
SCOTTISH STATUTORY INSTRUMENTS

2022 No. 289

**Act of Sederunt (Ordinary Cause Rules 1993
Amendment) (Case Management of Defended
Family and Civil Partnership Actions) 2022**

Amendment of the Ordinary Cause Rules 1993

- 2.—(1) The Ordinary Cause Rules 1993⁽¹⁾ are amended in accordance with this paragraph.
- (2) In rule 1.2(1) (interpretation)⁽²⁾ after the definition of “enactment” insert—
- ““Full Case Management Hearing” means a hearing under rules 33.36P or 33A.36P (Full Case Management Hearing), as the case may be;
- “Initial Case Management Hearing” means a hearing under rules 33.36J or 33A.36J (Initial Case Management Hearing), as the case may be;”.
- (3) In rule 9.1 (notice of intention to defend)⁽³⁾—
- (a) in paragraph (1) from “rules” to “and” where it third occurs substitute “rule”;
- (b) in paragraph (3) after “Chapter 40” insert “or a family or civil partnership action within the meaning of Chapters 33 and 33A”.
- (4) In rule 9.2 (fixing date for Options Hearing)⁽⁴⁾—
- (a) in paragraph (1) omit “Subject to paragraph (1A),”;
- (b) omit paragraphs (1A) and (1B)⁽⁵⁾.
- (5) In rule 9.6 (defences)⁽⁶⁾—
- (a) in paragraph (1) omit “(subject to paragraph (3))”;
- (b) omit paragraph (3)⁽⁷⁾.
- (6) In rule 9.12 (Options Hearing)⁽⁸⁾—
- (a) in paragraph (3)⁽⁹⁾ omit sub-paragraph (f);
- (b) in paragraph (7)⁽¹⁰⁾—
- (i) for “rules” substitute “rule”;
- (ii) omit “33.37 (decree by default in family action) and 33A.37 (decree by default in civil partnership action),”;

(1) The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c. 51). Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2021/226.

(2) Rule 1.2(1) was last amended by S.S.I. 2015/227.

(3) Rule 9.1 was last amended by S.S.I. 2006/207.

(4) Rule 9.2 was last amended by S.S.I. 2006/207.

(5) Paragraphs (1A) and (1B) were inserted by S.S.I. 2000/239.

(6) Rule 9.6 was last amended by S.S.I. 2006/207.

(7) Rule 9.6(3) was inserted by S.I. 1996/2167 and last amended by S.S.I. 2006/207.

(8) Rule 9.12 was last amended by S.S.I. 2013/139.

(9) Paragraph (3)(d) and (e) were inserted by S.S.I. 2007/463. Paragraph (3)(f) was inserted by S.S.I. 2013/139.

(10) Paragraph (7) was amended by S.S.I. 2006/207.

- (c) omit paragraph (9)(11).
- (7) In rule 10.6 (Procedural Hearing)(12)—
- (a) in paragraph (3) omit sub-paragraph (f)(13);
 - (b) omit paragraph (6).
- (8) In rule 14.10A(2) (orders under section 11 of the Children (Scotland) Act 1995)(14) for “Chapter 33AA (expeditious resolution of certain causes)” substitute “rules 33.36J or 33A.36J (Initial Case Management Hearing)”.
- (9) In rule 22.1 (note of basis of preliminary plea)(15)—
- (a) in paragraph (1) for “rule 9.12 or the Procedural Hearing under rule 10.6” substitute “rule 9.12, the Procedural Hearing under rule 10.6 or the Full Case Management Hearing under rule 33.36P or rule 33A.36P”;
 - (b) for paragraph (2)(16) substitute—

“(2) Where the Options Hearing or Full Case Management Hearing is continued under rules 9.12(5) or 33.36P(7) and a preliminary plea is added by adjustment, a party intending to insist on that plea shall, not later than 3 days before the date of the Options Hearing or Full Case Management Hearing so continued—

 - (a) lodge in process a note of the basis for the plea; and
 - (b) intimate a copy of it to every other party.”;
 - (c) in paragraph (3)—
 - (i) for “he shall be” substitute “the party is”;
 - (ii) for “or Procedural Hearing” substitute “, Procedural Hearing or Full Case Management Hearing”.
- (10) In rule 28A.1 (pre-proof hearing)(17)—
- (a) for paragraph (1A)(18) substitute—

“(1A) In a family action which must follow the procedure set out in Part III of Chapter 33 or 33A (defended family actions), the sheriff will fix a pre-proof hearing at the Full Case Management Hearing.”;
 - (b) for paragraph (3)(b)(19) substitute—

“(b) the extent to which the parties have complied with their duties under rules 9A.2, 9A.3, 29.11 and 29.15 and any orders made by the sheriff under—

 - (i) rules 9.12(3)(a), (b), (d) or (e);
 - (ii) rules 10.6(3)(a) or (b);
 - (iii) rules 33.36P(4)(a), (b), (d) or (6); or
 - (iv) rules 33A.36P(4)(a), (b), (d) or (6); and”.
- (11) In rule 33.16(3) (appointment of curators ad litem to defenders)(20), in sub-paragraph (b) for “Form G5 sent to him” substitute “Form G5A sent to the curator *ad litem*”.

(11) Paragraph (9) was inserted by S.S.I. 2013/139.

(12) Rule 10.6 was last amended by S.S.I. 2013/139.

(13) Paragraphs (3)(f) and (6) were inserted by S.S.I. 2013/139.

(14) Rule 14.10A was inserted by S.S.I. 2013/139.

(15) Rule 22.1 was last amended by S.S.I. 2000/239.

(16) Paragraph (2) was inserted by S.I. 1996/2445.

(17) Rule 28A.1 was inserted by S.S.I. 2006/410 and last amended by S.S.I. 2013/139.

(18) Paragraph (1A) was inserted by S.S.I. 2013/139.

(19) Paragraph (3)(b) was amended by S.S.I. 2007/463.

(20) Rule 33.16(3) was last amended by S.I. 1996/2445.

(12) For rule 33.22 (referral to family mediation)(21) substitute—

“Referral to family mediation

33.22.—(1) In any family action, where the sheriff considers it appropriate to do so, the sheriff may, at any stage of the action, refer the action, or part thereof, to a mediator accredited to a specified family mediation organisation.

(2) The sheriff must have particular regard to any averments of domestic abuse when considering the appropriateness of referring the action, or part thereof, to a mediator under paragraph (1).

(3) In this rule “any family action” means any action to which the Civil Evidence (Family Mediation) (Scotland) Act 1995(22) applies.”.

(13) In rule 33.22A (Child Welfare Hearing)(23)—

(a) in paragraph (1)—

(i) after “time for a Child Welfare Hearing” insert “to be heard either at the same time as the Initial Case Management Hearing or”;

(ii) for “21 days after the lodging of such notice of intention to defend” substitute “21 days and not later than 49 days after the last date for lodging of the notice of intention to defend”;

(b) for paragraph (2) substitute—

“(2) On fixing the date for the Child Welfare Hearing, the sheriff clerk must—

(a) if the Child Welfare Hearing is to be heard at the same time as the Initial Case Management Hearing, intimate the date on which both hearings will take place to the parties in Form G5A; or

(b) if the Child Welfare Hearing is to be heard at a different time from the Initial Case Management Hearing, intimate the date of the Child Welfare Hearing to the parties in Form F41.”.

(14) Before rule 33.34 (notice of intention to defend and defences etc.)(24), in Part III insert—

“General provisions

33.33B.—(1) Chapters 9 (standard procedure in defended causes) and 10 (additional procedure) do not apply to a family action in which a notice of intention to defend has been lodged in accordance with rule 33.34 (notice of intention to defend and defences etc.).

(2) Subject to paragraph (3), a family action in which a notice of intention to defend has been lodged must follow the procedure set out in this Part of this Chapter.

(3) The sheriff may, in exceptional circumstances, of the sheriff’s own motion or on the motion of a party, disapply any rule mentioned in this Part of this Chapter.”.

(15) In rule 33.34(4A)(25) omit “and where the initial writ does not include a crave for a section 11 order,”.

(16) For rule 33.36 (attendance of parties at Options Hearing) substitute—

(21) Rules 33.22 and 33.22A were substituted and inserted respectively by [S.I. 1996/2167](#).

(22) [1995 c. 6](#), last amended by [S.S.I. 2013/211](#).

(23) Rule 33.22A was last amended by [S.S.I. 2007/463](#).

(24) Rule 33.34 was last amended by [S.S.I. 2019/123](#).

(25) Paragraph (4A) was inserted by [S.S.I. 2019/123](#).

“Attendance of parties at Case Management Hearings

33.36. All parties must, except on cause shown, attend personally case management hearings under rules 33.36J (Initial Case Management Hearing) and 33.36P (Full Case Management Hearing).”.

(17) After rule 33.36 insert—

“Fixing of date and time for Initial Case Management Hearing

33.36A.—(1) On the lodging of a notice of intention to defend under rule 33.34 (notice of intention to defend and defences etc.), the sheriff clerk must fix a date and time for an Initial Case Management Hearing which date must be on the first suitable court day occurring not sooner than 21 days and not later than 49 days after the last date for the lodging of the notice of intention to defend.

(2) In cases involving a crave for a section 11 order the sheriff must have regard to holding the Initial Case Management Hearing and the Child Welfare Hearing at the same time.

(3) On fixing the date for Initial Case Management Hearing, the sheriff clerk must—

(a) intimate forthwith to the parties in Form G5A—

(i) the last date for lodging defences;

(ii) the date for the return of the initial writ;

(iii) the date of the Initial Case Management Hearing;

(iv) whether the Child Welfare Hearing is to be held at the same time with the Initial Case Management Hearing;

(b) prepare an interlocutor addressing all of the matters in sub-paragraph (a) for the sheriff to sign.

(4) The fixing of the date of the Initial Case Management Hearing does not affect the right of a party to make any incidental application to the court.

Alteration of date and time for Initial Case Management Hearing

33.36B.—(1) Subject to paragraph (2), at any time before the date and time fixed under rule 33.36A (fixing of date and time for Initial Case Management Hearing) or under this rule, the sheriff may of the sheriff’s own motion, on the motion of any party or on the joint motion of the parties—

(a) discharge the Initial Case Management Hearing or, where fixed, the Child Welfare Hearing or both, as the case may be; and

(b) fix a new date and time for either the Initial Case Management Hearing or the Child Welfare Hearing or both, as the case may be.

(2) The date and time of any hearing to be fixed under paragraph (1)(b) may be earlier or later than the date and time fixed for the discharged hearing, but must be fixed for a date within the period specified in rule 33.36A(1) or the first available court date thereafter.

(3) Where the sheriff is considering making an order under paragraph (1) of the sheriff’s own motion and in the absence of the parties, the sheriff clerk must—

(a) fix a date, time and place for the parties to be heard;

(b) prepare an interlocutor recording those dates, times and places for the sheriff to sign.

(4) The sheriff may discharge a hearing fixed under paragraph (3) on the joint motion of the parties.

(5) On the discharge of a hearing under paragraph (1)(a) or paragraph (4), the sheriff clerk must forthwith intimate to all parties—

- (a) that the hearing has been discharged under paragraph (1)(a) or, as the case may be, paragraph (4);
- (b) the last date for lodging defences, if appropriate;
- (c) the last date for adjustment, if appropriate;
- (d) the new date and time fixed for any hearing under paragraph (1)(b).

(6) Any reference in these Rules to the Initial Case Management Hearing, the Child Welfare Hearing or a continuation of either, includes a reference to an Initial Case Management Hearing or Child Welfare Hearing for which a date and time has been fixed under this rule.

Return of initial writ

33.36C. Subject to rule 33.36D (lodging of pleadings before Initial Case Management Hearing) the pursuer must return the initial writ, unbacked and unfolded, to the sheriff clerk within 7 days of the expiry of the period of notice and in accordance with the date intimated on Form G5A.

Lodging of pleadings before Initial Case Management Hearing

33.36D. Where any hearing, whether by motion or otherwise, is fixed before the Initial Case Management Hearing, each party must lodge in process a copy of the party's pleadings, or, where the pleadings have been adjusted, the pleadings as adjusted, not later than 2 days before the hearing.

Process folder

33.36E.—(1) On receipt of the notice of intention to defend, the sheriff clerk must prepare a process folder which must include—

- (a) interlocutor sheets;
- (b) duplicate interlocutor sheets;
- (c) a production file;
- (d) a motion file;
- (e) an inventory of process.

(2) Any productions or part of process lodged in a cause must be placed in the process folder.

Defences

33.36F.—(1) Where a notice of intention to defend has been lodged, the defender must lodge defences within 14 days after the expiry of the period of notice.

(2) Defences must be in the form of answers in numbered paragraphs corresponding to the articles of the condescendence and must have appended a note of the pleas-in-law of the defender.

(3) Defences which include a counterclaim must commence with a crave setting out the counterclaim in such form as, if the counterclaim had been made in a separate action, would have been appropriate in the initial writ in that separate action and must include—

- (a) answers to the condescendence of the initial writ;

- (b) a statement of facts in numbered paragraphs setting out the facts on which the counterclaim is founded, incorporating by reference, if necessary, any matter contained in the defences;
- (c) appropriate pleas-in-law.

Implied admissions

33.36G. Every statement of fact made by a party must be answered by every other party, and if such a statement by one party within the knowledge of another party is not denied by that other party, that other party will be deemed to have admitted that statement of fact.

Sisting

33.36H.—(1) The sheriff may, on cause shown, of the sheriff’s own motion or on the motion of any party, sist the action until a specified date.

- (2) Where the action is sisted, the sheriff clerk must—
 - (a) prepare an interlocutor specifying the reason for the sist and the date specified in paragraph (1) for the sheriff to sign;
 - (b) fix a date for a review of sist hearing for not later than 30 days following the expiration of the sist;
 - (c) intimate the date of the review of sist hearing to each party.

(3) Where a cause has been sisted, any period for adjustment before the sist is to be reckoned as a part of the period for adjustment.

Open record

33.36I. The sheriff may, at any time before the closing of the record in a family action, of the sheriff’s own motion or on the motion of a party, order any party to lodge a copy of the pleadings in the form of an open record containing any adjustments and amendments made as at the date of the order.

Initial Case Management Hearing

33.36J.—(1) At the Initial Case Management Hearing the sheriff must seek to secure the expeditious progress of the cause by ascertaining from parties the matters in dispute and information about any other matter referred to in paragraph (3).

(2) It is the duty of the parties to provide the sheriff with sufficient information to enable the sheriff to conduct the hearing as provided for in this rule.

- (3) At the Initial Case Management Hearing each party must address the court on—
 - (a) any matters that are capable of agreement;
 - (b) the matters that are in dispute between the parties;
 - (c) any matters of potential complexity or difficulty;
 - (d) any valuations that are likely to be required;
 - (e) any expert or skilled witness evidence that is likely to be required and the scope for joint instruction;
 - (f) whether additional steps require to be taken to give a child an opportunity to express the child’s view;

- (g) whether steps require to be taken to investigate any facts or circumstances relating to a child;
 - (h) the suitability of the action for referral to mediation;
 - (i) whether special measures will be required for the purposes of taking the evidence of any vulnerable witnesses;
 - (j) the scope for use of affidavits and other documents in place of oral evidence;
 - (k) the extent to which the parties have complied with any orders made by the court;
 - (l) the number and availability of witnesses;
 - (m) the content, volume and form of productions;
 - (n) the requirement for access to IT equipment to view productions;
 - (o) whether sanction is sought for the employment of counsel;
 - (p) the progress of any legal aid application.
- (4) At the Initial Case Management Hearing, the sheriff must fix a date and time for a Full Case Management Hearing which date must be on the first suitable court day occurring—
- (a) in cases involving a crave for a section 11 order only, not sooner than 16 weeks and not later than 24 weeks after the last date for the lodging of defences;
 - (b) in all other cases, not sooner than 20 weeks and not later than 24 weeks after the last date for the lodging of defences.
- (5) Following the Initial Case Management Hearing the sheriff clerk must intimate forthwith to the parties in Form G6B—
- (a) the last date for lodging a note of the basis for any preliminary pleas;
 - (b) the last date for adjustment;
 - (c) the last date for lodging a copy of the record;
 - (d) the date of the Full Case Management Hearing.

Alteration of date and time for Full Case Management Hearing

33.36K.—(1) Subject to paragraph (2), at any time before the date and time fixed under rule 33.36J (Initial Case Management Hearing) or under this rule, the sheriff may, of the sheriff's own motion, on the motion of any party or on the joint motion of the parties—

- (a) discharge the Full Case Management Hearing; and
- (b) fix a new date and time for a Full Case Management Hearing.

(2) The date and time of any hearing to be fixed under paragraph (1)(b) may be earlier or later than the date and time fixed for the discharged hearing, but must be fixed for a date within the relevant period specified in rule 33.36J(4) or the first available court date thereafter.

(3) Where the sheriff is considering making an order under paragraph (1) of the sheriff's own motion and in the absence of the parties, the sheriff clerk must—

- (a) fix a date, time and place for the parties to be heard;
- (b) prepare an interlocutor recording those dates, times and places for the sheriff to sign.

(4) The sheriff may discharge a hearing fixed under paragraph (3) on the joint motion of the parties.

(5) On the discharge of a hearing under paragraph (1)(a) or paragraph (4), the sheriff clerk must forthwith intimate to all parties—

- (a) that the hearing has been discharged under paragraph (1)(a) or, as the case may be, paragraph (4);
- (b) the last date for lodging a note of basis of preliminary pleas, if appropriate;
- (c) the last date for adjustment, if appropriate;
- (d) the last date for lodging a copy of the record, if appropriate;
- (e) the new date and time fixed for the hearing under paragraph (1)(b).

(6) Any reference in these Rules to the Full Case Management Hearing includes a reference to a Full Case Management Hearing for which a date and time has been fixed under this rule.

Pre-Hearing Meeting

33.36L.—(1) In advance of the Full Case Management Hearing the parties must hold a pre-hearing meeting, at which parties must—

- (a) discuss settlement of the action;
- (b) agree, so far as is possible, the matters which are not in dispute between them;
- (c) discuss the information referred to in rule 33.36P(3) (Full Case Management Hearing).

(2) Not later than 2 days before the Full Case Management Hearing the pursuer must lodge with the court a joint minute of the pre-hearing meeting, signed by both parties, addressing the points in rule 33.36P(3) or explain to the sheriff why such a minute has not been lodged.

(3) If a party is not present during the pre-hearing meeting, that party's representative must be able to contact the party during the meeting and be in full possession of all relevant facts.

Adjustment of pleadings

33.36M.—(1) Parties may adjust their pleadings until 14 days before the date of the Full Case Management Hearing or any continuation of it.

(2) Any adjustments must be exchanged between parties and not lodged in process.

(3) Parties are responsible for maintaining a record of adjustments made during the period for adjustment.

(4) No adjustments are permitted after the period mentioned in paragraph (1) except with leave of the sheriff.

Record for Full Case Management Hearing

33.36N.—(1) The pursuer must, at the end of the period for adjustment referred to in rule 33.36M(1) (adjustment of pleadings) and before the Full Case Management Hearing, make a copy of the pleadings and any adjustments and amendments in the form of a record.

(2) Not later than 2 days before the Full Case Management Hearing, the pursuer must lodge a certified copy of the record in process.

(3) Where the Full Case Management Hearing is continued under rule 33.36P(7), and further adjustment or amendment is made to the record, a copy of the record as adjusted or amended, certified by the pursuer, must be lodged in process not later than 2 days before the Full Case Management Hearing so continued.

Exchange of lists of witnesses

33.36O.—(1) Not later than 7 days before the Full Case Management Hearing, each party must—

- (a) intimate to every other party a list of witnesses, including any skilled witnesses, on whose evidence they intend to rely at proof;
- (b) lodge a copy of that list in process.

(2) A party who seeks to rely on the evidence of a person not on the list intimated under paragraph (1)(a) must, if any other party objects to such evidence being admitted, seek leave of the sheriff to admit that evidence; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.

(3) The list of witnesses intimated under paragraph (1)(a) must include—

- (a) the name, occupation (where known) and address of each witness;
- (b) a summary of up to 50 words on the matters to which each witness is expected to speak;
- (c) details of whether the witness is considered to be a vulnerable witness within the meaning of section 11(1) of the Act of 2004⁽²⁶⁾ and whether any child witness notice under section 12(2) of that Act or vulnerable witness application under section 12(6) of that Act has been lodged in respect of that witness.

Full Case Management Hearing

33.36P.—(1) At the Full Case Management Hearing the sheriff must seek to secure the expeditious progress of the cause by ascertaining from the parties the matters in dispute and information about any other matter referred to in paragraph (3).

(2) It is the duty of the parties to provide the sheriff with sufficient information to enable the sheriff to conduct the hearing as provided for in this rule.

(3) At the Full Case Management Hearing each party must address the court on—

- (a) any matters that are capable of agreement;
- (b) the matters that are in dispute between the parties;
- (c) any matters of potential complexity or difficulty;
- (d) any valuations that are likely to be required;
- (e) any expert or skilled witness evidence that is likely to be required and the scope for joint instruction;
- (f) whether additional steps require to be taken to give a child an opportunity to express the child's views;
- (g) whether steps require to be taken to investigate any facts or circumstances relating to a child;
- (h) the suitability of the action for referral to mediation;
- (i) whether special measures will be required for the purposes of taking the evidence of any vulnerable witnesses;
- (j) the scope for use of affidavits and other documents in place of oral evidence;
- (k) the extent to which the parties have complied with any orders made by the court;
- (l) the number and availability of witnesses;

⁽²⁶⁾ Section 11(1) was amended by section 22 of the Victims and Witnesses (Scotland) Act 2014 (asp 1).

- (m) the content, volume and form of productions;
 - (n) the requirement for access to IT equipment to view productions;
 - (o) whether sanction is sought for the employment of counsel;
 - (p) the progress of any legal aid application.
- (4) After having heard parties at the Full Case Management Hearing the sheriff must close the record, fix a pre-proof hearing in accordance with Chapter 28A (pre-proof hearing)(27) and—
- (a) appoint the action to a proof and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such matters as the sheriff thinks fit;
 - (b) consider any note lodged under rule 22.1 (note of basis of preliminary plea)(28), appoint the cause to a proof before answer and make such orders as to the extent of the proof, the lodging of a joint minute of admissions or agreement, or such other matters as the sheriff thinks fit; or
 - (c) consider any note lodged under rule 22.1, appoint the cause to a debate if satisfied that there is a preliminary matter of law which if established following debate would lead to decree in favour of any party, or to limitation of proof to any substantial degree.
- (5) The diet fixed under paragraph (4)—
- (a) is to be assigned for the appropriate number of days for resolution of the issues with reference to the information provided under paragraph (3) and subject to paragraph (6);
 - (b) may only be extended or varied on exceptional cause shown and subject to such orders (including awards of expenses) as the sheriff considers appropriate.
- (6) The sheriff may make such orders as thought fit to ensure compliance with this rule and the expeditious resolution of the issues in dispute, including—
- (a) restricting the issues for proof;
 - (b) the scope for instruction of a joint expert or a meeting between skilled persons;
 - (c) excluding specified documents, reports or witnesses from proof;
 - (d) fixing other hearings;
 - (e) awarding expenses.
- (7) The sheriff may, on cause shown, of the sheriff's own motion or on the motion of any party, allow a continuation of the Full Case Management Hearing on one occasion only for a period not exceeding 28 days or to the first suitable court day thereafter.
- (8) On closing the record—
- (a) where there are no adjustments made since the lodging of the record under rule 33.36N (record for Full Case Management Hearing), that record becomes the closed record;
 - (b) where there are such adjustments, the sheriff may order that a closed record including such adjustments be lodged within 7 days after the date of the interlocutor closing the record.

(27) Chapter 28A was inserted by [S.S.I. 2006/410](#) and last amended by [S.S.I. 2013/139](#).

(28) Rule 22.1 was last amended by [S.S.I. 2000/239](#).

Judicial continuity

33.36Q. Where possible, the same sheriff is to preside at—

- (a) the Initial Case Management Hearing;
- (b) the Full Case Management Hearing;
- (c) the pre-proof hearing;
- (d) where fixed, any—
 - (i) Child Welfare Hearing;
 - (ii) proof;
 - (iii) proof before answer;
 - (iv) debate.”.

(18) In rule 33A.16(3) (appointment of curators ad litem to defenders)(**29**), in sub-paragraph (b) for “Form G5 sent to him” substitute “Form G5A sent to the *curator ad litem*”.

(19) In rule 33A.22 (referral to family mediation) substitute—

“Referral to family mediation

33A.22.—(1) In any civil partnership action, where the sheriff considers it appropriate to do so the sheriff may, at any stage of the action, refer the action, or part thereof, to a mediator accredited to a specified family mediation organisation.

(2) The sheriff must have particular regard to any averments of domestic abuse when considering the appropriateness of referring the action, or part thereof, to a mediator under paragraph (1).

(3) In this rule any civil partnership action means an action to which the Civil Evidence (Family Mediation) (Scotland) Act 1995(**30**) applies.”.

(20) In rule 33A.23 (Child Welfare Hearings)(**31**)—

- (a) in paragraph (1)—
 - (i) after “time for a Child Welfare Hearing” insert “to be heard either at the same time as the Initial Case Management Hearing or”;
 - (ii) for “21 days after the lodging of such notice of intention to defend” substitute “21 days and not later than 49 days after the last date for lodging of the notice of intention to defend”;

(b) for paragraph (2) substitute—

“(2) On fixing the date for the Child Welfare Hearing the sheriff clerk must—

- (a) if the Child Welfare Hearing is to be heard at the same time as the Initial Case Management Hearing, intimate the date on which both hearings will take place to parties in Form G5A; or
- (b) if the Child Welfare Hearing is to be heard at a different time from the Initial Case Management Hearing, intimate the date of the Child Welfare Hearing to parties in Form F41.”.

(21) Before rule 33A.34 (notice of intention to defend and defences etc.)(**32**), in Part III insert—

(29) Chapter 33A was inserted by [S.S.I. 2005/638](#).

(30) [1995 c. 6](#), last amended by [S.S.I. 2013/211](#).

(31) Rule 33A.23 was last amended by [S.S.I. 2007/463](#).

(32) Rule 33A.34 was last amended by [S.S.I. 2019/123](#).

“General provisions

33A.33B.—(1) Chapters 9 (standard procedure in defended causes) and 10 (additional procedure) do not apply to a civil partnership action in which a notice of intention to defend has been lodged in accordance with rule 33A.34 (notice of intention to defend and defences etc.).

(2) Subject to paragraph (3), a civil partnership action in which a notice of intention to defend has been lodged must follow the procedure set out in this Part of this Chapter.

(3) The sheriff may, in exceptional circumstances, of the sheriff’s own motion or on the motion of a party, disapply any rule mentioned in this Part of this Chapter.”.

(22) In rule 33A.34(4A)(33) omit “and where the initial writ does not include a crave for a section 11 order.”.

(23) For rule 33A.36 (attendance of parties at Options Hearing)(34) substitute—

“Attendance of parties at Case Management Hearings

33A.36. All parties must, except on cause shown, attend personally case management hearings under rules 33A.36J (Initial Case Management Hearing) and 33A.36P (Full Case Management Hearing).”.

(24) After rule 33A.36 insert—

“Fixing of date and time for Initial Case Management Hearing

33A.36A.—(1) On the lodging of a notice of intention to defend under rule 33A.34 (notice of intention to defend and defences etc.) the sheriff clerk must fix a date and time for an Initial Case Management Hearing which date must be on the first suitable court day occurring not sooner than 21 days and not later than 49 days after the last date for the lodging of the notice of intention to defend.

(2) In cases involving a crave for a section 11 order the sheriff must have regard to holding the Initial Case Management Hearing and the Child Welfare Hearing at the same time.

(3) On fixing the date for the Initial Case Management Hearing, the sheriff clerk must—

(a) intimate forthwith to the parties in Form G5A—

(i) the last date for lodging defences;

(ii) the date for the return of the initial writ;

(iii) the date of the Initial Case Management Hearing;

(iv) whether a Child Welfare Hearing is to be held at the same time as the Initial Case Management Hearing;

(b) prepare an interlocutor addressing all of the matters in sub-paragraph (a) for the sheriff to sign.

(4) The fixing of the date of the Initial Case Management Hearing does not affect the right of a party to make any incidental application to the court.

Alteration of date and time for Initial Case Management Hearing

33A.36B.—(1) Subject to paragraph (2), at any time before the date and time fixed under rule 33A.36A (fixing of date and time for Initial Case Management Hearing) or under this

(33) Paragraph (4A) was inserted by [S.S.I. 2019/123](#).

(34) Rule 33A.36 was inserted by [S.S.I. 2005/638](#).

rule, the sheriff may of the sheriff's own motion, on the motion of any party or on the joint motion of the parties—

- (a) discharge the Initial Case Management Hearing or, where fixed, the Child Welfare Hearing or both, as the case may be; and
- (b) fix a new date and time for either the Initial Case Management Hearing or the Child Welfare Hearing or both, as the case may be.

(2) The date and time of any hearing fixed under paragraph (1)(b) may be earlier or later than the date and time fixed for the discharged hearing but must be fixed for a date within the period specified in rule 33A.36A(1) or the first available court date thereafter.

(3) Where the sheriff is considering making an order under paragraph (1) of the sheriff's own motion and in the absence of the parties, the sheriff clerk must—

- (a) fix a date, time and place for the parties to be heard;
- (b) prepare and sign an interlocutor recording those dates, times and places for the sheriff to sign.

(4) The sheriff may discharge a hearing fixed under paragraph (3) on the joint motion of the parties.

(5) On the discharge of a hearing under paragraph (1)(a) or paragraph (4), the sheriff clerk must forthwith intimate to all parties—

- (a) that the hearing has been discharged under paragraph (1)(a) or, as the case may be, paragraph (4);
- (b) the last date for lodging defences, if appropriate;
- (c) the last date for adjustment, if appropriate;
- (d) the new date and time fixed for any hearing under paragraph (1)(b).

(6) Any reference in these Rules to the Initial Case Management Hearing, the Child Welfare Hearing or a continuation of either includes a reference to an Initial Case Management Hearing or Child Welfare Hearing for which a date and time has been fixed under this rule.

Return of initial writ

33A.3C. Subject to rule 33A.36D (lodging of pleadings before Initial Case Management Hearing) the pursuer must return the initial writ, unbacked and unfolded, to the sheriff clerk within 7 days of the expiry of the period of notice in accordance with the date intimated on Form G5A.

Lodging of pleadings before Initial Case Management Hearing

33A.36D. Where any hearing, whether by motion or otherwise, is fixed before the Initial Case Management Hearing, each party shall lodge in process a copy of the party's pleadings, or where the pleadings have been adjusted, the pleadings as adjusted, not later than 2 days before the hearing.

Process folder

33A.36E.—(1) On receipt of the notice of intention to defend, the sheriff clerk must prepare a process folder which must include—

- (a) interlocutor sheets;
- (b) duplicate interlocutor sheets;
- (c) a production file;

- (d) a motion file;
 - (e) an inventory of process.
- (2) Any production or part of process lodged in cause must be placed in the process folder.

Defences

33A.36F.—(1) Where a notice of intention to defend has been lodged, the defender must lodge defences within 14 days after the expiry of the period of notice.

(2) Defences must be in the form of answers in numbered paragraphs corresponding to the articles of the condescence and must have appended a note of the pleas-in-law of the defender.

(3) Defences which include a counterclaim must commence with a crave setting out the counterclaim in such form as, if the counterclaim had been made in a separate action, would have been appropriate in the initial writ in that separate action and must include—

- (a) answers to the condescence of the initial writ;
- (b) a statement of facts in numbered paragraphs setting out the facts on which the counterclaim is founded, incorporating by reference, if necessary, any matter contained in the defences;
- (c) appropriate pleas-in-law.

Implied admissions

33A.33G. Every statement of fact made by a party must be answered by every other party, and if such a statement by one party within the knowledge of another party is not denied by that other party, that other party will be deemed to have admitted that statement of fact.

Sisting

33A.36H.—(1) The sheriff may, on cause shown, of the sheriff's own motion or on the motion of any party, sist the action until a specified date.

- (2) Where the action is sisted, the sheriff clerk must—
- (a) prepare an interlocutor specifying the reason for the sist and the date specified in paragraph (1) for the sheriff to sign;
 - (b) fix a date for a review of sist hearing not later than 30 days following the expiration of the sist;
 - (c) intimate the date of the review of sist hearing to each party.

(3) Where a cause has been sisted, any period for adjustment before the sist is to be reckoned as a part of the period for adjustment.

Open record

33A.36I. The sheriff may, at any time before the closing of the record in a civil partnership action, of the sheriff's own motion or on the motion of a party, order any party to lodge a copy of the pleadings in the form of an open record containing any adjustments and amendments made as at the date of the order.

Initial Case Management Hearing

33A.36J.—(1) At the Initial Case Management Hearing the sheriff must seek to secure the expeditious progress of the cause by ascertaining from the parties the matters in dispute and information about any other matter referred to in paragraph (3).

(2) It is the duty of the parties to provide the sheriff with sufficient information to enable the sheriff to conduct the hearing as provided for in this rule.

(3) At the Initial Case Management Hearing each party must address the court on—

- (a) any matters that are capable of agreement;
- (b) the matters that are in dispute between the parties;
- (c) any matters of potential complexity or difficulty;
- (d) any valuations that are likely to be required;
- (e) any skilled witness evidence that is likely to be required and the scope for joint instruction;
- (f) whether additional steps require to be taken to give a child an opportunity to express the child's views;
- (g) whether steps require to be taken to investigate any facts or circumstances relating to a child;
- (h) the suitability of the action for referral to mediation;
- (i) whether special measures will be required for the purposes of taking the evidence of any vulnerable witnesses;
- (j) the scope for use of affidavits and other documents in place of oral evidence;
- (k) the extent to which the parties have complied with any orders made by the court;
- (l) the number and availability of witnesses;
- (m) the content, volume and form of productions;
- (n) the requirement for access to IT equipment to view productions;
- (o) whether sanction is sought for the employment of counsel;
- (p) the progress of any legal aid application.

(4) At the Initial Case Management Hearing, the sheriff must fix a date and time for a Full Case Management Hearing which date must be on the first suitable court day occurring—

- (a) in cases involving a crave for a section 11 order only, not sooner than 16 weeks and not later than 24 weeks after the last date for the lodging of defences;
- (b) in all other cases, not sooner than 20 weeks and not later than 24 weeks after the last date for the lodging of defences.

(5) Following the Initial Case Management Hearing the sheriff clerk must intimate forthwith to the parties in Form G6B—

- (a) the last date for lodging a note of the basis for any preliminary pleas;
- (b) the last date for adjustment;
- (c) the last date for lodging a copy of the record;
- (d) the date of the Full Case Management Hearing.

Alteration of date and time for Full Case Management Hearing

33A.36K.—(1) Subject to paragraph (2), at any time before the date and time fixed under rule 33A.36J (Initial Case Management Hearing) or under this rule, the sheriff may, of the sheriff's own motion, on the motion of any party or on the joint motion of the parties—

- (a) discharge the Full Case Management Hearing; and
- (b) fix a new date and time for a Full Case Management Hearing.

(2) The date and time of any hearing to be fixed under paragraph (1)(b) may be earlier or later than the date and time fixed for the discharged hearing, but must be fixed for a date within the relevant period specified in rule 33A.36J(4) or the first available court date thereafter.

(3) Where the sheriff is considering making an order under paragraph (1) of the sheriff's own motion and in the absence of the parties, the sheriff clerk must—

- (a) fix a date, time and place for the parties to be heard;
- (b) prepare an interlocutor recording those dates, times and places for the sheriff to sign.

(4) The sheriff may discharge a hearing fixed under paragraph (3) on the joint motion of the parties.

(5) On the discharge of a hearing under paragraph (1)(a) or paragraph (4), the sheriff clerk must forthwith intimate to all parties—

- (a) that the hearing has been discharged under paragraph (1)(a) or, as the case may be, paragraph (4);
- (b) the last date for lodging a note of basis of preliminary pleas, if appropriate;
- (c) the last date for adjustment, if appropriate;
- (d) the last date for lodging a copy of the record, if appropriate;
- (e) the new date and time fixed for the hearing under paragraph (1)(b).

(6) Any reference in these Rules to the Full Case Management Hearing includes a reference to a Full Case Management Hearing for which a date and time has been fixed under this rule.

Pre-Hearing Meeting

33A.36L.—(1) In advance of the Full Case Management Hearing the parties must hold a pre-hearing meeting, at which parties must—

- (a) discuss settlement of the action;
- (b) agree, so far as is possible, the matters which are not in dispute between them;
- (c) discuss the information referred to in rule 33A.36P(3) (Full Case Management Hearing).

(2) Not later than 2 days before the Full Case Management Hearing the pursuer must lodge with the court a joint minute of the pre-hearing meeting signed by both parties, addressing the points in rule 33A.36P(3) or explain to the sheriff why such a minute has not been lodged.

(3) If a party is not present during the pre-hearing meeting, that party's representative must be able to contact the party during the meeting and be in full possession of all relevant facts.

Adjustment of pleadings

33A.36M.—(1) Parties may adjust their pleadings until 14 days before the date of the Full Case Management Hearing or any continuation of it.

- (2) Any adjustments must be exchanged between parties and not lodged in process.

(3) Parties are responsible for maintaining a record of adjustments made during the period for adjustment.

(4) No adjustments are permitted after the period mentioned in paragraph (1) except with leave of the sheriff.

Record for Full Case Management Hearing

33A.36N.—(1) The pursuer must, at the end of the period for adjustment referred to in rule 33A.36M(1) (adjustment of pleadings) and before the Full Case Management Hearing, make a copy of the pleadings and any adjustments and amendments in the form of a record.

(2) Not later than 2 days before the Full Case Management Hearing, the pursuer must lodge a certified copy of the record in process.

(3) Where the Full Case Management Hearing is continued under rule 33A.36P(7) and further adjustment or amendment is made to the record, a copy of the record as adjusted or amended, certified by the pursuer, must be lodged in process not later than 2 days before the Full Case Management Hearing so continued.

Exchange of lists of witnesses

33A.36O.—(1) Not later than 7 days before the Full Case Management Hearing, each party must—

- (a) intimate to every other party a list of witnesses, including any skilled witnesses, on whose evidence they intend to rely at proof;
- (b) lodge a copy of that list in process.

(2) A party who seeks to rely on the evidence of a person not on the list intimated under paragraph (1)(a) must, if any other party objects to such evidence being admitted, seek leave of the sheriff to admit that evidence; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.

(3) The list of witnesses intimated under paragraph (1)(a) must include—

- (a) the name, occupation (where known) and address of each witness;
- (b) a summary of up to 50 words on the matters to which each witness is expected to speak;
- (c) details of whether the witness is considered to be a vulnerable witness within the meaning of section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004⁽³⁵⁾ and whether any child witness notice under section 12(2) of that Act or vulnerable witness application under section 12(6) of that Act has been lodged in respect of that witness.

Full Case Management Hearing

33A.36P.—(1) At the Full Case Management Hearing the sheriff must seek to secure the expeditious progress of the cause by ascertaining from the parties the matters in dispute and information about any other matter referred to in paragraph (3).

(2) It is the duty of the parties to provide the sheriff with sufficient information to enable the sheriff to conduct the hearing as provided for in this rule.

(3) At the Full Case Management Hearing each party must address the court on—

- (a) any matters that are capable of agreement;

⁽³⁵⁾ 2004 asp 3. Section 11(1) was amended by section 22 of the Victims and Witnesses (Scotland) Act 2014 (asp 1).

- (b) the matters that are in dispute between the parties;
 - (c) any matters of potential complexity or difficulty;
 - (d) any valuations that are likely to be required;
 - (e) any expert or skilled witness evidence that is likely to be required and the scope for joint instruction;
 - (f) whether additional steps require to be taken to give a child an opportunity to express the child's views;
 - (g) whether steps require to be taken to investigate any facts or circumstances relating to a child;
 - (h) the suitability of the action for referral to mediation;
 - (i) whether special measures will be required for the purposes of taking the evidence of any vulnerable witnesses;
 - (j) the scope for use of affidavits and other documents in place of oral evidence;
 - (k) the extent to which the parties have complied with any orders made by the court;
 - (l) the number and availability of witnesses;
 - (m) the content, volume and form of productions;
 - (n) the requirement for access to IT equipment to view productions;
 - (o) whether sanction is sought for the employment of counsel;
 - (p) the progress of any legal aid application.
- (4) After having heard parties at the Full Case Management Hearing the sheriff must close the record, fix a pre-proof hearing in accordance with Chapter 28A (pre-proof hearing)⁽³⁶⁾ and—
- (a) appoint the action to a proof and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such matter as the sheriff thinks fit;
 - (b) consider any note lodged under rule 22.1 (note of basis of preliminary pleas)⁽³⁷⁾, appoint the cause to a proof before answer and make such orders as to the extent of the proof, the lodging of a joint minute of admissions or agreement, or such other matters as the sheriff thinks fit; or
 - (c) consider any note lodged under rule 22.1, appoint the cause to a debate if satisfied that there is a preliminary matter of law which if established following debate would lead to decree in favour of any party, or to limitation of proof to any substantial degree.
- (5) The diet fixed under paragraph (4)—
- (a) is to be assigned for the appropriate number of days for resolution of the issues with reference to the information provided under paragraph (3) and subject to paragraph (6);
 - (b) may only be extended or varied on exceptional cause shown and subject to such orders (including awards of expenses) as the sheriff considers appropriate.
- (6) The sheriff may make such orders as thought fit to ensure compliance with this rule and the expeditious resolution of the issues in dispute, including—
- (a) restricting the issues for proof;

⁽³⁶⁾ Chapter 28A was inserted by [S.S.I. 2006/410](#) and last amended by [S.S.I. 2013/139](#).

⁽³⁷⁾ Rule 22.1 was last amended by [S.S.I. 2000/239](#).

- (b) the scope for instruction of a joint expert or a meeting between skilled persons;
- (c) excluding specified documents, reports or witnesses from proof;
- (d) fixing other hearings;
- (e) awarding expenses.

(7) The sheriff may, on cause shown, of the sheriff's own motion or on the motion of any party, allow a continuation of the Full Case Management Hearing on one occasion only for a period not exceeding 28 days or to the first suitable court day thereafter.

(8) On closing the record—

- (a) where there are no adjustments made since the lodging of the record under rule 33A.36N (record for Full Case Management Hearings), that record becomes the closed record;
- (b) where there are such adjustments, the sheriff may order that a closed record including such adjustments be lodged within 7 days after the date of the interlocutor closing the record.

Judicial continuity

33A.36Q. Where possible, the same sheriff is to preside—

- (a) the Initial Case Management Hearings;
- (b) the Full Case Management Hearing;
- (c) the pre-proof hearing;
- (d) where fixed, any—
 - (i) Child Welfare Hearing;
 - (ii) proof;
 - (iii) proof before answer;
 - (iv) debate.”.

(25) Chapter 33AA (expeditious resolution of certain causes)(**38**) is revoked.

(26) In Appendix 1 (forms)—

- (a) after Form G5 (form of intimation of Options Hearing) insert Form G5A (form of intimation of Initial Case Management Hearing in defended family actions);
- (b) after Form G6A (motion by email) insert Form G6B (form of intimation of Initial Case Management Hearing in defended civil partnership actions),

as set out in the schedule of this Act of Sederunt.