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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 416**

**Act of Sederunt (Sheriff Court Rules)  
(Miscellaneous Amendments) (No. 2) 2010**

**Foreign decrees in family actions**

- 8.**—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.
- (2) In rule 8.1 (reponing)(1), in paragraph (1)(a), for “rule 33.1(1)(a) to (h) (n) or (o)” substitute “rule 33.1(a) to (h) or (n) to (p)”.
- (3) In rule 33.1 (interpretation of Chapter 33)(2), in paragraph (1), after subparagraph (o) insert—
- “(p) an action for declarator of recognition, or non-recognition, of a relevant foreign decree within the meaning of section 7(9) of the Domicile and Matrimonial Proceedings Act 1973(3);”.
- (4) In rule 33.28 (evidence in certain undefended family actions), after paragraph (1)(a)(iv), insert—
- “(v) for declarator of recognition, or non-recognition, of a relevant foreign decree within the meaning of section 7(9) of the Domicile and Matrimonial Proceedings Act 1973;”.
- (5) In rule 33.33A (late appearance and application for recall by defenders)(4), in paragraph (1), for “rule 33.1(a) to (h), (n) or (o)” substitute “rule 33.1(a) to (h) or (n) to (p)”.
- (6) In rule 33.37 (decree by default), in paragraph (2)(a), for “rule 33.1(1)(a) to (h), (n) or (o)” substitute “rule 33.1(a) to (h) or (n) to (p)”.
- (7) After Part XV of Chapter 33 (management of money payable to children)(5), insert—

**“PART XVI**

**ACTION OF DECLARATOR OF RECOGNITION  
OR NON-RECOGNITION OF A FOREIGN DECREE**

**Action of declarator in relation to certain foreign decrees**

- 33.96.**—(1) This rule applies to an action for declarator of recognition, or non-recognition, of a decree of divorce, nullity or separation granted outwith a member state of the European Union.
- (2) In an action to which this rule applies, the pursuer shall state in the condescendence of the initial writ—
- (a) the court, tribunal or other authority which granted the decree;

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(1) Rule 8.1 was amended by [S.S.I. 2000/239](#), [2004/197](#), [2006/207](#).  
(2) Rule 33.1 was amended by [S.I. 1996/2167](#), [S.S.I. 2005/189](#) and [2006/207](#).  
(3) [1973 c.45](#). Section 7 was amended by the Presumption of Death (Scotland) Act [1977 \(c.27\)](#), section 19 and Schedule 2; the Family Law (Scotland) Act [2006 \(asp 2\)](#), section 37(2) and schedule 2, paragraph (1); and [S.S.I. 2001/36](#) and [2005/42](#).  
(4) Rule 33.33A was inserted by [S.S.I. 2008/223](#).  
(5) Part XV of Chapter 33 was inserted by [S.I. 1996/2167](#).

- (b) the date of the decree of divorce, annulment or separation to which the action relates;
- (c) the date and place of the marriage to which the decree of divorce, nullity or separation relates;
- (d) the basis on which the court has jurisdiction to entertain the action;
- (e) whether to the pursuer's knowledge any other proceedings whether in Scotland or in any other country are continuing in respect of the marriage to which the action relates or are capable of affecting its validity or subsistence; and
- (f) where such proceedings are continuing—
  - (i) the court, tribunal or authority before which the proceedings have been commenced;
  - (ii) the date of commencement;
  - (iii) the names of the parties; and
  - (iv) the date, or expected date of any proof (or its equivalent), in the proceedings.

(3) Where—

- (a) such proceedings are continuing;
- (b) the action before the sheriff is defended; and
- (c) either—
  - (i) the initial writ does not contain the statement referred to in paragraph (2)(e), or
  - (ii) the particulars mentioned in paragraph (2)(f) as set out in the initial writ are incomplete or incorrect,

any defences or minute, as the case may be, lodged by any person to the action shall include that statement and, where appropriate, the further or correct particulars mentioned in paragraph (2)(f).

(4) Unless the sheriff otherwise directs, a declarator of recognition, or non-recognition, of a decree under this rule shall not be granted without there being produced with the initial writ—

- (a) the decree in question or a certified copy of the decree;
- (b) the marriage extract or equivalent document to which the action relates.

(5) Where a document produced under paragraph (4)(a) or (b) is not in English it shall, unless the sheriff otherwise directs, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(6) For the purposes of this rule, proceedings are continuing at any time after they have commenced and before they are finally disposed of.”