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## SCHEDULES

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

#### ORDINARY CAUSE RULES 1993

##### Textual Amendments

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

#### SPECIAL PROVISIONS IN RELATION TO PARTICULAR CAUSES

### CHAPTER 33

#### FAMILY ACTIONS

##### *PART XI*

##### *SIMPLIFIED DIVORCE APPLICATIONS*

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

- 33.73. (1) This Part applies to an application for divorce by a party to a marriage made in the manner prescribed in rule 33.74 (form of applications) if, but only if—
- that party relies on the facts set out in section 1(2)(d) (no cohabitation for [<sup>F1</sup>one year] with consent of defender to decree), or section 1(2)(e) (no cohabitation for [<sup>F2</sup>two] years) [<sup>F3</sup> or section 1(1)(b) (issue of interim gender recognition certificate) <sup>F4</sup>], of the <sup>M1</sup>Act of 1976;
  - in an application under section 1(2)(d) of the Act of 1976, the other party consents to decree of divorce being granted;
  - no other proceedings are pending in any court which could have the effect of bringing the marriage to an end;
  - there are no children of the marriage under the age of 16 years;
  - neither party to the marriage applies for an order for financial provision on divorce; <sup>F5</sup> . . .
  - neither party to the marriage suffers from mental disorder. [<sup>F6</sup>; and
  - there is no religious impediment to the remarriage of either party]
- (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.

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(3) In this Part “simplified divorce application” means an application mentioned in paragraph (1).

#### Textual Amendments

- F1** Words in [Sch. 1 rule 33.73\(1\)\(a\)](#) substituted (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(36)(a)(i)}
- F2** Word in [Sch. 1 rule 33.73\(1\)\(a\)](#) substituted (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(36)(a)(ii)}
- F3** Words in [Sch. 1 rule 33.73\(1\)\(a\)](#) 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(36)(a)(iii)}
- F4** [Section 1\(1\)\(b\)](#) was inserted by paragraph 6 of Schedule 2 to the [Gender Recognition Act 2004 \(c. 7\)](#).
- F5** Word in [Sch. 1 rule 33.73\(1\)\(e\)](#) omitted (4.5.2006) by virtue of Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 ([S.S.I. 2006/207](#)), {rule 2(36)(b)}
- F6** [Sch. 1 rule 33.73\(1\)\(g\)](#) and word 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(36)(c)}

#### Marginal Citations

- M1** [1976 c.39](#).

#### Form of applications

- 33.74. (1) A simplified divorce application in which the facts set out in section 1(2)(d) of the Act of 1976 (no cohabitation for [<sup>F7</sup>one year] with consent of defender to decree) are relied on shall be made in Form F31 and shall only be of effect if—
- (a) it is signed by the applicant; and
  - (b) the form of consent in Part 2 of Form [<sup>F8</sup>F31] is signed by the party to the marriage giving consent.
- (2) A simplified divorce application in which the facts set out in section 1(2)(e) of the Act of 1976 (no cohabitation for [<sup>F9</sup>two] years) are relied on shall be made in Form F33 and shall only be of effect if it is signed by the applicant.
- [<sup>F10</sup>(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.]

#### Textual Amendments

- F7** Words in [Sch. 1 rule 33.74\(1\)](#) substituted (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(37)(a)}
- F8** Word in [rule 33.74\(1\)\(b\)](#) substituted (1.11.1996) by [S.I. 1996/2445, para. 3\(54\)](#)
- F9** Word in [Sch. 1 rule 33.74\(2\)](#) substituted (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(37)(b)}
- F10** [Sch. 1 rule 33.74\(3\)](#) 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(37)(c)}

#### Lodging of applications

- 33.75. The applicant shall send a simplified divorce application to the sheriff clerk with—

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- (a) an extract or certified copy of the marriage certificate; <sup>F11</sup> . . .
- (b) the appropriate fee. [<sup>F12</sup>; 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).]

#### Textual Amendments

- F11** Word in [Sch. 1 rule 33.75\(a\)](#) omitted (4.5.2006) by virtue of Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 ([S.S.I. 2006/207](#)), {rule 2(38)(a)}
- F12** [Sch. 1 rule 33.75\(c\)](#) and word 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(38)(b)}

#### Citation and intimation

- 33.76. (1) This rule is subject to rule 33.77 (citation where address not known).
- (2) It shall be the duty of the sheriff clerk to cite any person or intimate any document in connection with a simplified divorce application.
- (3) The form of citation—
- (a) in an application relying on the facts in section 1(2)(d) of the Act of 1976 shall be in Form F34; <sup>F13</sup> . . .
  - (b) in an application relying on the facts in section 1(2)(e) of the Act of 1976 shall be in Form F35.
  - [<sup>F14</sup>(c) in an application relying on the facts in section 1(1)(b) of the Act of 1976 shall be in Form F35A.]
- [<sup>F15</sup>(4) The citation or intimation required by paragraph (2) shall be made—
- (a) by the sheriff clerk by registered post or the first class recorded delivery service in accordance with rule 5.3 (postal service or intimation);
  - (b) on payment of an additional fee, by a sheriff officer in accordance with rule 5.4(1) and (2) (service within Scotland by sheriff officer); or
  - (c) where necessary, by the sheriff clerk in accordance with rule 5.5 (service on persons furth of Scotland).]

[<sup>F16</sup>(5) Where citation or intimation is made in accordance with paragraph (4)(c), the translation into an official language of the country in which service is to be executed required by rule 5.5(6) shall be provided by the party lodging the simplified divorce application.]

#### Textual Amendments

- F13** Word in [Sch. 1 rule 33.76\(3\)\(a\)](#) omitted (4.5.2006) by virtue of Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 ([S.S.I. 2006/207](#)), {rule 2(39)(a)}
- F14** [Sch. 1 rule 33.76\(3\)\(c\)](#) 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(39)(b)}
- F15** [Sch. 1 rule 33.76\(4\)](#) substituted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(17\)\(a\)](#)
- F16** [Sch. 1 rule 33.76\(5\)](#) inserted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(17\)\(b\)](#)

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*Citation where address not known*

- 33.77. (1) In a simplified divorce application in which the facts in section 1(2)(e) of the Act of 1976 (no cohabitation for [<sup>F17</sup>two] years) [<sup>F18</sup>or section 1(1)(b) of the Act of 1976 (grounds of divorce: issue of interim gender recognition certificate)] are relied on and the address of the other party to the marriage 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 F36 on the walls of court on a period of notice of 21 days; and
  - (b) intimation shall be made to—
    - (i) every child of the marriage between the parties who has reached the age of 16 years, and
    - (ii) one of the next-of-kin of the other party to the marriage who has reached that age, unless the address of such person is not known and cannot reasonably be ascertained.
- (2) Intimation to a person referred to in paragraph (1)(b) shall be given by intimating a copy of the application and a notice of intimation in Form F37.

**Textual Amendments**

- F17** Word in [Sch. 1 rule 33.77\(1\)](#) substituted (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(40)(a)}
- F18** Words in [Sch. 1 rule 33.77\(1\)](#) 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(40)(b)}

*Opposition to applications*

- 33.78. (1) Any person on whom service or intimation of a simplified divorce application has been made may give notice by letter sent to the sheriff clerk that he challenges the jurisdiction of the court or opposes the grant of decree of divorce and giving the reasons for his opposition to the application.
- (2) Where opposition to a simplified divorce application is made under paragraph (1), the sheriff shall dismiss the application unless he is satisfied that the reasons given for the opposition are frivolous.
  - (3) The sheriff clerk shall intimate the decision under paragraph (2) to the applicant and the respondent.
  - (4) The sending of a letter under paragraph (1) shall not imply acceptance of the jurisdiction of the court.

*Evidence*

- 33.79. Parole evidence shall not be given in a simplified divorce application.

*Decree*

- 33.80. (1) The sheriff may grant decree in terms of the simplified divorce application on the expiry of the period of notice if such application has been properly served provided that, when the application has been served in a country to which the <sup>M2</sup>Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil

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or Commercial Matters dated 15 November 1965 applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of article 15 of that Convention have been complied with.

- (2) The sheriff clerk shall, not sooner than 14 days after the granting of decree in terms of paragraph (1), issue to each party to the marriage an extract of the decree of divorce in Form F38.

**Marginal Citations**

**M2** Cmnd. 3986 (1969).

*Appeals*

- 33.81. Any appeal against an interlocutor granting decree of divorce under rule 33.80 (decree) may be made, within 14 days after the date of decree, by sending a letter to the court giving reasons for the appeal.

*Applications after decree*

- 33.82. Any application to the court after decree of divorce has been granted in a simplified divorce application which could have been made if it had been made in an action of divorce shall be made by minute.

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