

2006 No. 207

SHERIFF COURT

Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006

Made - - - - - *12th April 2006*

Coming into force - - - - - *4th May 2006*

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

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 and shall come into force on 4th May 2006.

(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(b) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 3.3(1) (warrants of citation) after sub-paragraph (d) there shall be inserted the following:—

“(e) a civil partnership action within the meaning of rule 33A.1(1)(c).”.

(3) In rule 5.1(2) (signature of warrants)—

(a) in sub-paragraph (c), for “improper” there shall be substituted “alleged”; and

(b) after sub-paragraph (c) there shall be inserted the following:—

“(d) a warrant for intimation ordered under rule 33A.8 (intimation where alleged association).”.

(4) After rule 5.2(1)(a) (form of citation and certificate) there shall be inserted the following:—

“(aa) a civil partnership action within the meaning of rule 33A.1(1);”.

(a) 1971 c.58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2).

(b) 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, 189, 638 and 648.

(c) Rule 33A.1 was inserted by S.S.I. 2005/638.

- (5) In rule 8.1(1) (reponing)–
- (a) in sub-paragraph (a), after “(h)” there shall be inserted “(n) or (o)”; and
 - (b) after sub-paragraph (a) there shall be inserted the following:–
 - “(aa) a cause mentioned in rule 33A.1(a), (b) or (f) (certain civil partnership actions);”.
- (6) In rule 9.1(1) (notice of intention to defend)(a), after “action” there shall be inserted “, 33A.34 (notice of intention to defend and defences in civil partnership action)(b)”.
- (7) In rule 9.2 (fixing date for options hearing)–
- (a) in paragraph (1A)(c), after “action” there shall be inserted “or a civil partnership action”; and
 - (b) for paragraph (1B)(d) there shall be substituted the following:–
 - “(1B) In paragraph (1A) above–
 - (a) “family action” has the meaning given in rule 33.1(1); and
 - (b) “civil partnership action” has the meaning given in rule 33A.1(1).”.
- (8) In rule 9.6(3) (defences)(e), after “rule 33.1(1)” there shall be inserted “or a civil partnership action (within the meaning of rule 33A.1(1))”.
- (9) In rule 9.12(7) (options hearing), for “and 33.37 (decree by default in family action)” there shall be substituted “, 33.37 (decree by default in family action) and 33A.37 (decree by default in civil partnership action)(f)”.
- (10) In rule 12.2(3) (further provisions in relation to interlocutors)(g), after “rule 33.1(1)” there shall be inserted “or a civil partnership action within the meaning of rule 33A.1(1)”.
- (11) In rule 16.1 (application of Chapter 16: decrees by default), after paragraph (a) there shall be inserted the following:–
- “(aa) an action to which rule 33A.37 (decree by default in a civil partnership action) applies;”
- (12) In rule 17.1 (application of Chapter 17), after paragraph (a) there shall be inserted–
- “(aa) a civil partnership action within the meaning of rule 33A.1(1);”.
- (13) In rule 19.1(1) (counterclaims), after “rule 33.1(1)” there shall be inserted, “, a civil partnership action within the meaning of rule 33A.1(1)”.
- (14) In rule 33.1(interpretation of Chapter 33: family actions)–
- (a) in paragraph (1), after sub-paragraph (m) there shall be inserted–
 - “(n) an action of declarator of marriage;
 - (o) an action of declarator of nullity of marriage.”; and
 - (b) in paragraph (2), for the definition of “mental disorder” there shall be substituted–
 - ““mental disorder” has the meaning assigned in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003(h)”.
- (15) In rule 33.2 (averments in actions of divorce or separation about other proceedings)–
- (i) for the heading there shall be substituted, “Averments in certain family actions about other proceedings”;
 - (ii) in paragraph (1), for “or separation” there shall be substituted “, separation, declarator of marriage or declarator of nullity of marriage”; and

(a) Rule 9.1(1) was amended by S.I. 1996/2167.
 (b) Rule 33A.34 was inserted by S.S.I. 2005/638.
 (c) Rule 9.2(1A) was inserted by S.S.I. 2000/239.
 (d) Rule 9.2(1B) was inserted by S.S.I. 2000/239.
 (e) Rule 9.6(3) was inserted by S.I. 1996/2167.
 (f) Rule 33A.37 was inserted by S.S.I. 2005/638.
 (g) Rule 12.2(3) was substituted by S.I. 1996/2445.
 (h) 2003 asp 13.

- (iii) in paragraph (2)(b)(v)(a), for the words from “or Council Regulation” to “spouses” there shall be substituted “or Council Regulation (E.C.) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility(b).”
- (16) In rule 33.3(1)(a) (averments where section 11 order sought), for “or separation” there shall be substituted “, separation or declarator of nullity of marriage”.
- (17) In rule 33.7 (warrants and forms for intimation)–
- (a) in paragraph (1)(c)(i) “and” shall be omitted;
 - (b) after paragraph (1)(c)(ii) there shall be inserted the following:–
 - “(iii)) any person holding the office of guardian or continuing or welfare attorney to the defender under or by virtue of the Adults with Incapacity (Scotland) Act 2000(c),”
 - (c) in paragraph (1)(e), for “or separation” there shall be substituted “, separation or declarator of nullity of marriage”; and
 - (d) in paragraph (5), for “or (l)” there shall be substituted “, (l) or (m)”.
- (18) In rule 33.8 (intimation where improper association)–
- (a) in the heading for “improper” there shall be substituted “alleged”;
 - (b) in paragraph (1), for “alleges an improper” there shall be substituted “founds upon an”; and
 - (c) in paragraph (4) “improper” shall be omitted.
- (19) In rule 33.9(a) (productions in action of divorce or where section 11 order may be made), after “divorce” there shall be inserted “or declarator of nullity of marriage”.
- (20) In rule 33.12(2)(b) (execution of service on, or intimation to, local authority), for “motion” there shall be substituted “crave”.
- (21) In rule 33.14(1) (notices in certain actions of divorce or separation)–
- (a) in sub-paragraph (a), for “two years” there shall be substituted “one year”;
 - (b) in sub-paragraph (b), for “five” there shall be substituted “two”; and
 - (c) after sub-paragraph (b), there shall be inserted the following:–
 - “(c) in an action relying on section 1(1)(b) of the Act of 1976 (grounds for divorce: interim gender recognition certificate), a notice in Form F24A”.
- (22) In rule 33.16 (appointment of curators *ad litem* to defenders)–
- (a) in paragraph (1), for “or separation” there shall be substituted “, separation or declarator of nullity of marriage”; and
 - (b) in paragraph (2)(b), for “two years” there shall be substituted “one year”.
- (23) In rule 33.18(1) (notices of consent to divorce or separation), for “two years” there shall be substituted “one year”;
- (24) In rule 33.25(c)(ii) (intimation to local authority before supervised contact order), “to” where it second occurs shall be omitted.
- (25) For rule 33.27A(d) there shall be substituted–

“Applications for postponement of decree under section 3A of the Act of 1976

33.27A. An application under section 3A(1)(e) (application for postponement of decree where religious impediment to marry exists) or section 3A(4) (application for recall of

(a) Rule 33.2(2) was amended by S.S.I. 2001/144.
 (b) O.J. No. L 38, 23.12.2003, p.1.
 (c) 2000 asp 4.
 (d) Rule 33.27A was inserted by S.S.I. 2001/144 and was amended by S.S.I. 2005/648.
 (e) Section 3A was inserted by section 15 of the Family Law (Scotland) Act 2006 (asp 2).

postponement) of the Act of 1976 shall be made by minute in the process of the action to which the application relates.”;

(26) In rule 33.30 (extracts of undefended decree), for “pursuers” there shall be substituted “pursuer”.

(27) In rule 33.37(2), after “(h)” there shall be inserted “, (n) or (o)”.

(28) In rule 33.38 (application and interpretation of Part IV of Chapter 33: applications and orders relating to children in certain family actions), for “or separation” there shall be substituted “, separation or declarator of nullity of marriage”.

(29) In rule 33.59(1) (applications relating to agreement on aliment), after “paragraph (2)” there shall be inserted “and rule 33A.53”.

(30) In rule 33.60 (application of Part IX of Chapter 33: applications for orders under section 11 of the Children (Scotland) Act 1995), for “or separation” there shall be substituted “, separation or declarator of nullity of marriage”.

(31) In rule 33.63 (applications relating to interim orders in depending family actions), “an order for” shall be omitted.

(32) In rule 33.68 (defenders)–

(a) in paragraph (b) “and” shall be omitted; and

(b) after paragraph (c) there shall be inserted–

“; and

(d) where the application is made under section 18A of the Act of 1981(a) (application for domestic interdict), the other partner.”.

(33) In rule 33.69(1) (applications by motion), sub-paragraph (d) shall be omitted.

(34) In rule 33.70(1) (applications by minute), sub-paragraph (b) shall be omitted.

(35) Rule 33.72 (certificates of delivery of documents to chief constable)(b) shall be omitted.

(36) In rule 33.73(1) (application and interpretation of Part XI: simplified divorce applications)–

(a) in sub-paragraph (a)–

(i) for “two years” there shall be substituted “one year”;

(ii) for “five” there shall be substituted “two”; and

(iii) after “years)” there shall be inserted “or section 1(1)(b) (issue of interim gender recognition certificate)(c)”.

(b) in sub-paragraph (e) “and” shall be omitted; and

(c) after sub-paragraph (f) there shall be inserted the following:–

“; and

(g) there is no religious impediment to the remarriage of either party”.

(37) In rule 33.74 (form of simplified divorce applications)–

(a) in paragraph (1), for “two years” there shall be substituted “one year”;

(b) in paragraph (2), for “five” there shall be substituted “two”; and

(c) after paragraph (2) there shall be inserted–

“(3) A simplified divorce application in which the facts set out in section 1(1)(b) of the Act of 1976 (grounds of divorce: interim gender recognition certificate) are relied on shall be made in Form F33A and shall only be of effect if signed by the applicant.”.

(38) In rule 33.75 (lodging of applications)–

(a) in paragraph (a) “and” shall be omitted; and

(a) Section 18A was inserted by section 31 of the Family Law (Scotland) Act 2006 (asp 2).

(b) Rule 33.72 was amended by S.I. 1996/2445.

(c) Section 1(1)(b) was inserted by paragraph 6 of Schedule 2 to the Gender Recognition Act 2004 (c.7).

- (b) after paragraph (b) there shall be inserted the following:–
“; and
- (c) in an application under section 1(1)(b) of the Act of 1976 (grounds of divorce: interim gender recognition certificate), the interim gender recognition certificate or a certified copy within the meaning of rule 33.9A(3)(a).”.
- (39) In rule 33.76(3) (citation and intimation)–
- (a) in sub-paragraph (a) “and” shall be omitted; and
- (b) after paragraph (b) there shall be inserted the following:–
“(c) in an application relying on the facts in section 1(1)(b) of the Act of 1976 shall be in Form F35A.”.
- (40) In rule 33.77(1) (citation where address not known)–
- (a) for “five” there shall be substituted “two”; and
- (b) after “years)” there shall be inserted “or section 1(1)(b) of the Act of 1976 (grounds of divorce: issue of interim gender recognition certificate)”.
- (41) In rule 33A.1(1) (interpretation of Chapter 33A: civil partnership actions)(b), after sub-paragraph (e), there shall be inserted the following:–
“(f) an action for declarator of nullity of civil partnership.”.
- (42) In rule 33A.2 (averments in actions of dissolution of civil partnership or separation of civil partners)–
- (a) for the heading there shall be substituted, “Averments in certain civil partnership actions about other proceedings”; and
- (b) in paragraph (1), after “dissolution” there shall be inserted “or declarator of nullity”.
- (43) In rule 33A.3(1)(a) (averments where section 11 order sought), after “dissolution” there shall be inserted “or declarator of nullity”.
- (44) In rule 33A.7(1)(c) (warrants and forms for intimation), after “dissolution” there shall be inserted “or declarator of nullity”.
- (45) In rule 33A.9(2) (productions in action of dissolution of civil partnership or where section 11 order may be made), after “dissolution” there shall be inserted “or declarator of nullity”.
- (46) In rule 33A.14(1) (notices in certain actions of dissolution of civil partnership or separation of civil partners)–
- (a) in sub-paragraph (a), for “two years” there shall be substituted “one year”;
- (b) in sub-paragraph (b), for “five” there shall be substituted “two”; and
- (c) after sub-paragraph (b), there shall be inserted the following:–
“(c) in an action relying on section 117(2)(b) of the Act of 2004 (grounds of dissolution: interim gender recognition certificate), a notice in Form CP25A.”.
- (47) In rule 33A.16 (appointment of curators *ad litem* to defenders)–
- (a) in paragraph (1), after “dissolution” there shall be inserted “or declarator of nullity”; and
- (b) in paragraph (2)(b), for “two years” there shall be substituted “one year”.
- (48) In rule 33A.18(1) (notices of consent to dissolution of civil partnership or separation of civil partners), for “two years” there shall be substituted “one year”.
- (49) In rule 33A.37(2)(a) (decree by default), for “or (b)” there shall be substituted “(b) or (f)”.
- (50) In rule 33A.38 (application and interpretation of Part IV of Chapter 33A: applications and orders relating to children in civil partnership actions), after “dissolution” there shall be inserted “or declarator of nullity”.

(a) Rule 33.9A was inserted by S.S.I. 2005/189.

(b) Chapter 33A was inserted by S.S.I. 2005/638.

(51) In rule 33A.44(1) (application and interpretation of Part V of Chapter 33A: orders relating to financial provision in civil partnership actions), after “dissolution” there shall be inserted “or declarator of nullity”.

(52) In rule 33A.54 (application of Part IX of Chapter 33A: applications for orders under section 11 of the Children (Scotland) Act 1995 in civil partnership actions), after “dissolution” there shall be inserted “or declarator of nullity”.

(53) In rule 33A.62(1) (applications by motion), sub-paragraph (d) shall be omitted.

(54) Rule 33A.65 (certificates of delivery of documents to chief constable) shall be omitted.

(55) In rule 33A.66(1)(a) (application and interpretation of Part XI of Chapter 33A: simplified dissolution of civil partnership applications)–

(a) for “two years” there shall be substituted “one year”; and

(b) for “five” there shall be substituted “two”.

(56) In rule 33A.67 (form of applications) the following:–

(a) in paragraph (1), for “two years” there shall be substituted “one year”; and

(b) in paragraph (2), for “five” there shall be substituted “two”.

(57) In rule 33A.70(1) (citation where address not known), for “five” there shall be substituted “two”.

(58) After Chapter 33A (civil partnership actions) there shall be inserted–

“CHAPTER 33B

FINANCIAL PROVISION FOR FORMER COHABITANTS

Interpretation of this Chapter

33B.1. In this Chapter–

“the Act” means the Family Law (Scotland) Act 2006(a);

“cohabitant” has the meaning given in section 25 of the Act;

“the deceased” means the cohabitant referred to in section 29(1)(a) of the Act;

“net intestate estate” has the meaning given in section 29(10) of the Act;

“the survivor” means the cohabitant referred to in section 29(1)(b) of the Act.

33B.2.—(1) An application under–

(a) section 28(2) of the Act for an order for financial provision where cohabitation ends otherwise than by death; or

(b) section 29(2) of the Act for an order for financial provision by the survivor on intestacy,

shall be made by initial writ.

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

(a) name the deceased’s executor as the defender; and

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

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

(a) 2006 asp 2.

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

(59) In rule 41.2 (attachment of power of arrest to interdict)(a), after “section 1(2)” there shall be inserted “or (1A)(b)”.

(60) Appendix 1 shall be amended as follows:–

- (a) in paragraph 1(a) of Form F19, for “two years” there shall be substituted “one year”;
- (b) in paragraph 1(a) of Form F21, for “two years” there shall be substituted “one year”;
- (c) in Form F23–
 - (i) in the heading, for “five” there shall be substituted “two”;
 - (ii) in paragraph 1–
 - (aa) for “five” there shall be substituted “two”; and
 - (bb) the words from “unless” to the end of that paragraph shall be omitted; and
 - (iii) in paragraph 3, for “five” there shall be substituted “two”;
- (d) in Form F24–
 - (i) in the heading, for “five” there shall be substituted “two”;
 - (ii) in paragraph 1–
 - (aa) for “five” there shall be substituted “two”; and
 - (bb) the words from “unless” to the end of that paragraph shall be omitted; and
 - (iii) in paragraph 3, for “five” there shall be substituted “two”;
- (e) after Form F24 there shall be inserted the Form F24A set out in the Schedule to this Act of Sederunt;
- (f) Form F30 shall be omitted;
- (g) in Form F31–
 - (i) in the heading in block capitals for “two years” there shall be substituted “one year”;
 - (ii) in paragraph 4(ii) of the directions for making application for the words, from “the Sheriff Clerk” to the end of that paragraph there shall be substituted ““the Scottish Court Service” or a completed fee exemption form”;
 - (iii) in Part B of paragraph 3 of Part 1–
 - (aa) for the heading there shall be substituted the following:–

“If you have ticked one or more of the boxes in Part A, you should go direct to Part C. You should only complete Part B if you have not ticked any boxes in Part A”;
 - (bb) in sub-paragraph (i), for “consider myself to be” there shall be substituted “am”; and
 - (cc) in sub-paragraph (ii), for “considers himself or herself to be” there shall be substituted “is”;
 - (dd) in sub-paragraph (iii), for “the Council Regulation” there shall be substituted “Council Regulation (E.C.) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of Parental Responsibility (O.J. No L.338, 23.12.2003, p.1)”;

(a) Rule 41.2 was inserted by S.S.I. 2003/26.

(b) Section 1(1A) was inserted by the Family Law (Scotland) Act 2006 (asp 2).

(iv) in Part C of paragraph 3 of Part 1, after sub-paragraph (ii) there shall be inserted–

“(iii) I lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and have no known residence in Scotland at that date

(iv) My spouse lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and has no known residence in Scotland at that date”

(v) in paragraph 5 of Part 1, for “2 years” there shall be substituted “1 year”;

(vi) in paragraph 8 of Part 1, for the words from “Is” to “handicap?” there shall be substituted “Does your spouse have any mental disorder (whether mental illness, personality disorder or learning disability)? *(if yes, give details)*”;

(vii) after paragraph 10 of Part 1 there shall be inserted the following:–

“(10A) REMARRIAGE

Is there any religious impediment to the remarriage of *[YES/NO]

you or your spouse? *(if yes, give details)*”;

(viii) in the heading to Part 2, for “two years” there shall be substituted “one year”;

(ix) in the first paragraph of Part 2, for “two years” there shall be substituted “one year”;
and

(x) in paragraph (b) of the statement of consent, for “two years” there shall be substituted “one year”;

(h) in Form F33–

(i) in the heading in block capitals for “five” there shall be substituted “two”;

(ii) in paragraph 3(ii) of the directions for making application, for the words from “the Sheriff Clerk” to the end of that paragraph there shall be substituted ““the Scottish Court Service” or a completed fee exemption form”;

(iii) in Part B of paragraph 5 of Part 1–

(aa) for the heading there shall be substituted–

“If you have ticked one or more of the boxes in Part A, you should go direct to Part C. You should only complete Part B if you have not ticked any boxes in Part A”;

(bb) in sub-paragraph (i), for “consider myself to be” there shall be substituted “am”; and

(cc) in sub-paragraph (ii), for “considers himself or herself to be” there shall be substituted “is”;

(dd) in sub-paragraph (iii), for “the Council Regulation” there shall be substituted “Council Regulation (E.C.) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of Parental Responsibility (O.J. No L.338, 23.12.2003, p.1)”;

(iv) in Part C of paragraph 5 of Part 1, after sub-paragraph (ii) there shall be inserted–

“(iii) I lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and have no known residence in Scotland at that date

(iv) My spouse lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and has no known residence in Scotland at that date”

- (v) in paragraph 7(i) of Part 1 for “5” there shall be substituted “2”;
- (vi) in paragraph 9 of Part 1, for the words from “Is” until “handicap?” there shall be substituted “Does your spouse have any mental disorder (whether mental illness, personality disorder or learning disability)? (if yes, give details)”;
- (vii) after paragraph 11 there shall be inserted the following:–

“11A. REMARRIAGE

Is there any religious impediment to the remarriage of *[YES/NO]
you or your spouse? (if yes, give details)”;

- (viii) in paragraph 12, the words from “I believe” to “application” shall be omitted”;
- (i) after Form F33 there shall be inserted the Form F33A set out in the Schedule to this Act of Sederunt;
- (j) in Form F34–
- (i) in the heading in block capitals for “two years” there shall be substituted “one year”;
- (ii) in the first paragraph, for “two years” there shall be substituted “one year” and
- (iii) paragraph 1(b) shall be omitted;
- (k) in Form F35–
- (i) in the heading in block capitals for “five” there shall be substituted “two”;
- (ii) in the first paragraph, for “five” there shall be substituted “two”; and
- (iii) paragraph 1(b) shall be omitted;
- (l) after Form F35 there shall be inserted the Form F35A set out in the Schedule to this Act of Sederunt;
- (m) in paragraph 1(a) of Form CP20, for “two years” there shall be substituted “one year”;
- (n) in paragraph 1(a) of Form CP22, for “two years” there shall be substituted “one year”;
- (o) in Form CP24–
- (i) in the heading, for “five” there shall be substituted “two”; and
- (ii) in paragraph 1–
- (aa) for “five” there shall be substituted “two”; and
- (bb) the words from “unless” to the end of that paragraph shall be omitted.
- (p) in Form CP25–
- (i) in the heading, for “five” there shall be substituted “two”;
- (ii) in paragraph 1 for “five” there shall be substituted “two”; and
- (iii) in paragraph 3, for “five” there shall be substituted “two”;
- (q) after Form CP25 there shall be inserted the Form CP25A set out in the Schedule to this Act of Sederunt;

- (r) Form CP28 shall be omitted;
- (s) in Form CP29–
 - (i) in the heading in block capitals, for “two years” there shall be substituted “one year”;
 - (ii) in paragraph 4(ii) of the directions for making application, for “sheriff clerk” there shall be substituted “Scottish Court Service”;
 - (iii) in paragraph 5(i) of Part 1, for “2 years” there shall be substituted “1 year”;
 - (iv) in paragraph 8 of Part 1, for the words from “Is” to “handicap)?” there shall be substituted “Does your civil partner have any mental disorder (whether mental illness, personality disorder or learning disability)?”;
 - (v) in the heading in block capitals in Part 2, for “two years” there shall be substituted “one year”;
 - (vi) in the first paragraph of Part 2, for “two years” there shall be substituted “one year”
 - (vii) in paragraph (b) of the statement of consent, for “two years” there shall be substituted “one year”;
- (t) in Form CP30–
 - (i) in the heading in block capitals, for “five” there shall be substituted “two”;
 - (ii) in paragraph 3(ii) of the directions for making application, for the words from “the Sheriff Clerk” to the end of that paragraph there shall be substituted “‘the Scottish Court Service’ or a completed fee exemption form”;
 - (iii) in paragraph 7(i) of Part 1 for “5” there shall be substituted “2”;
 - (iv) in paragraph 9 of Part 1, for the words from “Is” to “handicap)?” there shall be substituted “Does your civil partner have any mental disorder (whether mental illness, personality disorder or learning disability)? ”;
 - (v) in paragraph 12 of Part 1, the words from “I believe” to “application” shall be omitted;
- (u) in Form CP31–
 - (i) in paragraph 3(ii) of the directions for making application, for the words from “the Sheriff Clerk” to the end of that paragraph there shall be substituted “‘the Scottish Court Service’ or a completed fee exemption form”;
 - (ii) in paragraph 8 of Part 1, for the words from “Is” to “handicap)?” there shall be substituted “Does your civil partner have any mental disorder (whether mental illness, personality disorder or learning disability)?”;
- (v) in Form CP32–
 - (i) in the heading in block capitals for “two years” there shall be substituted “one year”;
and
 - (ii) in the paragraph beginning “Your civil partner”, for “two years” there shall be substituted “one year”;
- (w) in Form CP33–
 - (i) in the heading in block capitals for “five” there shall be substituted “two”;
 - (ii) in the first paragraph for “five” there shall be substituted “two”; and
 - (iii) paragraph 1(b) shall be omitted;

- (x) after Form CP37 there shall be inserted the Form CO1 set out in the Schedule to this Act of Sederunt.

Edinburgh
12th April 2006

BRIAN GILL
Lord Justice Clerk, I.P.D.

SCHEDULE

Rule 2(60)

FORM F24A

Rule 33.14(1)(c)

Form of notice to defender in action of divorce where an interim gender recognition certificate has been issued

YOU ARE GIVEN NOTICE that–

1. The copy initial writ served on you together with this notice states that an interim gender recognition certificate has been issued to you [*or* the pursuer]. If the pursuer establishes this as a fact, decree will be granted.
2. Decree of divorce will end the marriage thereby affecting any right to such pension as may depend on the marriage continuing, or, on your being left a widow the state widow's pension will not be payable to you when the pursuer dies. You may also lose your rights of succession to the pursuer's estate.
3. If the pursuer is entitled to a decree of divorce, you are nevertheless entitled to apply to the sheriff in this action–
 - (a) to make financial or other provision for you under the Family Law (Scotland) Act 1985;
 - (b) for an order under section 11 of the Children (Scotland) Act 1995 in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age; or
 - (c) for any competent order.
4. IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26).

Date (insert date)

(Signed)

Solicitor for the pursuer (add designation and business address)

Form of simplified divorce application under section 1(1)(b) of the Divorce (Scotland) Act 1976

Sheriff Clerk

Sheriff Court House

.....

.....

(Telephone).....

APPLICATION FOR DIVORCE (INTERIM GENDER RECOGNITION CERTIFICATE ISSUED TO ONE OF THE PARTIES AFTER THE MARRIAGE)

Before completing this form, you should have read the leaflet entitled “Do it yourself Divorce”, which explains the circumstances in which a divorce may be sought by this method. If the simplified procedure appears to suit your circumstances, you may use this form to apply for divorce. Below you will find directions designed to assist you with your application. Please follow them carefully. In the event of difficulty, you may contact any sheriff clerk’s office or Citizen’s Advice Bureau.

Directions for making application

WRITE IN INK, USING BLOCK CAPITALS

- | | |
|---|---|
| Application (Part 1) | 1. Complete and sign Part 1 of the form (pages 3-7), paying particular attention to the notes opposite each section. |
| Affidavits (Part 2) | 2. When you have completed Part 1, you should take the form to a Justice of the Peace, Notary Public, Commissioner for Oaths or other duly authorised person so that your affidavit at Part 2 (page 8) may be completed and sworn. |
| Returning completed application form to court | 3. When directions 1-2 above have been complied with, your application is now ready to be sent to the sheriff clerk at the above address. With it you must enclose: <ul style="list-style-type: none"> (i) your marriage certificate (the document headed “Extract of an entry in a Register of Marriages”, which will be returned to you in due course). Check the notes on page 2 to see if you also need to obtain a letter from the General Register Office stating that there is no record that your spouse has divorced you, and, (ii) either a cheque or postal order in respect of the court fee, crossed and made payable to “Scottish Court Service” or a completed fee exemption form, and (iii) the interim gender recognition certificate or a copy 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. |
| | 4. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the sheriff clerk immediately. |

PART 1

WRITE IN INK, USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname.....

Other name(s) in full.....

.....

Present address

.....

Daytime telephone number (if any).....

2. NAME OF SPOUSE

Surname.....

Other name(s) in full.....

3. ADDRESS OF SPOUSE (If the address of your spouse is not known, please enter "not known" in this paragraph and proceed to paragraph 4)

Present address

.....

.....

Daytime telephone number (if any).....

4. Only complete this paragraph if you do not know the present address of your spouse

NEXT-OF-KIN

Name.....

Address.....

.....

.....

Relationship to your spouse.....

CHILDREN OF THE MARRIAGE

Names and dates of birth

Addresses

.....
.....
.....
.....
.....

If insufficient space is available to list all the children of the marriage, please continue on a separate sheet and attach to this form.

5. JURISDICTION

Please indicate with a tick (✓) in the appropriate box or boxes which of the following apply:

PART A

- (i) My spouse and I are habitually resident in Scotland
- (ii) My spouse and I were last habitually resident in Scotland, and one of us still resides there
- (iii) My spouse is habitually resident in Scotland
- (iv) I am habitually resident in Scotland having resided there for at least a year immediately before this application was made
- (v) I am habitually resident in Scotland having resided there for at least six months immediately before this application was made and am domiciled in Scotland
- (vi) My spouse and I are domiciled in Scotland

If you have ticked one or more of the boxes in Part A, you should go direct to Part C. You should only complete Part B if you have not ticked any of the boxes in Part A

PART B

- (i) I am domiciled in Scotland
 - (ii) My spouse is domiciled in Scotland
- AND
- (iii) No court of a Contracting State has jurisdiction under Council Regulation (E.C.) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility (O.J. No. L. 338, 23.12.2003, p.1.)

PART C

- (i) I have lived at the address shown above for at least 40 days immediately before the date I signed this application
- (ii) My spouse has lived at the address shown above for at least 40 days immediately before the date I signed this application
- (iii) I lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and have no known residence in Scotland at that date
- (iv) My spouse lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and has no known residence in Scotland at that date

6. DETAILS OF PRESENT MARRIAGE

Place of Marriage.....(Registration District)

Date of Marriage: Day.....month.....year.....

7. DETAILS OF ISSUE OF INTERIM GENDER RECOGNITION CERTIFICATE

- (i) Please state whether the interim gender recognition certificate has been issued to you or your spouse
- (ii) Please state the date the interim gender recognition certificate was issued
Day.....Month.....Year.....

8. MENTAL DISORDER

Does your spouse have any mental disorder (whether mental illness, personality disorder or learning disability)? * [YES/NO]
(If yes, give details)

9. CHILDREN

Are there any children of the marriage under the age of 16? * [YES/NO]

10. OTHER COURT ACTIONS

Are you aware of any court actions currently proceeding in any country (including Scotland) which may affect your marriage? (If yes, give details) * [YES/NO]

* Delete as appropriate

11. DECLARATION AND REQUEST FOR DIVORCE

I confirm that the facts stated in paragraphs 1-10 above apply to my marriage.

I do NOT ask the sheriff to make any financial provision in connection with this application.

I request the sheriff to grant decree of divorce from my husband or wife.

Date Signature of Applicant.....

PART 2

APPLICANT'S AFFIDAVIT

To be completed by the Applicant only after Part 1 has been signed and dated.

I, (Insert Applicant's full name)

residing at (insert Applicant's present home address).....

.....

.....

SWEAR that to the best of my knowledge and belief the facts stated in Part 1 of this Application are true.

Signature of Applicant.....

To be completed by
Justice of the Peace,
Notary Public or
Commissioner for
Oaths

SWORN at *(insert place)*

this.....day of.....20.....

before me *(insert full name)*

(insert full address)

.....

.....

Signature

*Justice of the Peace/ Notary Public/Commissioner for Oaths

* Delete as appropriate

**Form of citation in application on grounds under section 1(1)(b) of the Divorce (Scotland)
Act 1976**

(Insert name and address of non-applicant spouse)

**APPLICATION FOR DIVORCE (INTERIM GENDER RECOGNITION CERTIFICATE
ISSUED TO ONE OF THE PARTIES AFTER THE MARRIAGE)**

Your spouse has applied to the sheriff for divorce on the ground that an interim gender recognition certificate has been issued to you or your spouse after your marriage.

A copy of the application is hereby served upon you.

1. Please note that the sheriff may not make financial provision under this procedure and that your spouse is making no claim for—
 - (a) the payment by you of a periodical allowance (i.e. a regular payment of money weekly or monthly, etc. for maintenance);
 - (b) the payment by you of a capital sum (i.e. a lump sum payment).
2. Divorce may result in the loss to you of property rights (e.g. the right to succeed to the Applicant's estate on his or her death) or the right, where appropriate, to a pension.
3. If you wish to oppose the granting of a decree of divorce, you should put your reasons in writing and send your letter to the address shown below. Your letter must reach the sheriff clerk before *(insert date)*.
4. In the event of the decree of divorce being granted, you will be sent a copy of the extract decree. Should you change your address before receiving the copy extract decree, please notify the sheriff clerk immediately.

(Signed)

Sheriff clerk (depute)

*(insert address and telephone number of the
sheriff clerk)*

[or Sheriff officer]

NOTE: If you wish to exercise your right to make a claim for financial provision you should immediately advise the sheriff clerk that you oppose the application for that reason, and thereafter consult a solicitor.

Form of notice to defender in action of dissolution of civil partnership where an interim gender recognition certificate has been issued

YOU ARE GIVEN NOTICE that–

1. The copy initial writ served on you together with this notice states that an interim gender recognition certificate has been issued to you [*or the pursuer*]. If the pursuer establishes this as a fact, decree will be granted.
2. Decree of dissolution will end the civil partnership thereby affecting any right to such pension as may depend on the civil partnership continuing or your right to any state pension that may have been payable to you on the death of your civil partner. You may also lose your rights of succession to the pursuer's estate.
3. If the pursuer is entitled to decree of dissolution you are nevertheless entitled to apply to the sheriff in this action–
 - (a) to make financial or other provision for you under the Family Law (Scotland) Act 1985;
 - (b) for an order under section 11 of the Children (Scotland) Act 1995 in respect of any child of the family within the meaning of section 101(7) of the Civil Partnership Act 2004; or
 - (c) for any other competent order.
4. IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS you should consult a solicitor with a view to lodging a notice of intention to defend (Form CP16).

Date (*insert date*)

(*Signed*)

Solicitor for the pursuer (*add designation and business address*)

Form of intimation of application for financial provision on intestacy under section 29(2) of the Family Law (Scotland) Act 2006

To: (insert name and address as in warrant)

Court ref no.

You are given NOTICE that the pursuer has applied for an order for financial provision on intestacy under section 29(2) of the Family Law (Scotland) Act 2006. A copy of the initial writ is attached. If you wish to appear as a party, you must lodge a minute with the sheriff clerk (*insert address of sheriff clerk*) for leave to do so. Your minute must be lodged within 21 days of (*insert date on which intimation is given. N.B. rule 5.3(2) relating to postal service or intimation*).

Date (insert date)

(signed)

Solicitor for the pursuer

NOTE

If you decide to lodge a minute it may be in your best interests to consult a solicitor. The minute should be lodged with the sheriff clerk together with the appropriate fee of (*insert amount*) and a copy of this intimation.

IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

EXPLANATORY NOTE

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

This Act of Sederunt amends Chapters 33 and 33A of the Ordinary Cause Rules in relation to family actions and civil partnership actions in consequence of the provisions of the Family Law (Scotland) Act 2006. In particular, provision is made to extend the application of the rules to actions of declarator of marriage and declarator of nullity of marriage which may now be brought in the sheriff court. Consequential amendments are also made in respect of the reduction in the separation periods for divorce. A new Chapter 33B is inserted into the rules to make provision for applications under sections 28 and 29 of the Family Law (Scotland) Act 2006 in relation to orders for financial provision where cohabitation ends otherwise than by death and on intestacy. Additionally, various minor amendments are made to Chapters 33 and 33A.

Consequential and miscellaneous amendments are also made to the forms set out in the Schedule to the rules.

2006 No. 207

SHERIFF COURT

**Act of Sederunt (Ordinary Cause Rules) Amendment (Family
Law (Scotland) Act 2006 etc.) 2006**

£4.00

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