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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 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 [<sup>F1</sup>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 <sup>M1</sup>Matrimonial and Family Proceedings Act 1984; or
  - (iv) for an order under the <sup>M2</sup>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 <sup>[F2]</sup>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 <sup>[F3]</sup>section 11 order*

- 33.31. (1) Where no notice of intention to defend has been lodged in a family action for <sup>[F4]</sup>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)

### PART III

#### DEFENDED FAMILY ACTIONS

##### *Notice of intention to defend and defences*

- 33.34. (1) This rule applies where the defender in a family action seeks—
- (a) to oppose any crave in the initial writ;
  - (b) to make a claim for—
    - (i) aliment;
    - (ii) an order for financial provision within the meaning of section 8(3) of the Act of 1985; or
    - (iii) [<sup>F8</sup>a section 11 order]; or
  - (c) an order—
    - (i) under section 16(1)(b) or (3) of the <sup>M3</sup>Act of 1985 (setting aside or varying agreement as to financial provision);
    - (ii) under section 18 of the Act of 1985 (which relates to avoidance transactions); or
    - (iii) under the Act of 1981; or
  - (d) to challenge the jurisdiction of the court.
- (2) In an action to which this rule applies, the defender shall—
- (a) lodge a notice of intention to defend in Form F26 before the expiry of the period of notice; and
  - (b) make any claim or seek any order referred to in paragraph (1), as the case may be, in those defences by setting out in his defences—
    - (i) craves;
    - (ii) averments in the answers to the condescendence in support of those craves; and
    - (iii) appropriate pleas-in-law.
- [<sup>F9</sup>(3) Where a defender intends to make an application for a section 11 order which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, the defender shall include a crave in his notice of intention to defend for a warrant for intimation or to dispense with such intimation; and rule 33.7 shall, with

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the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.]

#### Textual Amendments

- F8** Words in rule 33.34(1)(b)(iii) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 18(a)  
**F9** Rule 33.34(3) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 18(b)

#### Marginal Citations

- M3** 1985 c.37.

#### *Abandonment by pursuer*

- 33.35. Notwithstanding abandonment by a pursuer, the court may allow a defender to pursue an order or claim sought in his defences; and the proceedings in relation to that order or claim shall continue in dependence as if a separate cause.

#### *Attendance of parties at Options Hearing*

- 33.36. All parties shall, except on cause shown, attend personally the hearing under rule 9.12 (Options Hearing).

#### *Decree by default*

- 33.37. (1) In a family action in which the defender has lodged a notice of intention to defend, where a party fails—
- (a) to lodge, or intimate the lodging of, any production or part of process,
  - (b) to implement an order of the sheriff within a specified period, <sup>F10</sup> . . .
  - (c) to appear [<sup>F11</sup>or] be represented at any diet, [<sup>F12</sup>, or
  - (d) otherwise to comply with any requirement imposed upon that party by these Rules]
- that party shall be in default.
- (2) Where a party is in default under paragraph (1), the sheriff may—
- (a) where the family action is one mentioned in rule 33.1(1)(a) to (h) [<sup>F13</sup>, (n) or (o)], allow that action to proceed as undefended under Part II of this Chapter; or
  - (b) where the family action is one mentioned in rule 33.1(1)(i) to (m), grant decree as craved; or
  - (c) grant decree of absolvitor; or
  - (d) dismiss the family action or any claim made or order sought; [<sup>F14</sup>or]
  - [<sup>F15</sup>(da) make such other order as he thinks fit to secure the expeditious progress of the cause; and]
  - (e) award expenses.
- (3) Where no party appears at a diet in a family action, the sheriff may dismiss that action.
- (4) In a family action, the sheriff may, on cause shown, prorogate the time for lodging any production or part of process, or for intimating or implementing any order.

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#### Textual Amendments

- F10** Word in [Sch. 1 rule 33.37\(1\)\(b\)](#) omitted (18.8.2006) by virtue of [Act of Sederunt \(Ordinary Cause and Summary Application Rules\) Amendment \(Miscellaneous\) 2006 \(S.S.I. 2006/410\)](#), [art. 2\(9\)\(a\)](#)
- F11** Word in [rule 33.37\(1\)\(c\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(49\)](#)
- F12** [Sch. 1 rule 33.37\(1\)\(d\)](#) and word inserted (18.8.2006) by [Act of Sederunt \(Ordinary Cause and Summary Application Rules\) Amendment \(Miscellaneous\) 2006 \(S.S.I. 2006/410\)](#), [art. 2\(9\)\(b\)](#)
- F13** Words in [Sch. 1 rule 33.37\(2\)](#) 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(27)}
- F14** Word in [Sch. 1 rule 33.37\(2\)\(d\)](#) substituted (18.8.2006) by [Act of Sederunt \(Ordinary Cause and Summary Application Rules\) Amendment \(Miscellaneous\) 2006 \(S.S.I. 2006/410\)](#), [art. 2\(9\)\(c\)](#)
- F15** [Sch. 1 rule 33.37\(2\)\(da\)](#) inserted (18.8.2006) by [Act of Sederunt \(Ordinary Cause and Summary Application Rules\) Amendment \(Miscellaneous\) 2006 \(S.S.I. 2006/410\)](#), [art. 2\(9\)\(d\)](#)

### PART IV

#### APPLICATIONS AND ORDERS RELATING TO CHILDREN IN CERTAIN ACTIONS

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

33.38. <sup>F16</sup> . . . This Part applies to an action of divorce [<sup>F17</sup>, separation or declarator of nullity of marriage].

<sup>F18</sup>(2) . . . . .

#### Textual Amendments

- F16** [Rule 33.38](#): “-(1)” at the beginning of paragraph (1) is omitted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 19\(a\)](#)
- F17** Words in [Sch. 1 rule 33.38](#) 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(28)}
- F18** [Rule 33.38\(2\)](#) omitted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 19\(b\)](#)

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

- 33.39. (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.
- (2) The orders referred to in paragraph (1) are:—
- (a) an order for [<sup>F19</sup>a section 11 order]; and
  - (b) an order for aliment for a child.

#### Textual Amendments

- F19** Words in [rule 33.39\(2\)\(a\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 20](#)

<sup>F20</sup>33.40. . . . .

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**Textual Amendments**

**F20** Rule 33.40 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 21

<sup>F21</sup>33.41. . . . .

**Textual Amendments**

**F21** Rule 33.41 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 22

<sup>F22</sup>33.42. . . . .

**Textual Amendments**

**F22** Rule 33.42 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 23

*Applications in depending actions by motion*

[<sup>F23</sup>33.43. An application by a party in an action depending before the court to which this Part applies for, or for variation of, an order for—  
(a) interim aliment for a child under the age of 18, or  
(b) a residence order or a contact order,  
shall be made by motion.]

**Textual Amendments**

**F23** Rule 33.43 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 24

*Applications after decree relating to [<sup>F24</sup>a section 11 order]*

33.<sup>F25</sup>(1) An application after final decree for, or for the variation or recall of, a section 11 order [<sup>F26</sup>or in relation to the enforcement of such an order] shall be made by minute in the process of the action to which the application relates.]  
  
(2) Where a minute has been lodged under paragraph (1), any party may apply by motion for any interim order which may be made pending the determination of the application.

**Textual Amendments**

**F24** Words in rule 33.44 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 25(a)

**F25** Rule 33.44(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 25(b)

**F26** Words Sch. 1 rule 33.44(1) inserted (2.10.2000) by S.I. 2000/239, Sch. para. 3(15)

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*Applications after decree relating to aliment*

- 33.45. (1) An application after final decree for, or for the variation or recall of, an order for aliment for a child shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute has been lodged under paragraph (1), any party may lodge a motion for any interim order which may be made pending the determination of the application.

*Applications after decree by persons over 18 years for aliment*

- 33.46. (1) A person—
- (a) to whom an obligation of aliment is owed under section 1 of the <sup>M4</sup>Act of 1985,
  - (b) in whose favour an order for aliment while under the age of 18 years was made in an action to which this Part applies, and
  - (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,
- shall apply by minute in the process of that action.
- (2) An application for interim aliment pending the determination of an application under paragraph (1) shall be made by motion.
- (3) Where a decree has been pronounced in an application under paragraph (1) or (2), any application for variation or recall of any such decree shall be made by minute in the process of the action to which the application relates.

**Marginal Citations**

**M4** 1985 c.37.

*PART V*

*ORDERS RELATING TO FINANCIAL PROVISION*

*Application and interpretation of this Part*

- 33.47. (1) This Part applies to an action of divorce.
- (2) In this Part, “incidental order” has the meaning assigned in section 14(2) of the Act of 1985.

*Applications in actions to which this Part applies*

- 33.48. (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.
- (2) The orders referred to in paragraph (1) are:—



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- (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 13 of the <sup>M5</sup>Act of 1981 (transfer or vesting of tenancy).

#### Marginal Citations

**M5** 1981 c.59; section 13 was amended by the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraph 11 and the Housing (Scotland) Act 1987 (c.26), **Schedule 23**, paragraph 26.

#### *Applications in depending actions relating to incidental orders*

33.49. (1) In an action depending before the sheriff to which this Part applies—

- (a) the pursuer or defender, notwithstanding rules 33.34(2) (application by defender for order for financial provision) and 33.48(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*

33.50. 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*

33.51. (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.

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- (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.
- [<sup>F27</sup>(3) An application under–
- (a) paragraph (5) of section 12A of the Act of 1985 <sup>F28</sup> (recall or variation of order in respect of a pension lump sum), <sup>F29</sup> . . .
  - (b) paragraph (7) of that section (variation of order in respect of pension lump sum to substitute trustees or managers), [<sup>F30</sup>or
  - (c) section 28(10) or 48(9) of the Welfare Reform and Pensions Act 1999 <sup>F31</sup>,]
- shall be made by minute in the process of the action to which the application relates.]

#### Textual Amendments

- F27** Rule 33.51(3) inserted (1.11.1996) by S.I. 1996/2445, **para. 3(50)**
- F28** Section 12A of the Family Law (Scotland) Act 1985 (c.37) was inserted by the Pensions Act 1995 (c.26), **section 167(3)**.
- F29** Word in Sch. 1 rule 33.51(3)(a) omitted (24.1.2003) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), **art. 2(9)(a)**
- F30** Sch. 1 rule 33.51(3)(c) and word inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), **art. 2(9)(b)**
- F31** 1999 c. 30.

#### *Pension Protection Fund notification*

- [<sup>F32</sup>33.51] In this rule–
- “assessment period” shall be construed in accordance with section 132 of the Pensions Act 2004 <sup>F33</sup>;
  - “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 <sup>F34</sup>.
- (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–

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

#### **Textual Amendments**

- F32** Sch. 1 rule 33.51A inserted (1.7.2008) by [Act of Sederunt \(Sheriff Court Rules\) \(Miscellaneous Amendments\) 2008 \(S.S.I. 2008/223\)](#), **para. 3(2)**
- F33** 2004 c. 35.
- F34** S.I. 2005/674.

#### *Applications after decree relating to agreements and avoidance transactions*

- 33.52. 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.

### *PART VI*

#### *APPLICATIONS RELATING TO AVOIDANCE TRANSACTIONS*

#### *Form of applications*

- 33.53. (1) An application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions) by a party to an action shall be made by including in the initial writ, defences or minute, as the case may be, appropriate craves, averments and pleas-in-law.
- (2) An application for an order under section 18 of the Act of 1985 after final decree in an action, shall be made by minute in the process of the action to which the application relates.

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## PART VII

### FINANCIAL PROVISION AFTER OVERSEAS DIVORCE OR ANNULMENT

#### *Interpretation of this Part*

33.54. In this Part—

- “the Act of 1984” means the <sup>M6</sup>Matrimonial and Family Proceedings Act 1984;
- “order for financial provision” has the meaning assigned in section 30(1) of the Act of 1984;
- “overseas country” has the meaning assigned in section 30(1) of the Act of 1984.

#### **Marginal Citations**

**M6** 1984 c.42.

#### *Applications for financial provision [F35 after overseas divorce or annulment]*

- 33.55. (1) An application under <sup>M7</sup>section 28 of the Act of 1984 for an order for financial provision after a divorce or annulment in an overseas country shall be made by initial writ.
- (2) An application for an order in an action to which paragraph (1) applies made before final decree under—
- (a) section 13 of the <sup>M8</sup>Act of 1981 (transfer of tenancy of matrimonial home),
  - (b) section 29(4) of the Act of 1984 for interim periodical allowance, or
  - (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),
- shall be made by motion.
- (3) An application for an order in an action to which paragraph (1) applies made after final decree under—
- (a) section 12(4) of the Act of 1985 (variation of date or method of payment of capital sum or date of transfer of property),
  - (b) section 13(4) of the Act of 1985 (variation, recall, backdating or conversion [F36 of] periodical allowance), or
  - (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),
- shall be made by minute in the process of the action to which the application relates.
- [F37(4) An application under—
- (a) paragraph (5) of section 12A of the Act of 1985 (recall or variation of order in respect of a pension lump sum), or
  - (b) paragraph (7) of that section (variation of order in respect of pension lump sum to substitute trustees or managers),
- shall be made by minute in the process of the action to which the application relates.]
- [F38(5)] Where a minute has been lodged under paragraph (3), any party may apply by motion for an interim order pending the determination of the application.

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#### Textual Amendments

- F35** Words in [rule 33.55](#) heading inserted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(51\)\(a\)](#)  
**F36** Word in [rule 33.55\(3\)\(b\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(51\)\(b\)](#)  
**F37** [Rule 33.55\(4\)](#) inserted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(51\)\(d\)](#)  
**F38** [Rule 33.55\(4\)](#) renumbered as [rule 33.55\(5\)](#) (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(51\)\(c\)](#)

#### Marginal Citations

- M7** [Section 28](#) was extended by section 29A (inserted by the Act of 1985, Schedule 1, paragraph 12) to an annulment.  
**M8** [1981 c.51](#); [section 13\(2\)](#) was amended by the Act of 1985, Schedule 1, paragraph 11.

### PART VIII

#### ACTIONS OF ALIMENT

##### *Interpretation of this Part*

- 33.56. In this Part, “action of aliment” means a claim for aliment under section 2(1) of the Act of 1985.

##### *Undefended actions of aliment*

- 33.57. (1) Where a motion for decree in absence under Chapter 7 (undefended causes) is lodged in an action of aliment, the pursuer shall, on lodging the motion, lodge all documentary evidence of the means of the parties available to him in support of the amount of aliment sought.
- (2) Where the sheriff requires the appearance of parties, the sheriff clerk shall fix a hearing.

##### *Applications relating to aliment*

- 33.58. (1) An application for, or for variation of, an order for interim aliment in a depending action of aliment shall be made by motion.
- (2) An application after final decree for the variation or recall of an order for aliment in an action of aliment shall be made by minute in the process of the action to which the application relates.
- (3) A person—
- (a) to whom an obligation of aliment is owed under section 1 of the <sup>M9</sup>Act of 1985,
  - (b) in whose favour an order for aliment while under the age of 18 years was made in an action of aliment, or
  - (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,
- shall apply by minute in the process of that action.
- (4) An application for interim aliment pending the determination of an application under paragraph (2) or (3) shall be made by motion.

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- (5) Where a decree has been pronounced in an application under paragraph (2) or (3), any application for variation or recall of any such decree shall be made by minute in the process of the action to which the application relates.

#### Marginal Citations

**M9** 1985 c.37.

#### *Applications relating to agreements on aliment*

33.59.(1) Subject to paragraph (2) [<sup>F39</sup>and rule 33A.53], an application under section 7(2) of the Act of 1985 (variation or termination of agreement on aliment) shall be made by summary application.

- (2) In a family action in which a crave for aliment may be made, an application under section 7(2) of the Act of 1985 shall be made by a crave in the initial writ or in defences, as the case may be.

#### Textual Amendments

**F39** Words in [Sch. 1 rule 33.59\(1\)](#) 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(29)}

### [<sup>F40</sup>PART IX

#### *APPLICATIONS FOR ORDERS UNDER SECTION 11 OF THE CHILDREN (SCOTLAND) ACT 1995.]*

#### Textual Amendments

**F40** [Chapter 33 Pt. IX](#) (rules 33.60-33/65): heading substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 26](#)

#### *Application of this Part*

[<sup>F41</sup>33.60. This Part applies to an application for a section 11 order in a family action other than in an action of divorce [<sup>F42</sup>, separation or declarator of nullity of marriage].]

#### Textual Amendments

**F41** [Rule 33.60](#) substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 27](#)

**F42** Words in [Sch. 1 rule 33.60](#) 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(30)}

#### *Form of applications*

33.61. Subject to any other provision in this Chapter, an application for [<sup>F43</sup>a section 11 order] shall be made—

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- (a) by an action for [<sup>F44</sup>a section 11 order];
- (b) by a crave in the initial writ or defences, as the case may be, in any other family action to which this Part applies; or
- (c) where the application is made by a person other than a party to an action mentioned in paragraph (a) or (b), by minute in that action.

**Textual Amendments**

- F43** Words in rule 33.61 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 28(a)
- F44** Words in rule 33.61(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 28(b)

*Defences in action for a section 11 order*

[<sup>F45F45</sup>33.62. In an action for a section 11 order, the pursuer shall call as a defender—

- (a) the parents or other parent of the child in respect of whom the order is sought;
- (b) any guardian of the child;
- (c) any person who has treated the child as a child of his family;
- (d) any person who in fact exercises care or control in respect of the child; and
- <sup>F46</sup>(e) .....

**Textual Amendments**

- F45** Rule 33.62 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 29
- F46** Sch. 1 rule 33.62(e) omitted (2.10.2000) by virtue of S.S.I. 2000/239, para. 3(16)

*Applications relating to interim orders in depending actions*

33.63. An application, in an action depending before the sheriff to which this Part applies, for, or for the variation or recall of, <sup>F47</sup>... [<sup>F48</sup>an interim residence order or an interim contact order] shall be made—

- (a) by a party to the action, by motion; or
- (b) by a person who is not a party to the action, by minute.

**Textual Amendments**

- F47** Words in Sch. 1 rule 33.63 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(31)}
- F48** Rule 33.63: the words “an interim residence order or an interim contact order” substituted for the words “interim custody or interim access” (1.11.1996) by virtue of S.I. 1996/2167, para. 2, Sch. para. 30

<sup>F49</sup>33.64. ....

**Textual Amendments**

- F49** Rule 33.64 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 31



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### *Applications after decree*

- 33.65<sup>0</sup>(1) An application after final decree for variation or recall of a section 11 order shall be made by minute in the process of the action to which the application relates.]
- (2) Where a minute has been lodged under paragraph (1), any party may apply by motion for an interim order pending the determination of the application.

#### **Textual Amendments**

**F50** Rule 33.65(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 32

## *PART X*

### *ACTIONS UNDER THE MATRIMONIAL HOMES (FAMILY PROTECTION) (SCOTLAND) ACT 1981*

### *Interpretation of this Part*

- 33.66. Unless the context otherwise requires, words and expressions used in this Part which are also used in the <sup>M10</sup>Act of 1981 have the same meaning as in that Act.

#### **Marginal Citations**

**M10** 1981 c.59.

### *Form of applications*

- 33.67. (1) Subject to any other provision in this Chapter, an application for an order under the Act of 1981 shall be made—
- (a) by an action for such an order;
  - (b) by a crave in the initial writ or in defences, as the case may be, in any other family action; or
  - (c) where the application is made by a person other than a party to any action mentioned in paragraph (a) or (b), by minute in that action.
- (2) An application under section 7(1) (dispensing with consent of non-entitled spouse to a dealing) or section 11 (application in relation to poinding) shall, unless made in a depending family action, be made by summary application.

### *Defenders*

- 33.68. The applicant for an order under the Act of 1981 shall call as a defender—
- (a) where he is seeking an order as a spouse, the other spouse;
  - (b) where he is a third party making an application under section 7(1) (dispensing with consent of non-entitled spouse to a dealing), or 8(1) (payment from non-entitled spouse in respect of loan), of the Act of 1981, both spouses; <sup>F51</sup> . . .
  - (c) where the application is made under section 18 of the Act of 1981 <sup>M11</sup>(occupancy rights of cohabiting couples), or is one to which that section applies, the other partner. [<sup>F52</sup>; and



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- (d) where the application is made under section 18A of the Act of 1981<sup>M12</sup>(application for domestic interdict), the other partner.]

**Textual Amendments**

- F51** Word in [Sch. 1 rule 33.68\(b\)](#) 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(32)(a)}
- F52** [Sch. 1 rule 33.68\(d\)](#) 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(32)(b)}

**Marginal Citations**

- M11** [Section 18](#) was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c.73\)](#), [section 13\(9\)](#).
- M12** [Section 18A](#) was inserted by section 31 of the Family Law (Scotland) Act 2006 (asp2).

*Applications by motion*

- 33.69. (1) An application under any of the following provisions of the Act of 1981 shall be made by motion in the process of the depending action to which the application relates:—
- (a) section 3(4) (interim order for regulation of rights of occupancy, etc.);
  - (b) section 4(6) (interim order suspending occupancy rights);
  - (c) section 7(1) (dispensing with consent of non-entitled spouse to a dealing);
  - (d) <sup>F53</sup> .....
  - (e) the proviso to section 18(1) <sup>F54</sup> (extension of period of occupancy rights).
- (2) Intimation of a motion under paragraph (1) shall be given—
- (a) to the other spouse or partner, as the case may be;
  - (b) where the motion is under paragraph (1)(a), (b) or (e) and the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
  - (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

**Textual Amendments**

- F53** [Sch. 1 rule 33.69\(1\)\(d\)](#) 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(33)}
- F54** [Section 18\(1\)](#) of the Act of 1981 was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c.73\)](#), [section 13\(9\)\(a\)](#).

*Applications by minute*

- 33.70. (1) An application for an order under—
- (a) section 5 of the Act of 1981 (variation and recall of orders regulating occupancy rights and of exclusion order), or
  - (b) <sup>F55</sup> .....
- shall be made by minute.

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- (2) A minute under paragraph (1) shall be intimated—
- (a) to the other spouse or partner, as the case may be;
  - (b) where the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
  - (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

#### Textual Amendments

**F55** Sch. 1 rule 33.70(1)(b) 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(34)}

#### *Sist of actions to enforce occupancy rights*

- 33.71. Unless the sheriff otherwise directs, the sist of an action by virtue of section 7(4) of the Act of 1981 (where action raised by non-entitled spouse to enforce occupancy rights) shall apply only to such part of the action as relates to the enforcement of occupancy rights by a non-entitled spouse.
- 33.72. <sup>F56</sup> .....

#### Textual Amendments

**F56** Sch. 1 rule 33.72 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(35)}

## 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—
- (a) that party relies on the facts set out in section 1(2)(d) (no cohabitation for [<sup>F57</sup>one year] with consent of defender to decree), or section 1(2)(e) (no cohabitation for [<sup>F58</sup>two] years) [<sup>F59</sup>or section 1(1)(b) (issue of interim gender recognition certificate) <sup>F60</sup>], of the <sup>M13</sup>Act of 1976;
  - (b) in an application under section 1(2)(d) of the Act of 1976, the other party consents to decree of divorce being granted;
  - (c) no other proceedings are pending in any court which could have the effect of bringing the marriage to an end;
  - (d) there are no children of the marriage under the age of 16 years;
  - (e) neither party to the marriage applies for an order for financial provision on divorce; <sup>F61</sup> . . .
  - (f) neither party to the marriage suffers from mental disorder [<sup>F62</sup>; and.

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- [<sup>F63</sup>(g) neither party to the marriage applies for postponement of decree under section 3A of the Act of 1976 <sup>M14</sup>(postponement of decree where impediment to religious marriage exists).]
- (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.
- (3) In this Part “simplified divorce application” means an application mentioned in paragraph (1).

#### Textual Amendments

- F57** 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)}
- F58** 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)}
- F59** 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)}
- F60** [Section 1\(1\)\(b\)](#) was inserted by paragraph 6 of Schedule 2 to the [Gender Recognition Act 2004 \(c. 7\)](#).
- F61** 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)}
- F62** [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)}
- F63** [Sch. 1 rule 33.73\(1\)\(g\)](#) substituted (29.1.2007) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2007 ([S.S.I. 2007/6](#)), [para. 2\(15\)](#)

#### Marginal Citations

- M13** [1976 c.39](#).
- M14** [Section 3A](#) was inserted by section 15 of the [Family Law \(Scotland\) Act 2006 \(asp 2\)](#).

#### 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>F64</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>F65</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>F66</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>F67</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

- F64** 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)}

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- F65** Word in rule 33.74(1)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(54)
- F66** 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)}
- F67** 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—
- (a) an extract or certified copy of the marriage certificate; <sup>F68</sup> . . .
  - (b) the appropriate fee. [<sup>F69</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**

- F68** 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)}
- F69** 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>F70</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>F71</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>F72</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>F73</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.]

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#### Textual Amendments

- F70** 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)}
- F71** [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)}
- F72** [Sch. 1 rule 33.76\(4\)](#) substituted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(17\)\(a\)](#)
- F73** [Sch. 1 rule 33.76\(5\)](#) inserted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(17\)\(b\)](#)

#### *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>F74</sup>two] years) [<sup>F75</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

- F74** 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)}
- F75** 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.

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### *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>M15</sup>Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil 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**

**M15** 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.

## *PART XII*

### *VARIATION OF COURT OF SESSION DECREES*

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

33.83. (1) This Part applies to an application to the sheriff for variation or recall of any order to which section 8 of the <sup>M16</sup>Act of 1966 (variation of certain Court of Session orders) applies.

(2) In this Part, the “Act of 1966” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966.

#### **Marginal Citations**

**M16** 1966 c.19; section 8 was amended by the [Guardianship Act 1973 \(c.29\)](#), [Schedule 5](#), the [Divorce \(Scotland\) Act 1976 \(c.39\)](#), [Schedule 1](#), the [Matrimonial and Family Proceedings Act 1984 \(c.42\)](#),

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**Schedule 1**, paragraph 7, the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraph 5 and the Family Law Act 1986 (c.53), **Schedule 1**, paragraph 8 and Schedule 2.

### *Form of applications and intimation to Court of Session*

- 33.84. (1) An application to which this Part applies shall be made by initial writ.
- (2) In such an application there shall be lodged with the initial writ a copy of the interlocutor, certified by a clerk of the Court of Session, which it is sought to vary.
- (3) Before lodging the initial writ, a copy of the initial writ certified by the pursuer or his solicitor shall be lodged, or sent by first class recorded delivery post to the Deputy Principal Clerk of Session to be lodged in the process of the cause in the Court of Session in which the original order was made.
- (4) The pursuer or his solicitor shall attach a certificate to the initial writ stating that paragraph (3) has been complied with.
- (5) The sheriff may, on cause shown, prorogate the time for lodging the certified copy of the interlocutor required under [<sup>F76</sup>paragraph (2)].

#### **Textual Amendments**

**F76** Words in rule 33.84(5) substituted (1.11.1996) by S.I. 1996/2445, para. 3(55)

### *Defended actions*

- 33.85. (1) Where a notice of intention to defend has been lodged and no request is made under rule 33.87 (remit of applications to Court of Session), the pursuer shall within 14 days after the date of the lodging of a notice of intention to defend or within such other period as the sheriff may order, lodge in process the following documents (or copies) from the process in the cause in the Court of Session in which the original order was made:—
- (a) the pleadings;
- (b) the interlocutor sheets;
- (c) any opinion of the court; and
- (d) any productions on which he seeks to found.
- (2) The sheriff may, on the joint motion of parties made at any time after the lodging of the documents mentioned in paragraph (1)—
- (a) dispense with proof;
- (b) whether defences have been lodged or not, hear the parties; and
- (c) thereafter, grant decree or otherwise dispose of the cause as he thinks fit.

### *Transmission of process to Court of Session*

- 33.86. (1) Where decree has been granted or the cause otherwise disposed of—
- (a) and the period for marking an appeal has elapsed without an appeal being marked, or
- (b) after the determination of the cause on any appeal,



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the sheriff clerk shall transmit to the Court of Session the sheriff court process and the documents from the process of the cause in the Court of Session which have been lodged in the sheriff court process.

- (2) A sheriff court process transmitted under paragraph (1) shall form part of the process of the cause in the Court of Session in which the original order was made.

#### *Remit of applications to Court of Session*

- 33.87. (1) A request for a remit to the Court of Session under section 8(3) of the Act of 1966 shall be made by motion.
- (2) The sheriff shall, in respect of any such motion, order that the cause be remitted to the Court of Session; and, within four days after the date of such order, the sheriff clerk shall transmit the whole sheriff court process to the Court of Session.
- (3) A cause remitted to the Court of Session under paragraph (2) shall form part of the process of the cause in the Court of Session in which the original order was made.

### *PART XIII*

#### *CHILD SUPPORT ACT 1991*

#### *Interpretation of this Part*

- 33.88. <sup>F77</sup> . . . In this Part—
- “the Act of 1991” means the <sup>M17</sup>Child Support Act 1991;
- “child” has the meaning assigned in section 55 of the Act of 1991;
- [<sup>F78</sup>“maintenance calculation”] has the meaning assigned in section [<sup>F79</sup>54] of the Act of 1991.

#### **Textual Amendments**

- F77** Rule 33.88: “-(1)” at the beginning is omitted (1.11.1996) by S.I. 1996/2445, **para. 3(56)(a)**
- F78** Words in Sch. 1 rule 33.88 substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), **art. 2(10)**
- F79** Word in rule 33.88 substituted (1.11.1996) by S.I. 1996/2445, **para. 3(56)(b)**

#### **Marginal Citations**

- M17** 1991 c.48.

#### *Restriction of expenses*

- 33.89. Where the Secretary of State is named as a defender in an action for declarator of nonparentage or illegitimacy, and the Secretary of State does not defend the action, no expenses shall be awarded against the Secretary of State.



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*Effect of maintenance [F80 calculations]*

- 33.90. The sheriff clerk shall, on receiving notification that a maintenance [F81 calculation] has been made, cancelled or has ceased to have effect so as to affect an order of a kind prescribed for the purposes of section 10 of the Act of 1991, endorse on the interlocutor sheet relating to that order a certificate, in Form F39 or F40, as the case may be.

**Textual Amendments**

- F80** Word in Sch. 1 rule 33.90 substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(11)(a)
- F81** Word in Sch. 1 rule 33.90 substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(11)(b)

*Effect of maintenance [F82 calculations] on extracts relating to aliment*

- 33.91. (1) Where an order relating to aliment is affected by a maintenance [F83 calculation], any extract of that order issued by the sheriff clerk shall be endorsed with the following certificate:—

“A maintenance [F83 calculation] having been made under the Child Support Act 1991 on (insert date), this order, in so far as it relates to the making or securing of periodical payments to or for the benefit of (insert name(s) of child/children), ceases to have effect from (insert date two days after the date on which the maintenance [F83 calculation] was made)”.

- (2) Where an order relating to aliment has ceased to have effect on the making of a maintenance [F83 calculation], and that maintenance [F83 calculation] is later cancelled or ceases to have effect, any extract of that order issued by the sheriff clerk shall be endorsed also with the following certificate:—

“The jurisdiction of the child support officer under the Child Support Act 1991 having terminated on (insert date), this order, in so far as it relates to (insert name(s) of child/children), again shall have effect as from (insert date of termination of child support officer’s jurisdiction)”.

**Textual Amendments**

- F82** Word in Sch. 1 rule 33.91 heading substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(12)(a)
- F83** Word in Sch. 1 rule 33.91 substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(12)(b)

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## [<sup>F84</sup>PART XIV

### REFERRALS TO PRINCIPAL REPORTER

#### Textual Amendments

**F84** Pts. XIV (rules 33.92-33.94) and XV (rule 33.95) inserted (1.11.1996) by [S.I. 1996/2167, para. 2, Sch. para. 33](#)

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

- 33.92. (1) This Part applies where a sheriff, in a family action, refers a matter to the Principal Reporter under section 54 of the Act of 1995 (reference to the Principal Reporter by court).
- (2) In this Part, “Principal Reporter” has the meaning assigned in section 93(1) of the Act of 1995.

#### *Intimation to Principal Reporter*

- 33.93. Where a matter is referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995, the interlocutor making the reference shall be intimated by the sheriff clerk forthwith to the Principal Reporter; and that intimation shall specify which of the conditions in paragraph (2)(a) to (h), (j), (k) or (l) of [<sup>F85</sup>section 52 of that Act] it appears to the sheriff has been satisfied.

#### Textual Amendments

**F85** Words in [Sch. 1 rule 33.93](#) substituted (2.1.2006) by [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2005 \(S.S.I. 2005/648\), art. 2\(3\)](#)

#### *Intimation of decision by Principal Reporter*

- 33.94. (1) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such investigation as he thinks appropriate and having reached the view that compulsory measures of supervision are necessary, arranges a children’s hearing under section 69 of that Act (continuation or disposal of referral by children’s hearing), the Principal Reporter shall intimate to the court which referred the matter to him—
- (a) the decision to arrange such children’s hearing;
  - (b) where there is no appeal made against the decision of that children’s hearing once the period for appeal has expired, the outcome of the children’s hearing; and
  - (c) where such an appeal has been made, that an appeal has been made and, once determined, the outcome of that appeal.
- (2) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such investigation as he thinks appropriate and having considered whether compulsory measures of supervision are necessary, decides not to arrange a children’s hearing

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under section 69 of that Act, the Principal Reporter shall intimate that decision to the court which referred the matter to him.]

<sup>F86</sup>*PART XV*

*MANAGEMENT OF MONEY PAYABLE TO CHILDREN*

**Textual Amendments**

**F86** [Pts. XIV](#) (rules 33.92-33.94) and [XV](#) (rule 33.95) inserted (1.11.1995) by [S.I. 1996/2167](#), para. 2, [Sch.](#), para. 33

- 33.95. Where the sheriff has made an order under section 13 of the Act of 1995 (awards of damages to children), an application by a person for an order by virtue of section 11(1)(d) of that Act (administration of child's property) may be made in the process of the cause in which the order under section 13 of that Act was made.

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