

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### <sup>F1</sup>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 33A **S**

##### CIVIL PARTNERSHIP ACTIONS

###### *PART V*

###### *ORDERS RELATING TO FINANCIAL PROVISIONS*

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

33A.44(1) This Part applies to an action of dissolution [<sup>F1</sup>or declarator of nullity] of civil partnership.

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

##### Textual Amendments

- F1** Words in [Sch. 1 rule 33A.44\(1\)](#) 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(51)}

###### *Applications in actions to which this Part applies*

33A.45(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.

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (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);
  - (c) an order under section 18 of the Act of 1985 (which relates to avoidance transactions); and
  - (d) an order under section 112 of the Act of 2004 (transfer of tenancy).

*Applications in depending actions relating to incidental orders*

- 33A.46(1) In an action depending before the sheriff to which this Part applies–
- (a) the pursuer or defender, notwithstanding rules 33A.34(2) (application by defender for order for financial provision) and 33A.45(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*

- 33A.47. 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*

- 33A.48(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.
- (3) An application under–
- (a) paragraph (5) of section 12A of the Act of 1985 <sup>F2</sup> (recall or variation of order in respect of a pension lump sum);

*Status: Point in time view as at 28/09/2009.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) paragraph (7) of that section <sup>F3</sup> (variation of order in respect of pension lump sum to substitute trustees or managers); or
  - (c) section 28(10) or 48(9) of the Welfare Reform and Pensions Act 1999,
- shall be made by minute in the process of the action to which the application relates.

#### Textual Amendments

- F2** Section 12A(5) was inserted by the Pensions Act 1995 (c. 26), section 167(3) and amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 84 and Schedule 12, Part 1, paragraph 9(1)(6).
- F3** Section 12A(7) was inserted by the Pensions Act 1995 (c. 26), section 167(3) and amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 84 and Schedule 12, Part 1, paragraph 9(1)(8).

#### *Pension Protection Fund notification*

[<sup>F4</sup>33A(4) In this rule–

“assessment period” shall be construed in accordance with section 132 of the Pensions Act 2004;

“pension arrangement” shall be construed in accordance with the definition in section 27 of the Act of 1985; and

“valuation summary” shall be construed in accordance with the definition in Schedule 2 to the Pension Protection Fund (Provision of Information) Regulations 2005.

- (2) This rule applies where a party at any stage in the proceedings applies for an order under section 8 or section 16 of the Act of 1985.
- (3) Where the party against whom an order referred to in paragraph (2) is sought has received notification in compliance with the Pension Protection Fund (Provision of Information) Regulations 2005 or does so after the order is sought–
  - (a) that there is an assessment period in relation to his pension arrangement; or
  - (b) that the Board of the Pension Protection Fund has assumed responsibility for all or part of his pension arrangement,he shall comply with paragraph (4).
- (4) The party shall–
  - (a) lodge the notification; and
  - (b) obtain and lodge as soon as reasonably practicable thereafter–
    - (i) a valuation summary; and
    - (ii) a forecast of his compensation entitlement.
- (5) Subject to paragraph (6), the notification referred to in paragraph (4)(a) requires to be lodged–
  - (a) where the notification is received before the order is sought, within 7 days of the order being sought;
  - (b) where the notification is received after the order is sought, within 7 days of receiving the notification.
- (6) Where an order is sought against the defender before the defences are lodged, and the notification is received before that step occurs, the notification shall be lodged with the defences.

---

*Status: Point in time view as at 28/09/2009.*

**Changes to legislation:** *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

(7) At the same time as lodging documents under paragraph (4), copies shall be sent to the other party to the proceedings.]

**Textual Amendments**

**F4** Sch. 1 rule 33A.48A inserted (1.7.2008) by [Act of Sederunt \(Sheriff Court Rules\) \(Miscellaneous Amendments\) 2008 \(S.S.I. 2008/223\)](#), [para. 3\(3\)](#)

*Applications after decree relating to agreements and avoidance transactions*

33A.49. 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.

**Status:**

Point in time view as at 28/09/2009.

**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations.