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SCHEDULES

^{F1}FIRST SCHEDULE **S**

ORDINARY CAUSE RULES 1993

Textual Amendments

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

SPECIAL PROVISIONS IN RELATION TO PARTICULAR CAUSES **S**

CHAPTER 33 **S**

FAMILY ACTIONS

PART III

DEFENDED FAMILY ACTIONS

Notice of intention to defend and defences

- 33.34. (1) This rule applies where the defender in a family action seeks—
- (a) to oppose any crave in the initial writ;
 - (b) to make a claim for—
 - (i) aliment;
 - (ii) an order for financial provision within the meaning of section 8(3) of the Act of 1985; or
 - (iii) [^{F1}a section 11 order]; or
 - (c) an order—
 - (i) under section 16(1)(b) or (3) of the ^{M1}Act of 1985 (setting aside or varying agreement as to financial provision);
 - (ii) under section 18 of the Act of 1985 (which relates to avoidance transactions); or
 - (iii) under the Act of 1981; or
 - (d) to challenge the jurisdiction of the court.
- (2) In an action to which this rule applies, the defender shall—
- (a) lodge a notice of intention to defend in Form F26 before the expiry of the period of notice; and

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

[^{F2}(3) Where a defender intends to make an application for a section 11 order which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, the defender shall include a crave in his notice of intention to defend for a warrant for intimation or to dispense with such intimation; and rule 33.7 shall, with the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.]

Textual Amendments

- F1** Words in rule 33.34(1)(b)(iii) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 18(a)
F2 Rule 33.34(3) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 18(b)

Marginal Citations

- M1** 1985 c.37.

Abandonment by pursuer

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

Attendance of parties at Options Hearing

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

Decree by default

33.37. (1) In a family action in which the defender has lodged a notice of intention to defend, where a party fails—

- (a) to lodge, or intimate the lodging of, any production or part of process,
- (b) to implement an order of the sheriff within a specified period, ^{F3} . . .
- (c) to appear [^{F4}or] be represented at any diet, [^{F5}, or
- (d) otherwise to comply with any requirement imposed upon that party by these Rules]

that party shall be in default.

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

- (a) where the family action is one mentioned in rule 33.1(1)(a) to (h) [^{F6}, (n) or (o)], allow that action to proceed as undefended under Part II of this Chapter; or
- (b) where the family action is one mentioned in rule 33.1(1)(i) to (m), grant decree as craved; or

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- (c) grant decree of absolvitor; or
 - (d) dismiss the family action or any claim made or order sought; [^{F7}or]
 - [^{F8}(da) make such other order as he thinks fit to secure the expeditious progress of the cause; and]
 - (e) award expenses.
- (3) Where no party appears at a diet in a family action, the sheriff may dismiss that action.
- (4) In a family action, the sheriff may, on cause shown, prorogate the time for lodging any production or part of process, or for intimating or implementing any order.

Textual Amendments

- F3** Word in Sch. 1 rule 33.37(1)(b) omitted (18.8.2006) by virtue of Act of Sederunt (Ordinary Cause and Summary Application Rules) Amendment (Miscellaneous) 2006 (S.S.I. 2006/410), art. 2(9)(a)
- F4** Word in rule 33.37(1)(c) substituted (1.11.1996) by S.I. 1996/2445, para. 3(49)
- F5** Sch. 1 rule 33.37(1)(d) and word inserted (18.8.2006) by Act of Sederunt (Ordinary Cause and Summary Application Rules) Amendment (Miscellaneous) 2006 (S.S.I. 2006/410), art. 2(9)(b)
- F6** Words in Sch. 1 rule 33.37(2) inserted (4.5.2006) by Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 (S.S.I. 2006/207), {rule 2(27)}
- F7** Word in Sch. 1 rule 33.37(2)(d) substituted (18.8.2006) by Act of Sederunt (Ordinary Cause and Summary Application Rules) Amendment (Miscellaneous) 2006 (S.S.I. 2006/410), art. 2(9)(c)
- F8** Sch. 1 rule 33.37(2)(da) inserted (18.8.2006) by Act of Sederunt (Ordinary Cause and Summary Application Rules) Amendment (Miscellaneous) 2006 (S.S.I. 2006/410), art. 2(9)(d)

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