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## SCHEDULES

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

#### 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]

#### CHAPTER 33

##### 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>F1</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>Martimonial 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>F2</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>F3</sup> . . .

[<sup>F4</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>F5</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>F6</sup>section 11 order] sought) and, in relation to proceedings in another jurisdiction, Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973 <sup>F7</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

**F1** Rule 33.1(1)(h) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 4(a)

**F2** 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)

**F3** Rule 33.1(2): definition of “child” omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 4(b)(ii)

**F4** Rule 33.1(2): definition of “local authority” substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 4(b)(iii)

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- F5** 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)**
- F6** Words in rule 33.1(3) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(c)
- F7** 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.
- (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).

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*[<sup>F8</sup>Averments where section 11 order sought]*

- 33.3. (1) A party to a family action, who makes an application in that [<sup>F9</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>F10</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>F10</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>F11</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**

- F8** Words in rule 33.3 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 5(a)  
**F9** Words in rule 33.3(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 5(b)  
**F10** Words in rule 33.3(1)(a)(2) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 5(c)  
**F11** 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.

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#### 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;

“maintenance assessment” has the meaning assigned in section 55 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 assessment under section 11 of that Act (maintenance assessments) is in force;
  - (ii) the date of the maintenance assessment;
  - (iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance assessment; 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 assessment 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 assessment under section 4, 6 or 7 of the Act of 1991 (applications for maintenance assessment); 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.

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- (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.

#### Marginal Citations

M9 1991 c.48.

#### *Warrants and forms for intimation*

- 33.7. (1) [<sup>F12</sup>Subject 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—
    - (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

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- (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>F13</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>F14</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 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>F15</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>F16</sup>initial] writ intimated to that authority;
- [<sup>F17</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>F18</sup> . . .
- (k) in an action where the pursuer makes an application for an order under the <sup>M12</sup>Act of 1981—



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- (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>F19</sup>; and]
- [<sup>F20</sup>(1) 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.
- (4) In a family action, where the pursuer—
- [<sup>F21</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>F22</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>F23</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

**F12** Words in [rule 33.7\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2167, para. 2, Sch., para. 6\(a\)\(i\)](#)



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- F13** Words in rule 33.7(1)(e)(iii) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 6(a)(iii)**
- F14** Words in rule 33.7(1)(f) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 6(a)(iv)**
- F15** Words in rule 33.7(1)(g) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 6(a)(v)**
- F16** Word in rule 33.7(1)(g) substituted (1.11.1996) by S.I. 1996/2445, **para. 3(45)(a)(i)**
- F17** Rule 33.7(1)(h) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 6(a)(vi)**
- F18** Word in rule 33.7(1)(j) omitted (1.11.1996) by S.I. 1996/2445, **para. 3(45)(a)(ii)**
- F19** Rule 33.7(1)(k): “; and” substituted for the full-stop (1.11.1996) by S.I. 1996/2445, **para. 3(45)(a)(iii)**
- F20** Rule 33.7(1)(l) inserted (1.11.1996) by S.I. 1996/2445, **para. 3(45)(a)(iv)**
- F21** 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)**
- F22** Words in rule 33.7(5) substituted (1.11.1996) by S.I. 1996/2445, **para. 3(45)(b)**
- F23** 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.
- 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 [F<sup>24</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) [F<sup>25</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.

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#### Textual Amendments

- F24** Words in rule 33.9 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 7(a)  
**F25** Words in rule 33.9(b) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 7(b)

#### *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>F26</sup>residence order] sought by non-parent resident in Scotland) or 33.7(4) ([<sup>F26</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—
- (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>F27</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>F28</sup>(4) Where, by virtue of [<sup>F29</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

- F26** Words in rule 33.12(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(a)  
**F27** Rule 33.12(3) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(c)  
**F28** Rule 33.12(3) renumbered as rule 33.12(4) (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(b)  
**F29** Words in rule 33.12(4) (as renumbered) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(d)

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*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,
- 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>F30</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.

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#### Textual Amendments

**F30** 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>F31</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 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

**F31** 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

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- (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>F32</sup>any notice] in Form G5 sent to him by the [<sup>F33</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.
- (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

**F32** Words in rule 33.16(3)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(47)(a)

**F33** Word in rule 33.16(3)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(47)(b)

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### *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.
- (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>F34</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.

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- (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

**F34** Rule 33.19 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 10

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

[<sup>F35</sup>33.19] 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.]

#### Textual Amendments

**F35** 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>F36</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.



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- (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>F37</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

**F36** Rule 33.21(1)(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 11(a)**

**F37** 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 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>F38</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

**F38** 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>F39</sup>33.20A. 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,

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- (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.

#### **Textual Amendments**

**F39** 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.

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### *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>F40</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**

**F40** 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.

### *Intimation to local authority before supervised [<sup>F41</sup>contact order]*

- 33.25. Where the sheriff, [<sup>F42</sup>at his own instance] or on the motion of a party, is considering making [<sup>F43</sup>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 [<sup>F44</sup>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 [<sup>F45</sup>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.

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#### Textual Amendments

- F41** Words in rule 33.25 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(a)
- F42** Words in rule 33.25 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(b)
- F43** Words in rule 33.25 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(c)
- F44** Words in rule 33.25 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(d)
- F45** 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) [<sup>F46</sup>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; [<sup>F47</sup>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

- F46** Words in rule 33.26(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 15(a)
- F47** 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.

## 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>F48</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;

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- (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.

#### Textual Amendments

**F48** 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 [F49] section 11 order]*

- 33.31. (1) Where no notice of intention to defend has been lodged in a family action for [F50] a section 11 order], any proceedings in the cause shall be dealt with by the sheriff in chambers.

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- (2) In an action to which paragraph (1) applies, decree may be pronounced after such inquiry as the sheriff thinks fit.

**Textual Amendments**

- F49** Words in rule 33.31 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 17(a)  
**F50** 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.

*Disapplication of Chapter 15*

- 33.33. [F51Other 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 [F52, or to a family action in so far as it proceeds as undefended].

**Textual Amendments**

- F51** Words in rule 33.33 inserted (1.11.1996) by S.I. 1996/2445, para. 3(48)(a)  
**F52** 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) [F53a section 11 order]; or
  - (c) an order—
    - (i) under section 16(1)(b) or (3) of the M22Act 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

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- (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.

[<sup>F54</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.]

#### Textual Amendments

- F53** Words in rule 33.34(1)(b)(iii) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 18(a)  
**F54** 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>F55</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.



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- (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**

**F55** Word in rule 33.37(1)(c) substituted (1.11.1996) by S.I. 1996/2445, para. 3(49)

*PART IV*

*APPLICATIONS AND ORDERS RELATING TO CHILDREN IN CERTAIN ACTIONS*

*Application and interpretation of this Part*

33.38. <sup>F56</sup> . . . This Part applies to an action of divorce or separation.

<sup>F57</sup>(2) . . . . .

**Textual Amendments**

**F56** 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)

**F57** 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>F58</sup>a section 11 order]; and
  - (b) an order for aliment for a child.

**Textual Amendments**

**F58** Words in rule 33.39(2)(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 20

<sup>F59</sup>33.40. . . . .

**Textual Amendments**

**F59** Rule 33.40 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 21

<sup>F60</sup>33.41. . . . .

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**Textual Amendments**

**F60** Rule 33.41 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 22

<sup>F61</sup>33.42. . . . .

**Textual Amendments**

**F61** Rule 33.42 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 23

*Applications in depending actions by motion*

[<sup>F62</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**

**F62** Rule 33.43 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 24

*Applications after decree relating to [<sup>F63</sup>a section 11 order]*

33.44(1) An application after final decree for, or for the variation or recall of, a section 11 order [<sup>F65</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**

**F63** Words in rule 33.44 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 25(a)

**F64** Rule 33.44(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 25(b)

**F65** 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.

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*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.
- (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).

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### 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
  - (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>F66</sup>(3) An application under—
- (a) paragraph (5) of section 12A of the Act of 1985 <sup>F67</sup> (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),

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

#### Textual Amendments

- F66** Rule 33.51(3) inserted (1.11.1996) by S.I. 1996/2445, para. 3(50)  
**F67** Section 12A of the Family Law (Scotland) Act 1985 (c.37) was inserted by the Pensions Act 1995 (c.26), section 167(3).

#### *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 [F68 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 [F69 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.
- [F70] (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.]
- [F71] (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**

- F68** Words in rule 33.55 heading inserted (1.11.1996) by S.I. 1996/2445, para. 3(51)(a)  
**F69** Word in rule 33.55(3)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(51)(b)  
**F70** Rule 33.55(4) inserted (1.11.1996) by S.I. 1996/2445, para. 3(51)(d)  
**F71** 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.



*Status: Point in time view as at 02/10/2000.*

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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>F72</sup>PART IX

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

#### Textual Amendments

**F72** 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>F73</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

**F73** 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>F74</sup>a section 11 order] shall be made—
- (a) by an action for [<sup>F75</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

**F74** Words in rule 33.61 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 28(a)

**F75** 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>F76</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>F77</sup>(e) .....]

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**Textual Amendments**

- F76** Rule 33.62 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 29
- F77** 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>F78</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**

- F78** 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>F79</sup>33.64. ....

**Textual Amendments**

- F79** Rule 33.64 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 31

*Applications after decree*

- 33.65<sup>80</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**

- F80** 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.

*Status: Point in time view as at 02/10/2000.*

*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)*

#### **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>F81</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**

**F81** 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>F82</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>F83</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

- F82** Section 15(4) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 64(b).
- F83** 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 [<sup>F84</sup>F31] 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

**F84** 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—
- (a) an extract or certified copy of the marriage certificate; and
  - (b) 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—
- (a) in an application relying on the facts in section 1(2)(d) of the Act of 1976 shall be in Form F34; and
  - (b) in an application relying on the facts in section 1(2)(e) of the Act of 1976 shall be in Form F35.
- [<sup>F85</sup>(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).]

[<sup>F86</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

**F85** Sch. 1 rule 33.76(4) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(17)(a)

**F86** 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 [<sup>F87</sup>paragraph (2)].

#### **Textual Amendments**

**F87** 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>F88</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;  
“maintenance assessment” has the meaning assigned in section [F8954] of the Act of 1991.

#### Textual Amendments

**F88** Rule 33.88: “-(1)” at the beginning is omitted (1.11.1996) by S.I. 1996/2445, para. 3(56)(a)

**F89** 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 assessments*

- 33.90. The sheriff clerk shall, on receiving notification that a maintenance assessment 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.

#### *Effect of maintenance assessments on extracts relating to aliment*

- 33.91. (1) Where an order relating to aliment is affected by a maintenance assessment, any extract of that order issued by the sheriff clerk shall be endorsed with the following certificate:—

“A maintenance assessment 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 assessment was made)”.

- (2) Where an order relating to aliment has ceased to have effect on the making of a maintenance assessment, and that maintenance assessment 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)”.

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## <sup>F90</sup>PART XIV

### REFERRALS TO PRINCIPAL REPORTER

#### Textual Amendments

**F90** 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 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.]

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<sup>F91</sup>*PART XV*

*MANAGEMENT OF MONEY PAYABLE TO CHILDREN*

**Textual Amendments**

**F91** [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.

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