of, an order for aliment for a child shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute has been lodged under paragraph (1), any party may lodge a motion for any interim order which may be made pending the determination of the application.

### *Applications after decree by persons over 18 years for aliment*

- 33.46. (1) A person—
- (a) to whom an obligation of aliment is owed under section 1 of the <sup>M23</sup>Act of 1985,
  - (b) in whose favour an order for aliment while under the age of 18 years was made in an action to which this Part applies, and
  - (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,
- shall apply by minute in the process of that action.
- (2) An application for interim aliment pending the determination of an application under paragraph (1) shall be made by motion.

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- (3) Where a decree has been pronounced in an application under paragraph (1) or (2), any application for variation or recall of any such decree shall be made by minute in the process of the action to which the application relates.

**Marginal Citations**

**M23** 1985 c.37.

*PART V*

*ORDERS RELATING TO FINANCIAL PROVISION*

*Application and interpretation of this Part*

33.47. (1) This Part applies to an action of divorce.

- (2) In this Part, “incidental order” has the meaning assigned in section 14(2) of the Act of 1985.

*Applications in actions to which this Part applies*

33.48. (1) An application for an order mentioned in paragraph (2) shall be made—

- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
- (b) where the application is made by a person other than the pursuer or defender, by minute in that action.

(2) The orders referred to in paragraph (1) are:—

- (a) an order for financial provision within the meaning of section 8(3) of the Act of 1985;
- (b) an order under section 16(1)(b) or (3) of the Act of 1985 (setting aside or varying agreement as to financial provision);
- (c) an order under section 18 of the Act of 1985 (which relates to avoidance transactions); and
- (d) an order under section 13 of the <sup>M24</sup>Act of 1981 (transfer or vesting of tenancy).

**Marginal Citations**

**M24** 1981 c.59; section 13 was amended by the [Family Law \(Scotland\) Act 1985 \(c.37\)](#), [Schedule 1](#), paragraph 11 and the [Housing \(Scotland\) Act 1987 \(c.26\)](#), [Schedule 23](#), paragraph 26.

*Applications in depending actions relating to incidental orders*

33.49. (1) In an action depending before the sheriff to which this Part applies—

- (a) the pursuer or defender, notwithstanding rules 33.34(2) (application by defender for order for financial provision) and 33.48(1)(a) (application for order for financial provision in initial writ or defences), may apply by motion for an incidental order; and

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- (b) the sheriff shall not be bound to determine such a motion if he considers that the application should properly be by a crave in the initial writ or defences, as the case may be.
- (2) In an action depending before the sheriff to which this Part applies, an application under section 14(4) of the Act of 1985 for the variation or recall of an incidental order shall be made by minute in the process of the action to which the application relates.

*Applications relating to interim aliment*

33.50. An application for, or for the variation or recall of, an order for interim aliment for the pursuer or defender shall be made by motion.

*Applications relating to orders for financial provision*

33.51. (1) An application—

- (a) after final decree under any of the following provisions of the Act of 1985—
  - (i) section 8(1) for periodical allowance,
  - (ii) section 12(1)(b) (payment of capital sum or transfer of property),
  - (iii) section 12(4) (variation of date or method of payment of capital sum or date of transfer of property), or
  - (iv) section 13(4) (variation, recall, backdating or conversion of periodical allowance), or
- (b) after the grant or refusal of an application under—
  - (i) section 8(1) or 14(3) for an incidental order, or
  - (ii) section 14(4) (variation or recall of incidental order),
 shall be made by minute in the process of the action to which the application relates.

(2) Where a minute is lodged under paragraph (1), any party may lodge a motion for any interim order which may be made pending the determination of the application.

[<sup>F75</sup>(3) An application under—

- (a) paragraph (5) of section 12A of the Act of 1985 <sup>F76</sup> (recall or variation of order in respect of a pension lump sum), <sup>F77</sup> . . .
  - (b) paragraph (7) of that section (variation of order in respect of pension lump sum to substitute trustees or managers), [<sup>F78</sup>or
  - (c) section 28(10) or 48(9) of the Welfare Reform and Pensions Act 1999 <sup>F79</sup>,]
- shall be made by minute in the process of the action to which the application relates.]

**Textual Amendments**

**F75** Rule 33.51(3) inserted (1.11.1996) by S.I. 1996/2445, **para. 3(50)**

**F76** Section 12A of the Family Law (Scotland) Act 1985 (c.37) was inserted by the Pensions Act 1995 (c.26), **section 167(3)**.

**F77** Word in Sch. 1 rule 33.51(3)(a) omitted (24.1.2003) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), **art. 2(9)(a)**

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**F78** Sch. 1 rule 33.51(3)(c) and word inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(9)(b)

**F79** 1999 c. 30.

### *Applications after decree relating to agreements and avoidance transactions*

- 33.52. An application for an order—
- (a) under section 16(1)(a) or (3) of the Act of 1985 (setting aside or varying agreements as to financial provision), or
  - (b) under section 18 of the Act of 1985 (which relates to avoidance transactions),
- made after final decree shall be made by minute in the process of the action to which the application relates.

## *PART VI*

### *APPLICATIONS RELATING TO AVOIDANCE TRANSACTIONS*

#### *Form of applications*

- 33.53. (1) An application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions) by a party to an action shall be made by including in the initial writ, defences or minute, as the case may be, appropriate craves, averments and pleas-in-law.
- (2) An application for an order under section 18 of the Act of 1985 after final decree in an action, shall be made by minute in the process of the action to which the application relates.

## *PART VII*

### *FINANCIAL PROVISION AFTER OVERSEAS DIVORCE OR ANNULMENT*

#### *Interpretation of this Part*

- 33.54. In this Part—
- “the Act of 1984” means the <sup>M25</sup>Matrimonial and Family Proceedings Act 1984;
- “order for financial provision” has the meaning assigned in section 30(1) of the Act of 1984;
- “overseas country” has the meaning assigned in section 30(1) of the Act of 1984.

#### **Marginal Citations**

**M25** 1984 c.42.

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*Applications for financial provision [F80 after overseas divorce or annulment]*

- 33.55. (1) An application under <sup>M26</sup>section 28 of the Act of 1984 for an order for financial provision after a divorce or annulment in an overseas country shall be made by initial writ.
- (2) An application for an order in an action to which paragraph (1) applies made before final decree under—
- (a) section 13 of the <sup>M27</sup>Act of 1981 (transfer of tenancy of matrimonial home),
  - (b) section 29(4) of the Act of 1984 for interim periodical allowance, or
  - (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),
- shall be made by motion.
- (3) An application for an order in an action to which paragraph (1) applies made after final decree under—
- (a) section 12(4) of the Act of 1985 (variation of date or method of payment of capital sum or date of transfer of property),
  - (b) section 13(4) of the Act of 1985 (variation, recall, backdating or conversion [F81 of] periodical allowance), or
  - (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),
- shall be made by minute in the process of the action to which the application relates.
- [F82 (4) An application under—
- (a) paragraph (5) of section 12A of the Act of 1985 (recall or variation of order in respect of a pension lump sum), or
  - (b) paragraph (7) of that section (variation of order in respect of pension lump sum to substitute trustees or managers),
- shall be made by minute in the process of the action to which the application relates.]
- [F83 (5)] Where a minute has been lodged under paragraph (3), any party may apply by motion for an interim order pending the determination of the application.

**Textual Amendments**

**F80** Words in rule 33.55 heading inserted (1.11.1996) by S.I. 1996/2445, para. 3(51)(a)

**F81** Word in rule 33.55(3)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(51)(b)

**F82** Rule 33.55(4) inserted (1.11.1996) by S.I. 1996/2445, para. 3(51)(d)

**F83** Rule 33.55(4) renumbered as rule 33.55(5) (1.11.1996) by S.I. 1996/2445, para. 3(51)(c)

**Marginal Citations**

**M26** Section 28 was extended by section 29A (inserted by the Act of 1985, Schedule 1, paragraph 12) to an annulment.

**M27** 1981 c.51; section 13(2) was amended by the Act of 1985, Schedule 1, paragraph 11.

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## PART VIII ACTIONS OF ALIMENT

### *Interpretation of this Part*

33.56. In this Part, “action of aliment” means a claim for aliment under section 2(1) of the Act of 1985.

### *Undefended actions of aliment*

33.57.(1) Where a motion for decree in absence under Chapter 7 (undefended causes) is lodged in an action of aliment, the pursuer shall, on lodging the motion, lodge all documentary evidence of the means of the parties available to him in support of the amount of aliment sought.

(2) Where the sheriff requires the appearance of parties, the sheriff clerk shall fix a hearing.

### *Applications relating to aliment*

33.58.(1) An application for, or for variation of, an order for interim aliment in a depending action of aliment shall be made by motion.

(2) An application after final decree for the variation or recall of an order for aliment in an action of aliment shall be made by minute in the process of the action to which the application relates.

(3) A person—

- (a) to whom an obligation of aliment is owed under section 1 of the <sup>M28</sup>Act of 1985,
- (b) in whose favour an order for aliment while under the age of 18 years was made in an action of aliment, or
- (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,

shall apply by minute in the process of that action.

(4) An application for interim aliment pending the determination of an application under paragraph (2) or (3) shall be made by motion.

(5) Where a decree has been pronounced in an application under paragraph (2) or (3), any application for variation or recall of any such decree shall be made by minute in the process of the action to which the application relates.

#### **Marginal Citations**

**M28** 1985 c.37.

### *Applications relating to agreements on aliment*

33.59.(1) Subject to paragraph (2), an application under section 7(2) of the Act of 1985 (variation or termination of agreement on aliment) shall be made by summary application.

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- (2) In a family action in which a crave for aliment may be made, an application under section 7(2) of the Act of 1985 shall be made by a crave in the initial writ or in defences, as the case may be.

### [<sup>F84</sup>PART IX

#### APPLICATIONS FOR ORDERS UNDER SECTION 11 OF THE CHILDREN (SCOTLAND) ACT 1995.]

##### Textual Amendments

**F84** Chapter 33 Pt. IX (rules 33.60-33/65): heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 26**

##### *Application of this Part*

[<sup>F85</sup>33.60. This Part applies to an application for a section 11 order in a family action other than in an action of divorce or separation.]

##### Textual Amendments

**F85** Rule 33.60 substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 27**

##### *Form of applications*

- 33.61. Subject to any other provision in this Chapter, an application for [<sup>F86</sup>a section 11 order] shall be made—
- (a) by an action for [<sup>F87</sup>a section 11 order];
  - (b) by a crave in the initial writ or defences, as the case may be, in any other family action to which this Part applies; or
  - (c) where the application is made by a person other than a party to an action mentioned in paragraph (a) or (b), by minute in that action.

##### Textual Amendments

**F86** Words in rule 33.61 substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 28(a)**

**F87** Words in rule 33.61(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 28(b)**

##### *Defences in action for a section 11 order*

- [<sup>F88F88</sup>33.62. In an action for a section 11 order, the pursuer shall call as a defender—
- (a) the parents or other parent of the child in respect of whom the order is sought;
  - (b) any guardian of the child;
  - (c) any person who has treated the child as a child of his family;
  - (d) any person who in fact exercises care or control in respect of the child; and
  - <sup>F89</sup>(e) .....]



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**Textual Amendments**

- F88** Rule 33.62 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 29
- F89** Sch. 1 rule 33.62(e) omitted (2.10.2000) by virtue of S.S.I. 2000/239, para. 3(16)

*Applications relating to interim orders in depending actions*

- 33.63. An application, in an action depending before the sheriff to which this Part applies, for, or for the variation or recall of, an order for [<sup>F90</sup>an interim residence order or an interim contact order] shall be made—
- (a) by a party to the action, by motion; or
  - (b) by a person who is not a party to the action, by minute.

**Textual Amendments**

- F90** Rule 33.63: the words “an interim residence order or an interim contact order” substituted for the words “interim custody or interim access” (1.11.1996) by virtue of S.I. 1996/2167, para. 2, Sch. para. 30

<sup>F91</sup>33.64. ....

**Textual Amendments**

- F91** Rule 33.64 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 31

*Applications after decree*

- 33.65<sup>2</sup>(1) An application after final decree for variation or recall of a section 11 order shall be made by minute in the process of the action to which the application relates.]
- (2) Where a minute has been lodged under paragraph (1), any party may apply by motion for an interim order pending the determination of the application.

**Textual Amendments**

- F92** Rule 33.65(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 32

*PART X*

*ACTIONS UNDER THE MATRIMONIAL HOMES  
(FAMILY PROTECTION) (SCOTLAND) ACT 1981*

*Interpretation of this Part*

- 33.66. Unless the context otherwise requires, words and expressions used in this Part which are also used in the <sup>M29</sup>Act of 1981 have the same meaning as in that Act.

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#### Marginal Citations

**M29** 1981 c.59.

#### *Form of applications*

33.67. (1) Subject to any other provision in this Chapter, an application for an order under the Act of 1981 shall be made—

- (a) by an action for such an order;
- (b) by a crave in the initial writ or in defences, as the case may be, in any other family action; or
- (c) where the application is made by a person other than a party to any action mentioned in paragraph (a) or (b), by minute in that action.

(2) An application under section 7(1) (dispensing with consent of non-entitled spouse to a dealing) or section 11 (application in relation to poinding) shall, unless made in a depending family action, be made by summary application.

#### *Defenders*

33.68. The applicant for an order under the Act of 1981 shall call as a defender—

- (a) where he is seeking an order as a spouse, the other spouse;
- (b) where he is a third party making an application under section 7(1) (dispensing with consent of non-entitled spouse to a dealing), or 8(1) (payment from non-entitled spouse in respect of loan), of the Act of 1981, both spouses; and
- (c) where the application is made under section 18 of the Act of 1981 <sup>M30</sup> (occupancy rights of cohabiting couples), or is one to which that section applies, the other partner.

#### Marginal Citations

**M30** Section 18 was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c.73\)](#), [section 13\(9\)](#).

#### *Applications by motion*

33.69. (1) An application under any of the following provisions of the Act of 1981 shall be made by motion in the process of the depending action to which the application relates:—

- (a) section 3(4) (interim order for regulation of rights of occupancy, etc.);
- (b) section 4(6) (interim order suspending occupancy rights);
- (c) section 7(1) (dispensing with consent of non-entitled spouse to a dealing);
- (d) section 15(1) (order attaching power of arrest), if made after application for matrimonial interdict; and
- (e) the proviso to section 18(1) <sup>F93</sup> (extension of period of occupancy rights).

(2) Intimation of a motion under paragraph (1) shall be given—

- (a) to the other spouse or partner, as the case may be;

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- (b) where the motion is under paragraph (1)(a), (b) or (e) and the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
- (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

#### Textual Amendments

**F93** Section 18(1) of the Act of 1981 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), section 13(9)(a).

#### Applications by minute

33.70. (1) An application for an order under—

- (a) section 5 of the Act of 1981 (variation and recall of orders regulating occupancy rights and of exclusion order), or
- (b) section 15(2) and (5) of the Act of 1981 (variation and recall of matrimonial interdict and power of arrest),

shall be made by minute.

(2) A minute under paragraph (1) shall be intimated—

- (a) to the other spouse or partner, as the case may be;
- (b) where the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
- (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

#### Sist of actions to enforce occupancy rights

33.71. Unless the sheriff otherwise directs, the sist of an action by virtue of section 7(4) of the Act of 1981 (where action raised by non-entitled spouse to enforce occupancy rights) shall apply only to such part of the action as relates to the enforcement of occupancy rights by a non-entitled spouse.

#### Certificates of delivery of documents to chief constable

33.72. (1) Where an applicant is required to comply with section 15(4) or (5), as the case may be, of the Act of 1981 <sup>F94</sup> (delivery of documents to chief constable where power of arrest attached to matrimonial interdict is granted, varied or recalled), he shall, after such compliance, lodge in process a certificate of delivery in Form F30.

(2) Where a [<sup>F95</sup>matrimonial] interdict to which a power of arrest under section 15(1) of the Act of 1981 has been attached ceases to have effect by reason of a decree of divorce being pronounced by the sheriff, the pursuer shall send—

- (a) to the chief constable of the police area in which the matrimonial home is situated, and

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- (b) if the applicant spouse (within the meaning of section 15(6) of the Act 1981) resides in another police area, to the chief constable of that other police area, a copy of the interlocutor granting decree and lodge in process a certificate of delivery in Form F30.

#### Textual Amendments

**F94** Section 15(4) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 64(b).

**F95** Word in rule 33.72(2) substituted (1.11.1996) by S.I. 1996/2445, para. 3(53)

## PART XI

### SIMPLIFIED DIVORCE APPLICATIONS

#### *Application and interpretation of this Part*

- 33.73. (1) This Part applies to an application for divorce by a party to a marriage made in the manner prescribed in rule 33.74 (form of applications) if, but only if—
- (a) that party relies on the facts set out in section 1(2)(d) (no cohabitation for two years with consent of defender to decree), or section 1(2)(e) (no cohabitation for five years), of the <sup>M31</sup>Act of 1976;
  - (b) in an application under section 1(2)(d) of the Act of 1976, the other party consents to decree of divorce being granted;
  - (c) no other proceedings are pending in any court which could have the effect of bringing the marriage to an end;
  - (d) there are no children of the marriage under the age of 16 years;
  - (e) neither party to the marriage applies for an order for financial provision on divorce; and
  - (f) neither party to the marriage suffers from mental disorder.
- (2) If an application ceases to be one to which this Part applies at any time before final decree, it shall be deemed to be abandoned and shall be dismissed.
- (3) In this Part “simplified divorce application” means an application mentioned in paragraph (1).

#### Marginal Citations

**M31** 1976 c.39.

#### *Form of applications*

- 33.74. (1) A simplified divorce application in which the facts set out in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on shall be made in Form F31 and shall only be of effect if—
- (a) it is signed by the applicant; and
  - (b) the form of consent in Part 2 of Form [F96F31] is signed by the party to the marriage giving consent.

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- (2) A simplified divorce application in which the facts set out in section 1(2)(e) of the Act of 1976 (no cohabitation for five years) are relied on shall be made in Form F33 and shall only be of effect if it is signed by the applicant.

#### Textual Amendments

**F96** Word in rule 33.74(1)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(54)

#### *Lodging of applications*

- 33.75. The applicant shall send a simplified divorce application to the sheriff clerk with—
- an extract or certified copy of the marriage certificate; and
  - the appropriate fee.

#### *Citation and intimation*

- 33.76. (1) This rule is subject to rule 33.77 (citation where address not known).
- (2) It shall be the duty of the sheriff clerk to cite any person or intimate any document in connection with a simplified divorce application.
- (3) The form of citation—
- in an application relying on the facts in section 1(2)(d) of the Act of 1976 shall be in Form F34; and
  - in an application relying on the facts in section 1(2)(e) of the Act of 1976 shall be in Form F35.
- [<sup>F97</sup>(4) The citation or intimation required by paragraph (2) shall be made—
- by the sheriff clerk by registered post or the first class recorded delivery service in accordance with rule 5.3 (postal service or intimation);
  - on payment of an additional fee, by a sheriff officer in accordance with rule 5.4(1) and (2) (service within Scotland by sheriff officer); or
  - where necessary, by the sheriff clerk in accordance with rule 5.5 (service on persons furth of Scotland).]

[<sup>F98</sup>(5) Where citation or intimation is made in accordance with paragraph (4)(c), the translation into an official language of the country in which service is to be executed required by rule 5.5(6) shall be provided by the party lodging the simplified divorce application.]

#### Textual Amendments

**F97** Sch. 1 rule 33.76(4) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(17)(a)

**F98** Sch. 1 rule 33.76(5) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(17)(b)

#### *Citation where address not known*

- 33.77. (1) In a simplified divorce application in which the facts in section 1(2)(e) of the Act of 1976 (no cohabitation for five years) are relied on and the address of the other party to the marriage is not known and cannot reasonably be ascertained—

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- (a) citation shall be executed by displaying a copy of the application and a notice in Form F36 on the walls of court on a period of notice of 21 days; and
  - (b) intimation shall be made to—
    - (i) every child of the marriage between the parties who has reached the age of 16 years, and
    - (ii) one of the next-of-kin of the other party to the marriage who has reached that age, unless the address of such person is not known and cannot reasonably be ascertained.
- (2) Intimation to a person referred to in paragraph (1)(b) shall be given by intimating a copy of the application and a notice of intimation in Form F37.

### *Opposition to applications*

- 33.78. (1) Any person on whom service or intimation of a simplified divorce application has been made may give notice by letter sent to the sheriff clerk that he challenges the jurisdiction of the court or opposes the grant of decree of divorce and giving the reasons for his opposition to the application.
- (2) Where opposition to a simplified divorce application is made under paragraph (1), the sheriff shall dismiss the application unless he is satisfied that the reasons given for the opposition are frivolous.
- (3) The sheriff clerk shall intimate the decision under paragraph (2) to the applicant and the respondent.
- (4) The sending of a letter under paragraph (1) shall not imply acceptance of the jurisdiction of the court.

### *Evidence*

- 33.79. Parole evidence shall not be given in a simplified divorce application.

### *Decree*

- 33.80. (1) The sheriff may grant decree in terms of the simplified divorce application on the expiry of the period of notice if such application has been properly served provided that, when the application has been served in a country to which the <sup>M32</sup>Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15 November 1965 applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of article 15 of that Convention have been complied with.
- (2) The sheriff clerk shall, not sooner than 14 days after the granting of decree in terms of paragraph (1), issue to each party to the marriage an extract of the decree of divorce in Form F38.

#### **Marginal Citations**

**M32** Cmnd. 3986 (1969).

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### Appeals

- 33.81. Any appeal against an interlocutor granting decree of divorce under rule 33.80 (decree) may be made, within 14 days after the date of decree, by sending a letter to the court giving reasons for the appeal.

### Applications after decree

- 33.82. Any application to the court after decree of divorce has been granted in a simplified divorce application which could have been made if it had been made in an action of divorce shall be made by minute.

## PART XII

### VARIATION OF COURT OF SESSION DECREES

#### Application and interpretation of this Part

- 33.83. (1) This Part applies to an application to the sheriff for variation or recall of any order to which section 8 of the <sup>M33</sup>Act of 1966 (variation of certain Court of Session orders) applies.
- (2) In this Part, the “Act of 1966” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966.

#### Marginal Citations

**M33** 1966 c.19; section 8 was amended by the Guardianship Act 1973 (c.29), **Schedule 5**, the Divorce (Scotland) Act 1976 (c.39), **Schedule 1**, the Matrimonial and Family Proceedings Act 1984 (c.42), **Schedule 1**, paragraph 7, the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraph 5 and the Family Law Act 1986 (c.53), **Schedule 1**, paragraph 8 and Schedule 2.

#### Form of applications and intimation to Court of Session

- 33.84. (1) An application to which this Part applies shall be made by initial writ.
- (2) In such an application there shall be lodged with the initial writ a copy of the interlocutor, certified by a clerk of the Court of Session, which it is sought to vary.
- (3) Before lodging the initial writ, a copy of the initial writ certified by the pursuer or his solicitor shall be lodged, or sent by first class recorded delivery post to the Deputy Principal Clerk of Session to be lodged in the process of the cause in the Court of Session in which the original order was made.
- (4) The pursuer or his solicitor shall attach a certificate to the initial writ stating that paragraph (3) has been complied with.
- (5) The sheriff may, on cause shown, prorogate the time for lodging the certified copy of the interlocutor required under [F99 paragraph (2)].

#### Textual Amendments

**F99** Words in rule 33.84(5) substituted (1.11.1996) by S.I. 1996/2445, para. 3(55)

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### *Defended actions*

- 33.85. (1) Where a notice of intention to defend has been lodged and no request is made under rule 33.87 (remit of applications to Court of Session), the pursuer shall within 14 days after the date of the lodging of a notice of intention to defend or within such other period as the sheriff may order, lodge in process the following documents (or copies) from the process in the cause in the Court of Session in which the original order was made:—
- (a) the pleadings;
  - (b) the interlocutor sheets;
  - (c) any opinion of the court; and
  - (d) any productions on which he seeks to found.
- (2) The sheriff may, on the joint motion of parties made at any time after the lodging of the documents mentioned in paragraph (1)—
- (a) dispense with proof;
  - (b) whether defences have been lodged or not, hear the parties; and
  - (c) thereafter, grant decree or otherwise dispose of the cause as he thinks fit.

### *Transmission of process to Court of Session*

- 33.86. (1) Where decree has been granted or the cause otherwise disposed of—
- (a) and the period for marking an appeal has elapsed without an appeal being marked, or
  - (b) after the determination of the cause on any appeal,
- the sheriff clerk shall transmit to the Court of Session the sheriff court process and the documents from the process of the cause in the Court of Session which have been lodged in the sheriff court process.
- (2) A sheriff court process transmitted under paragraph (1) shall form part of the process of the cause in the Court of Session in which the original order was made.

### *Remit of applications to Court of Session*

- 33.87. (1) A request for a remit to the Court of Session under section 8(3) of the Act of 1966 shall be made by motion.
- (2) The sheriff shall, in respect of any such motion, order that the cause be remitted to the Court of Session; and, within four days after the date of such order, the sheriff clerk shall transmit the whole sheriff court process to the Court of Session.
- (3) A cause remitted to the Court of Session under paragraph (2) shall form part of the process of the cause in the Court of Session in which the original order was made.

## *PART XIII*

### *CHILD SUPPORT ACT 1991*

### *Interpretation of this Part*

- 33.88. <sup>F100</sup> . . . In this Part—
- “the Act of 1991” means the <sup>M34</sup>Child Support Act 1991;



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“child” has the meaning assigned in section 55 of the Act of 1991;  
[<sup>F101</sup>“maintenance calculation”] has the meaning assigned in section [<sup>F102</sup>54] of the Act of 1991.

#### Textual Amendments

- F100** Rule 33.88: “-(1)” at the beginning is omitted (1.11.1996) by S.I. 1996/2445, **para. 3(56)(a)**
- F101** Words in Sch. 1 rule 33.88 substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), **art. 2(10)**
- F102** Word in rule 33.88 substituted (1.11.1996) by S.I. 1996/2445, **para. 3(56)(b)**

#### Marginal Citations

- M34** 1991 c.48.

#### *Restriction of expenses*

- 33.89. Where the Secretary of State is named as a defender in an action for declarator of nonparentage or illegitimacy, and the Secretary of State does not defend the action, no expenses shall be awarded against the Secretary of State.

#### *Effect of maintenance [<sup>F103</sup>calculations]*

- 33.90. The sheriff clerk shall, on receiving notification that a maintenance [<sup>F104</sup>calculation] has been made, cancelled or has ceased to have effect so as to affect an order of a kind prescribed for the purposes of section 10 of the Act of 1991, endorse on the interlocutor sheet relating to that order a certificate, in Form F39 or F40, as the case may be.

#### Textual Amendments

- F103** Word in Sch. 1 rule 33.90 substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), **art. 2(11)(a)**
- F104** Word in Sch. 1 rule 33.90 substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), **art. 2(11)(b)**

#### *Effect of maintenance [<sup>F105</sup>calculations] on extracts relating to aliment*

- 33.91. (1) Where an order relating to aliment is affected by a maintenance [<sup>F106</sup>calculation], any extract of that order issued by the sheriff clerk shall be endorsed with the following certificate:—

“A maintenance [<sup>F106</sup>calculation] having been made under the Child Support Act 1991 on (insert date), this order, in so far as it relates to the making or securing of periodical payments to or for the benefit of (insert name(s) of child/children), ceases to have effect from (insert date two days after the date on which the maintenance [<sup>F106</sup>calculation] was made)”.

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- (2) Where an order relating to aliment has ceased to have effect on the making of a maintenance [<sup>F106</sup>calculation], and that maintenance [<sup>F106</sup>calculation] is later cancelled or ceases to have effect, any extract of that order issued by the sheriff clerk shall be endorsed also with the following certificate:—

“The jurisdiction of the child support officer under the Child Support Act 1991 having terminated on (insert date), this order, in so far as it relates to (insert name(s) of child/children), again shall have effect as from (insert date of termination of child support officer’s jurisdiction)”.

#### **Textual Amendments**

- F105** Word in Sch. 1 rule 33.91 heading substituted (24.1.2003) by [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2003 \(S.I. 2003/26\), art. 2\(12\)\(a\)](#)
- F106** Word in Sch. 1 rule 33.91 substituted (24.1.2003) by [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2003 \(S.I. 2003/26\), art. 2\(12\)\(b\)](#)

## *<sup>F107</sup>PART XIV*

### *REFERRALS TO PRINCIPAL REPORTER*

#### **Textual Amendments**

- F107** [Pts. XIV \(rules 33.92-33.94\) and XV \(rule 33.95\) inserted \(1.11.1996\) by S.I. 1996/2167, para. 2, Sch. para. 33](#)

#### *Application and interpretation of this Part*

- 33.92. (1) This Part applies where a sheriff, in a family action, refers a matter to the Principal Reporter under section 54 of the Act of 1995 (reference to the Principal Reporter by court).
- (2) In this Part, “Principal Reporter” has the meaning assigned in section 93(1) of the Act of 1995.

#### *Intimation to Principal Reporter*

- 33.93. Where a matter is referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995, the interlocutor making the reference shall be intimated by the sheriff clerk forthwith to the Principal Reporter; and that intimation shall specify which of the conditions in paragraph (2)(a) to (h), (j), (k) or (l) of that section it appears to the sheriff has been satisfied.

#### *Intimation of decision by Principal Reporter*

- 33.94. (1) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such

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investigation as he thinks appropriate and having reached the view that compulsory measures of supervision are necessary, arranges a children’s hearing under section 69 of that Act (continuation or disposal of referral by children’s hearing), the Principal Reporter shall intimate to the court which referred the matter to him–

- (a) the decision to arrange such children’s hearing;
- (b) where there is no appeal made against the decision of that children’s hearing once the period for appeal has expired, the outcome of the children’s hearing; and
- (c) where such an appeal has been made, that an appeal has been made and, once determined, the outcome of that appeal.

- (2) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such investigation as he thinks appropriate and having considered whether compulsory measures of supervision are necessary, decides not to arrange a children’s hearing under section 69 of that Act, the Principal Reporter shall intimate that decision to the court which referred the matter to him.]

*F108* PART XV

MANAGEMENT OF MONEY PAYABLE TO CHILDREN

**Textual Amendments**

**F108** Pts. XIV (rules 33.92-33.94) and XV (rule 33.95) inserted (1.11.1995) by [S.I. 1996/2167, para. 2, Sch., para. 33](#)

- 33.95. Where the sheriff has made an order under section 13 of the Act of 1995 (awards of damages to children), an application by a person for an order by virtue of section 11(1)(d) of that Act (administration of child’s property) may be made in the process of the cause in which the order under section 13 of that Act was made.

VALID FROM 08/12/2005

**CHAPTER 33A S**

CIVIL PARTNERSHIP ACTIONS

*PART I*

*GENERAL PROVISIONS*

*Interpretation of this Chapter*

- 33A.1.(1) In this Chapter, “civil partnership action” means–
- (a) an action of dissolution of civil partnership;
  - (b) an action of separation of civil partners;
  - (c) an action or application for an order under Chapter 3 or Chapter 4 of Part 3 of the Act of 2004;

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- (d) an application for a declarator or other order under section 127 of the Act of 2004;
- (e) an action or application for financial provision after overseas proceedings as provided for in Schedule 11 to the Act of 2004;

(2) In this Chapter, unless the context otherwise requires–

“the Act of 1985” means the Family Law (Scotland) Act 1985 <sup>M35</sup>;

“the Act of 1995” means the Children (Scotland) Act 1995 <sup>M36</sup>;

“the Act of 2004” means the Civil Partnership Act 2004 <sup>M37</sup>;

“civil partnership” has the meaning assigned in section 1(1) of the Act of 2004;

“contact order” has the meaning assigned in section 11(2)(d) of the Act of 1995;

“Gender Recognition Panel” is to be construed in accordance with Schedule 1 to the Gender Recognition Act 2004 <sup>M38</sup>;

“interim gender recognition certificate” means the certificate issued under section 4 of the Gender Recognition Act 2004;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 <sup>M39</sup>;

“mental disorder” has the meaning assigned in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 <sup>M40</sup>;

“order for financial provision” means, except in Part VII of this Chapter (financial provision after overseas proceedings as provided for in Schedule 11 to the Act of 2004), an order mentioned in section 8(1) of the Act of 1985;

“parental responsibilities” has the meaning assigned in section 1(3) of the Act of 1995;

“parental rights” has the meaning assigned in section 2(4) of the Act of 1995;

“relevant interdict” has the meaning assigned in section 113(2) of the Act of 2004;

“residence order” has the meaning assigned in section 11(2)(c) of the Act of 1995;

“section 11 order” means an order under section 11 of the Act of 1995 <sup>M41</sup>.

(3) For the purposes of rules 33A.2 (averments in actions of dissolution of civil partnership or separation of civil partners about other proceedings) and 33A.3 (averments where section 11 order sought) and, in relation to proceedings in another jurisdiction, Part XIII of this Chapter (sisting of civil partnership actions in Scotland), proceedings are continuing at any time after they have commenced and before they are finally disposed of.

#### Marginal Citations

**M35** 1985 c. 37.

**M36** 1995 c. 36.

**M37** 2004 c. 33.

**M38** 2004 c. 7.

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**M39** 1994 c. 39; section 2(2) was amended by the Environment Act 1995 (c. 25), **Schedule 22**, paragraph 232(1).

**M40** 2003 asp 13.

**M41** Section 11 was amended by S.S.I. 2005/42.

*Averments in actions of dissolution of civil partnership or separation of civil partners about other proceedings*

33A.2.(1) This rule applies to an action of dissolution of civil partnership or separation of civil partners.

(2) In an action to which this rule applies, the pursuer shall state in the condescendence of the initial writ—

- (a) whether to his knowledge any proceedings are continuing in Scotland or in any other country in respect of the civil partnership to which the initial writ relates or are capable of affecting its validity or subsistence; and
- (b) where such proceedings are continuing—
  - (i) the court, tribunal or authority before which the proceedings have been commenced;
  - (ii) the date of commencement;
  - (iii) the names of the parties;
  - (iv) the date, or expected date of any proof (or its equivalent) in the proceedings; and
  - (v) such other facts as may be relevant to the question of whether or not the action before the sheriff should be sisted under Part XIII of this Chapter.

(3) Where—

- (a) such proceedings are continuing;
- (b) the action before the sheriff is defended; and
- (c) either—
  - (i) the initial writ does not contain the statement referred to in paragraph (2)(a); or
  - (ii) the particulars mentioned in paragraph (2)(b) as set out in the initial writ are incomplete or incorrect,

any defences or minute, as the case may be, lodged by any person to the action shall include that statement and, where appropriate, the further or correct particulars mentioned in paragraph (2)(b).

*Averments where section 11 order sought*

33A.3.(1) A party to a civil partnership action who makes an application in that action for a section 11 order in respect of a child shall include in his pleadings—

- (a) where that action is an action of dissolution of civil partnership or separation of civil partners, averments giving particulars of any other proceedings known to him, whether in Scotland or elsewhere and whether concluded or not, which relate to the child in respect of whom the section 11 order is sought;
- (b) in any other civil partnership action—
  - (i) the averments mentioned in paragraph (a); and

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(ii) averments giving particulars of any proceedings known to him which are continuing, whether in Scotland or elsewhere, and which relate to the civil partnership of either of the parents of that child.

(2) Where such other proceedings are continuing or have taken place and the averments of the applicant for such a section 11 order–

- (a) do not contain particulars of the other proceedings, or
- (b) contain particulars which are incomplete or incorrect,

any defences or minute, as the case may be, lodged by any party to the civil partnership action shall include such particulars or such further or correct particulars as are known to him.

(3) In paragraph 1(b)(ii), “child” includes a child of the family within the meaning assigned in section 101(7) of the Act of 2004.

*Averments where identity or address of person not known*

33A.4. In a civil partnership action, where the identity or address of any person referred to in rule 33A.7 as a person in respect of whom a warrant for intimation requires to be applied for is not known and cannot reasonably be ascertained, the party required to apply for the warrant shall include in his pleadings an averment of that fact and averments setting out what steps have been taken to ascertain the identity or address, as the case may be, of that person.

*Averments about maintenance orders*

33A.5. In a civil partnership action in which an order for aliment or periodical allowance is sought, or is sought to be varied or recalled, by any party, the pleadings of that party shall contain an averment stating whether and, if so, when and by whom, a maintenance order (within the meaning of section 106 of the Debtors (Scotland) Act 1987 <sup>F109</sup>) has been granted in favour of or against that party or of any other person in respect of whom the order is sought.

**Textual Amendments**

**F109** 1987 c. 18; section 106 was amended by the [Child Support, Pensions and Social Security Act 2000](#) (c. 19), [Schedule 3](#), paragraph 7(3).

*Averments where aliment or financial provision sought*

33A.6.(1) In this rule–

“the Act of 1991” means the Child Support Act 1991 <sup>F110</sup>;

“child” has the meaning assigned in section 55 of the Act of 1991;

“crave relating to aliment” means–

- (a) for the purposes of paragraph (2), a crave for decree of aliment in relation to a child or for recall or variation of such a decree; and
- (b) for the purposes of paragraph (3), a crave for decree of aliment in relation to a child or for recall or variation of such a decree or for the variation or termination of an agreement on aliment in relation to a child;

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“maintenance calculation” has the meaning assigned in section 54 of the Act of 1991.

- (2) A civil partnership action containing a crave relating to aliment and to which section 8(6), (7), (8), or (10) of the Act of 1991 <sup>F110</sup> (top up maintenance orders) applies shall—
- (a) include averments stating, where appropriate—
    - (i) that a maintenance calculation under section 11 of that Act (maintenance calculations) is in force;
    - (ii) the date of the maintenance calculation;
    - (iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance calculation; and
    - (iv) the grounds on which the sheriff retains jurisdiction under section 8(6), (7), (8) or (10) of that Act; and
  - (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the party intimating the making of the maintenance calculation referred to in sub paragraph (a).
- (3) A civil partnership action containing a crave relating to aliment, and to which section 8(6), (7), (8) or (10) of the Act of 1991 does not apply, shall include averments stating—
- (a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of that Act, is furth of the United Kingdom; or
  - (b) that the child is not a child within the meaning of section 55 of that Act.
- (4) A civil partnership action involving parties in respect of whom a decision has been made in any application, review or appeal under the Act of 1991 relating to any child of those parties, shall—
- (a) include averments stating that such a decision has been made and giving details of that decision; and
  - (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the parties intimating that decision.

#### Textual Amendments

**F110** 1991 c. 48.

**F111** Section 8 was amended by S.I. 2003/192.

#### *Warrants and forms for intimation*

- 33A.7.(1) Subject to paragraphs (5) and (7), in the initial writ in a civil partnership action, the pursuer shall include a crave for a warrant for intimation—
- (a) in an action where the address of the defender is not known to the pursuer and cannot reasonably be ascertained, to—
    - (i) every person who was a child of the family (within the meaning of section 101(7) of the Act of 2004) and who has reached the age of 16 years, and
    - (ii) one of the next of kin of the defender who has reached that age,

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- unless the address of such a person is not known to the pursuer and cannot reasonably be ascertained, and a notice of intimation in Form CP1 shall be attached to the copy of the initial writ intimated to any such person;
- (b) in an action where the defender is a person who is suffering from a mental disorder, to—
- (i) those persons mentioned in sub paragraph (a)(i) and (ii), unless the address of such person is not known to the pursuer and cannot reasonably be ascertained; and
  - (ii) any person who holds the office of guardian, or continuing or welfare attorney to the defender under or by virtue of the Adults with Incapacity (Scotland) Act 2000<sup>M42</sup>,
- and a notice of intimation in Form CP2 shall be attached to the copy of the initial writ intimated to any such person;
- (c) in an action of dissolution of civil partnership or separation of civil partners where the sheriff may make a section 11 order in respect of a child—
- (i) who is in the care of a local authority, to that authority and a notice of intimation in Form CP3 shall be attached to the initial writ intimated to that authority;
  - (ii) who, being a child of one party to the civil partnership, has been accepted as a child of the family by the other party to the civil partnership and who is liable to be maintained by a third party, to that third party, and a notice of intimation in Form CP3 shall be attached to the initial writ intimated to that third party; or
  - (iii) in respect of whom a third party in fact exercises care or control, to that third party, and a notice of intimation in Form CP4 shall be attached to the initial writ intimated to that third party;
- (d) in an action where the pursuer craves a section 11 order, to any parent or guardian of the child who is not a party to the action, and a notice of intimation in Form CP5 shall be attached to the initial writ intimated to any such parent or guardian;
- (e) in an action where the pursuer craves a residence order in respect of a child and he is—
- (i) not a parent of that child; and
  - (ii) resident in Scotland when the initial writ is lodged,
- to the local authority within which area the pursuer resides, and a notice of intimation in Form CP6 shall be attached to the initial writ intimated to that authority;
- (f) in an action which includes a crave for a section 11 order, to the child to whom such an order would relate if not a party to the action, and a notice of intimation in Form CP7 shall be intimated to that child;
- (g) in an action where the pursuer makes an application for an order under section 8(1)(aa) of the Act of 1985<sup>M43</sup> (transfer of property) and—
- (i) the consent of a third party to such a transfer is necessary by virtue of an obligation, enactment or rule of law, or
  - (ii) the property is subject to a security,
- to the third party or creditor, as the case may be, and a notice of intimation in Form CP8 shall be attached to the initial writ intimated to any such person;
- (h) in an action where the pursuer makes an application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions), to—



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- (i) any third party in whose favour the transfer of, or transaction involving, the property is to be or was made, and
  - (ii) any other person having an interest in the transfer of, or transaction involving, the property,
- and a notice of intimation in Form CP9 shall be attached to the initial writ intimated to any such person;
- (i) in an action where the pursuer makes an application for an order under Chapter 3 of Part 3 of the Act of 2004, where the application is under section 102(1)(e), 102(4)(a), 103(1), 103(2), 104, 107 or 112 of that Act, and the entitled civil partner is a tenant or occupies the family home by permission of a third party, to the landlord or the third party, as the case may be and a notice of intimation in Form CP10 shall be attached to the initial writ intimated to any such person;
  - (j) in an action where the pursuer makes an application for an order under section 8(1)(ba) of the Act of 1985 <sup>M44</sup> (orders under section 12A of the Act of 1985 for pension lump sum), to the person responsible for the pension arrangement, and a notice of intimation in Form CP11 shall be attached to the initial writ intimated to any such person; and
  - (k) in an action where a pursuer makes an application for an order under section 8(1)(baa) of the Act of 1985 <sup>M45</sup> (pension sharing orders), to the person responsible for the pension arrangement and a notice of intimation in Form CP12 shall be attached to the initial writ intimated to any such person.
- (2) Expressions used in paragraph (1)(i) which are also used in Chapter 3 of Part 3 of the Act of 2004 have the same meaning as in that Chapter.
- (3) A notice of intimation under paragraph (1) shall be on a period of notice of 21 days unless the sheriff otherwise orders; but the sheriff shall not order a period of notice of less than 2 days.
- (4) In a civil partnership action, where the pursuer–
- (a) craves a residence order in respect of a child;
  - (b) is not a parent of the child, and
  - (c) is not resident in Scotland when the initial writ is lodged for warranting,
- he shall include a crave for an order for intimation in Form CP6 to such local authority as the sheriff thinks fit.
- (5) Where the address of a person mentioned in paragraph (1)(c), (d), (f), (g), (h), (i), (j) or (k) is not known and cannot reasonably be ascertained, the pursuer shall include a crave in the initial writ to dispense with intimation; and the sheriff may grant that crave or make such other order as he thinks fit.
- (6) Where the identity or address of a person to whom intimation of a civil partnership action is required becomes known during the course of the action, the party who would have been required to insert a warrant for intimation to that person shall lodge a motion for a warrant for intimation to that person or to dispense with such intimation.
- (7) Where a pursuer considers that to order intimation to a child under paragraph (1) (f) is inappropriate, he shall–
- (a) include a crave in the initial writ to dispense with intimation to that child; and

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(b) include in the initial writ averments setting out the reasons why such intimation is inappropriate;  
 and the sheriff may dispense with such intimation or make such other order as he thinks fit.

#### **Marginal Citations**

**M42** 2000 asp 4.

**M43** Section 8(1)(aa) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 74 and Schedule 8, paragraph 34(b).

**M44** Section 8(1)(ba) was inserted by the Pensions Act 1995 (c. 26), section 167(1).

**M45** Section 8(1)(baa) was inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 20(1).

#### *Intimation where alleged association*

33A.8.(1) In a civil partnership action where the pursuer founds upon an alleged association between the defender and another named person, the pursuer shall, immediately after the expiry of the period of notice, lodge a motion for an order for intimation to that person or to dispense with such intimation.

- (2) In determining a motion under paragraph (1), the sheriff may—
- (a) make such order for intimation as he thinks fit; or
  - (b) dispense with intimation; and
  - (c) where he dispenses with intimation, order that the name of that person be deleted from the condescendence of the initial writ.
- (3) Where intimation is ordered under paragraph (2), a copy of the initial writ and an intimation in Form CP13 shall be intimated to the named person.
- (4) In paragraph (1), “association” means sodomy, incest, or any homosexual or heterosexual relationship.

#### *Productions in action of dissolution of civil partnership or where section 11 order may be made*

33A.9.(1) This rule applies unless the sheriff directs otherwise.

- (2) In an action of dissolution of civil partnership, a warrant for citation shall not be granted without there being produced with the initial writ—
- (a) an extract of the relevant entry in the civil partnership register or an equivalent document; and
  - (b) where the ground of action is that an interim gender recognition certificate has, after the date of registration of the civil partnership, been issued to either of the civil partners—
    - (i) where the pursuer is the subject of the interim gender recognition certificate, the interim gender recognition certificate or, failing that, a certified copy of the interim gender recognition certificate; or
    - (ii) where the defender is the subject of the interim gender recognition certificate, a certified copy of the interim gender recognition certificate.

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- (3) In a civil partnership action which includes a crave for a section 11 order, a warrant for citation shall not be granted without there being produced with the initial writ an extract of the relevant entry in the register of births or an equivalent document.
- (4) For the purposes of this rule, a certified copy of an interim gender recognition certificate shall be a copy of that certificate sealed with the seal of the Gender Recognition Panels and certified to be a true copy by an officer authorised by the President of Gender Recognition Panels.

#### *Warrant of citation*

33A.10. The warrant of citation in a civil partnership action shall be in Form CP14.

#### *Form of citation and certificate*

- 33A.11(1) Subject to rule 5.6 (service where address of person is not known), citation of a defender shall be in Form CP15, which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form CP16.
- (2) The certificate of citation shall be in Form CP17 which shall be attached to the initial writ.

#### *Execution of service on, or intimation to, local authority*

- 33A.12(1) Where a local authority referred to in rule 33A.7(1)(e) (residence order sought by non parent resident in Scotland) or rule 33A.7(4) (residence order sought by pursuer not resident in Scotland) is named as a defender in an initial writ at the time it is lodged, service of the initial writ on that local authority shall be executed within 7 days after the date of granting of the warrant of citation.
- (2) Where in a civil partnership action—
    - (a) to which rule 33A.7(1)(e) applies, or
    - (b) in which a crave under rule 33A.7(4) is required,the local authority referred to in that provision is named as a defender in the initial writ at the time it is lodged, a notice in Form CP6 shall be attached to the copy of the initial writ served on that local authority.
  - (3) In any civil partnership action, the sheriff may, if he thinks fit, order intimation to a local authority; and such intimation shall be in Form CP6; and
  - (4) Where, by virtue of paragraph (3) of this rule, or rule 33A.7(1)(e), or rule 33A.7(4), intimation of an application for a residence order is to be made to a local authority, intimation to that local authority shall be given within 7 days after the date on which a warrant of citation, or an order for intimation, as the case may be, has been granted.

#### *Service in cases of mental disorder of defender*

- 33A.13(1) In a civil partnership action where the defender suffers or appears to suffer from mental disorder and is resident in a hospital or other similar institution, citation shall be executed by registered post or the first class recorded delivery service addressed to the medical officer in charge of that hospital or institution; and there shall be included with the copy of the initial writ—

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- (a) a citation in Form CP15;
  - (b) any notice required by rule 33A.14(1);
  - (c) a request in Form CP18;
  - (d) a form of certificate in Form CP19 requesting the medical officer to—
    - (i) deliver and explain the initial writ, citation and any notice or form of notice of consent required under rule 33A.14(1) personally to the defender; or
    - (ii) certify that such delivery or explanation would be dangerous to the health or mental condition of the defender; and
  - (e) a stamped envelope addressed for return of that certificate to the pursuer or his solicitor, if he has one.
- (2) The medical officer referred to in paragraph (1) shall send the certificate in Form CP19 duly completed to the pursuer or his solicitor, as the case may be.
- (3) The certificate mentioned in paragraph (2) shall be attached to the certificate of citation.
- (4) Where such a certificate bears that the initial writ has not been delivered to the defender, the sheriff may, at any time before decree—
- (a) order such further medical inquiry, and
  - (b) make such order for further service or intimation,
- as he thinks fit.

*Notices in certain actions of dissolution of civil partnership or separation of civil partners*

- 33A.14(1) In the following actions of dissolution of civil partnership or separation of civil partners there shall be attached to the copy of the initial writ served on the defender—
- (a) in an action relying on section 117(3)(c) of the Act of 2004 (no cohabitation for two years with consent of defender to decree)—
    - (i) which is an action of dissolution of civil partnership, a notice in Form CP20 and a notice of consent in Form CP21;
    - (ii) which is an action of separation of civil partners, a notice in Form CP22 and a form of notice of consent in Form CP23;
  - (b) in an action relying on section 117(3)(d) of the Act of 2004 (no cohabitation for five years)—
    - (i) which is an action of dissolution of civil partnership, a notice in Form CP24;
    - (ii) which is an action of separation of civil partners, a notice in Form CP25.
- (2) The certificate of citation of an initial writ in an action mentioned in paragraph (1) shall state which notice or form mentioned in paragraph (1) has been attached to the initial writ.

*Orders for intimation*

- 33A.15(1) In any civil partnership action, the sheriff may, at any time—
- (a) subject to paragraph (2), order intimation to be made on such person as he thinks fit;

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- (b) postpone intimation, where he considers that such postponement is appropriate and, in that case, the sheriff shall make such order in respect of postponement of intimation as he thinks fit; or
  - (c) dispense with intimation, where he considers that such dispensation is appropriate.
- (2) Where the sheriff is considering whether to make a section 11 order by virtue of section 12 of the Act of 1995 (restrictions on decrees for dissolution of civil partnership, separation or annulment affecting children), he shall, subject to paragraph (1)(c) and without prejudice to paragraph (1)(b) of this rule, order intimation in Form CP7 to the child to whom the section 11 order would relate unless—
- (a) intimation has been given to the child under rule 33A.7(1)(f); or
  - (b) the sheriff considers that the child is not of sufficient age or maturity to express his views.
- (3) Where a party makes a crave or averment in a civil partnership action which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, that party shall include a crave in his writ for a warrant for intimation or to dispense with such intimation; and rule 33A.7 shall, with the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.

#### *Appointment of curators ad litem to defenders*

- 33A.1(1) This rule applies to an action of dissolution of civil partnership or separation of civil partners where it appears to the court that the defender is suffering from a mental disorder.
- (2) In an action to which this rule applies, the sheriff shall—
- (a) appoint a curator *ad litem* to the defender;
  - (b) where the facts set out in section 117(3)(c) of the Act of 2004 (no cohabitation for two years with consent of defender to decree) are relied on—
    - (i) make an order for intimation of the ground of the action to the Mental Welfare Commission for Scotland; and
    - (ii) include in such an order a requirement that the Commission sends to the sheriff clerk a report indicating whether in its opinion the defender is capable of deciding whether or not to give consent to the granting of decree.
- (3) Within 7 days after the appointment of a curator *ad litem* under paragraph (2)(a), the pursuer shall send to him—
- (a) a copy of the initial writ and any defences (including any adjustments and amendments) lodged; and
  - (b) a copy of any notice in Form G5 sent to him by the sheriff clerk.
- (4) On receipt of a report required under paragraph (2)(b)(ii), the sheriff clerk shall—
- (a) lodge the report in process; and
  - (b) intimate that this has been done to—
    - (i) the pursuer;
    - (ii) the solicitor for the defender, if known; and

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(iii) the curator *ad litem*.

- (5) The curator *ad litem* shall lodge in process one of the writs mentioned in paragraph (6)–
- (a) within 14 days after the report required under paragraph (2)(b)(ii) has been lodged in process; or
  - (b) where no such report is required, within 21 days after the date of his appointment under paragraph (2)(a).
- (6) The writs referred to in paragraph (5) are–
- (a) a notice of intention to defend;
  - (b) defences to the action;
  - (c) a minute adopting defences already lodged; and
  - (d) a minute stating that the curator *ad litem* does not intend to lodge defences.
- (7) Notwithstanding that he has lodged a minute stating that he does not intend to lodge defences, a curator *ad litem* may appear at any stage of the action to protect the interests of the defender.
- (8) If, at any time, it appears to the curator *ad litem* that the defender is not suffering from mental disorder, he may report that fact to the court and seek his own discharge.
- (9) The pursuer shall be responsible, in the first instance, for payment of the fees and outlays of the curator *ad litem* incurred during the period from his appointment until–
- (a) he lodges a minute stating that he does not intend to lodge defences;
  - (b) he decides to instruct the lodging of defences or a minute adopting defences already lodged; or
  - (c) being satisfied after investigation that the defender is not suffering from mental disorder, he is discharged.

*Applications for sist*

- 33A.17. An application for a sist, or the recall of a sist, under Part XIII of this Chapter shall be made by written motion.

*Notices of consent to dissolution of civil partnership or separation of civil partners*

- 33A.18(1) Where, in an action of dissolution of civil partnership or separation of civil partners in which the facts in section 117(3)(c) of the Act of 2004 (no cohabitation for two years with consent of defender to decree) are relied on, the defender wishes to consent to the grant of decree of dissolution of civil partnership or separation of civil partners he shall do so by giving notice in writing in Form CP21 (dissolution) or Form CP23 (separation), as the case may be, to the sheriff clerk.
- (2) The evidence of one witness shall be sufficient for the purpose of establishing that the signature on a notice of consent under paragraph (1) is that of the defender.
  - (3) In an action of dissolution of civil partnership or separation of civil partners where the initial writ includes, for the purposes of section 117(3)(c) of the Act of 2004, an averment that the defender consents to the grant of decree, the defender may give

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notice by letter sent to the sheriff clerk stating that he has not so consented or that he withdraws any consent which he has already given.

- (4) On receipt of a letter under paragraph (3), the sheriff clerk shall intimate the terms of the letter to the pursuer.
- (5) On receipt of any intimation under paragraph (4), the pursuer may, within 14 days after the date of the intimation, if none of the other facts mentioned in section 117(3) of the Act of 2004 is averred in the initial writ, lodge a motion for the action to be sisted.
- (6) If no such motion is lodged, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.
- (7) If a motion under paragraph (5) is granted and the sist is not recalled or renewed within a period of 6 months from the date of the interlocutor granting the sist, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.

#### *Procedure in respect of children*

33A.1(1) In a civil partnership action, in relation to any matter affecting a child, where that child has—

- (a) returned to the sheriff clerk Form CP7, or
  - (b) otherwise indicated to the court a wish to express views on a matter affecting him, the sheriff shall not grant any order unless an opportunity has been given for the views of that child to be obtained or heard.
- (2) Where a child has indicated his wish to express his views, the sheriff shall order such steps to be taken as he considers appropriate to ascertain the views of that child.
  - (3) The sheriff shall not grant an order in a civil partnership action, in relation to any matter affecting a child who has indicated his wish to express his views, unless due weight has been given by the sheriff to the views expressed by that child, having due regard to his age and maturity.

#### *Recording of views of the child*

33A.2(1) This rule applies where a child expresses a view on a matter affecting him whether expressed personally to the sheriff or to a person appointed by the sheriff for that purpose or provided by the child in writing.

- (2) The sheriff, or the person appointed by the sheriff, shall record the views of the child in writing; and the sheriff may direct that such views, and any written views, given by a child shall—
  - (a) be sealed in an envelope marked “Views of the child confidential”;
  - (b) be kept in the court process without being recorded in the inventory of process;
  - (c) be available to a sheriff only;
  - (d) not be opened by any person other than a sheriff; and
  - (e) not form a borrowable part of the process.

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### *Appointment of local authority or reporter to report on a child*

33A.2(1) This rule applies where, at any stage of a civil partnership action, the sheriff appoints–

- (a) a local authority, whether under section 11(1) of the Matrimonial Proceedings (Children) Act 1958<sup>F112</sup> (reports as to arrangements for future care and upbringing of children) or otherwise, or
- (b) another person (referred to in this rule as a “reporter”), whether under a provision mentioned in sub paragraph (a) or otherwise,

to investigate and report to the court on the circumstances of a child and on proposed arrangements for the care and upbringing of the child.

(2) On making an appointment referred to in paragraph (1), the sheriff shall direct that the party who sought the appointment or, where the court makes the appointment of its own motion, the pursuer or minuter, as the case may be, shall–

- (a) instruct the local authority or reporter; and
- (b) be responsible, in the first instance, for the fees and outlays of the local authority or reporter appointed.

(3) Where a local authority or reporter is appointed–

- (a) the party who sought the appointment, or
- (b) where the sheriff makes the appointment of his own motion, the pursuer or minuter, as the case may be,

shall, within 7 days after the date of the appointment, intimate the name and address of the local authority or reporter to any local authority to which intimation of the family action has been made.

(4) On completion of a report referred to in paragraph (1), the local authority or reporter, as the case may be, shall send the report, with a copy of it for each party, to the sheriff clerk.

(5) On receipt of such a report, the sheriff clerk shall send a copy of the report to each party.

(6) Where a local authority or reporter has been appointed to investigate and report in respect of a child, an application for a section 11 order in respect of that child shall not be determined until the report of the local authority or reporter, as the case may be, has been lodged.

#### **Textual Amendments**

**F112** 1958 c. 40; section 11(1) was amended by the [Children \(Scotland\) Act 1995 \(c. 36\)](#), [Schedule 4](#), paragraph 9.

### *Referral to family mediation*

33A.22. In any civil partnership action in which an order in relation to parental responsibilities or parental rights is in issue, the sheriff may, at any stage of the action, where he considers it appropriate to do so, refer that issue to a mediator accredited to a specified family mediation organisation.



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#### *Applications for orders to disclose whereabouts of children*

- 33A.24(1) An application in a civil partnership action for an order under section 33(1) of the Family Law Act 1986 <sup>F113</sup> (which relates to the disclosure of the whereabouts of a child) shall be made by motion.
- (2) Where the sheriff makes an order under section 33(1) of the Family Law Act 1986, he may ordain the person against whom the order has been made to appear before him or to lodge an affidavit.

#### **Textual Amendments**

**F113** 1986 c. 55.

#### *Applications in relation to removal of children*

- 33A.25(1) An application in a civil partnership action for leave under section 51(1) of the Children Act 1975 <sup>F114</sup> (authority to remove a child from the care and possession of the applicant for a residence order) or for an order under section 35(3) of the Family Law Act 1986 (application for interdict or interim interdict prohibiting removal of child from jurisdiction) shall be made—
- (a) by a party to the action, by motion; or
- (b) by a person who is not a party to the action, by minute.
- (2) An application under section 35(3) of the Family Law Act 1986 need not be served or intimated.
- (3) An application in a civil partnership action under section 23(2) of the Child Abduction and Custody Act 1985 <sup>F115</sup> (declarator that removal of child from United Kingdom was unlawful) shall be made—
- (a) in an action depending before the sheriff—
- (i) by a party, in the initial writ, defences or minute, as the case may be, or by motion; or
- (ii) by any other person, by minute; or
- (b) after final decree, by minute in the process of the action to which the application relates.

#### **Textual Amendments**

**F114** 1975 c. 72.

**F115** 1985 c. 60.

#### *Intimation to local authority before supervised contact order*

- 33A.26. Where in a civil partnership action the sheriff, at his own instance or on the motion of a party, is considering making a contact order or an interim contact order subject to supervision by the social work department of a local authority, he shall ordain the party moving for such an order to intimate to the chief executive of that local authority (where not already a party to the action and represented at the hearing at which the issue arises)—
- (a) the terms of any relevant motion;

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- (b) the intention of the sheriff to order that the contact order be supervised by the social work department of that local authority; and
- (c) that the local authority shall, within such period as the sheriff has determined—
  - (i) notify the sheriff clerk whether it intends to make representations to the sheriff; and
  - (ii) where it intends to make representations in writing, do so within that period.

*Joint minutes*

33A.27. Where any parties in a civil partnership action have reached agreement in relation to—

- (a) a section 11 order;
- (b) aliment for a child; or
- (c) an order for financial provision,

a joint minute may be entered into expressing that agreement; and, subject to rule 33A.19(3) (no order before views of child expressed), the sheriff may grant decree in respect of those parts of the joint minute in relation to which he could otherwise make an order, whether or not such a decree would include a matter for which there was no crave.

*Affidavits*

33A.28. The sheriff in a civil partnership action may accept evidence by affidavit at any hearing for an order or interim order.

**F116** PART II

UNDEFENDED CIVIL PARTNERSHIP ACTIONS

**Textual Amendments**

**F116** Sch. 1 Ch. 33A inserted (8.12.2005) by Act of Sederunt (Ordinary Cause Rules) Amendment (Civil Partnership Act 2004) 2005 (S.S.I. 2005/638), art. 2(2)

*Evidence in certain undefended civil partnership actions*

33A.29(1) This rule—

- (a) subject to sub paragraph (b), applies to all civil partnership actions in which no notice of intention to defend has been lodged, other than a civil partnership action—
  - (i) for financial provision after overseas proceedings as provided for in Schedule 11 to the Act of 2004; or
  - (ii) for an order under Chapter 3 or Chapter 4 of Part 3 or section 127 of the Act of 2004;
- (b) applies to a civil partnership action in which a curator *ad litem* has been appointed under rule 33A.16 where the curator *ad litem* to the defender has lodged a minute intimating that he does not intend to lodge defences;

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- (c) applies to any civil partnership action which proceeds at any stage as undefended where the sheriff so directs;
  - (d) applies to the merits of a civil partnership action which is undefended on the merits where the sheriff so directs, notwithstanding that the action is defended on an ancillary matter.
- (2) Unless the sheriff otherwise directs, evidence shall be given by affidavits.
- (3) Unless the sheriff otherwise directs, evidence relating to the welfare of a child shall be given by affidavit, at least one affidavit being emitted by a person other than a parent or party to the action.
- (4) Evidence in the form of a written statement bearing to be the professional opinion of a duly qualified medical practitioner, which has been signed by him and lodged in process, shall be admissible in place of parole evidence by him.

*Procedure for decree in actions under rule 33A.29*

- 33A.30(1) In an action to which rule 33A.29 (evidence in certain undefended civil partnership actions) applies, the pursuer shall at any time after the expiry of the period for lodging a notice of intention to defend–
- (a) lodge in process the affidavit evidence; and
  - (b) endorse a minute in Form CP27 on the initial writ.
- (2) The sheriff may, at any time after the pursuer has complied with paragraph (1), without requiring the appearance of parties–
- (a) grant decree in terms of the motion for decree; or
  - (b) remit the cause for such further procedure, if any, including proof by parole evidence, as the sheriff thinks fit.

*Extracts of undefended decree*

- 33A.31. In an action to which rule 33A.29 (evidence in certain undefended civil partnership actions) applies, the sheriff clerk shall, after the expiry of 14 days after the grant of decree under rule 33A.30 (procedure for decree in actions under rule 33A.29), issue to the pursuer and the defender an extract decree.

*No recording of evidence*

- 33A.32. It shall not be necessary to record the evidence in any proof in a civil partnership action which is not defended.

*Disapplication of Chapter 15*

- 33A.33. Other than rule 15.1(1), Chapter 15 (motions) shall not apply to a civil partnership action in which no notice of intention to defend has been lodged, or to a civil partnership action in so far as it proceeds as undefended.

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### PART III

#### DEFENDED CIVIL PARTNERSHIP ACTIONS

##### *Notice of intention to defend and defences*

33A.34(1) This rule applies where the defender in a civil partnership action seeks—

- (a) to oppose any crave in the initial writ;
- (b) to make a claim for—
  - (i) aliment;
  - (ii) an order for financial provision within the meaning of section 8(3) of the Act of 1985; or
  - (iii) a section 11 order; or
- (c) an order—
  - (i) under section 16(1)(b) or (3) of the Act of 1985 <sup>F117</sup> (setting aside or varying agreement as to financial provision);
  - (ii) under section 18 of the Act of 1985 (which relates to avoidance transactions); or
  - (iii) under Chapter 3 or Chapter 4 of Part 3 or section 127 of the Act of 2004; or
- (d) to challenge the jurisdiction of the court.

(2) In an action to which this rule applies, the defender shall—

- (a) lodge a notice of intention to defend in Form CP16 before the expiry of the period of notice; and
- (b) make any claim or seek any order referred to in paragraph (1), as the case may be, in those defences by setting out in his defences—
  - (i) craves;
  - (ii) averments in the answers to the condescendence in support of those craves; and
  - (iii) appropriate pleas-in-law.

(3) Where a defender intends to make an application for a section 11 order which, had it been made in an initial writ, would have required a warrant for intimation under rule 33A.7, the defender shall include a crave in his notice of intention to defend for a warrant for intimation or to dispense with such intimation; and rule 33A.7 shall, with the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.

##### **Textual Amendments**

**F117** Section 16(3) was amended by the [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), [Schedule 3](#), paragraph 5.

##### *Abandonment by pursuer*

33A.35. Notwithstanding abandonment by a pursuer of a civil partnership action, the court may allow a defender to pursue an order or claim sought in his defences; and the proceedings in relation to that order or claim shall continue in dependence as if a separate cause.

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### *Attendance of parties at Options Hearing*

33A.36. All parties to a civil partnership action shall, except on cause shown, attend personally the hearing under rule 9.12 (Options Hearing).

### *Decree by default*

33A.37(1) In a civil partnership action in which the defender has lodged a notice of intention to defend, where a party fails–

- (a) to lodge, or intimate the lodging of, any production or part of process;
- (b) to implement an order of the sheriff within a specified period; or
- (c) to appear or be represented at any diet,

that party shall be in default.

(2) Where a party is in default under paragraph (1), the sheriff may–

- (a) where the civil partnership action is one mentioned in rule 33A.1(1) (a) or (b), allow that action to proceed as undefended under Part II of this Chapter; or
- (b) where the civil partnership action is one mentioned in rule 33A.1(1)(c) to (e), grant decree as craved; or
- (c) grant decree of absolvitor; or
- (d) dismiss the civil partnership action or any claim made or order sought; and
- (e) award expenses.

(3) Where no party appears at a diet in a civil partnership action, the sheriff may dismiss that action.

(4) In a civil partnership action, the sheriff may, on cause shown, prorogate the time for lodging any production or part of process, or for intimating or implementing any order.

## *PART IV*

### *APPLICATIONS AND ORDERS RELATING TO CHILDREN IN CERTAIN ACTIONS*

#### *Application and interpretation of this Part*

33A.38. This Part applies to an action of dissolution of civil partnership or separation of civil partners.

#### *Applications in actions to which this Part applies*

33A.39(1) An application for an order mentioned in paragraph (2) shall be made–

- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
- (b) where the application is made by a person other than the pursuer or defender, by minute in that action.

(2) The orders referred to in paragraph (1) are:–

- (a) an order for a section 11 order; and
- (b) an order for aliment for a child.

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*Applications in depending actions by motion*

- 33A.40. An application by a party in an action depending before the court to which this Part applies for, or for variation of, an order for—
- (a) interim aliment for a child under the age of 18; or
  - (b) a residence order or a contact order,
- shall be made by motion.

*Applications after decree relating to a section 11 order*

- 33A.41(1) An application after final decree for, or for the variation or recall of, a section 11 order or in relation to the enforcement of such an order shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute has been lodged under paragraph (1), any party may apply by motion for any interim order which may be made pending the determination of the application.

*Applications after decree relating to aliment*

- 33A.42(1) An application after final decree for, or for the variation or recall of, an order for aliment for a child shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute has been lodged under paragraph (1), any party may lodge a motion for any interim order which may be made pending the determination of the application.

*Applications after decree by persons over 18 years for aliment*

- 33A.43(1) A person—
- (a) to whom an obligation of aliment is owed under section 1 of the Act of 1985;
  - (b) in whose favour an order for aliment while under the age of 18 years was made in an action to which this Part applies, and
  - (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,
- shall apply by minute in the process of that action.
- (2) An application for interim aliment pending the determination of an application under paragraph (1) shall be made by motion.
- (3) Where a decree has been pronounced in an application under paragraph (1) or (2), any application for variation or recall of any such decree shall be made by minute in the process of the action to which the application relates.

*PART V*

*ORDERS RELATING TO FINANCIAL PROVISIONS*

*Application and interpretation of this Part*

- 33A.44(1) This Part applies to an action of dissolution of civil partnership.

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(2) In this Part, “incidental order” has the meaning assigned in section 14(2) of the Act of 1985.

*Applications in actions to which this Part applies*

33A.45(1) An application for an order mentioned in paragraph (2) shall be made—

- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
- (b) where the application is made by a person other than the pursuer or defender, by minute in that action.

(2) The orders referred to in paragraph (1) are—

- (a) an order for financial provision within the meaning of section 8(3) of the Act of 1985;
- (b) an order under section 16(1)(b) or (3) of the Act of 1985 (setting aside or varying agreement as to financial provision);
- (c) an order under section 18 of the Act of 1985 (which relates to avoidance transactions); and
- (d) an order under section 112 of the Act of 2004 (transfer of tenancy).

*Applications in depending actions relating to incidental orders*

33A.46(1) In an action depending before the sheriff to which this Part applies—

- (a) the pursuer or defender, notwithstanding rules 33A.34(2) (application by defender for order for financial provision) and 33A.45(1)(a) (application for order for financial provision in initial writ or defences), may apply by motion for an incidental order; and
- (b) the sheriff shall not be bound to determine such a motion if he considers that the application should properly be by a crave in the initial writ or defences, as the case may be.

(2) In an action depending before the sheriff to which this Part applies, an application under section 14(4) of the Act of 1985 for the variation or recall of an incidental order shall be made by minute in the process of the action to which the application relates.

*Applications relating to interim aliment*

33A.47. An application for, or for the variation or recall of, an order for interim aliment for the pursuer or defender shall be made by motion.

*Applications relating to orders for financial provision*

33A.48(1) An application—

- (a) after final decree under any of the following provisions of the Act of 1985—
  - (i) section 8(1) for periodical allowance;
  - (ii) section 12(1)(b) (payment of capital sum or transfer of property);
  - (iii) section 12(4) (variation of date or method of payment of capital sum or date of transfer of property); or
  - (iv) section 13(4) (variation, recall, backdating or conversion of periodical allowance); or

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- (b) after the grant or refusal of an application under–
- (i) section 8(1) or 14(3) for an incidental order; or
  - (ii) section 14(4) (variation or recall of incidental order),
- shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute is lodged under paragraph (1), any party may lodge a motion for any interim order which may be made pending the determination of the application.
- (3) An application under–
- (a) paragraph (5) of section 12A of the Act of 1985 <sup>F118</sup> (recall or variation of order in respect of a pension lump sum);
  - (b) paragraph (7) of that section <sup>F119</sup> (variation of order in respect of pension lump sum to substitute trustees or managers); or
  - (c) section 28(10) or 48(9) of the Welfare Reform and Pensions Act 1999,
- shall be made by minute in the process of the action to which the application relates.

#### **Textual Amendments**

**F118** Section 12A(5) was inserted by the Pensions Act 1995 (c. 26), section 167(3) and amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 84 and Schedule 12, Part 1, paragraph 9(1)(6).

**F119** Section 12A(7) was inserted by the Pensions Act 1995 (c. 26), section 167(3) and amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 84 and Schedule 12, Part 1, paragraph 9(1)(8).

#### *Applications after decree relating to agreements and avoidance transactions*

- 33A.49. An application for an order–
- (a) under section 16(1)(a) or (3) of the Act of 1985 (setting aside or varying agreements as to financial provision), or
  - (b) under section 18 of the Act of 1985 (which relates to avoidance transactions),
- made after final decree shall be made by minute in the process of the action to which the application relates.

### *PART VI*

#### *APPLICATIONS RELATING TO AVOIDANCE TRANSACTIONS*

#### *Form of applications*

- 33A.50(1) An application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions) by a party to a civil partnership action shall be made by including in the initial writ, defences or minute, as the case may be, appropriate craves, averments and pleas in law.
- (2) An application for an order under section 18 of the Act of 1985 after final decree in a civil partnership action shall be made by minute in the process of the action to which the application relates.



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## PART VII

### FINANCIAL PROVISION AFTER OVERSEAS PROCEEDINGS

#### *Interpretation of this Part*

33A.51. In this Part–

“order for financial provision” has the meaning assigned in paragraph 4 of Schedule 11 to the Act of 2004;

“overseas proceedings” has the meaning assigned in paragraph 1(1)(a) of Schedule 11 to the Act of 2004.

#### *Applications for financial provision after overseas proceedings*

33A.52(1) An application under paragraph 2(1) of Schedule 11 to the Act of 2004 for an order for financial provision after overseas proceedings shall be made by initial writ.

(2) An application for an order in an action to which paragraph (1) applies made before final decree under–

- (a) section 112 of the Act of 2004 (transfer of tenancy of family home);
- (b) paragraph 3(4) of Schedule 11 to the Act of 2004 for interim periodical allowance; or
- (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),

shall be made by motion.

(3) An application for an order in an action to which paragraph (1) applies made after final decree under–

- (a) section 12(4) of the Act of 1985 (variation of date or method of payment of capital sum or date of transfer of property);
- (b) section 13(4) of the Act of 1985 (variation, recall, backdating or conversion of periodical allowance); or
- (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),

shall be made by minute in the process of the action to which it relates.

(4) An application under–

- (a) paragraph (5) of section 12A of the Act of 1985 (recall or variation of order in respect of a pension lump sum); or
- (b) paragraph (7) of that section (variation of order in respect of pension lump sum to substitute trustees or managers),

shall be made by minute in the process of the action to which the application relates.

(5) Where a minute has been lodged under paragraph (3), any party may apply by motion for an interim order pending the determination of the application.

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### *PART VIII*

#### *ACTIONS IN RESPECT OF ALIMENT*

##### *Applications relating to agreements on aliment*

- 33A.53. In a civil partnership action in which a crave for aliment may be made, an application under section 7(2) of the Act of 1985 shall be made by a crave in the initial writ or in defences, as the case may be.

### *PART IX*

#### *APPLICATIONS FOR ORDERS UNDER SECTION 11 OF THE CHILDREN (SCOTLAND) ACT 1995]*

##### *Application of this Part*

- 33A.54. This Part applies to an application for a section 11 order in a civil partnership action other than in an action of dissolution of civil partnership or separation of civil partners.

##### *Form of applications*

- 33A.55. Subject to any other provision in this Chapter, an application for a section 11 order shall be made—
- (a) by a crave in the initial writ or defences, as the case may be, in a civil partnership action to which this Part applies; or
  - (b) where the application is made by a person other than a party to an action mentioned in paragraph (a), by minute in that action.

##### *Applications relating to interim orders in depending actions*

- 33A.56. An application, in an action depending before the sheriff to which this Part applies, for, or for the variation or recall of, an interim residence order or an interim contact order shall be made—
- (a) by a party to the action, by motion; or
  - (b) by a person who is not a party to the action, by minute.

##### *Applications after decree*

- 33A.57(1) An application after final decree for variation or recall of a section 11 order shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute has been lodged under paragraph (1), any party may apply by motion for an interim order pending the determination of the application.

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## PART X

### ACTIONS RELATING TO OCCUPANCY RIGHTS AND TENANCIES

#### *Application of this Part*

33A.58. This Part applies to an action or application for an order under Chapter 3 or Chapter 4 of Part 3 or section 127 of the Act of 2004.

#### *Interpretation of this Part*

33A.59. Unless the context otherwise requires, words and expressions used in this Part which are also used in Chapter 3 or Chapter 4 of Part 3 of the Act of 2004 have the same meaning as in Chapter 3 or Chapter 4, as the case may be.

#### *Form of application*

33A.60(1) Subject to any other provision in this Chapter, an application for an order under this Part shall be made—

- (a) by an action for such an order;
- (b) by a crave in the initial writ or defences, as the case may be, in any other civil partnership action;
- (c) where the application is made by a person other than a party to any action mentioned in paragraph (a) or (b), by minute in that action.

(2) An application under section 107(1) (dispensation with civil partner's consent to dealing) or section 127 (application in relation to attachment) of the Act of 2004 shall, unless made in a depending civil partnership action, be made by summary application.

#### *Defenders*

33A.61. The applicant for an order under this Part shall call as a defender—

- (a) where he is seeking an order as a civil partner, the other civil partner; and
- (b) where he is a third party making an application under section 107(1) (dispensation with civil partner's consent to dealing), or 108(1) (payment from non-entitled civil partner in respect of loan) of the Act of 2004, both civil partners.

#### *Applications by motion*

33A.62(1) An application under any of the following provisions of the Act of 2004 shall be made by motion in the process of the depending action to which the application relates:—

- (a) section 103(4) (interim order for regulation of rights of occupancy, etc.);
- (b) section 104(6) (interim order suspending occupancy rights);
- (c) section 107(1) (dispensation with civil partner's consent to dealing); and
- (d) section 114(1) (order attaching power of arrest), if made after application for relevant interdict.

(2) Intimation of a motion under paragraph (1) shall be given—

- (a) to the other civil partner;

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- (b) where the motion is under paragraph (1)(a) or (b) and the entitled civil partner is a tenant or occupies the family home by the permission of a third party, to the landlord or third party, as the case may be; and
- (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33A.7(1)(i) (warrant for intimation to certain persons in actions for orders under Chapter 3 of Part 3 of the Act of 2004) or rule 33A.15 (order for intimation by sheriff).

*Applications by minute*

33A.63(1) An application for an order under section 105 of the Act of 2004 (variation and recall of orders made under section 103 or section 104 of the Act of 2004) shall be made by minute.

- (2) A minute under paragraph (1) shall be intimated–
  - (a) to the other civil partner;
  - (b) where the entitled civil partner is a tenant or occupies the family home by the permission of a third party, to the landlord or third party, as the case may be; and
  - (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33A.7(1)(i) (warrant for intimation to certain persons in actions for orders under Chapter 3 of Part 3 of the Act of 2004) or rule 33A.15 (order for intimation by sheriff).

*Sist of actions to enforce occupancy rights*

33A.64. Unless the sheriff otherwise directs, the sist of an action by virtue of section 107(4) of the Act of 2004 (where action raised by non entitled civil partner to enforce occupancy rights) shall apply only to such part of the action as relates to the enforcement of occupancy rights by a non entitled civil partner.

*Certificates of delivery of documents to chief constable*

33A.65(1) Where an applicant is required to comply with section 114(5) or (6), as the case may be, of the Act of 2004 (delivery of documents to chief constable where power of arrest attached to relevant interdict is granted, varied or recalled), he shall, after such compliance, lodge in process a certificate of delivery in Form CP28.

- (2) Where a relevant interdict to which a power of arrest under section 114(1) of the Act of 2004 has been attached ceases to have effect by reason of a decree of dissolution of civil partnership being pronounced by the sheriff, the pursuer shall send–
  - (a) to the chief constable of the police area in which the family home is situated; and
  - (b) if the applicant civil partner (within the meaning of section 114(7) of the Act of 2004) resides in another police area, to the chief constable of that other police area,

a copy of the interlocutor granting decree and lodge in process a certificate of delivery in Form CP28.

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## PART XI

### SIMPLIFIED DISSOLUTION OF CIVIL PARTNERSHIP APPLICATIONS

#### *Application and interpretation of this Part*

33A.66(1) This Part applies to an application for dissolution of civil partnership by a party to a civil partnership made in the manner prescribed in rule 33A.67 (form of applications) if, but only if–

- (a) that party relies on the facts set out in section 117(3)(c) (no cohabitation for two years with consent of defender to decree), section 117(3)(d) (no cohabitation for five years), or section 117(2)(b) (issue of interim gender recognition certificate) of the Act of 2004;
- (b) in an application under section 117(3)(c) of the Act of 2004, the other party consents to decree of dissolution of civil partnership being granted;
- (c) no other proceedings are pending in any court which could have the effect of bringing the civil partnership to an end;
- (d) there is no child of the family (as defined in section 101(7) of the Act of 2004) under the age of 16 years;
- (e) neither party to the civil partnership applies for an order for financial provision on dissolution of civil partnership; and
- (f) neither party to the civil partnership suffers from mental disorder.

(2) If an application ceases to be one to which this Part applies at any time before final decree, it shall be deemed to be abandoned and shall be dismissed.

(3) In this Part “simplified dissolution of civil partnership application” means an application mentioned in paragraph (1).

#### *Form of applications*

33A.67(1) A simplified dissolution of civil partnership application in which the facts set out in section 117(3)(c) of the Act of 2004 (no cohabitation for two years with consent of defender to decree) are relied on shall be made in Form CP29 and shall only be of effect if–

- (a) it is signed by the applicant; and
- (b) the form of consent in Part 2 of Form CP29 is signed by the party to the civil partnership giving consent.

(2) A simplified dissolution of civil partnership application in which the facts set out in section 117(3)(d) of the Act of 2004 (no cohabitation for five years) are relied on shall be made in Form CP30 and shall only be of effect if it is signed by the applicant.

(3) A simplified dissolution of civil partnership application in which the facts set out in section 117(2)(b) of the Act of 2004 (issue of interim gender recognition certificate) are relied on shall be made in Form CP31 and shall only be of effect if it is signed by the applicant.

#### *Lodging of applications*

33A.68. The applicant shall send a simplified dissolution of civil partnership application to the sheriff clerk with–

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- (a) an extract or certified copy of the civil partnership certificate;
- (b) the appropriate fee; and
- (c) in an application under section 117(2)(b) of the Act of 2004, the interim gender recognition certificate or a certified copy, within the meaning of rule 33A.9(4).

*Citation and intimation*

33A.69(1) This rule is subject to rule 33A.70 (citation where address not known).

- (2) It shall be the duty of the sheriff clerk to cite any person or intimate any document in connection with a simplified dissolution of civil partnership application.
- (3) The form of citation—
  - (a) in an application relying on the facts in section 117(3)(c) of the Act of 2004 shall be in Form CP32;
  - (b) in an application relying on the facts in section 117(3)(d) of the Act of 2004 shall be in Form CP33; and
  - (c) in an application relying on the facts in section 117(2)(b) of the Act of 2004 shall be in Form CP34.
- (4) The citation or intimation required by paragraph (2) shall be made—
  - (a) by the sheriff clerk by registered post or the first class recorded delivery service in accordance with rule 5.3 (postal service or intimation);
  - (b) on payment of an additional fee, by a sheriff officer in accordance with rule 5.4(1) and (2) (service within Scotland by sheriff officer); or
  - (c) where necessary, by the sheriff clerk in accordance with rule 5.5 (service on persons furth of Scotland).
- (5) Where citation or intimation is made in accordance with paragraph (4)(c), the translation into an official language of the country in which service is to be executed required by rule 5.5(6) shall be provided by the party lodging the simplified dissolution of civil partnership application.

*Citation where address not known*

33A.70(1) In a simplified dissolution of civil partnership application in which the facts in section 117(3)(d) (no cohabitation for five years) or section 117(2)(b) (issue of interim gender recognition certificate) of the Act of 2004 are relied on and the address of the other party to the civil partnership is not known and cannot reasonably be ascertained—

- (a) citation shall be executed by displaying a copy of the application and a notice in Form CP35 on the walls of court on a period of notice of 21 days; and
- (b) intimation shall be made to—
  - (i) every person who was a child of the family (within the meaning of section 101(7) of the Act of 2004) who has reached the age of 16 years, and
  - (ii) one of the next of kin of the other party to the civil partnership who has reached that age, unless the address of such person is not known and cannot reasonably be ascertained.

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- (2) Intimation to a person referred to in paragraph (1)(b) shall be given by intimating a copy of the application and a notice of intimation in Form CP36.

#### *Opposition to applications*

33A.71(1) Any person on whom service or intimation of a simplified dissolution of civil partnership application has been made may give notice by letter sent to the sheriff clerk that he challenges the jurisdiction of the court or opposes the grant of decree of dissolution of civil partnership and giving the reasons for his opposition to the application.

- (2) Where opposition to a simplified dissolution of civil partnership application is made under paragraph (1), the sheriff shall dismiss the application unless he is satisfied that the reasons given for the opposition are frivolous.
- (3) The sheriff clerk shall intimate the decision under paragraph (2) to the applicant and the respondent.
- (4) The sending of a letter under paragraph (1) shall not imply acceptance of the jurisdiction of the court.

#### *Evidence*

33A.72. Parole evidence shall not be given in a simplified dissolution of civil partnership application.

#### *Decree*

33A.73(1) The sheriff may grant decree in terms of the simplified dissolution of civil partnership application on the expiry of the period of notice if such application has been properly served provided that, when the application has been served in a country to which the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters dated 15 November 1965 <sup>F120</sup> applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of article 15 of that Convention have been complied with.

- (2) The sheriff clerk shall, not sooner than 14 days after the granting of decree in terms of paragraph (1), issue to each party to the civil partnership an extract of the decree of dissolution of civil partnership in Form CP37.

#### **Textual Amendments**

**F120** Cmnd. 3986 (1969).

#### *Appeals*

33A.74. Any appeal against an interlocutor granting decree of dissolution of civil partnership under rule 33A.73 (decree) may be made, within 14 days after the date of decree, by sending a letter to the court giving reasons for the appeal.

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### *Applications after decree*

33A.75. Any application to the court after decree of dissolution of civil partnership has been granted in a simplified dissolution of civil partnership application which could have been made if it had been made in an action of dissolution of civil partnership shall be made by minute.

## *PART XII*

### *REFERRALS TO PRINCIPAL REPORTER*

#### *Application and interpretation of this Part*

33A.76(1) This Part applies where a sheriff, in a civil partnership action, refers a matter to the Principal Reporter under section 54 of the Act of 1995 (reference to the Principal Reporter by court).

(2) In this Part, “Principal Reporter” has the meaning assigned in section 93(1) of the Act of 1995.

#### *Intimation to Principal Reporter*

33A.77. Where a matter is referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995, the interlocutor making the reference shall be intimated by the sheriff clerk forthwith to the Principal Reporter; and that intimation shall specify which of the conditions in paragraph (2)(a) to (h), (j), (k) or (l) of section 52 of the Act of 1995 it appears to the sheriff has been satisfied.

#### *Intimation of decision by Principal Reporter*

33A.78(1) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such investigation as he thinks appropriate and having reached the view that compulsory measures of supervision are necessary, arranges a children's hearing under section 69 of that Act <sup>M46</sup>(continuation or disposal of referral by children's hearing), the Principal Reporter shall intimate to the court which referred the matter to him—

- (a) the decision to arrange such children's hearing;
- (b) where there is no appeal made against the decision of that children's hearing once the period for appeal has expired, the outcome of the children's hearing; and
- (c) where such an appeal has been made, that an appeal has been made and, once determined, the outcome of that appeal.

(2) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such investigation as he thinks appropriate and having considered whether compulsory measures of supervision are necessary, decides not to arrange a children's hearing under section 69 of that Act, the Principal Reporter shall intimate that decision to the court which referred the matter to him.



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### Marginal Citations

**M46** Section 69 was amended by the [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), [Schedule 4](#), paragraph 4(5).

## PART XIII

### SISTING OF CIVIL PARTNERSHIP ACTIONS

#### *Application and interpretation of this Part*

33A.79(1) This Part applies to any action for—  
dissolution of civil partnership;  
separation of civil partners.

(2) In this Part—

“another jurisdiction” means any country outside Scotland.

“related jurisdiction” means any of the following countries, namely, England and Wales, Northern Ireland, Jersey, Guernsey and the Isle of Man (the reference to Guernsey being treated as including Alderney and Sark).

(3) For the purposes of this Part—

(a) neither the taking of evidence on commission nor a separate proof relating to any preliminary plea shall be regarded as part of the proof in the action; and

(b) an action is continuing if it is pending and not sisted.

(4) Any reference in this Part to proceedings in another jurisdiction is to proceedings in a court or before an administrative authority of that jurisdiction.

#### *Duty to furnish particulars of concurrent proceedings*

33A.80. While any action to which this Part applies is pending in a sheriff court and proof in that action has not begun, it shall be the duty of the pursuer, and of any other person who has entered appearance in the action, to furnish, in such manner and to such persons and on such occasions as may be prescribed, such particulars as may be so prescribed of any proceedings which—

(a) he knows to be continuing in another jurisdiction; and

(b) are in respect of that civil partnership or capable of affecting its validity.

#### *Mandatory sists*

33A.81. Where before the beginning of the proof in any action for dissolution of civil partnership it appears to the sheriff on the application of a party to the civil partnership—

(a) that in respect of the same civil partnership proceedings for dissolution or nullity of civil partnership are continuing in a related jurisdiction; and

(b) that the parties to the civil partnership have resided together after the civil partnership was formed or treated as having been formed within the meaning of section 1(1) of the Act of 2004; and

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- (c) that the place where they resided together when the action was begun or, if they did not then reside together, where they last resided together before the date on which that action was begun is in that jurisdiction; and
- (d) that either of the said parties was habitually resident in that jurisdiction throughout the year ending with the date on which they last resided together before the date on which that action was begun;

it shall be the duty of the sheriff, subject to rule 33A.83(2) below, to sist the action before him.

#### *Discretionary sists*

33A.81(1) Where before the beginning of the proof in any action to which this Part applies, it appears to the sheriff—

- (a) that any other proceedings in respect of the civil partnership in question or capable of affecting its validity are continuing in another jurisdiction, and
- (b) that the balance of fairness (including convenience) as between the parties to the civil partnership is such that it is appropriate for those other proceedings to be disposed of before further steps are taken in the action,

the sheriff may then if he thinks fit sist that action.

(2) In considering the balance of fairness and convenience for the purposes of paragraph (1)(b), the sheriff shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being sisted, or not being sisted.

(3) Paragraph (1) is without prejudice to the duty imposed by rule 33A.81 above.

(4) If, at any time after the beginning of the proof in any action to which this Part applies, the sheriff is satisfied that a person has failed to perform the duty imposed on him in respect of the action and any such other proceedings as aforesaid by rule 33A.80, paragraph (1) shall have effect in relation to that action and to the other proceedings as if the words “before the beginning of the proof” were omitted; but no action in respect of the failure of a person to perform such a duty shall be competent.

#### *Recall of sists*

33A.82(1) Where an action is sisted in pursuance of rule 33A.81 or 33A.82, the sheriff may if he thinks fit, on the application of a party to the action, recall the sist if it appears to him that the other proceedings by reference to which the action was sisted are sisted or concluded or that a party to those other proceedings has delayed unreasonably in prosecuting those other proceedings.

(2) Where an action has been sisted in pursuance of rule 33A.82 by reference to some other proceedings, and the sheriff recalls the sist in pursuance of the preceding paragraph, the sheriff shall not again sist the action in pursuance of the said rule 33A.82.

#### *Orders in sisted actions*

33A.84(1) The provisions of paragraphs (2) and (3) shall apply where an action to which this Part applies is sisted by reference to proceedings in a related jurisdiction for any of those remedies; and in this rule—

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“the other proceedings”, in relation to any sisted action, means the proceedings in another jurisdiction by reference to which the action was sisted;

“relevant order” means an interim order relating to aliment or children; and

“sisted” means sisted in pursuance of this Part.

- (2) Where an action such as is mentioned in paragraph (1) is sisted, then, without prejudice to the effect of the sist apart from this paragraph—
- (a) the sheriff shall not have power to make a relevant order in connection with the sisted action except in pursuance of sub paragraph (c); and
  - (b) subject to the said sub paragraph (c), any relevant order made in connection with the sisted action shall (unless the sist or the relevant order has been previously recalled) cease to have effect on the expiration of the period of three months beginning with the date on which the sist comes into operation; but
  - (c) if the sheriff considers that as a matter of necessity and urgency it is necessary during or after that period to make a relevant order in connection with the sisted action or to extend or further extend the duration of a relevant order made in connection with the sisted action, the sheriff may do so, and the order shall not cease to have effect by virtue of sub paragraph (b).
- (3) Where any action such as is mentioned in paragraph (1) is sisted and at the time when the sist comes into operation, an order is in force, or at a subsequent time an order comes into force, being an order made in connection with the other proceedings and providing for any of the following matters, namely periodical payments for a party to the civil partnership in question, periodical payments for a child, the arrangements to be made as to with whom a child is to live, contact with a child, and any other matter relating to parental responsibilities or parental rights, then, as from the time when the sist comes into operation (in a case where the order is in force at that time) or (in any other case) on the coming into force of the order—
- (a) any relevant order made in connection with the sisted action shall cease to have effect in so far as it makes for a civil partner or child any provision for any of the said matters as respects which the same or different provision for that civil partner or child is made by the other order; and
  - (b) the sheriff shall not have power in connection with the sisted action to make a relevant order containing for a civil partner or child provision for any of the matters aforesaid as respects which any provision for that civil partner or child is made by the other order.
- (4) Nothing in this paragraph affects any power of a sheriff—
- (a) to vary or recall a relevant order in so far as the order is for the time being in force; or
  - (b) to enforce a relevant order as respects any period when it is or was in force; or
  - (c) to make a relevant order in connection with an action which was, but is no longer, sisted.

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VALID FROM 04/05/2006

## [<sup>F121</sup>CHAPTER 33B S

### FINANCIAL PROVISION FOR FORMER COHABITANTS

#### Textual Amendments

**F121** Sch. 1 Ch. 33B inserted (4.5.2006) by Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 (S.S.I. 2006/207), {rule 2(58)}

#### *Interpretation of this Chapter*

33B.1. In this Chapter—

- “the Act” means the Family Law (Scotland) Act 2006 <sup>M47</sup>;
- “cohabitant” has the meaning given in section 25 of the Act;
- “the deceased” means the cohabitant referred to in section 29(1)(a) of the Act;
- “net intestate estate” has the meaning given in section 29(10) of the Act;
- “the survivor” means the cohabitant referred to in section 29(1)(b) of the Act.

#### Marginal Citations

**M47** 2006 asp2.

33B.2.(1) An application under—

- (a) section 28(2) of the Act for an order for financial provision where cohabitation ends otherwise than by death; or
- (b) section 29(2) of the Act for an order for financial provision by the survivor on intestacy,

shall be made by initial writ.

(2) In an initial writ under paragraph (1)(b) the pursuer shall—

- (a) name the deceased's executor as the defender; and
- (b) include a crave for a warrant for intimation to any person having an interest in the deceased's net intestate estate, and a notice of intimation in Form CO1 shall be attached to the initial writ intimated to any such person.

(3) Where the identity or address of any person referred to in paragraph (2)(b) is not known and cannot be ascertained, the pursuer shall include in his pleadings an averment of that fact and averments setting out what steps have been taken to identify the identity or address, as the case may be, of that person.

(4) An application under section 29(9) of the Act for variation of the date or method of payment of a capital sum shall be made by minute in the process of the action to which the application relates.]

**Status:** Point in time view as at 04/04/2005. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

## CHAPTER 34 **S**

### ACTIONS RELATING TO HERITABLE PROPERTY

#### PART I

#### SEQUESTRATION FOR RENT

##### *Actions craving payment [<sup>F122</sup>of rent]*

34.1. (1) In an action for sequestration and sale—

- (a) for non-payment of rent,
- (b) for recovery of rent, or
- (c) in security of rent,

whether brought before or after the term of payment, payment of rent may be craved; and decree for payment of such rent or part of it, when due and payable, may be pronounced and extracted in common form.

(2) There shall be served on the defender in such an action, with the initial writ, warrant and citation, a notice in Form H1.

##### **Textual Amendments**

**F122** Words in rule 34.1 heading substituted (1.11.1996) by S.I. 1996/2445, para. 3(57)

##### *Warrant to inventory and secure*

34.2. (1) In the first deliverance on an initial writ for sequestration and sale, the sheriff may sequester the effects of the tenant, and grant warrant to inventory and secure them.

(2) A warrant to sequester, inventory, sell, eject or relet shall include authority to open <sup>F123</sup> . . . shut and lockfast places for the purpose of executing such warrant.

##### **Textual Amendments**

**F123** Rule 34.2(2): comma omitted (1.11.1996) by S.I. 1996/2445, para. 3(58)

##### *Sale of effects*

34.3. (1) In an action for sequestration and sale, the sheriff may order the sequestered effects to be sold by a sheriff officer or other named person.

(2) Where a sale follows an order under paragraph (1), the sale shall be reported within 14 days after the date of the sale and the pursuer shall lodge with the sheriff clerk the roup rolls or certified copies of them and a state of debt.

(3) In the interlocutor approving the report of sale, or by separate interlocutor, the sheriff may grant decree against the defender for any balance remaining due.

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### *Care of effects*

- 34.4. The sheriff may, at any stage of an action for sequestration and sale appoint a fit person to take charge of the sequestrated effects, or may require the tenant to find caution that they shall be made available.

## *PART II*

### *REMOVING*

### *Actions of removing where fixed term of removal*

- 34.5. (1) Subject to section 21 of the Agricultural Holdings (Scotland) Act 1991 <sup>M48</sup>(notice to quit and notice of intention to quit)—
- (a) where the tenant has bound himself to remove by writing, dated and signed—
    - (i) within 12 months after the term of removal, or
    - (ii) where there is more than one ish, after the ish first in date to remove an action of removing may be raised at any time; and
  - (b) where the tenant has not bound himself, an action of removing may be raised at any time, but—
    - (i) in the case of a lease of lands exceeding two acres in extent for three years and upwards, an interval of not less than one year nor more than two years shall elapse between the date of notice of removal and the term of removal first in date;
    - (ii) in the case of a lease of lands exceeding two acres in extent, whether written or verbal, held from year to year or under tacit relocation, or for any other period less than three years, an interval of not less than six months shall elapse between the date of notice of removal and the term of removal first in date; and
    - (iii) in the case of a house let with or without land attached not exceeding two acres in extent, as also of land not exceeding two acres in extent without houses, as also of mills, fishings, shootings, and all other heritable subjects excepting land exceeding two acres in extent, and let for a year or more, 40 days at least shall elapse between the date of notice of removal and the term of removal first in date.
- (2) In any defended action of removing the sheriff may order the defender to find caution for violent profits.
- (3) In an action for declarator of irritancy and removing by a superior against a vassal, the pursuer shall call as parties the last entered vassal and such heritable creditors and holders of postponed ground burdens as are disclosed by a search for 20 years before the raising of the action, and the expense of the search shall form part of the pursuer's expenses of process.

#### **Marginal Citations**

**M48** 1991 c.55.

**Status:** Point in time view as at 04/04/2005. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

### Form of notice of removal

34.6. (1) A notice under the following sections of [<sup>F124</sup>the <sup>M49</sup>Sheriff Courts (Scotland) Act 1907] shall be in Form H2:—

- (a) section 34 (notice in writing to remove where lands exceeding two acres held on probative lease),
- (b) section 35 (letter of removal where tenant in possession of lands exceeding two acres), and
- (c) section 36 (notice of removal where lands exceeding two acres occupied by tenant without written lease).

(2) A letter of removal shall be in Form H3.

#### Textual Amendments

**F124** Words in rule 34.6(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(59)

#### Marginal Citations

**M49** 1907 c. 51

### Form of notice under section 37 of [<sup>F125</sup>the Act of 1907]

34.7. A notice under section 37 of [<sup>F126</sup>the Sheriff Courts (Scotland) Act 1907] (notice of termination of tenancy) shall be in Form H4.

#### Textual Amendments

**F125** Words in rule 34.7 heading substituted (1.11.1996) by S.I. 1996/2445, para. 3(60)(a)

**F126** Words in rule 34.7 substituted (1.11.1996) by S.I. 1996/2445, para. 3(60)(b)

### Giving notice of removal

34.8. (1) A notice under section 34, 35, 36, 37 or 38 of [<sup>F127</sup>the Sheriff Courts (Scotland) Act 1907] (which relate to notices of removal) may be given by—

- (a) a sheriff officer,
- (b) the person entitled to give such notice, or
- (c) the solicitor or factor of such person,

posting the notice by registered post or the first class recorded delivery service at any post office within the United Kingdom in time for it to be delivered at the address on the notice before the last date on which by law such notice must be given, addressed to the person entitled to receive such notice, and bearing the address of that person at the time, if known, or, if not known, to the last known address of that person.

(2) A sheriff officer may also give notice under a section of [<sup>F127</sup>the Sheriff Courts (Scotland) Act 1907] mentioned in paragraph (1) in any manner in which he may serve an initial writ; and, accordingly, rule 5.4 (service within Scotland by sheriff officer) shall, with the necessary modifications, apply to the giving of notice under this paragraph as it applies to service of an initial writ.

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### Textual Amendments

**F127** Words in [rule 34.8](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(61\)](#)

### *Evidence of notice to remove*

- 34.9. (1) A certificate of the sending of notice under rule 34.8 dated and endorsed on the lease or an extract of it, or on the letter of removal, signed by the sheriff officer or the person sending the notice, his solicitor or factor, or an acknowledgement of the notice endorsed on the lease or an extract of it, or on the letter of removal, by the party in possession or his agent, shall be sufficient evidence that notice has been given.
- (2) Where there is no lease, a certificate of the sending of such notice shall be endorsed on a copy of the notice or letter of removal.

### *Applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970*

- 34.10. (1) An application or counter-application to the sheriff under any of the following provisions of Part II of the <sup>M50</sup>Conveyancing and Feudal Reform (Scotland) Act 1970 (which relates to the standard security) shall be made by initial writ where any other remedy is craved:—
- (a) <sup>M51</sup>section 18(2) (declarator that obligations under contract performed);
  - (b) section 20(3) (application by creditor for warrant to let security subjects);
  - (c) section 22(1) (objections to notice of default); and
  - (d) section 22(3) (counter-application for remedies under the Act);
  - (e) section 24(1) (application by a creditor for warrant to exercise remedies on default); and
  - (f) section 28(1) (decree of foreclosure).
- (2) An interlocutor of the sheriff disposing of an application or counter-application under paragraph (1) shall be final and not subject to appeal except as to a question of title or any other remedy granted.

### Marginal Citations

**M50** 1970 c.35.

**M51** [Section 18\(2\)](#) was amended by the [Redemption of Standard Securities \(Scotland\) Act 1971 \(c.45\)](#), [section 1](#).

### *Service on unnamed occupiers*

- [<sup>F128</sup>34(1)]. Subject to paragraph (2), this rule applies only to a crave for removing in an action of removing against a person or persons in possession of heritable property without right or title to possess the property.
- (2) This rule shall not apply with respect to a person who has or had a title or other right to occupy the heritable property and who has been in continuous occupation since that title or right is alleged to have come to an end.



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- (3) Where this rule applies, the pursuer may apply by motion to shorten or dispense with the period of notice or other period of time in these Rules relating to the conduct of the action or the extracting of any decree.
- (4) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the pursuer shall call that person as a defender by naming him as an “occupier”.
- (5) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the initial writ shall be served (whether or not it is also served on a named person), unless the court otherwise directs, by a sheriff officer—
  - (a) affixing a copy of the initial writ and a citation in Form H5 addressed to “the occupiers” to the main door or other conspicuous part of the premises, and if practicable, depositing a copy of each of those documents in the premises; or
  - (b) in the case of land only, inserting stakes in the ground at conspicuous parts of the occupied land to each of which is attached a sealed transparent envelope containing a copy of the initial writ and a citation in Form H5 addressed to “the occupiers”.]

#### Textual Amendments

**F128** Sch. 1 rule 34.11 inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(18)

#### *Applications under the Mortgage Rights (Scotland) Act 2001*

[<sup>F129</sup>34(1). In an action to which rule 3.2(3) applies, an application under either of the following provisions of the Mortgage Rights (Scotland) Act 2001 shall be made by minute in the action:—

- (a) section 1(2)(application to the court for an order under section 2);
  - (b) section 2(5)(application to vary or revoke an order or to further continue proceedings).
- (2) Any such minute may be lodged by a person who is entitled to make an application even although that person has not been called as a defender and such a person may appear or be represented at any hearing to determine the application.]

#### Textual Amendments

**F129** Rule 34.12 inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (2002/7), {para. 2(5)}

## CHAPTER 35 **S**

### ACTIONS OF MULTIPLEPOINDING

#### *Application of this Chapter*

35.1. This Chapter applies to an action of multiplepoinding.

*Status: Point in time view as at 04/04/2005. This version of this part contains provisions that are not valid for this point in time.*

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### *Application of Chapters 9 and 10*

- 35.2. Chapter 10 (additional procedure) and the following rules in Chapter 9 (standard procedure in defended causes) shall not apply to an action of multiplepounding:—
- rule9.1 (notice of intention to defend),
  - rule9.2 (fixing date for Options Hearing),
  - rule9.4 (lodging of pleadings before Options Hearing),
  - rule9.8 (adjustment of pleadings),
  - rule9.9 (effect of sist on adjustment),
  - rule9.10 (open record),
  - rule9.11 (record for Option Hearing),
  - rule9.12 (Option Hearing),
  - rule9.15 (applications for time to pay directions).

### *Parties*

- 35.3. (1) An action of multiplepounding may be brought by any person holding, or having an interest in, or claim on, the fund in medio in his own name.
- (2) The pursuer shall call as defenders to such an action—
- (a) all persons so far as known to him as having an interest in the fund in medio; and
  - (b) where he is not the holder of the fund, the holder of that fund.

### *Condescence of fund in medio*

- 35.4. (1) Where the pursuer is the holder of the fund in medio, he shall include a detailed statement of the fund in the condescence in the initial writ.
- (2) Where the pursuer is not the holder of the fund in medio, the holder shall, before the expiry of the period of notice—
- (a) lodge in process—
    - (i) a condescence of the fund in medio, stating any claim or lien which he may profess to have on that fund;
    - (ii) a list of all persons known to him as having an interest in the fund; and
  - (b) intimate a copy of the condescence and list to any other party.

### *Warrant of citation in multiplepoundings*

- 35.5. The warrant of citation of the initial writ in an action of multiplepounding shall be in Form M1.

### *Citation*

- 35.6. (1) Subject to rule 5.6 (service where address of person is not known), citation of any person in an action of multiplepounding shall be in Form M2 which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of appearance in Form M4.
- (2) The certificate of citation shall be in Form M3 and shall be attached to the initial writ.

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### *Advertisement*

- 35.7. The sheriff may make an order for advertisement of the action in such newspapers as he thinks fit.

### *Lodging of notice of appearance*

- 35.8. Where a party intends to lodge—
- (a) defences to challenge the jurisdiction of the court or the competency of the action,
  - (b) objections to the condescendence of the fund in medio, or
  - (c) a claim on the fund,
- he shall, before the expiry of the period of notice, lodge a notice of appearance in Form M4.

### *Fixing date of first hearing*

- 35.9. Where a notice of appearance, or a condescendence on the fund in medio and a list under rule 35.4(2)(a) has been lodged, the sheriff clerk shall—
- (a) fix a date and time for the first hearing, which date shall be the first suitable court day occurring not sooner than four weeks after the expiry of the period of notice;
  - (b) on fixing the date for the first hearing forthwith intimate that date in Form M5 to each party; and
  - (c) prepare and sign an interlocutor recording the date of the first hearing.

### *Hearings*

- 35.10. (1) The sheriff shall conduct the first, and any subsequent hearing, with a view to securing the expeditious progress of the cause by ascertaining from the parties the matters in dispute.
- (2) The parties shall provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this Chapter.
  - (3) At the first, or any subsequent hearing, the sheriff shall fix a period within which defences, objections or claims shall be lodged, and appoint a date for a second hearing.
  - (4) Where the list lodged under rule 35.4(2)(a) contains any person who is not a party to the action, the sheriff shall order—
    - (a) the initial writ to be amended to add that person as a defender;
    - (b) service of the pleadings so amended to be made on that person, with a citation in Form M6; and
    - (c) intimation to that person of any condescendence of the fund in medio lodged by a holder of the fund who is not the pursuer.
  - (5) Where a person to whom service has been made under paragraph (4) lodges a notice of appearance under rule 35.8, the sheriff clerk shall intimate to him in Form M5 the date of the next hearing fixed in the action.

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#### *Lodging defences, objections and claims*

- 35.11. (1) Defences, objections and claims by a party shall be lodged with the sheriff clerk in a single document under separate headings.
- (2) Each claimant shall lodge with his claim any documents founded on in his claim, so far as they are within his custody or power.

#### *Disposal of defences*

- 35.12. (1) Where defences have been lodged, the sheriff may order the initial writ and defences to be adjusted and thereafter close the record and regulate further procedure.
- (2) Unless the sheriff otherwise directs, defences shall be disposed of before any further procedure in the action.

#### *Objections to fund in medio*

- 35.13. (1) Where objections to the fund in medio have been lodged, the sheriff may, after disposal of any defences, order the condescendence of the fund and objections to be adjusted; and thereafter close the record and regulate further procedure.
- (2) If no objections to the fund in medio have been lodged, or if objections have been lodged and disposed of, the sheriff may, on the motion of the holder of the fund, and without ordering intimation to any party approve the condescendence of the fund and find the holder liable only in one single payment.

#### *Preliminary pleas in multiple findings*

- 35.14. (1) A party intending to insist on a preliminary plea shall, not later than 3 days before any hearing to determine further procedure following the lodging of defences, objections or claims, lodge with the sheriff clerk a note of the basis of the plea.
- (2) Where a party fails to comply with the provisions of paragraph (1), he shall be deemed to be no longer insisting on the plea and the plea shall be repelled by the sheriff at the hearing referred to in paragraph (1).
- (3) If satisfied that there is a preliminary matter of law which justifies a debate, the sheriff shall, after having heard parties and considered the note lodged under this rule, appoint the action to debate.

#### *Consignation of the fund and discharge of holder*

- 35.15. (1) At any time after the condescendence of the fund in medio has been approved, the sheriff may order the whole or any part of the fund to be sold and the proceeds of the sale consigned into court.
- (2) After such consignation the holder of the fund in medio may apply for his exoneration and discharge.
- (3) The sheriff may allow the holder of the fund in medio, on his exoneration and discharge, his expenses out of the fund as a first charge on the fund.

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#### *Further service or advertisement*

35.16. The sheriff may at any time, of his own motion or on the motion of any party, order further service on any person or advertisement.

#### *Ranking of claims*

35.17. (1) After disposal of any defences, and approval of the condescendence of the fund in medio, the sheriff may, where there is no competition on the fund, rank and prefer the claimants and grant decree in terms of that ranking.

(2) Where there is competition on the fund, the sheriff may order claims to be adjusted and thereafter close the record and regulate further procedure.

#### *Remit to reporter*

35.18. (1) Where several claims have been lodged, the sheriff may remit to a reporter to prepare a scheme of division and report.

(2) The expenses of such remit, when approved by the sheriff, shall be made a charge on the fund, to be deducted before division.

## CHAPTER 36 **S**

### ACTIONS OF DAMAGES

#### *PART I*

#### *INTIMATION TO CONNECTED PERSONS IN CERTAIN ACTIONS OF DAMAGES*

#### *Application and interpretation of this Part*

36.1. (1) This Part applies to an action of damages in which, following the death of any person from personal injuries, damages are claimed—

- (a) by the executor of the deceased, in respect of the injuries from which the deceased died; or
- (b) by any relative of the deceased, in respect of the death of the deceased.

(2) In this Part—

“connected person” means a person, not being a party to the action, who has title to sue the defender in respect of the personal injuries from which the deceased died or in respect of his death;

“relative” has the meaning assigned to it in Schedule 1 to the <sup>M52</sup>Damages (Scotland) Act 1976.

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#### **Marginal Citations**

**M52** 1976 c.13; Schedule 1 was amended by the [Administration of Justice Act 1982 \(c.53\)](#), [section 14\(4\)](#).

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### *Averments*

- 36.2. In an action to which this Part applies, the pursuer shall aver in the condescence, as the case may be—
- (a) that there are no connected persons;
  - (b) that there are connected persons, being the persons specified in the crave for intimation;
  - (c) that there are connected persons in respect of whom intimation should be dispensed with on the ground that—
    - (i) the names or whereabouts of such persons are not known to, and cannot reasonably be ascertained by, the pursuer; or
    - (ii) such persons are unlikely to be awarded more than £200 each.

### *Warrants for intimation*

- 36.3. (1) Where the pursuer makes averments under rule 36.2(b) (existence of connected persons), he shall include a crave in the initial writ for intimation to any person who is believed to have title to sue the defender in an action in respect of the death of the deceased or the personal injuries from which the deceased died.
- (2) A notice of intimation in Form D1 shall be attached to the copy of the initial writ where intimation is given on a warrant under paragraph (1).

### *Applications to dispense with intimation*

- 36.4. (1) Where the pursuer makes averments under rule 36.2(c) (dispensing with intimation to connected persons), he shall apply by crave in the initial writ for an order to dispense with intimation.
- (2) In determining an application under paragraph (1), the sheriff shall have regard to—
- (a) the desirability of avoiding a multiplicity of actions; and
  - (b) the expense, inconvenience or difficulty likely to be involved in taking steps to ascertain the name or whereabouts of the connected person.
- (3) Where the sheriff is not satisfied that intimation to a connected person should be dispensed with, he may—
- (a) order intimation to a connected person whose name and whereabouts are known;
  - (b) order the pursuer to take such further steps as he may specify in the interlocutor to ascertain the name or whereabouts of any connected person; and
  - (c) order advertisement in such manner, place and at such times as he may specify in the interlocutor.

### *Subsequent disclosure of connected persons*

- 36.5. Where the name or whereabouts of a person, in respect of whom the sheriff has dispensed with intimation on a ground specified in rule 36.2(c) (dispensing with intimation to connected persons), subsequently becomes known to the pursuer, the pursuer shall apply to the sheriff by motion for a warrant for intimation to such a person; and such intimation shall be made in accordance with rule 36.3(2).

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### *Connected persons entering process*

- 36.6. (1) A connected person may apply by minute craving leave to be sisted as an additional pursuer to the action.
- (2) Such a minute shall also crave leave of the sheriff to adopt the existing grounds of action, and to amend the craves, condescendence and pleas-in-law.
- (3) The period within which answers to a minute under this rule may be lodged shall be 14 days from the date of intimation of the minute.
- (4) [<sup>F130</sup>Rule 14.13 (procedure following grant of minute)] shall not apply to a minute to which this rule applies.

#### **Textual Amendments**

**F130** Words in sch. 1 rule 36.6(4) substituted (1.11.1996) by [S.I. 1996/2445, para. 3\(62\)](#)

### *Failure to enter process*

- 36.7. Where a connected person to whom intimation is made in accordance with this Part—
- (a) does not apply to be sisted as an additional pursuer to the action,
- (b) subsequently raises a separate action against the same defender in respect of the same personal injuries or death, and
- (c) would, apart from this rule, be awarded the expenses or part of the expenses of that action,
- he shall not be awarded those expenses except on cause shown.

## *PART II*

### *INTERIM PAYMENTS OF DAMAGES*

#### *Application and interpretation of this Part*

- 36.8. (1) This Part applies to an action of damages for personal injuries or the death of a person in consequence of personal injuries.
- (2) In this Part—
- “defender” includes a third party against whom the pursuer has a crave for damages;
- “personal injuries” includes any disease or impairment of a physical or mental condition.

#### *Applications for interim payment of damages*

- 36.9. (1) In an action to which this Part applies, a pursuer may, at any time after defences have been lodged, apply by motion for an order for interim payment of damages to him by the defender or, where there are two or more of them, by any one or more of them.
- (2) The pursuer shall intimate a motion under paragraph (1) to every other party on a period of notice of 14 days.

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- (3) On a motion under paragraph (1), the sheriff may, if satisfied that—
- (a) the defender has admitted liability to the pursuer in the action, or
  - (b) if the action proceeded to proof, the pursuer would succeed in the action on the question of liability without any substantial finding of contributory negligence on his part, or on the part of any person in respect of whose injury or death the claim of the pursuer arises, and would obtain decree for damages against any defender,
- ordain that defender to make an interim payment to the pursuer of such amount as the sheriff thinks fit, not exceeding a reasonable proportion of the damages which, in the opinion of the sheriff, are likely to be recovered by the pursuer.
- (4) Any such payment may be ordered to be made in one lump sum or otherwise as the sheriff thinks fit.
- (5) No order shall be made against a defender under this rule unless it appears to the sheriff that the defender is—
- (a) a person who is insured in respect of the claim of the pursuer;
  - (b) a public authority; <sup>F131</sup> . . .
  - (c) a person whose means and resources are such as to enable him to make the interim payment. [<sup>F132</sup>; or
  - (d) the person's liability will be met by—
    - (i) an insurer under section 151 of the Road Traffic Act 1988 <sup>F133</sup>; or
    - (ii) an insurer acting under the Motor Insurers Bureau Agreement, or the Motor Insurers Bureau where it is acting itself.]
- (6) Notwithstanding the grant or refusal of a motion for an interim payment, a subsequent motion may be made where there has been a change of circumstances.
- (7) Subject to Part IV (management of damages payable to persons under legal disability), an interim payment shall be made to the pursuer unless the sheriff otherwise directs.
- (8) This rule shall, with the necessary modifications, apply to a counterclaim for damages for personal injuries made by a defender as it applies to an action in which the pursuer may apply for an order for interim payment of damages.

#### **Textual Amendments**

**F131** Word in sch. 1 rule 36.9(5)(b) omitted (21.5.2004) by virtue of [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2004 \(S.S.I. 2004/197\)](#), [art. 2\(13\)\(a\)](#)

**F132** Sch. 1 rule 36.9(5)(d) and word inserted (21.5.2004) by [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2004 \(S.S.I. 2004/197\)](#), [art. 2\(13\)\(b\)](#)

**F133** 1988 c. 52; section 151 repealed in part by the [Road Traffic Act 1991 \(c. 40\)](#), [Schedule 8](#).

#### *Adjustment on final decree*

- 36.10. Where a defender has made an interim payment under rule 36.9, the sheriff may, when final decree is pronounced, make such order with respect to the interim



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payment as he thinks fit to give effect to the final liability of that defender to the pursuer; and in particular may order—

- (a) repayment by the pursuer of any sum by which the interim payment exceeds the amount which that defender is liable to pay to the pursuer; or
- (b) payment by any other defender or a third party, of any part of the interim payment which the defender who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to, or connected with, the claim of the pursuer.

### *PART III*

#### *PROVISIONAL DAMAGES FOR PERSONAL INJURIES*

##### *Application and interpretation of this Part*

36.11. (1) This Part applies to an action of damages for personal injuries.

(2) In this Part—

“the Act of 1982” means the <sup>M53</sup>Administration of Justice Act 1982;

“further damages” means the damages referred to in section 12(4)(b) of the Act of 1982;

“provisional damages” means the damages referred to in section 12(4)(a) of the Act of 1982.

##### **Marginal Citations**

**M53** 1982 c.53.

##### *Applications for provisional damages*

36.12. An application under section 12(2)(a) of the Act of 1982 for provisional damages for personal injuries shall be made by including in the initial writ—

- (a) a crave for provisional damages;
- (b) averments in the condescendence supporting the crave, including averments—
  - (i) that there is a risk that, at some definite or indefinite time in the future, the pursuer will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration of his physical or mental condition; and
  - (ii) that the defender was, at the time of the act or omission which gave rise to the cause of action, a public authority, public corporation or insured or otherwise indemnified in respect of the claim; and
- (c) an appropriate plea-in-law.

##### *Applications for further damages*

36.13. (1) An application for further damages by a pursuer in respect of whom an order under section 12(2)(b) of the Act of 1982 has been made shall be made by minute in the process of the action to which it relates and shall include—

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- (a) a crave for further damages;
  - (b) averments in the statement of facts supporting that crave; and
  - (c) appropriate pleas-in-law.
- (2) On lodging such a minute in process, the pursuer shall apply by motion for warrant to serve the minute on—
- (a) every other party; and
  - (b) where such other party is insured or otherwise indemnified, his insurer or indemnifier, if known to the pursuer.
- (3) Any such party, insurer or indemnifier may lodge answers to such a minute in process within 28 days after the date of service on him.
- (4) Where answers have been lodged under paragraph (3), the sheriff may, on the motion of any party, make such further order as to procedure as he thinks fit.

#### *PART IV*

#### *MANAGEMENT OF DAMAGES PAYABLE TO PERSONS UNDER LEGAL DISABILITY*

##### *Orders for payment and management of money*

- 36.14. (1) In an action of damages in which a sum of money becomes payable, by virtue of a decree or an extra-judicial settlement, to or for the benefit of a person under legal disability [<sup>F134</sup>(other than a person under the age of 18 years)], the sheriff shall make such order regarding the payment and management of that sum for the benefit of that person as he thinks fit.
- (2) An order under paragraph (1) shall be made on the granting of decree for payment or of absolvitor.

##### **Textual Amendments**

**F134** Words in sch. 1 rule 36.14(1) inserted (1.11.1996) by *S.I. 1996/2167, para. 2, Sch. para. 34*

##### *Methods of management*

- 36.15. In making an order under rule 36.14(1), the sheriff may—
- (a) appoint a judicial factor to apply, invest or otherwise deal with the money for the benefit of the person under legal disability;
  - (b) order the money to be paid to—
    - (i) the Accountant of Court, or
    - (ii) the guardian of the person under legal disability,
 as trustee, to be applied, invested or otherwise dealt with and administered under the directions of the sheriff for the benefit of the person under legal disability;
  - (c) order the money to be paid to the sheriff clerk of the sheriff court district in which the person under legal disability resides, to be applied, invested or otherwise dealt with and administered, under the directions of the sheriff of that district, for the benefit of the person under legal disability; or
  - (d) order the money to be paid directly to the person under legal disability.

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### *Subsequent orders*

- 36.16. (1) Where the sheriff has made an order under rule 36.14(1), any person having an interest may apply for an appointment or order under rule 36.15, or any other order for the payment or management of the money, by minute in the process of the cause to which the application relates.
- (2) An application for directions under rule 36.15(b) or (c) may be made by any person having an interest by minute in the process of the cause to which the application relates.

### *Management of money paid to sheriff clerk*

- 36.17. (1) A receipt in Form D2 by the sheriff clerk shall be a sufficient discharge in respect of the amount paid to him under this Part.
- (2) The sheriff clerk shall, at the request of any competent court, accept custody of any sum of money in an action of damages ordered to be paid to, applied, invested or otherwise dealt with by him, for the benefit of a person under legal disability.
- (3) Any money paid to the sheriff clerk under this Part shall be paid out, applied, invested or otherwise dealt with by the sheriff clerk only after such intimation, service and enquiry as the sheriff may order.
- (4) Any sum of money invested by the sheriff clerk under this Part shall be invested in a manner in which trustees are authorised to invest by virtue of the <sup>M54</sup>Trustee Investments Act 1961.

#### **Marginal Citations**

**M54** 1961 c.62.

## *<sup>F135</sup>PART IVA*

### *PRODUCTIONS IN CERTAIN ACTIONS OF DAMAGES*

#### **Textual Amendments**

**F135** Sch. 1 Ch. 36 Pt. 4A inserted (2.10.2000) by **S.S.I. 2000/239, para. 3(19)**

### *Application of this Part*

- 36.17A. This Part applies to an action of damages for personal injuries or the death of a person in consequence of personal injuries.

### *Averments of medical treatment*

- 36.17B. The condescence of the initial writ in an action to which this Part applies shall include averments naming—
- (a) every general medical practitioner or general medical practice from whom;
  - and
  - (b) every hospital or other institution in which,

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the pursuer or, in an action in respect of the death of a person, the deceased received treatment for the injuries sustained, or disease suffered, by him.

#### *Lodging of medical reports*

36.17Q(1) In an action to which this Part applies, the pursuer shall lodge as productions, with the initial writ when it is presented for warranting in accordance with rule 5.1, all medical reports on which he intends, or intends to reserve the right, to rely in the action.

(2) Where no medical report is lodged as required by paragraph (1), the defender may apply by motion for an order specifying a period within which such a report shall be lodged in process.]

### *PART V*

#### *SEX DISCRIMINATION ACT 1975*

#### *Causes under section 66 of the Act of 1975*

36.18. (1) In a cause in which a breach of statutory duty under section 66(1) of the <sup>M55</sup>Sex Discrimination Act 1975 (proceedings for act of discrimination) is averred, the sheriff may, of his own motion or on the motion of any party, appoint an assessor.

(2) An assessor appointed under paragraph (1) shall be a person who the sheriff considers has special qualifications to be of assistance in determining [F136a cause] referred to in that paragraph.

(3) In a cause referred to in paragraph (1), the pursuer should send a copy of the initial writ by post by the first class recorded delivery service to the Equal Opportunities Commission.

#### **Textual Amendments**

**F136** Words in rule 36.18(2) substituted (1.11.1996) by *S.I. 1996/2445, para. 3(1)(63)*

#### **Marginal Citations**

**M55** 1975 c.65.

## **CHAPTER 37** S

### CAUSES UNDER THE PRESUMPTION OF DEATH (SCOTLAND) ACT 1977

#### *Interpretation of this Chapter*

37.1. In this Chapter—

“the Act of 1977” means the <sup>M56</sup>Presumption of Death (Scotland) Act 1977;

“action of declarator” means an action under section 1(1) of the Act of 1977;

“missing person” has the meaning assigned in section 1(1) of the Act of 1977.

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### Marginal Citations

M56 1977 c.27.

### Parties to, and service and intimation of, actions of declarator

37<sup>F137</sup>(1) In an action of declarator—

- (a) the missing person shall be named as the defender;
- (b) subject to paragraph (2), service on that person shall be executed by advertisement in such newspaper or other publication as the sheriff thinks fit of such facts relating to the missing person and set out in the initial writ as the sheriff may specify; and
- (c) the period of notice shall be 21 days from the date of publication of the advertisement unless the sheriff otherwise directs.]

[<sup>F138</sup>(2) The advertisement mentioned in paragraph (1) shall be in Form P1.]

(3) Subject to paragraph (5), in an action of declarator, the pursuer shall include a crave for a warrant for intimation to—

- (a) the missing person's—
  - (i) spouse, and
  - (ii) children, or, if he has no children, his nearest relative known to the pursuer,
- (b) any person, including any insurance company, who so far as known to the pursuer has an interest in the action, and
- (c) the Lord Advocate,

in the following terms:— “For intimation to (name and address) as [husband or wife, child or nearest relative] [a person having an interest in the presumed death] of (name and last known address of the missing person) and to the Lord Advocate.”.

(4) A notice of intimation in Form P2 shall be attached to the copy of the [<sup>F139</sup>initial writ] where intimation is given on a warrant under paragraph (3).

(5) The sheriff may, on the motion of the pursuer, dispense with intimation on a person mentioned in paragraph (3)(a) or (b).

(6) An application by minute under section 1(5) of the Act of 1977 (person interested in seeking determination or appointment not sought by pursuer) shall contain a crave for the determination or appointment sought, averments in the answers to the condescendence in support of that crave and an appropriate plea-in-law.

(7) On lodging a minute under paragraph (6), the minuter shall—

- (a) send a copy of the minute by registered post or the first class recorded delivery service to each person to whom intimation of the action has been made under paragraph (2); and
- (b) lodge in process the Post Office receipt or certificate of posting of that minute.

### Textual Amendments

F137 Sch. 1 rule 37.2(1) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(20)(a)

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**F138** Sch. 1 rule 37.2(2) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(20)(b)

**F139** Words in Sch. 1 rule 37.2(4) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(20)(c)

#### *Further advertisement*

37.3. Where no minute has been lodged indicating knowledge of the present whereabouts of the missing person, at any time before the determination of the action, the sheriff may, of his own motion or on the motion of a party, make such order for further advertisement as he thinks fit.

#### *Applications for proof*

37.4. (1) In an action of declarator where no minute has been lodged, the pursuer shall, after such further advertisement as may be ordered under rule 37.3, apply to the sheriff by motion for an order for proof.

(2) A proof ordered under paragraph (1) shall be by affidavit evidence unless the sheriff otherwise directs.

#### *Applications for variation or recall of decree*

37.5. (1) An application under section 4(1) of the Act of 1977 (variation or recall of decree) shall be made by minute in the process of the action to which it relates.

(2) On the lodging of such a minute, the sheriff shall make an order—

- (a) for service on the missing person, where his whereabouts have become known;
- (b) for intimation to those persons mentioned in rule 37.2(3) or to dispense with intimation to a person mentioned in rule 37.2(3)(a) or (b); and
- (c) for any answers to the minute to be lodged in process within such period as the sheriff thinks fit.

(3) An application under section 4(3) of the Act of 1977 (person interested seeking determination or appointment not sought by applicant for variation order) shall be made by lodging answers containing a crave for the determination or appointment sought.

(4) A person lodging answers containing a crave under paragraph (3) shall, as well as sending a copy of the answers to the minuter—

- (a) send a copy of the answers by registered post or the first class recorded delivery service to each person on whom service or intimation of the minute was ordered; and
- (b) lodge in process the Post Office receipt or certificate of posting of those answers.

#### *Appointment of judicial factors*

37.6. (1) The Act of Sederunt (Judicial Factors Rules) 1992 <sup>F140</sup> shall apply to an application for the appointment of a judicial factor under section 2(2)(c) or section 4(2) of the Act of 1977 as it applies to a petition for the appointment of a judicial factor.

(2) In the application of rule 37.5 (applications for variation or recall of decree) to an application under section 4(1) of the Act of 1977 in a cause in which variation or

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recall of the appointment of a judicial factor is sought, for references to a minute there shall be substituted references to a note.

**Textual Amendments**

**F140** S.I. 1992/272.

**CHAPTER 38** **S**

**EUROPEAN COURT**

*Interpretation of this Chapter*

38.1. (1) In this Chapter—

“appeal” includes an application for leave to appeal;

“the European Court” means the Court of Justice of the European Communities;

“reference” means a reference to the European Court for—

- (a) a preliminary ruling under Article [<sup>F141</sup>234] of the E.E.C. Treaty, Article 150 of the Euratom Treaty, or Article 41 of the E.C.S.C. Treaty; or
- (b) a ruling on the interpretation of the Conventions, as defined in section 1(1) of the <sup>M57</sup>Civil Jurisdiction and Judgments Act 1982, under Article 3 of Schedule 2 to that Act.

(2) The expressions “E.E.C. Treaty”, “Euratom Treaty” and “E.C.S.C. Treaty” have the meanings assigned respectively in Schedule 1 to the <sup>M58</sup>European Communities Act 1972.

**Textual Amendments**

**F141** Word in *Sch. 1 rule 38.1(1)(a)* substituted (2.10.2000) by *S.S.I. 2000/239, para. 3(1)(21)*

**Marginal Citations**

**M57** 1982 c.27; *section 1(1)* was amended by section 2 of, and Schedule 2 by section 3 of, and Schedule 2 to, the *Civil Jurisdiction and Judgments Act 1991 (c.12)*.

**M58** 1972 c.68.

*Applications for reference*

38.2. (1) A reference may be made by the sheriff of his own motion or on the motion of a party.

<sup>F142</sup>(2) . . . . .

**Textual Amendments**

**F142** *Sch. 1 rule 38.2(2)* omitted (2.10.2000) by virtue of *S.S.I. 2000/239, para. 3(1)(22)*

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### *Preparation of case for reference*

38.3. (1) Where the sheriff decides that a reference shall be made, he shall continue the cause for that purpose and, within 4 weeks after the date of that continuation, draft a reference.

[<sup>F143</sup>(1A) Except in so far as the sheriff may otherwise direct, a reference shall be prepared in accordance with Form E1, having regard to the guidance set out in the <sup>M59</sup>Notes for Guidance issued by the Court of Justice of the European Communities.]

- (2) On the reference being drafted, the sheriff clerk shall send a copy to each party.
- (3) Within 4 weeks after the date on which copies of the draft have been sent to parties, each party may—
  - (a) lodge with the sheriff clerk, and
  - (b) send to every other party,
 a note of any adjustments he seeks to have made in the draft reference.
- (4) Within 14 days after the date on which any such note of adjustments may be lodged, the sheriff, after considering any such adjustments, shall make and sign the reference.
- (5) The sheriff clerk shall forthwith intimate the making of the reference to each party.

#### **Textual Amendments**

**F143** Sch. 1 rule 38.3(1A) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(23)

#### **Marginal Citations**

**M59** The Notes for Guidance are reproduced in the Parliament House Book.

### *Sist of cause*

- 38.4. (1) Subject to paragraph (2), on a reference being made, the cause shall, unless the sheriff when making such a reference otherwise orders, be sisted until the European Court has given a preliminary ruling on the question referred to it.
- (2) The sheriff may recall a sist made under paragraph (1) for the purpose of making an interim order which a due regard to the interests of the parties may require.

### *Transmission of reference*

- 38.5. (1) Subject to paragraph (2), a copy of the reference, certified by the sheriff clerk, shall be transmitted by the sheriff clerk to the Registrar of the European Court.
- (2) Unless the sheriff otherwise directs, a copy of the reference shall not be sent to the Registrar of the European Court where an appeal against the making of the reference is pending.
- (3) For the purpose of paragraph (2), an appeal shall be treated as pending—
  - (a) until the expiry of the time for making that appeal; or
  - (b) where an appeal has been made, until that appeal has been determined.



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## [<sup>F144</sup>CHAPTER 39 S

### PROVISIONS IN RELATION TO CURATORS AD LITEM

#### Textual Amendments

**F144** Sch. 1 Ch. 39 (rule 39.1) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(24)

#### *Fees and outlays of curators ad litem in respect of children*

<sup>F145</sup>39.(1) This rule applies to any civil proceedings whether or not the child is a party to the action.

(2) In an action where the sheriff appoints a curator *ad litem* to a child, the pursuer shall in the first instance, unless the court otherwise directs, be responsible for the fees and outlays of the curator *ad litem* incurred during the period from his appointment until the occurrence of any of the following events:–

- (a) he lodges a minute stating that he does not intend to lodge defences or to enter the process;
- (b) he decides to instruct the lodging of defences or a minute adopting defences already lodged; or
- (c) the discharge, before the occurrence of the events mentioned in sub paragraphs (a) and (b), of the curator.]

#### Textual Amendments

**F145** Sch. 1 Ch. 39 (rule 39(1) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(24)

## [<sup>F146</sup>CHAPTER 40 S

### COMMERCIAL ACTIONS

#### Textual Amendments

**F146** Ch. 40 (rules 40.1 - 40.17) inserted (1.3.2001) by S.S.I. 2001/8, para. 2(5)

#### *Application and interpretation of this Chapter*

40.1. (1) This Chapter applies to a commercial action.

(2) In this Chapter–

- (a) “commercial action” means–an action arising out of, or concerned with, any transaction or dispute of a commercial or business nature including, but not limited to, actions relating to–
  - (i) the construction of a commercial document;
  - (ii) the sale or hire purchase of goods;
  - (iii) the export or import of merchandise;
  - (iv) the carriage of goods by land, air or sea;

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- (v) insurance;
- (vi) banking;
- (vii) the provision of services;
- (viii) a building, engineering or construction contract; or
- (ix) a commercial lease; and
- (b) “commercial action” does not include an action in relation to consumer credit transactions.

- (3) A commercial action may be raised only in a sheriff court where the Sheriff Principal for the sheriffdom has directed that the procedure should be available.

#### *Proceedings before a nominated sheriff*

- 40.2. All proceedings in a commercial action shall be brought before—
- (a) a sheriff of the sheriffdom nominated by the Sheriff Principal; or
  - (b) where a nominated sheriff is not available, any other sheriff of the sheriffdom.

#### *Procedure in commercial actions*

- 40.3. (1) In a commercial action the sheriff may make such order as he thinks fit for the progress of the case in so far as not inconsistent with the provisions in this Chapter.
- (2) Where any hearing is continued, the reason for such continuation shall be recorded in the interlocutor.

#### *Election of procedure for commercial actions*

- 40.4. The pursuer may elect to adopt the procedure in this Chapter by bringing an action in Form G1A.

#### *Transfer of action to be a commercial action*

- 40.5. (1) In an action within the meaning of rule 40.1(2) in which the pursuer has not made an election under rule 40.4, any party may apply by motion at any time to have the action appointed to be a commercial action.
- (2) An interlocutor granted under paragraph (1) shall include a direction as to further procedure.

#### *Appointment of a commercial action as an ordinary cause*

- 40.6. (1) At any time before, or at the Case Management Conference, the sheriff shall appoint a commercial action to proceed as an ordinary cause—
- (a) on the motion of a party where—
    - (i) detailed pleadings are required to enable justice to be done between the parties; or
    - (ii) any other circumstances warrant such an order being made; or
  - (b) on the joint motion of parties.

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- (2) If a motion to appoint a commercial action to proceed as an ordinary action is refused, no subsequent motion to appoint the action to proceed as an ordinary cause shall be considered except on a material change of circumstances.
- (3) Where the sheriff orders that a commercial action shall proceed as an ordinary cause the interlocutor granting such shall prescribe—
  - (a) a period of adjustment, if appropriate; and
  - (b) the date, time and place for any options hearing fixed.
- (4) In determining what order to make in deciding that a commercial action proceed as an ordinary cause the sheriff shall have regard to the periods prescribed in rule 9.2.

#### *Special requirements for initial writ in a commercial action*

- 40.7. (1) Where the construction of a document is the only matter in dispute no pleadings or pleas-in-law require to be included in the initial writ.
- (2) There shall be appended to an initial writ in Form G1A a list of the documents founded on or adopted as incorporated in the initial writ.

#### *Notice of Intention to Defend*

- 40.8. (1) Where the defender intends to—
  - (a) challenge the jurisdiction of the court;
  - (b) state a defence; or
  - (c) make a counterclaim,he shall, before the expiry of the period of notice lodge with the sheriff clerk a notice of intention to defend in Form O7 and shall, at the same time, send a copy to the pursuer.
- (2) The lodging of a notice of intention to defend shall not imply acceptance of the jurisdiction of the court.

#### *Defences*

- 40.9. (1) Where a notice of intention to defend has been lodged, the defender shall lodge defences within 7 days after the expiry of the period of notice.
- (2) There shall be appended to the defences a list of the documents founded on or adopted as incorporated in the defences.
- (3) Subject to the requirement that each article of condescendence in the initial writ need not be admitted or denied, defences shall be in the form of answers that allow the extent of the dispute to be identified and shall have appended a note of the pleas in law of the defender.

#### *Fixing date for Case Management Conference*

- 40.10. (1) On the lodging of defences, the sheriff clerk shall fix a date and time for a Case Management Conference, which date shall be on the first suitable court day occurring not sooner than 14 days, nor later than 28 days after the date of expiry of the period of notice.

*Status: Point in time view as at 04/04/2005. This version of this part contains provisions that are not valid for this point in time.*

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- (2) On fixing the date for the Case Management Conference, the sheriff clerk shall—
  - (a) forthwith intimate to the parties the date and time of the Case Management Conference; and
  - (b) prepare and sign an interlocutor recording that information.
- (3) The fixing of the date of the Case Management Conference shall not affect the right of a party to make application by motion, to the court.

*Applications for summary decree in a commercial action*

- 40.11. Where a pursuer, in terms of rule 17.2(1) (applications for summary decree), or a defender in terms of rule 17.3(1) (application of summary decree to counterclaims), applies for summary decree in a commercial action, the period of notice mentioned in rule 17.2(3) shall be 48 hours.

*Case Management Conference*

- 40.12. (1) At the Case Management Conference in a commercial action the sheriff shall seek to secure the expeditious resolution of the action.
- (2) Parties shall be prepared to provide such information as the sheriff may require to determine—
- (a) whether, and to what extent, further specification of the claim and defences is required; and
  - (b) the orders to make to ensure the expeditious resolution of the action.
- (3) The orders the sheriff may make in terms of paragraph 2(b) may include but shall not be limited to—
- (a) the lodging of written pleadings by any party to the action which may be restricted to particular issues;
  - (b) the lodging of a statement of facts by any party which may be restricted to particular issues;
  - (c) allowing an amendment by a party to his pleadings;
  - (d) disclosure of the identity of witnesses and the existence and nature of documents relating to the action or authority to recover documents either generally or specifically;
  - (e) the lodging of documents constituting, evidencing or relating to the subject matter of the action or any invoices, correspondence or similar documents;
  - (f) the exchanging of lists of witnesses;
  - (g) the lodging of reports of skilled persons or witness statements;
  - (h) the lodging of affidavits concerned with any of the issues in the action;
  - (i) the lodging of notes of arguments setting out the basis of any preliminary plea;
  - (j) fixing a debate or proof, with or without any further preliminary procedure, to determine the action or any particular aspect thereof;
  - (k) the lodging of joint minutes of admission or agreement;
  - (l) recording admissions made on the basis of information produced; or
  - (m) any order which the sheriff thinks will result in the speedy resolution of the action (including the use of alternative dispute resolution), or requiring the attendance of parties in person at any subsequent hearing.

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- (4) In making any order in terms of paragraph (3) the sheriff may fix a period within which such order shall be complied with.
- (5) The sheriff may continue the Case Management Conference to a specified date where he considers it necessary to do so—
  - (a) to allow any order made in terms of paragraph (3) to be complied with; or
  - (b) to advance the possibility of resolution of the action.
- (6) Where the sheriff makes an order in terms of paragraph (3) he may ordain the pursuer to—
  - (a) make up a record; and
  - (b) lodge that record in process,within such period as he thinks fit.

#### *Lodging of productions*

- 40.13. Prior to any proof or other hearing at which the documents listed in terms of rules 40.7(2) and 40.9(2) are to be referred to parties shall, in addition to lodging the productions in terms of rule 21.1, prepare, for the use of the sheriff, a working bundle in which the documents are arranged chronologically or in another appropriate order.

#### *Hearing for further procedure*

- 40.14. At any time before final judgement, the sheriff may—
  - (a) of his own motion or on the motion of any party, fix a hearing for further procedure; and
  - (b) make such other order as he thinks fit.

#### *Failure to comply with rule or order of sheriff*

- 40.15. Any failure by a party to comply timeously with a provision in this Chapter or any order made by the sheriff in a commercial action shall entitle the sheriff, of his own motion—
  - (a) to refuse to extend any period for compliance with a provision in these Rules or an order of the court;
  - (b) to dismiss the action or counterclaim, as the case may be, in whole or in part;
  - (c) to grant decree in respect of all or any of the craves of the initial writ or counterclaim, as the case may be; or
  - (d) to make an award of expenses,as he thinks fit.

#### *Determination of action*

- 40.16. It shall be open to the sheriff, at the end of any hearing, to restrict any interlocutor to a finding.

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### *Parts of Process*

- 40.17. All parts of process lodged in a commercial action shall be clearly marked “Commercial Action”.]

## [<sup>F147</sup>CHAPTER 41 S

### PROTECTION FROM ABUSE (SCOTLAND) ACT 2001

#### **Textual Amendments**

**F147** *Sch. 1 Ch. 41* inserted (8.3.2002) by Act of Sederunt (Ordinary Cause Rules) Amendment (Applications under the Protection from Abuse (Scotland) Act 2001) 2002 (*S.S.I. 2002/7*), {para. 2(2)}

### *Interpretation*

- 41.1. (1) In this Chapter a section referred to by number means the section so numbered in the Protection from Abuse (Scotland) Act 2001.
- (2) Words and expressions used in this Chapter which are also used in the Protection from Abuse (Scotland) Act 2001 have the same meaning as in that Act.

### *Attachment of power of arrest to interdict*

- 41.2. (1) An application under section 1(1) (application for attachment of power of arrest to interdict)–
- (a) shall be made in the crave in the initial writ, defences or counterclaim in which the interdict to which it relates is applied for, or, if made after the application for interdict, by motion in the process of the action in which the interdict was sought [<sup>F148</sup>, or by minute, with answers if appropriate, should the sheriff so order]; and
  - (b) shall be intimated to the person against whom the interdict is sought or was obtained.
- (2) Where the sheriff attaches a power of arrest under section 1(2) (order attaching power of arrest) the following documents shall be served along with the power of arrest in accordance with section 2(1) (documents to be served along with power of arrest):–
- (a) a copy of the application for interdict;
  - (b) a copy of the interlocutor granting interdict; and
  - (c) where the application to attach the power of arrest was made after the interdict was granted, a copy of the certificate of service of the interdict.
- (3) After the power of arrest has been served, the following documents shall be delivered by the person who obtained the power to the chief constable in accordance with section 3(1) (notification to police):–
- (a) a copy of the application for interdict;
  - (b) a copy of the interlocutor granting interdict;
  - (c) a copy of the certificate of service of the interdict; and
  - (d) where the application to attach the power of arrest was made after the interdict was granted–

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- (i) a copy of the application for the power of arrest;
- (ii) a copy of the interlocutor granting it; and
- (iii) a copy of the certificate of service of the power of arrest and the documents that required to be served along with it in accordance with section 2(1).

#### Textual Amendments

**F148** Words in Sch. 1 rule 41.2(1)(a) inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(13)

#### *Extension or recall of power of arrest*

- 41.3. (1) An application under either of the following provisions shall be made by minute in the process of the action in which the power of arrest was attached:–
- (a) section 2(3) (extension of duration of power of arrest);
  - (b) section 2(7) (recall of power of arrest).
- (2) Where the sheriff extends the duration of, or recalls, a power of arrest, the person who obtained the extension or recall must deliver a copy of the interlocutor granting the extension or recall in accordance with section 3(1).

#### *Documents to be delivered to chief constable in relation to recall or variation of interdict*

- 41.4. Where an interdict to which a power of arrest has been attached under section 1(2) is varied or recalled, the person who obtained the variation or recall must deliver a copy of the interlocutor varying or recalling the interdict in accordance with section 3(1).

#### *Certificate of delivery of documents to chief constable*

- 41.5.— Where a person is in any circumstances required to comply with section 3(1) he shall, after such compliance, lodge in process a certificate of delivery in Form PA1.]

## [<sup>F149</sup>CHAPTER 42

#### Textual Amendments

**F149** Sch. 1 Ch. 42 inserted (20.8.2004) by Act of Sederunt (Ordinary Cause Rules) Amendment (Competition Appeal Tribunal) 2004 (S.S.I. 2004/350), art. 2

## COMPETITION APPEAL TRIBUNAL

#### *Interpretation*

- 42.1. In this Chapter–  
“the 1998 Act” means the Competition Act 1998 <sup>F150</sup>; and

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“the Tribunal” means the Competition Appeal Tribunal established by section 12 of the Enterprise Act 2002.

**Textual Amendments**

**F150** 1998 c. 41.

*Transfer of proceedings to the Tribunal*

- 42.2. (1) A party in proceedings for a monetary claim to which section 47A of the 1998 Act<sup>F151</sup> applies may apply by motion to the sheriff for an order transferring the proceedings, or any part of them, to the Tribunal.
- (2) Where the sheriff orders that such proceedings (or any part of them) are transferred to the Tribunal, the sheriff clerk shall, within 7 days from the date of such order—
- (a) transmit the process (or the appropriate part) to the clerk of the Tribunal;
  - (b) notify each party to the proceedings in writing of the transmission under sub paragraph (a); and
  - (c) certify, by making an appropriate entry on the interlocutor sheet, that he has made all notifications required under sub paragraph (b).
- (3) Transmission of the process under paragraph (2)(a) shall be valid notwithstanding any failure by the sheriff clerk to comply with paragraph (2)(b) and (c).]

**Textual Amendments**

**F151** Section 47A was inserted by the Enterprise Act 2002, section 18.

VALID FROM 16/06/2006

[<sup>F152</sup>CHAPTER 43 S

CAUSES RELATING TO ARTICLES 81 AND 82 OF THE  
TREATY ESTABLISHING THE EUROPEAN COMMUNITY

**Textual Amendments**

**F152** Sch. 1 Ch. 43 inserted (16.6.2006) by Act of Sederunt (Ordinary Cause Rules) Amendment (Causes Relating to Articles 81 and 82 of the Treaty Establishing the European Community) 2006 (S.S.I. 2006/293), art. 2

*Intimation of actions to the Office of Fair Trading*

- 43.1 (1) In this rule—
- “the Treaty” means the Treaty establishing the European Community;
  - and
  - “the OFT” means the Office of Fair Trading.



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- (2) In an action where an issue under Article 81 or 82 of the Treaty is raised—
- (a) by the pursuer in the initial writ;
  - (b) by the defender in the defences;
  - (c) by any party in the pleadings;
- intimation of the action shall be given to the OFT by the party raising the issue by a notice of intimation in Form OFT1.
- (3) The initial writ, defences or pleadings in which the issue under Article 81 or 82 of the Treaty is raised shall include a crave for warrant for intimation to the OFT.
- (4) A certified copy of an interlocutor granting a warrant under paragraph (3) shall be sufficient authority for the party to intimate by notice in Form OFT1.
- (5) A notice of intimation under paragraph (2) shall be on a period of notice of 21 days unless the sheriff otherwise orders; but the sheriff shall not order a period of notice of less than 2 days.
- (6) There shall be attached to the notice of intimation—
- (a) a copy of the initial writ, defences or pleadings (including any adjustments and amendments), as the case may be;
  - (b) a copy of the interlocutor allowing intimation of the notice; and
  - (c) where the pleadings have not been amended in accordance with any minute of amendment, a copy of that minute.]

VALID FROM 03/11/2006

[<sup>F153</sup>CHAPTER 44 S

EQUALITY ENACTMENTS

**Textual Amendments**

**F153** Sch. 1 Ch. 44 inserted (3.11.2006) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Equality Act 2006 etc.) 2006 (S.S.I. 2006/509), art. 2(3)

*Application and interpretation*

- 44.1. (1) This Chapter applies to claims under the equality enactments.
- (2) In this Chapter, “claims under the equality enactments” means proceedings in reparation for breach of statutory duty under any of the following enactments:—
- (a) Sex Discrimination Act 1975;
  - (b) Race Relations Act 1976;
  - (c) Disability Discrimination Act 1995;
  - (d) Equality Act 2006.

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### *Relevant Commission*

- 44.2. (1) The pursuer shall send a copy of the initial writ to the relevant Commission by registered or recorded delivery post.
- (2) The relevant Commission is–
- (a) for proceedings under the Sex Discrimination Act 1975, the Equal Opportunities Commission;
  - (b) for proceedings under the Race Relations Act 1976, the Commission for Racial Equality;
  - (c) for proceedings under the Disability Discrimination Act 1995, the Disability Rights Commission;
  - (d) for proceedings under the Equality Act 2006, the Commission for Equality and Human Rights.

### *Assessor*

- 44.3. (1) The sheriff may, of his own motion or on the motion of any party, appoint an assessor.
- (2) The assessor shall be a person who the sheriff considers has special qualifications to be of assistance in determining the cause.

### *National security*

- 44.5. (1) Where, on a motion under paragraph (3) or of his own motion, the sheriff considers it expedient in the interests of national security, he may–
- (a) exclude from all or part of the proceedings–
    - (i) the pursuer;
    - (ii) the pursuer's representatives;
    - (iii) any assessors;
  - (b) permit a pursuer or representative who has been excluded to make a statement to the court before the commencement of the proceedings or the part of the proceedings, from which he is excluded;
  - (c) take steps to keep secret all or part of the reasons for his decision in the proceedings.
- (2) The sheriff clerk shall, on the making of an order under paragraph (1) excluding the pursuer or his representatives, notify the Advocate General for Scotland of that order.
- (3) A party may apply by motion for an order under paragraph (1).
- (4) The steps referred to in paragraph (1)(c) may include the following:–
- (a) directions to the sheriff clerk; and
  - (b) orders requiring any person appointed to represent the interests of the pursuer in proceedings from which the pursuer or his representatives are excluded not to communicate (directly or indirectly) with any persons (including the excluded pursuer)–
    - (i) on any matter discussed or referred to;
    - (ii) with regard to any material disclosed,

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during or with reference to any part of the proceedings from which the pursuer or his representatives are excluded.

- (5) Where the sheriff has made an order under paragraph (4)(b), the person appointed to represent the interests of the pursuer may apply by motion for authority to seek instructions from or otherwise communicate with an excluded person.]

VALID FROM 01/11/2007

## [<sup>F154</sup>CHAPTER 45 S

### VULNERABLE WITNESSES (SCOTLAND) ACT 2004

#### Textual Amendments

**F154** Sch. 1 Ch. 45 inserted (1.11.2007) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2007 (S.S.I. 2007/463), {art. 2(13)}

#### Interpretation

- 45.1. In this Chapter–  
“child witness notice” has the meaning given in section 12(2) of the Act of 2004;  
“review application” means an application for review of arrangements for vulnerable witnesses pursuant to section 13 of the Act of 2004;  
“vulnerable witness application” has the meaning given in section 12(6) of the Act of 2004.

#### Child Witness Notice

- 45.2. A child witness notice lodged in accordance with section 12(2) of the Act of 2004 shall be in Form G19.

#### Vulnerable Witness Application

- 45.3. A vulnerable witness application lodged in accordance with section 12(6) of the Act of 2004 shall be in Form G20.

#### Intimation

- 45.4. (1) The party lodging a child witness notice or vulnerable witness application shall intimate a copy of the child witness notice or vulnerable witness application to all the other parties to the proceedings and complete a certificate of intimation.  
(2) A certificate of intimation referred to in paragraph (1) shall be in Form G21 and shall be lodged with the child witness notice or vulnerable witness application.

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#### *Procedure on lodging child witness notice or vulnerable witness application*

- 45.5. (1) On receipt of a child witness notice or vulnerable witness application, the sheriff may–
- (a) make an order under section 12(1) or (6) of the Act of 2004 without holding a hearing;
  - (b) require further information from any of the parties before making any further order;
  - (c) fix a date for a hearing of the child witness notice or vulnerable witness application.
- (2) The sheriff may, subject to any statutory time limits, make an order altering the date of the proof or other hearing at which the child or vulnerable witness is to give evidence and make such provision for intimation of such alteration to all parties concerned as he deems appropriate.
- (3) An order fixing a hearing for a child witness notice or vulnerable witness application shall be intimated by the sheriff clerk–
- (a) on the day the order is made; and
  - (b) in such manner as may be prescribed by the sheriff,
- to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.

#### *Review of arrangements for vulnerable witnesses*

- 45.6. (1) A review application shall be in Form G22.
- (2) Where the review application is made orally, the sheriff may dispense with the requirements of paragraph (1).

#### *Intimation of review application*

- 45.7. (1) Where a review application is lodged, the applicant shall intimate a copy of the review application to all other parties to the proceedings and complete a certificate of intimation.
- (2) A certificate of intimation referred to in paragraph (1) shall be in Form G23 and shall be lodged together with the review application.

#### *Procedure on lodging a review application*

- 45.8. (1) On receipt of a review application, the sheriff may–
- (a) if he is satisfied that he may properly do so, make an order under section 13(2) of the Act of 2004 without holding a hearing or, if he is not so satisfied, make such an order after giving the parties an opportunity to be heard;
  - (b) require of any of the parties further information before making any further order;
  - (c) fix a date for a hearing of the review application.
- (2) The sheriff may, subject to any statutory time limits, make an order altering the date of the proof or other hearing at which the child or vulnerable witness is to give

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evidence and make such provision for intimation of such alteration to all parties concerned as he deems appropriate.

- (3) An order fixing a hearing for a review application shall be intimated by the sheriff clerk—
- (a) on the day the order is made; and
  - (b) in such manner as may be prescribed by the sheriff,
- to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.

#### *Determination of special measures*

- 45.9. When making an order under section 12(1) or (6) or 13(2) of the Act of 2004 the sheriff may, in light thereof, make such further orders as he deems appropriate in all the circumstances.

#### *Intimation of an order under section 12(1) or (6) or 13(2)*

- 45.10. An order under section 12(1) or (6) or 13(2) of the Act of 2004 shall be intimated by the sheriff clerk—
- (a) on the day the order is made; and
  - (b) in such manner as may be prescribed by the sheriff,
- to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.

#### *Taking of evidence by commissioner*

- 45.11. (1) An interlocutor authorising the special measure of taking evidence by a commissioner shall be sufficient authority for the citing the witness to appear before the commissioner.
- (2) At the commission the commissioner shall—
- (a) administer the oath de fidei administratione to any clerk appointed for the commission; and
  - (b) administer to the witness the oath in Form G14, or where the witness elects to affirm, the affirmation in Form G15.
- (3) The commission shall proceed without interrogatories unless, on cause shown, the sheriff otherwise directs.

#### *Commission on interrogatories*

- 45.12. (1) Where interrogatories have not been dispensed with, the party citing or intending to cite the vulnerable witness shall lodge draft interrogatories in process.
- (2) Any other party may lodge cross-interrogatories.
- (3) The interrogatories and cross-interrogatories, when adjusted, shall be extended and returned to the sheriff clerk for approval and the settlement of any dispute as to their contents by the sheriff.
- (4) The party who cited the vulnerable witness shall—

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- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments), the approved interrogatories and any cross-interrogatories and a certified copy of the interlocutor of his appointment;
- (b) instruct the clerk; and
- (c) be responsible in the first instance for the fee of the commissioner and his clerk.

(5) The commissioner shall, in consultation with the parties, fix a diet for the execution of the commission to examine the witness.

*Commission without interrogatories*

45.13. Where interrogatories have been dispensed with, the party citing or intending to cite the vulnerable witness shall—

- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment;
- (b) fix a diet for the execution of the commission in consultation with the commissioner and every other party;
- (c) instruct the clerk; and
- (d) be responsible in the first instance for the fees of the commissioner and his clerk.

*Lodging of video record and documents*

45.14. (1) Where evidence is taken on commission pursuant to an order made under section 12(1) or (6) or 13(2) of the Act of 2004 the commissioner shall lodge the video record of the commission and relevant documents with the sheriff clerk.

(2) On the video record and any documents being lodged the sheriff clerk shall—

- (a) note—
  - (i) the documents lodged;
  - (ii) by whom they were lodged; and
  - (iii) the date on which they were lodged, and
- (b) intimate what he has noted to all parties concerned.

*Custody of video record and documents*

45.15. (1) The video record and documents referred to in rule 45.14 shall, subject to paragraph (2), be kept in the custody of the sheriff clerk.

(2) Where the video record of the evidence of a witness is in the custody of the sheriff clerk under this rule and where intimation has been given to that effect under rule 45.14(2), the name and address of that witness and the record of his evidence shall be treated as being in the knowledge of the parties; and no party shall be required, notwithstanding any enactment to the contrary—

- (a) to include the name of that witness in any list of witnesses; or
- (b) to include the record of his evidence in any list of productions.

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*Application for leave for party to be present at the commission*

45.16. An application for leave for a party to be present in the room where the commission proceedings are taking place shall be by motion.]

**Status:**

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