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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 638**

**Act of Sederunt (Ordinary Cause Rules)  
Amendment (Civil Partnership Act 2004) 2005**

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Ordinary Cause Rules) Amendment (Civil Partnership Act 2004) 2005, and shall come into force on 8th December 2005.

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

**Amendment of the Ordinary Cause Rules**

2.—(1) The Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907<sup>(1)</sup> are amended in accordance with sub paragraphs (2) and (3).

(2) After Chapter 33 (Family Actions) insert—

**“CHAPTER 33A**

**CIVIL PARTNERSHIP ACTIONS**

**PART I**

**GENERAL PROVISIONS**

**Interpretation of this Chapter**

**33A.1.**—(1) In this Chapter, “civil partnership action” means—

- (a) an action of dissolution of civil partnership;
- (b) an action of separation of civil partners;
- (c) an action or application for an order under Chapter 3 or Chapter 4 of Part 3 of the Act of 2004;
- (d) an application for a declarator or other order under section 127 of the Act of 2004;
- (e) an action or application for financial provision after overseas proceedings as provided for in Schedule 11 to the Act of 2004;

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

“the Act of 1985” means the Family Law (Scotland) Act 1985<sup>(2)</sup>;

“the Act of 1995” means the Children (Scotland) Act 1995<sup>(3)</sup>;

“the Act of 2004” means the Civil Partnership Act 2004<sup>(4)</sup>;

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(1) 1907 c. 51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445, S.S.I. 2000/239 and 408, 2001/8 and 144, 2002/7, 128 and 566, 2003/25 and 26, 2004/197 and 350 and 2005/20.

(2) 1985 c. 37.

(3) 1995 c. 36.

(4) 2004 c. 33.

- “civil partnership” has the meaning assigned in section 1(1) of the Act of 2004;
- “contact order” has the meaning assigned in section 11(2)(d) of the Act of 1995;
- “Gender Recognition Panel” is to be construed in accordance with Schedule 1 to the Gender Recognition Act 2004<sup>(5)</sup>;
- “interim gender recognition certificate” means the certificate issued under section 4 of the Gender Recognition Act 2004;
- “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(6)</sup>;
- “mental disorder” has the meaning assigned in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(7)</sup>;
- “order for financial provision” means, except in Part VII of this Chapter (financial provision after overseas proceedings as provided for in Schedule 11 to the Act of 2004), an order mentioned in section 8(1) of the Act of 1985;
- “parental responsibilities” has the meaning assigned in section 1(3) of the Act of 1995;
- “parental rights” has the meaning assigned in section 2(4) of the Act of 1995;
- “relevant interdict” has the meaning assigned in section 113(2) of the Act of 2004;
- “residence order” has the meaning assigned in section 11(2)(c) of the Act of 1995;
- “section 11 order” means an order under section 11 of the Act of 1995<sup>(8)</sup>.

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

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

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

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

- (a) whether to his knowledge any proceedings are continuing in Scotland or in any other country in respect of the civil partnership to which the initial writ relates or are capable of affecting its validity or subsistence; and
- (b) where such proceedings are continuing—
  - (i) the court, tribunal or authority before which the proceedings have been commenced;
  - (ii) the date of commencement;
  - (iii) the names of the parties;
  - (iv) the date, or expected date of any proof (or its equivalent) in the proceedings; and

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(5) 2004 c. 7.

(6) 1994 c. 39; section 2(2) was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

(7) 2003 asp 13.

(8) Section 11 was amended by S.S.I. 2005/42.

(v) such other facts as may be relevant to the question of whether or not the action before the sheriff should be sisted under Part XIII of this Chapter.

(3) Where—

- (a) such proceedings are continuing;
- (b) the action before the sheriff is defended; and
- (c) either—

- (i) the initial writ does not contain the statement referred to in paragraph (2)(a); or
- (ii) the particulars mentioned in paragraph (2)(b) as set out in the initial writ are incomplete or incorrect,

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

#### **Averments where section 11 order sought**

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

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

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

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

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

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

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

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

#### **Averments about maintenance orders**

**33A.5.** In a civil partnership action in which an order for aliment or periodical allowance is sought, or is sought to be varied or recalled, by any party, the pleadings of that party shall contain an averment stating whether and, if so, when and by whom, a maintenance order (within

the meaning of section 106 of the Debtors (Scotland) Act 1987<sup>(9)</sup> has been granted in favour of or against that party or of any other person in respect of whom the order is sought.

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

**33A.6.**—(1) In this rule—

“the Act of 1991” means the Child Support Act 1991<sup>(10)</sup>;

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

“crave relating to aliment” means—

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

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

(2) A civil partnership action containing a crave relating to aliment and to which section 8(6), (7), (8), or (10) of the Act of 1991<sup>(11)</sup> (top up maintenance orders) applies shall—

- (a) include averments stating, where appropriate—
  - (i) that a maintenance calculation under section 11 of that Act (maintenance calculations) is in force;
  - (ii) the date of the maintenance calculation;
  - (iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance calculation; and
  - (iv) the grounds on which the sheriff retains jurisdiction under section 8(6), (7), (8) or (10) of that Act; and
- (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the party intimating the making of the maintenance calculation referred to in sub paragraph (a).

(3) A civil partnership action containing a crave relating to aliment, and to which section 8(6), (7), (8) or (10) of the Act of 1991 does not apply, shall include averments stating—

- (a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of that Act, is furth of the United Kingdom; or
- (b) that the child is not a child within the meaning of section 55 of that Act.

(4) A civil partnership action involving parties in respect of whom a decision has been made in any application, review or appeal under the Act of 1991 relating to any child of those parties, shall—

- (a) include averments stating that such a decision has been made and giving details of that decision; and
- (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the parties intimating that decision.

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(9) 1987 c. 18; section 106 was amended by the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedule 3, paragraph 7(3).

(10) 1991 c. 48.

(11) Section 8 was amended by S.I. 2003/192.

## **Warrants and forms for intimation**

**33A.7.**—(1) Subject to paragraphs (5) and (7), in the initial writ in a civil partnership action, the pursuer shall include a crave for a warrant for intimation—

- (a) in an action where the address of the defender is not known to the pursuer and cannot reasonably be ascertained, to—
  - (i) every person who was a child of the family (within the meaning of section 101(7) of the Act of 2004) and who has reached the age of 16 years, and
  - (ii) one of the next of kin of the defender who has reached that age,unless the address of such a person is not known to the pursuer and cannot reasonably be ascertained, and a notice of intimation in Form CP1 shall be attached to the copy of the initial writ intimated to any such person;
- (b) in an action where the defender is a person who is suffering from a mental disorder, to—
  - (i) those persons mentioned in sub paragraph (a)(i) and (ii), unless the address of such person is not known to the pursuer and cannot reasonably be ascertained; and
  - (ii) any person who holds the office of guardian, or continuing or welfare attorney to the defender under or by virtue of the Adults with Incapacity (Scotland) Act 2000(12),and a notice of intimation in Form CP2 shall be attached to the copy of the initial writ intimated to any such person;
- (c) in an action of dissolution of civil partnership or separation of civil partners where the sheriff may make a section 11 order in respect of a child—
  - (i) who is in the care of a local authority, to that authority and a notice of intimation in Form CP3 shall be attached to the initial writ intimated to that authority;
  - (ii) who, being a child of one party to the civil partnership, has been accepted as a child of the family by the other party to the civil partnership and who is liable to be maintained by a third party, to that third party, and a notice of intimation in Form CP3 shall be attached to the initial writ intimated to that third party; or
  - (iii) in respect of whom a third party in fact exercises care or control, to that third party, and a notice of intimation in Form CP4 shall be attached to the initial writ intimated to that third party;
- (d) in an action where the pursuer craves a section 11 order, to any parent or guardian of the child who is not a party to the action, and a notice of intimation in Form CP5 shall be attached to the initial writ intimated to any such parent or guardian;
- (e) in an action where the pursuer craves a residence order in respect of a child and he is—
  - (i) not a parent of that child; and
  - (ii) resident in Scotland when the initial writ is lodged,to the local authority within which area the pursuer resides, and a notice of intimation in Form CP6 shall be attached to the initial writ intimated to that authority;
- (f) in an action which includes a crave for a section 11 order, to the child to whom such an order would relate if not a party to the action, and a notice of intimation in Form CP7 shall be intimated to that child;

- (g) in an action where the pursuer makes an application for an order under section 8(1)(aa) of the Act of 1985(13) (transfer of property) and—
- (i) the consent of a third party to such a transfer is necessary by virtue of an obligation, enactment or rule of law, or
  - (ii) the property is subject to a security,
- to the third party or creditor, as the case may be, and a notice of intimation in Form CP8 shall be attached to the initial writ intimated to any such person;
- (h) in an action where the pursuer makes an application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions), to—
- (i) any third party in whose favour the transfer of, or transaction involving, the property is to be or was made, and
  - (ii) any other person having an interest in the transfer of, or transaction involving, the property,
- and a notice of intimation in Form CP9 shall be attached to the initial writ intimated to any such person;
- (i) in an action where the pursuer makes an application for an order under Chapter 3 of Part 3 of the Act of 2004, where the application is under section 102(1)(e), 102(4)(a), 103(1), 103(2), 104, 107 or 112 of that Act, and the entitled civil partner is a tenant or occupies the family home by permission of a third party, to the landlord or the third party, as the case may be and a notice of intimation in Form CP10 shall be attached to the initial writ intimated to any such person;
- (j) in an action where the pursuer makes an application for an order under section 8(1)(ba) of the Act of 1985(14) (orders under section 12A of the Act of 1985 for pension lump sum), to the person responsible for the pension arrangement, and a notice of intimation in Form CP11 shall be attached to the initial writ intimated to any such person; and
- (k) in an action where a pursuer makes an application for an order under section 8(1)(baa) of the Act of 1985(15) (pension sharing orders), to the person responsible for the pension arrangement and a notice of intimation in Form CP12 shall be attached to the initial writ intimated to any such person.

(2) Expressions used in paragraph (1)(i) which are also used in Chapter 3 of Part 3 of the Act of 2004 have the same meaning as in that Chapter.

(3) A notice of intimation under paragraph (1) shall be on a period of notice of 21 days unless the sheriff otherwise orders; but the sheriff shall not order a period of notice of less than 2 days.

(4) In a civil partnership action, where the pursuer—

- (a) craves a residence order in respect of a child;
- (b) is not a parent of the child, and
- (c) is not resident in Scotland when the initial writ is lodged for warranting,

he shall include a crave for an order for intimation in Form CP6 to such local authority as the sheriff thinks fit.

(5) Where the address of a person mentioned in paragraph (1)(c), (d), (f), (g), (h), (i), (j) or (k) is not known and cannot reasonably be ascertained, the pursuer shall include a crave in

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

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

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

the initial writ to dispense with intimation; and the sheriff may grant that crave or make such other order as he thinks fit.

(6) Where the identity or address of a person to whom intimation of a civil partnership action is required becomes known during the course of the action, the party who would have been required to insert a warrant for intimation to that person shall lodge a motion for a warrant for intimation to that person or to dispense with such intimation.

(7) Where a pursuer considers that to order intimation to a child under paragraph (1)(f) is inappropriate, he shall—

- (a) include a crave in the initial writ to dispense with intimation to that child; and
- (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.

### **Intimation where alleged association**

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

(2) In determining a motion under paragraph (1), the sheriff may—

- (a) make such order for intimation as he thinks fit; or
- (b) dispense with intimation; and
- (c) where he dispenses with intimation, order that the name of that person be deleted from the condescendence of the initial writ.

(3) Where intimation is ordered under paragraph (2), a copy of the initial writ and an intimation in Form CP13 shall be intimated to the named person.

(4) In paragraph (1), “association” means sodomy, incest, or any homosexual or heterosexual relationship.

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

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

(2) In an action of dissolution of civil partnership, a warrant for citation shall not be granted without there being produced with the initial writ—

- (a) an extract of the relevant entry in the civil partnership register or an equivalent document; and
- (b) where the ground of action is that an interim gender recognition certificate has, after the date of registration of the civil partnership, been issued to either of the civil partners—
  - (i) where the pursuer is the subject of the interim gender recognition certificate, the interim gender recognition certificate or, failing that, a certified copy of the interim gender recognition certificate; or
  - (ii) where the defender is the subject of the interim gender recognition certificate, a certified copy of the interim gender recognition certificate.

(3) In a civil partnership action which includes a crave for a section 11 order, a warrant for citation shall not be granted without there being produced with the initial writ an extract of the relevant entry in the register of births or an equivalent document.

(4) For the purposes of this rule, a certified copy of an interim gender recognition certificate shall be a copy of that certificate sealed with the seal of the Gender Recognition Panels and certified to be a true copy by an officer authorised by the President of Gender Recognition Panels.

### **Warrant of citation**

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

### **Form of citation and certificate**

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

(2) The certificate of citation shall be in Form CP17 which shall be attached to the initial writ.

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

**33A.12.**—(1) Where a local authority referred to in rule 33A.7(1)(e) (residence order sought by non parent resident in Scotland) or rule 33A.7(4) (residence order sought by pursuer not resident in Scotland) is named as a defender in an initial writ at the time it is lodged, service of the initial writ on that local authority shall be executed within 7 days after the date of granting of the warrant of citation.

(2) Where in a civil partnership action—

- (a) to which rule 33A.7(1)(e) applies, or
- (b) in which a crave under rule 33A.7(4) is required,

the local authority referred to in that provision is named as a defender in the initial writ at the time it is lodged, a notice in Form CP6 shall be attached to the copy of the initial writ served on that local authority.

(3) In any civil partnership action, the sheriff may, if he thinks fit, order intimation to a local authority; and such intimation shall be in Form CP6; and

(4) Where, by virtue of paragraph (3) of this rule, or rule 33A.7(1)(e), or rule 33A.7(4), intimation of an application for a residence order is to be made to a local authority, intimation to that local authority shall be given within 7 days after the date on which a warrant of citation, or an order for intimation, as the case may be, has been granted.

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

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

- (a) a citation in Form CP15;
- (b) any notice required by rule 33A.14(1);
- (c) a request in Form CP18;



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

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

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

#### **Orders for intimation**

- 33A.15.**—(1) In any civil partnership action, the sheriff may, at any time—
- (a) subject to paragraph (2), order intimation to be made on such person as he thinks fit;
  - (b) postpone intimation, where he considers that such postponement is appropriate and, in that case, the sheriff shall make such order in respect of postponement of intimation as he thinks fit; or
  - (c) dispense with intimation, where he considers that such dispensation is appropriate.
- (2) Where the sheriff is considering whether to make a section 11 order by virtue of section 12 of the Act of 1995 (restrictions on decrees for dissolution of civil partnership, separation or annulment affecting children), he shall, subject to paragraph (1)(c) and without

prejudice to paragraph (1)(b) of this rule, order intimation in Form CP7 to the child to whom the section 11 order would relate unless—

- (a) intimation has been given to the child under rule 33A.7(1)(f); or
- (b) the sheriff considers that the child is not of sufficient age or maturity to express his views.

(3) Where a party makes a crave or averment in a civil partnership action which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, that party shall include a crave in his writ for a warrant for intimation or to dispense with such intimation; and rule 33A.7 shall, with the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.

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

**33A.16.**—(1) This rule applies to an action of dissolution of civil partnership or separation of civil partners where it appears to the court that the defender is suffering from a mental disorder.

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

- (a) appoint a curator *ad litem* to the defender;
- (b) where the facts set out in section 117(3)(c) of the Act of 2004 (no cohabitation for two years with consent of defender to decree) are relied on—
  - (i) make an order for intimation of the ground of the action to the Mental Welfare Commission for Scotland; and
  - (ii) include in such an order a requirement that the Commission sends to the sheriff clerk a report indicating whether in its opinion the defender is capable of deciding whether or not to give consent to the granting of decree.

(3) Within 7 days after the appointment of a curator *ad litem* under paragraph (2)(a), the pursuer shall send to him—

- (a) a copy of the initial writ and any defences (including any adjustments and amendments) lodged; and
- (b) a copy of any notice in Form G5 sent to him by the sheriff clerk.

(4) On receipt of a report required under paragraph (2)(b)(ii), the sheriff clerk shall—

- (a) lodge the report in process; and
- (b) intimate that this has been done to—
  - (i) the pursuer;
  - (ii) the solicitor for the defender, if known; and
  - (iii) the curator *ad litem*.

(5) The curator *ad litem* shall lodge in process one of the writs mentioned in paragraph (6)—

- (a) within 14 days after the report required under paragraph (2)(b)(ii) has been lodged in process; or
- (b) where no such report is required, within 21 days after the date of his appointment under paragraph (2)(a).

(6) The writs referred to in paragraph (5) are—

- (a) a notice of intention to defend;
- (b) defences to the action;
- (c) a minute adopting defences already lodged; and

(d) a minute stating that the curator *ad litem* does not intend to lodge defences.

(7) Notwithstanding that he has lodged a minute stating that he does not intend to lodge defences, a curator *ad litem* may appear at any stage of the action to protect the interests of the defender.

(8) If, at any time, it appears to the curator *ad litem* that the defender is not suffering from mental disorder, he may report that fact to the court and seek his own discharge.

(9) The pursuer shall be responsible, in the first instance, for payment of the fees and outlays of the curator *ad litem* incurred during the period from his appointment until—

- (a) he lodges a minute stating that he does not intend to lodge defences;
- (b) he decides to instruct the lodging of defences or a minute adopting defences already lodged; or
- (c) being satisfied after investigation that the defender is not suffering from mental disorder, he is discharged.

### **Applications for sist**

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

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

**33A.18.—**(1) Where, in an action of dissolution of civil partnership or separation of civil partners in which the facts in section 117(3)(c) of the Act of 2004 (no cohabitation for two years with consent of defender to decree) are relied on, the defender wishes to consent to the grant of decree of dissolution of civil partnership or separation of civil partners he shall do so by giving notice in writing in Form CP21 (dissolution) or Form CP23 (separation), as the case may be, to the sheriff clerk.

(2) The evidence of one witness shall be sufficient for the purpose of establishing that the signature on a notice of consent under paragraph (1) is that of the defender.

(3) In an action of dissolution of civil partnership or separation of civil partners where the initial writ includes, for the purposes of section 117(3)(c) of the Act of 2004, an averment that the defender consents to the grant of decree, the defender may give notice by letter sent to the sheriff clerk stating that he has not so consented or that he withdraws any consent which he has already given.

(4) On receipt of a letter under paragraph (3), the sheriff clerk shall intimate the terms of the letter to the pursuer.

(5) On receipt of any intimation under paragraph (4), the pursuer may, within 14 days after the date of the intimation, if none of the other facts mentioned in section 117(3) of the Act of 2004 is averred in the initial writ, lodge a motion for the action to be sisted.

(6) If no such motion is lodged, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.

(7) If a motion under paragraph (5) is granted and the sist is not recalled or renewed within a period of 6 months from the date of the interlocutor granting the sist, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.

### **Procedure in respect of children**

**33A.19.—**(1) In a civil partnership action, in relation to any matter affecting a child, where that child has—

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

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

**33A.20.**—(1) This rule applies where a child expresses a view on a matter affecting him whether expressed personally to the sheriff or to a person appointed by the sheriff for that purpose or provided by the child in writing.

(2) The sheriff, or the person appointed by the sheriff, shall record the views of the child in writing; and the sheriff may direct that such views, and any written views, given by a child shall—

- (a) be sealed in an envelope marked “Views of the child confidential”;
- (b) be kept in the court process without being recorded in the inventory of process;
- (c) be available to a sheriff only;
- (d) not be opened by any person other than a sheriff; and
- (e) not form a borrowable part of the process.

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

**33A.21.**—(1) This rule applies where, at any stage of a civil partnership action, the sheriff appoints—

- (a) a local authority, whether under section 11(1) of the Matrimonial Proceedings (Children) Act 1958<sup>(16)</sup> (reports as to arrangements for future care and upbringing of children) or otherwise, or
- (b) another person (referred to in this rule as a “reporter”), whether under a provision mentioned in sub paragraph (a) or otherwise,

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

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

- (a) instruct the local authority or reporter; and
  - (b) be responsible, in the first instance, for the fees and outlays of the local authority or reporter appointed.
- (3) Where a local authority or reporter is appointed—
- (a) the party who sought the appointment, or

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(16) 1958 c. 40; section 11(1) was amended by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 9.

(b) where the sheriff makes the appointment of his own motion, the pursuer or minuter, as the case may be, shall, within 7 days after the date of the appointment, intimate the name and address of the local authority or reporter to any local authority to which intimation of the family action has been made.

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

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

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

### **Referral to family mediation**

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

### **Child Welfare Hearing**

**33A.23.—(1)** Where—

- (a) on the lodging of a notice of intention to defend in a civil partnership action in which the initial writ seeks or includes a crave for a section 11 order, a defender wishes to oppose any such crave or order, or seeks the same order as that craved by the pursuer,
- (b) on the lodging of a notice of intention to defend in a civil partnership action, the defender seeks a section 11 order which is not craved by the pursuer, or
- (c) in any other circumstances in a civil partnership 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 CP26.

(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.

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

**33A.24.**—(1) An application in a civil partnership action for an order under section 33(1) of the Family Law Act 1986<sup>(17)</sup> (which relates to the disclosure of the whereabouts of a child) shall be made by motion.

(2) Where the sheriff makes an order under section 33(1) of the Family Law Act 1986, he may ordain the person against whom the order has been made to appear before him or to lodge an affidavit.

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

**33A.25.**—(1) An application in a civil partnership action for leave under section 51(1) of the Children Act 1975<sup>(18)</sup> (authority to remove a child from the care and possession of the applicant for a residence order) or for an order under section 35(3) of the Family Law Act 1986 (application for interdict or interim interdict prohibiting removal of child from jurisdiction) shall be made—

- (a) by a party to the action, by motion; or
- (b) by a person who is not a party to the action, by minute.

(2) An application under section 35(3) of the Family Law Act 1986 need not be served or intimated.

(3) An application in a civil partnership action under section 23(2) of the Child Abduction and Custody Act 1985<sup>(19)</sup> (declarator that removal of child from United Kingdom was unlawful) shall be made—

- (a) in an action depending before the sheriff—
  - (i) by a party, in the initial writ, defences or minute, as the case may be, or by motion; or
  - (ii) by any other person, by minute; or
- (b) after final decree, by minute in the process of the action to which the application relates.

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

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

- (a) the terms of any relevant motion;
- (b) the intention of the sheriff to order that the contact order be supervised by the social work department of that local authority; and
- (c) that the local authority shall, within such period as the sheriff has determined—
  - (i) notify the sheriff clerk whether it intends to make representations to the sheriff; and

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<sup>(17)</sup> 1986 c. 55.

<sup>(18)</sup> 1975 c. 72.

<sup>(19)</sup> 1985 c. 60.

- (ii) where it intends to make representations in writing, do so within that period.

### **Joint minutes**

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

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

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

### **Affidavits**

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

## **PART II**

### **UNDEFENDED CIVIL PARTNERSHIP ACTIONS**

#### **Evidence in certain undefended civil partnership actions**

**33A.29.—**(1) This rule—

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

(2) Unless the sheriff otherwise directs, evidence shall be given by affidavits.

(3) Unless the sheriff otherwise directs, evidence relating to the welfare of a child shall be given by affidavit, at least one affidavit being emitted by a person other than a parent or party to the action.

(4) Evidence in the form of a written statement bearing to be the professional opinion of a duly qualified medical practitioner, which has been signed by him and lodged in process, shall be admissible in place of parole evidence by him.

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

**33A.30.**—(1) In an action to which rule 33A.29 (evidence in certain undefended civil partnership actions) applies, the pursuer shall at any time after the expiry of the period for lodging a notice of intention to defend—

- (a) lodge in process the affidavit evidence; and
- (b) endorse a minute in Form CP27 on the initial writ.

(2) The sheriff may, at any time after the pursuer has complied with paragraph (1), without requiring the appearance of parties—

- (a) grant decree in terms of the motion for decree; or
- (b) remit the cause for such further procedure, if any, including proof by parole evidence, as the sheriff thinks fit.

### **Extracts of undefended decree**

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

### **No recording of evidence**

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

### **Disapplication of Chapter 15**

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

## **PART III**

### **DEFENDED CIVIL PARTNERSHIP ACTIONS**

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

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

- (a) to oppose any crave in the initial writ;
- (b) to make a claim for—
  - (i) aliment;
  - (ii) an order for financial provision within the meaning of section 8(3) of the Act of 1985; or
  - (iii) a section 11 order; or
- (c) an order—
  - (i) under section 16(1)(b) or (3) of the Act of 1985<sup>(20)</sup> (setting aside or varying agreement as to financial provision);
  - (ii) under section 18 of the Act of 1985 (which relates to avoidance transactions);
 or

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<sup>(20)</sup> Section 16(3) was amended by the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedule 3, paragraph 5.



- (iii) under Chapter 3 or Chapter 4 of Part 3 or section 127 of the Act of 2004; or
  - (d) to challenge the jurisdiction of the court.
- (2) In an action to which this rule applies, the defender shall—
- (a) lodge a notice of intention to defend in Form CP16 before the expiry of the period of notice; and
  - (b) make any claim or seek any order referred to in paragraph (1), as the case may be, in those defences by setting out in his defences—
    - (i) craves;
    - (ii) averments in the answers to the condescendence in support of those craves; and
    - (iii) appropriate pleas-in-law.

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

#### **Abandonment by pursuer**

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

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

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

#### **Decree by default**

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

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

that party shall be in default.

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

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

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

#### PART IV

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

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

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

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

- 33A.39.**—(1) An application for an order mentioned in paragraph (2) shall be made—
- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
  - (b) where the application is made by a person other than the pursuer or defender, by minute in that action.
- (2) The orders referred to in paragraph (1) are:—
- (a) an order for a section 11 order; and
  - (b) an order for aliment for a child.

#### **Applications in depending actions by motion**

**33A.40.** An application by a party in an action depending before the court to which this Part applies for, or for variation of, an order for—

- (a) interim aliment for a child under the age of 18; or
- (b) a residence order or a contact order,

shall be made by motion.

#### **Applications after decree relating to a section 11 order**

**33A.41.**—(1) An application after final decree for, or for the variation or recall of, a section 11 order or in relation to the enforcement of such an order shall be made by minute in the process of the action to which the application relates.

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

#### **Applications after decree relating to aliment**

**33A.42.**—(1) An application after final decree for, or for the variation or recall of, an order for aliment for a child shall be made by minute in the process of the action to which the application relates.

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

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

- 33A.43.**—(1) A person—
- (a) to whom an obligation of aliment is owed under section 1 of the Act of 1985;

(b) in whose favour an order for aliment while under the age of 18 years was made in an action to which this Part applies, and

(c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,

shall apply by minute in the process of that action.

(2) An application for interim aliment pending the determination of an application under paragraph (1) shall be made by motion.

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

## PART V

### ORDERS RELATING TO FINANCIAL PROVISIONS

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

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

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

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

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

(a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or

(b) where the application is made by a person other than the pursuer or defender, by minute in that action.

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

(a) an order for financial provision within the meaning of section 8(3) of the Act of 1985;

(b) an order under section 16(1)(b) or (3) of the Act of 1985 (setting aside or varying agreement as to financial provision);

(c) an order under section 18 of the Act of 1985 (which relates to avoidance transactions); and

(d) an order under section 112 of the Act of 2004 (transfer of tenancy).

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

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

(a) the pursuer or defender, notwithstanding rules 33A.34(2) (application by defender for order for financial provision) and 33A.45(1)(a) (application for order for financial provision in initial writ or defences), may apply by motion for an incidental order; and

(b) the sheriff shall not be bound to determine such a motion if he considers that the application should properly be by a crave in the initial writ or defences, as the case may be.

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

### **Applications relating to interim aliment**

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

### **Applications relating to orders for financial provision**

**33A.48.—**(1) An application—

- (a) after final decree under any of the following provisions of the Act of 1985—
  - (i) section 8(1) for periodical allowance;
  - (ii) section 12(1)(b) (payment of capital sum or transfer of property);
  - (iii) section 12(4) (variation of date or method of payment of capital sum or date of transfer of property); or
  - (iv) section 13(4) (variation, recall, backdating or conversion of periodical allowance); or
- (b) after the grant or refusal of an application under—
  - (i) section 8(1) or 14(3) for an incidental order; or
  - (ii) section 14(4) (variation or recall of incidental order),

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

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

(3) An application under—

- (a) paragraph (5) of section 12A of the Act of 1985<sup>(21)</sup> (recall or variation of order in respect of a pension lump sum);
- (b) paragraph (7) of that section<sup>(22)</sup> (variation of order in respect of pension lump sum to substitute trustees or managers); or
- (c) section 28(10) or 48(9) of the Welfare Reform and Pensions Act 1999,

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

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

**33A.49.** An application for an order—

- (a) under section 16(1)(a) or (3) of the Act of 1985 (setting aside or varying agreements as to financial provision), or
- (b) under section 18 of the Act of 1985 (which relates to avoidance transactions),

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

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

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

## PART VI

### APPLICATIONS RELATING TO AVOIDANCE TRANSACTIONS

#### Form of applications

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

(2) An application for an order under section 18 of the Act of 1985 after final decree in a civil partnership action shall be made by minute in the process of the action to which the application relates.

## PART VII

### FINANCIAL PROVISION AFTER OVERSEAS PROCEEDINGS

#### Interpretation of this Part

**33A.51.** In this Part—

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

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

#### Applications for financial provision after overseas proceedings

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

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

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

shall be made by motion.

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

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

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

(4) An application under—

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

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

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

## PART VIII

### ACTIONS IN RESPECT OF ALIMENT

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

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

## PART IX

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

#### **Application of this Part**

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

#### **Form of applications**

**33A.55.** Subject to any other provision in this Chapter, an application for a section 11 order shall be made—

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

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

**33A.56.** An application, in an action depending before the sheriff to which this Part applies, for, or for the variation or recall of, an interim residence order or an interim contact order shall be made—

- (a) by a party to the action, by motion; or
- (b) by a person who is not a party to the action, by minute.

#### **Applications after decree**

**33A.57.—**(1) An application after final decree for variation or recall of a section 11 order shall be made by minute in the process of the action to which the application relates.

(2) Where a minute has been lodged under paragraph (1), any party may apply by motion for an interim order pending the determination of the application.

## PART X

### ACTIONS RELATING TO OCCUPANCY RIGHTS AND TENANCIES

#### **Application of this Part**

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

#### **Interpretation of this Part**

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

#### **Form of application**

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

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

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

#### **Defenders**

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

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

#### **Applications by motion**

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

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

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

- (a) to the other civil partner;
- (b) where the motion is under paragraph (1)(a) or (b) and the entitled civil partner is a tenant or occupies the family home by the permission of a third party, to the landlord or third party, as the case may be; and

- (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33A.7(1)(i) (warrant for intimation to certain persons in actions for orders under Chapter 3 of Part 3 of the Act of 2004) or rule 33A.15 (order for intimation by sheriff).

### **Applications by minute**

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

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

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

### **Sist of actions to enforce occupancy rights**

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

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

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

(2) Where a relevant interdict to which a power of arrest under section 114(1) of the Act of 2004 has been attached ceases to have effect by reason of a decree of dissolution of civil partnership being pronounced by the sheriff, the pursuer shall send—

- (a) to the chief constable of the police area in which the family home is situated; and
- (b) if the applicant civil partner (within the meaning of section 114(7) of the Act of 2004) resides in another police area, to the chief constable of that other police area,

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

## **PART XI**

### **SIMPLIFIED DISSOLUTION OF CIVIL PARTNERSHIP APPLICATIONS**

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

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



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

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

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

### **Form of applications**

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

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

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

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

### **Lodging of applications**

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

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

### **Citation and intimation**

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

(2) It shall be the duty of the sheriff clerk to cite any person or intimate any document in connection with a simplified dissolution of civil partnership application.

(3) The form of citation—

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

#### **Citation where address not known**

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

- (a) citation shall be executed by displaying a copy of the application and a notice in Form CP35 on the walls of court on a period of notice of 21 days; and
  - (b) intimation shall be made to—
    - (i) every person who was a child of the family (within the meaning of section 101(7) of the Act of 2004) who has reached the age of 16 years, and
    - (ii) one of the next of kin of the other party to the civil partnership who has reached that age, unless the address of such person is not known and cannot reasonably be ascertained.
- (2) Intimation to a person referred to in paragraph (1)(b) shall be given by intimating a copy of the application and a notice of intimation in Form CP36.

#### **Opposition to applications**

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

(2) Where opposition to a simplified dissolution of civil partnership application is made under paragraph (1), the sheriff shall dismiss the application unless he is satisfied that the reasons given for the opposition are frivolous.

(3) The sheriff clerk shall intimate the decision under paragraph (2) to the applicant and the respondent.

(4) The sending of a letter under paragraph (1) shall not imply acceptance of the jurisdiction of the court.

### **Evidence**

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

### **Decree**

**33A.73.—**(1) The sheriff may grant decree in terms of the simplified dissolution of civil partnership application on the expiry of the period of notice if such application has been properly served provided that, when the application has been served in a country to which the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters dated 15 November 1965(23) applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of article 15 of that Convention have been complied with.

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

### **Appeals**

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

### **Applications after decree**

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

## **PART XII**

### **REFERRALS TO PRINCIPAL REPORTER**

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

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

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

#### **Intimation to Principal Reporter**

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

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

**33A.78.**—(1) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such investigation as he thinks appropriate and having reached the view that compulsory measures of supervision are necessary, arranges a children’s hearing under section 69 of that Act<sup>(24)</sup> (continuation or disposal of referral by children’s hearing), the Principal Reporter shall intimate to the court which referred the matter to him—

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

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

## **PART XIII**

### **SISTING OF CIVIL PARTNERSHIP ACTIONS**

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

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

(2) In this Part—

“another jurisdiction” means any country outside Scotland.

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

(3) For the purposes of this Part—

- (a) neither the taking of evidence on commission nor a separate proof relating to any preliminary plea shall be regarded as part of the proof in the action; and
- (b) an action is continuing if it is pending and not sisted.

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

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

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

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

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

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

### **Mandatory sists**

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

- (a) that in respect of the same civil partnership proceedings for dissolution or nullity of civil partnership are continuing in a related jurisdiction; and
- (b) that the parties to the civil partnership have resided together after the civil partnership was formed or treated as having been formed within the meaning of section 1(1) of the Act of 2004; and
- (c) that the place where they resided together when the action was begun or, if they did not then reside together, where they last resided together before the date on which that action was begun is in that jurisdiction; and
- (d) that either of the said parties was habitually resident in that jurisdiction throughout the year ending with the date on which they last resided together before the date on which that action was begun;

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

### **Discretionary sists**

**33A.82.—**(1) Where before the beginning of the proof in any action to which this Part applies, it appears to the sheriff—

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

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

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

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

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

### **Recall of sists**

**33A.83.—**(1) Where an action is sisted in pursuance of rule 33A.81 or 33A.82, the sheriff may if he thinks fit, on the application of a party to the action, recall the sist if it appears to him that the other proceedings by reference to which the action was sisted are sisted or concluded or that a party to those other proceedings has delayed unreasonably in prosecuting those other proceedings.

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

### **Orders in sisted actions**

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

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

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

“sisted” means sisted in pursuance of this Part.

(2) Where an action such as is mentioned in paragraph (1) is sisted, then, without prejudice to the effect of the sist apart from this paragraph—

- (a) the sheriff shall not have power to make a relevant order in connection with the sisted action except in pursuance of sub paragraph (c); and
- (b) subject to the said sub paragraph (c), any relevant order made in connection with the sisted action shall (unless the sist or the relevant order has been previously recalled) cease to have effect on the expiration of the period of three months beginning with the date on which the sist comes into operation; but
- (c) if the sheriff considers that as a matter of necessity and urgency it is necessary during or after that period to make a relevant order in connection with the sisted action or to extend or further extend the duration of a relevant order made in connection with the sisted action, the sheriff may do so, and the order shall not cease to have effect by virtue of sub paragraph (b).

(3) Where any action such as is mentioned in paragraph (1) is sisted and at the time when the sist comes into operation, an order is in force, or at a subsequent time an order comes into force, being an order made in connection with the other proceedings and providing for any of the following matters, namely periodical payments for a party to the civil partnership in question, periodical payments for a child, the arrangements to be made as to with whom a child is to live, contact with a child, and any other matter relating to parental responsibilities or parental rights, then, as from the time when the sist comes into operation (in a case where the order is in force at that time) or (in any other case) on the coming into force of the order—

- (a) any relevant order made in connection with the sisted action shall cease to have effect in so far as it makes for a civil partner or child any provision for any of the said matters as respects which the same or different provision for that civil partner or child is made by the other order; and
- (b) the sheriff shall not have power in connection with the sisted action to make a relevant order containing for a civil partner or child provision for any of the matters aforesaid as respects which any provision for that civil partner or child is made by the other order.

(4) Nothing in this paragraph affects any power of a sheriff—

- (a) to vary or recall a relevant order in so far as the order is for the time being in force; or
- (b) to enforce a relevant order as respects any period when it is or was in force; or
- (c) to make a relevant order in connection with an action which was, but is no longer, sisted.”.

(3) In Appendix 1, after Form F43 there shall be inserted the forms set out in the Schedule to this Act of Sederunt.

Edinburgh  
7th December 2005

*A. C. Hamilton*  
Lord President I.P.D.