

Status: Point in time view as at 24/01/2003.

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SCHEDULES

^{F1}FIRST SCHEDULE

ORDINARY CAUSE RULES 1993

Textual Amendments

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

[^{F1}SPECIAL PROVISIONS IN RELATION TO PARTICULAR CAUSES]

CHAPTER 33

FAMILY ACTIONS

PART V

ORDERS RELATING TO FINANCIAL PROVISION

Application and interpretation of this Part

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

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

Applications in actions to which this Part applies

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

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

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

- (a) an order for financial provision within the meaning of section 8(3) of the Act of 1985;
- (b) an order under section 16(1)(b) or (3) of the Act of 1985 (setting aside or varying agreement as to financial provision);

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- (c) an order under section 18 of the Act of 1985 (which relates to avoidance transactions); and
- (d) an order under section 13 of the ^{M1}Act of 1981 (transfer or vesting of tenancy).

Marginal Citations

M1 1981 c.59; section 13 was amended by the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraph 11 and the Housing (Scotland) Act 1987 (c.26), **Schedule 23**, paragraph 26.

Applications in depending actions relating to incidental orders

- 33.49. (1) In an action depending before the sheriff to which this Part applies—
- (a) the pursuer or defender, notwithstanding rules 33.34(2) (application by defender for order for financial provision) and 33.48(1)(a) (application for order for financial provision in initial writ or defences), may apply by motion for an incidental order; and
 - (b) the sheriff shall not be bound to determine such a motion if he considers that the application should properly be by a crave in the initial writ or defences, as the case may be.
- (2) In an action depending before the sheriff to which this Part applies, an application under section 14(4) of the Act of 1985 for the variation or recall of an incidental order shall be made by minute in the process of the action to which the application relates.

Applications relating to interim aliment

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

Applications relating to orders for financial provision

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

[^{F1}(3) An application under—

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- (a) paragraph (5) of section 12A of the Act of 1985 ^{F2} (recall or variation of order in respect of a pension lump sum), ^{F3} . . .
 - (b) paragraph (7) of that section (variation of order in respect of pension lump sum to substitute trustees or managers), [^{F4} or
 - (c) section 28(10) or 48(9) of the Welfare Reform and Pensions Act 1999 ^{F5},]
- shall be made by minute in the process of the action to which the application relates.]

Textual Amendments

- F1** Rule 33.51(3) inserted (1.11.1996) by S.I. 1996/2445, **para. 3(50)**
- F2** Section 12A of the Family Law (Scotland) Act 1985 (c.37) was inserted by the Pensions Act 1995 (c.26), **section 167(3)**.
- F3** Word in Sch. 1 rule 33.51(3)(a) omitted (24.1.2003) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), **art. 2(9)(a)**
- F4** Sch. 1 rule 33.51(3)(c) and word inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), **art. 2(9)(b)**
- F5** 1999 c. 30.

Applications after decree relating to agreements and avoidance transactions

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

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