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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 II

UNDEFENDED FAMILY ACTIONS

Evidence in certain undefended family actions

33.28. (1) This rule—

- (a) subject to sub-paragraph (b), applies to all family actions in which no notice of intention to defend has been lodged, other than a family action—
 - (i) for ^{F1}a section 11 order or for] aliment;
 - (ii) of affiliation and aliment;
 - (iii) for financial provision after an overseas divorce or annulment within the meaning of Part IV of the ^{M1}Matrimonial and Family Proceedings Act 1984; or
 - (iv) for an order under the ^{M2}Act of 1981;
- (b) applies to a family action in which a curator ad litem has been appointed under rule 33.16 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 family action which proceeds at any stage as undefended where the sheriff so directs;
- (d) applies to the merits of a family action which is undefended on the merits where the sheriff so directs, notwithstanding that the action is defended on an ancillary matter.

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- (2) Unless the sheriff otherwise directs, evidence shall be given by affidavit.
- (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 parent 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.

Textual Amendments

F1 Words in [rule 33.28\(1\)\(a\)\(i\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 16](#)

Marginal Citations

M1 [1984 c.42](#); Part IV was amended by the Act of 1985 (c.37), Schedule 1, paragraphs 12 and 13.

M2 [1981 c.59](#).

Procedure for decree in actions under rule 33.28

- 33.29. (1) In an action to which rule 33.28 (evidence in certain undefended family 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 F27 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

- 33.30. In an action to which rule 33.28 (evidence in certain undefended family actions) applies, the sheriff clerk shall, after the expiry of 14 days after the grant of decree under rule 33.29 (procedure for decree in actions under rule 33.28), issue to the ^[F2]pursuer and the defender an extract decree.

Textual Amendments

F2 Word in [Sch. 1 rule 33.30](#) 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(26)}

Procedure in undefended family actions for ^[F3]section 11 order

- 33.31. (1) Where no notice of intention to defend has been lodged in a family action for ^[F4]a section 11 order, any proceedings in the cause shall be dealt with by the sheriff in chambers.

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- (2) In an action to which paragraph (1) applies, decree may be pronounced after such inquiry as the sheriff thinks fit.

Textual Amendments

- F3** Words in [rule 33.31](#) heading substituted (1.11.1996) by [S.I. 1996/2167, para. 2, Sch. para. 17\(a\)](#)
F4 Words in [rule 33.31\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2167, para. 2, Sch. para. 17\(b\)](#)

No recording of evidence

- 33.32. It shall not be necessary to record the evidence in any proof in a family action which is not defended.

Disapplication of Chapter 15

- 33.33. [^{F5}Other than rule 15.1(1),]Chapter 15 (motions) shall not apply to a family action in which no notice of intention to defend has been lodged [^{F6}, or to a family action in so far as it proceeds as undefended].

Textual Amendments

- F5** Words in [rule 33.33](#) inserted (1.11.1996) by [S.I. 1996/2445, para. 3\(48\)\(a\)](#)
F6 Words in [rule 33.33](#) inserted (1.11.1996) by [S.I. 1996/2445, para. 3\(48\)\(b\)](#)

Late appearance and application for recall by defenders

- [^{F7}33.33A] In a cause mentioned in rule 33.1(a) to (h), (n) or (o), the sheriff may, at any stage of the action before the granting of final decree, make an order with such conditions, if any, as he thinks fit—
- (a) directing that a defender who has not lodged a notice of intention to defend be treated as if he had lodged such a notice and the period of notice had expired on the date on which the order was made; or
 - (b) allowing a defender who has not lodged a notice of intention to defend to appear and be heard at a diet of proof although he has not lodged defences, but he shall not, in that event, be allowed to lead evidence without the pursuer's consent.
- (2) Where the sheriff makes an order under paragraph (1), the pursuer may recall a witness already examined or lead other evidence whether or not he closed his proof before that order was made.
- (3) Where no order under paragraph (1) has been sought by a defender who has not lodged a notice of intention to defend and decree is granted against him, the sheriff may, on an application made within 14 days of the date of the decree, and with such conditions, if any, as he thinks fit, make an order recalling the decree.
- (4) Where the sheriff makes an order under paragraph (3), the cause shall thereafter proceed as if the defender had lodged a notice of intention to defend and the period of notice had expired on the date on which the decree was recalled.

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- (5) An application under paragraph (1) or (3) shall be made by note setting out the proposed defence and explaining the defender's failure to appear.
- (6) An application under paragraph (1) or (3) shall not affect any right of appeal the defender may otherwise have.
- (7) A note lodged in an application under paragraph (1) or (3) shall be served on the pursuer and any other party.]

Textual Amendments

- F7** Sch. 1 rule 33.33A inserted (1.7.2008) by Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2008 (S.S.I. 2008/223), **para. 2(2)**

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