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STATUTORY INSTRUMENTS

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**1996 No. 2445**

**Act of Sederunt (Sheriff Court Ordinary Cause  
Rules Amendment) (Miscellaneous) 1996**

**Amendment of Ordinary Cause Rules 1993**

**3.—(1)** The Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(1) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 3.1 (form of initial writ)—

(a) in paragraph (3)—

(i) for the word “agreement”, substitute the word “agreement”; and

(ii) for the word “intitial”, substitute the word “initial”;

(b) in paragraph (4) for the word “intial”, substitute the word “initial”; and

(c) in paragraph (5), for the word “intitial”, substitute the word “initial”.

(3) In rule 3.3 (warrants of citation), for references to Forms 01, 02 and 03, substitute references to Forms O1, O2 and O3 respectively.

(4) In rule 3.4 (warrants for arrestment to found jurisdiction), in paragraph (1), for the word “intitial”, substitute the word “initial”.

(5) In rule 5.2 (form of citation and certificate), in paragraph (1)—

(a) for the words “citation by”, substitute the words “citation of”; and

(b) for the word “intial”, substitute the word “initial”.

(6) In rule 5.5 (service on persons furth of Scotland), in paragraph (1), for the words “Foreign Office” wherever they occur, substitute the words “Secretary of State for Foreign and Commonwealth Affairs”.

(7) In rule 5.7 (persons carrying on business under trading or descriptive name), in paragraph (1)—

(a) in sub-paragraph (b), omit the words from “against such person” to “descriptive name”; and

(b) for the words “shall be a valid”, substitute the words “against such person under such trading or descriptive name shall be a valid”.

(8) In rule 7.2 (minute for granting of decree without attendance)—

(a) in paragraph (3)(b), after the words “Article 52 of” insert the words “the Convention in”; and

(b) in paragraph (4), for the words “Civil and Commercial” substitute the words “Civil or Commercial”.

(9) In rule 7.5 (finality of decree in absence), in sub-paragraph (a), after the words “made under it,”, insert the words “as the case may be,”.

(10) In rule 7.6 (amendment of initial writ)—

- (a) in paragraph (1)(b), for the word “intial” substitute the word “initial”; and
  - (b) in paragraph (3)(a) for the words “creditors, of”, substitute the words “creditors of”.
- (11) After rule 7.6, insert the following rule:–

**“Disapplication of certain rules**

**7.7.** The following rules in Chapter 15 (motions) shall not apply to an action in which no notice of intention to defend has been lodged or to any action in so far as it proceeds as undefended:–

- rule 15.2 (intimation of motions),
- rule 15.3 (opposition to motions),
- rule 15.5 (hearing of motions).”.

(12) In rule 9.2 (fixing date for Options Hearing), in paragraph (3), for the word “parties”, substitute the words “a party”.

(13) After rule 9.2, insert the following rule:–

**“Second or subsequent Options Hearing**

**9.2A.—**(1) Where for any reason a second or subsequent Options Hearing requires to be fixed and an Options Hearing has already been fixed but has not yet taken place, the sheriff shall fix a second or subsequent Options Hearing and discharge that earlier hearing.

(2) The sheriff clerk shall forthwith intimate to all parties–

- (a) that the original Options Hearing has been discharged;
- (b) the last date for lodging defences, if appropriate;
- (c) the last date for adjustment; and
- (d) the date and time fixed for the second or subsequent Options Hearing.

(3) Any reference in these Rules to an Options Hearing or a continuation of it shall include a reference to a second or subsequent Options Hearing ordered under this rule.”.

(14) In rule 9.11 (record for Options Hearing), after paragraph (2), insert the following paragraph:–

“(3) Where the Options Hearing is continued under rule 9.12(5), and further adjustment or amendment is made to the pleadings, a copy of the pleadings as adjusted or amended, certified by the pursuer, shall be lodged in process not later than 2 days before the Options Hearing so continued.”.

(15) In rule 11.2 (custody of process), in paragraph (3), for the words “clerk, may”, substitute the words “clerk may,”.

(16) In rule 11.6 (intimation of parts of process and adjustments)–

- (a) in paragraph (1), after the word “shall”, insert the words “, at the same time,”; and
- (b) in paragraph (4), after the words “where intimation is given”, insert the words “or, but for this paragraph, would be deemed to be given”.

(17) In rule 12.2 (further provisions in relation to interlocutors), for paragraphs (3) and (4) substitute the following paragraphs:–

“(3) In any cause, other than a family action within the meaning of rule 33.1(1) which has proceeded as undefended, where at any stage evidence has been led, the sheriff shall–

- (a) in the interlocutor, make findings in fact and law; and

(b) append to that interlocutor a note setting out the reasons for his decision.

(4) In any other interlocutor, the sheriff may, and shall when requested by a party, append a note setting out the reasons for his decision.”.

(18) In rule 13.2 (procedure following leave to enter process), in paragraph (1), for the word “answers”, substitute the word “defences”.

(19) In rule 14.1 (application of this Chapter), in paragraph (2)–

(a) at the end of sub-paragraph (a), omit the word “or”;

(b) at the end of sub-paragraph (b), for the full-stop, substitute “; or”; and

(c) after sub-paragraph (b), insert the following sub-paragraph:–

“(c) a joint minute.”.

(20) For rule 14.3 (procedure in minutes), substitute the following rule:–

#### **“Lodging of minutes**

**14.3.**—(1) Before intimating any minute, the minuter shall lodge the minute in process.

(2) On the lodging of a minute, and any document under rule 21.1(1)(b) (lodging documents founded on or adopted), the sheriff–

(a) may make an order for answers to be lodged;

(b) may order intimation of the minute without making an order for answers; or

(c) where he considers it appropriate for the expeditious disposal of the minute or for any other specified reason, may fix a hearing.

(3) Any answers ordered to be lodged under paragraph (2)(a) shall, unless otherwise ordered by the sheriff, be lodged within 14 days after the date of intimation of the minute.

(4) Where the sheriff fixes a hearing under paragraph (2)(c), the interlocutor fixing that hearing shall specify whether–

(a) answers are to be lodged;

(b) the sheriff will hear evidence at that hearing; and

(c) the sheriff will allow evidence by affidavit.

(5) Any answers or affidavit evidence ordered to be lodged under paragraph (4) shall be lodged within such time as shall be specified in the interlocutor of the sheriff.

(6) The following rules shall not apply to any hearing fixed under paragraph (2)(c):–

rule 14.7 (opposition where no order for answers made),

rule 14.8 (hearing of minutes where no opposition or no answers lodged),

rule 14.10 (notice of opposition or answers lodged).

(7) The sheriff clerk shall forthwith return the minute to the minuter with any interlocutor pronounced by the sheriff.”.

(21) After rule 14.3 (lodging of minutes), insert the following rules:–

#### **“Intimation of minutes**

**14.4.**—(1) The party lodging a minute shall, on receipt from the sheriff clerk of the minute, intimate to every other party including any person referred to in rule 14.13(1)–

(a) a notice in Form G7A, G7B or G7C, as the case may be, by any of the methods provided for in rule 14.5 (methods of intimation); and

- (b) a copy of—
  - (i) the minute;
  - (ii) any interlocutor; and
  - (iii) any document referred to in the minute.
- (2) The sheriff may, on cause shown, dispense with intimation.

#### **Methods of intimation**

- 14.5.**—(1) Intimation of a minute may be given by—
- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
  - (b) where intimation is to a party represented by a solicitor, by—
    - (i) personal delivery,
    - (ii) facsimile transmission,
    - (iii) first class ordinary post, or
    - (iv) delivery to a document exchange,to that solicitor.
- (2) Where intimation is given—
- (a) under paragraph (1)(b)(i) or (ii), it shall be deemed to have been given—
    - (i) on the day of transmission or delivery where it is given before 5.00 p.m. on any day; or
    - (ii) on the day after transmission or delivery where it is given after 5.00 p.m. on any day; or
  - (b) under paragraph 1(b)(iii) or (iv), it shall be deemed to have been given on the day after the date of posting or delivery.

#### **Return of minute with evidence of intimation**

**14.6.** Where intimation of any minute has been given, the minute and a certificate of intimation in Form G8 shall be returned to the sheriff clerk within 5 days after the date of intimation.

#### **Opposition where no order for answers made**

- 14.7.**—(1) Where a party seeks to oppose a minute lodged under rule 14.3 (lodging of minutes) in which no order for answers has been made under paragraph (2)(a) of that rule, that party shall, within 14 days after the date of intimation of the minute to him—
- (a) complete a notice of opposition in Form G9;
  - (b) lodge the notice with the sheriff clerk; and
  - (c) intimate a copy of that notice to every other party.
- (2) Rule 14.5 (methods of intimation) and rule 14.6 (return of minute with evidence of intimation) shall apply to intimation of opposition to a minute under paragraph (1)(c) of this rule as they apply to intimation of a minute.
- (3) The sheriff may, on cause shown, reduce or dispense with the period for lodging the notice mentioned in paragraph (1)(b).

### **Hearing of minutes where no opposition or no answers lodged**

**14.8.**—(1) Where no notice of opposition is lodged or where no answers have been lodged to the minute within the time allowed, the minute shall be determined by the sheriff in chambers without the attendance of parties, unless the sheriff otherwise directs.

(2) Where the sheriff requires to hear a party on a minute, the sheriff clerk shall—

- (a) fix a date, time and place for the party to be heard; and
- (b) inform that party—
  - (i) of that date, time and place; and
  - (ii) of the reasons for the sheriff wishing to hear him.

### **Intimation of interlocutor**

**14.9.** Where a minute has been determined in accordance with rule 14.8 (hearing of minutes where no opposition or no answers lodged), the sheriff clerk shall intimate the interlocutor determining that minute to the parties forthwith.

### **Notice of opposition or answers lodged**

**14.10.**—(1) Where a notice of opposition has, or answers have, been lodged to the minute, the sheriff clerk shall—

- (a) assign a date, time and place for a hearing on the first suitable court day after the date of the lodging of the notice of opposition or answers, as the case may be; and
- (b) intimate that date, time and place to the parties.

(2) The interlocutor fixing a hearing under paragraph (1) shall specify whether the sheriff will hear evidence at the hearing or receive evidence by affidavit.

### **Procedure for hearing**

**14.11.**—(1) A certified copy of the interlocutor assigning a hearing under this Chapter and requiring evidence to be led shall be sufficient warrant to a sheriff officer to cite a witness on behalf of a party.

(2) At the hearing, the sheriff shall hear parties on the minute and any answers lodged, and may determine the minute or may appoint such further procedure as he considers necessary.

### **Consent to minute**

**14.12.** Subject to paragraph (2) of rule 14.8 (hearing of minutes where no opposition or no answers lodged), where all parties to the action indicate to the sheriff, by endorsement of the minute or otherwise in writing, their intention to consent to the minute, the sheriff may forthwith determine the minute in chambers without the appearance of parties.

### **Procedure following grant of minute**

**14.13.**—(1) Where the minute includes a crave seeking leave—

- (a) for a person—
  - (i) to be sisted as a party to the action, or
  - (ii) to appear in the proceedings, or
- (b) for the cause to be transferred against the representatives of a party who has died or is under a legal incapacity,

the sheriff, on granting the minute, may order a hearing under rule 9.12 (Options Hearing) to be fixed or may appoint such further procedure as he thinks fit.

- (2) Where an Options Hearing is ordered under paragraph (1), the sheriff clerk shall—
- (a) fix a date and time for such hearing, which date, unless the sheriff otherwise directs, shall be on the first suitable court day occurring not sooner than 10 weeks after the date of the interlocutor of the sheriff ordering such hearing be fixed;
  - (b) forthwith intimate to the parties in Form G5—
    - (i) where appropriate, the last date for lodging defences;
    - (ii) where appropriate, the last date for adjustment; and
    - (iii) the date of the Options Hearing; and
  - (c) prepare and sign an interlocutor recording those dates.

(3) For the purpose of fixing the date for the Options Hearing referred to in paragraph (1), the date of granting the minute shall be deemed to be the date of expiry of the period of notice.”.

(22) For Chapter 15 (motions), substitute the following Chapter:—

*“CHAPTER 15*

***MOTIONS***

**Lodging of motions**

**15.1.**—(1) A motion may be made—

- (a) orally with leave of the court during any hearing of a cause; or
- (b) by lodging a written motion in Form G6.

(2) Subject to paragraph (3), a written motion shall be lodged with the sheriff clerk within 5 days after the date of intimation of the motion required by rule 15.2 (intimation of motions) with—

- (a) a certificate of intimation in Form G8; and
- (b) so far as practicable any document referred to in the written motion and not already lodged in process.

(3) Where the period for lodging opposition to the motion is varied under rule 15.2(4) (variation of and dispensing with period of intimation) to a period of 5 days or less, the written motion and certificate to be lodged in terms of paragraph (2) shall be lodged no later than the day on which the period for lodging opposition expires.

**Intimation of motions**

**15.2.**—(1) Subject to paragraphs (4) and (7), a party intending to lodge a motion in accordance with rule 15.1(1)(b) (lodging written motion) shall intimate the motion in Form G7, and a copy of any document referred to in the motion, to every other party.

(2) Intimation of a motion may be given by—

- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
- (b) where intimation is to a party represented by a solicitor, by—
  - (i) personal delivery,

- (ii) facsimile transmission,
  - (iii) first class ordinary post, or
  - (iv) delivery to a document exchange,
- to that solicitor.

(3) Where intimation is given—

(a) under paragraph (2)(b)(i) or (ii), it shall be deemed to have been given—

- (i) on the day of transmission or delivery where it is given before 5.00 p.m. on any day; or
- (ii) on the day after transmission or delivery where it is given after 5.00 p.m. on any day; or

(b) under paragraph (2)(b)(iii) or (iv), it shall be deemed to have been given on the day after posting or delivery.

(4) The sheriff may, on the application of a party intending to lodge a written motion, vary the period of 7 days specified in rule 15.3(1)(c) for lodging opposition to the motion or dispense with intimation.

(5) An application under paragraph (4) shall be made in the written motion, giving reasons for such variation or dispensation.

(6) Where the sheriff varies the period within which notice of opposition is to be lodged under rule 15.3(1)(c), the form of intimation required under rule 15.2(1) (intimation of motion in Form G7) shall state the date by which such notice requires to be lodged.

(7) A joint motion by all parties lodged in Form G6 need not be intimated.

### **Opposition to motions**

**15.3.—**(1) Where a party seeks to oppose a motion made in accordance with rule 15.1(1)

(b) (written motion), he shall—

- (a) complete a notice of opposition in Form G9;
- (b) intimate a copy of that notice to every other party; and
- (c) lodge the notice with the sheriff clerk within 7 days after the date of intimation of the motion or such other period as the sheriff may have determined under rule 15.2(6).

(2) Paragraphs (2) and (3) of rule 15.2 (methods and time of intimation of motions) shall apply to the intimation of opposition to a motion under paragraph (1)(b) of this rule as they apply to intimation under that rule.

### **Consent to motions**

**15.4.** Where a party consents to a written motion, he shall endorse the motion, or give notice to the sheriff clerk in writing, of his consent.

### **Hearing of motions**

**15.5.—**(1) Subject to paragraph (2), where no notice of opposition is lodged with the sheriff clerk within the period specified in rule 15.3(1)(c), or ordered by virtue of rule 15.2(4), the motion shall be determined by the sheriff in chambers without the appearance of parties, unless the sheriff otherwise directs.

(2) In accordance with any directions given by the sheriff principal, the sheriff clerk may determine any motion other than a motion which seeks a final interlocutor.

(3) Where the sheriff clerk considers that a motion dealt with by him under paragraph (2) should not be granted, he shall refer that motion to the sheriff who shall deal with it in accordance with paragraph (1).

(4) Where the sheriff requires to hear a party on a motion which is not opposed, the sheriff clerk shall—

- (a) fix a date, time and place for the party to be heard, and
- (b) inform that party—
  - (i) of that date, time and place; and
  - (ii) of the reasons for the sheriff wishing to hear him.

(5) Where a notice of opposition is lodged in accordance with rule 15.3(1), the sheriff clerk shall—

- (a) assign a date, time and place, on the first suitable court day after the lodging of the notice of opposition, for the motion to be heard; and
- (b) intimate that date, time and place to the parties.

(6) Where a motion has been determined under paragraph (1) or (2), the sheriff clerk shall intimate the interlocutor determining that motion to all parties forthwith.

(7) Where the sheriff, under paragraph (4) of rule 15.2, dispenses with intimation required by paragraph (1) of that rule, he shall make such order as he thinks fit for intimation of his determination of the motion to every party to the action in respect of whom intimation has been so dispensed with.

(8) Subject to paragraph (4), where all parties consent to a written motion, the sheriff may determine the motion in chambers without the appearance of parties.

(9) Subject to paragraph (4) where a joint motion of all parties in Form G6 is lodged with the sheriff clerk, the sheriff may determine the motion in chambers without the appearance of parties.”.

(23) In rule 18.1 (alteration of sum sued for), in paragraph (1), omit the words “the certified copy of the initial writ”.

(24) In rule 18.5 (service of amended pleadings), in paragraph (1), after the word “rule”, insert the words “18.2(b)(iv), (v) or (vi) (additional or substitute defenders added by amendment) or rule”.

(25) In rule 18.7 (effect of amendment on diligence), in paragraph (a), for the words “creditors, of” substitute the words “creditors of”.

(26) In rule 19.2 (warrants for diligence on counterclaims), in paragraph (2)(a), for the word “before” substitute the word “after”.

(27) After rule 19.2, insert the following rule:—

**“Form of record where counterclaim lodged**

**19.2A.** Where, under rule 9.10 (open record), 9.11 (record for Options Hearing), 10.4 (open record), or 10.5 (closed record), a record requires to be lodged in an action in which a counterclaim is included in the defences, the pleadings of the parties shall be set out in the record in the following order:—

- (a) the crave of the initial writ;
- (b) the condescendence and answers relating to the initial writ;
- (c) the pleas-in-law of the parties relating to the crave of the initial writ;
- (d) the crave of the counterclaim;
- (e) the statement of facts and answers relating to the counterclaim; and



- (f) the pleas-in-law of the parties relating to the counterclaim.”.
- (28) In rule 20.1 (applications for third party notice), in paragraph (2), for “20.7” substitute “20.6”.
- (29) In rule 22.1 (note of basis of preliminary plea)–
- (a) re-number paragraphs (2) and (3) as paragraphs (3) and (4) respectively;
  - (b) after paragraph (1), insert the following paragraph:–
    - “(2) Where the Options Hearing is continued under rule 9.12(5) 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 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 paragraphs (3) and (4) (as re-numbered), after the words “paragraph (1)” insert the words “or (2)”; and
  - (d) after paragraph (4) (as re-numbered), insert the following paragraph:–
    - “(5) Where a note of the basis of a preliminary plea has been lodged under paragraph (1), and the Options Hearing is continued under rule 9.12(5), unless the basis of the plea has changed following further adjustment, it shall not be necessary for a party who is insisting on the plea to lodge a further note before the Options Hearing so continued.”.
- (30) In rule 25.2 (minutes of transference)–
- (a) omit “-(1)” at the beginning of paragraph (1); and
  - (b) omit paragraph (2).
- (31) In rule 27.5, in the heading, for the word “**quarantors**”, substitute the word “**guarantors**”.
- (32) In rule 28.2 (applications for commission and diligence for recovery of documents etc), for paragraph (3), substitute the following paragraph:–
- “(3) A copy of the specification lodged under paragraph (2) and the motion made under paragraph (1) shall be intimated by the applicant to–
    - (a) every other party;
    - (b) in respect of an application under section 1(1) of the Act of 1972(2), any third party haver; and
    - (c) where necessary, the Lord Advocate.”.
- (33) In rule 28.3 (optional procedure before executing commission and diligence)–
- (a) in paragraph (2), after the word “order” where it first occurs, insert the words “and a copy of the specification referred to in rule 28.2(2) as approved by the court”;
  - (b) in paragraph (3), for the words “a certificate in form G12”, substitute the words “the certificate appended to Form G11”; and
  - (c) in paragraph (11), after the word “extract”, insert the words “from that book”.
- (34) In rule 28.4 (execution of commission and diligence for recovery of documents)–
- (a) in paragraph (4), after “amendments”, insert the words “; and the party citing the haver shall lodge a certificate of citation in Form G12”; and
  - (b) in paragraph (6)(a), after the word “any”, insert the words “clerk and any”.

- (35) In rule 28.7 (execution of orders for preservation etc of documents or other property under section 1(1) of the Act of 1972), in paragraph (1), omit the words “, other than in the hands of a haver,”.
- (36) In rule 28.8 (confidentiality)–
- (a) in paragraph (1), after the word “shall”, insert the words “, where practicable,”; and
  - (b) in paragraph (2), after the words “opened up”, insert the words “or such recovery allowed”.
- (37) In rule 28.10 (commissions for examination of witnesses)–
- (a) in paragraph (1)–
    - (i) in sub-paragraph (a), omit the word “or” at the end of head (iii);
    - (ii) at the end of sub-paragraph (b), for the full-stop, substitute “; or”; and
    - (iii) after sub-paragraph (b), insert the following sub-paragraph:–
      - “(c) on special cause shown, to take evidence of a witness on a ground other than one mentioned in sub-paragraph (a) or (b)”;
  - (b) in paragraph (4)(a), after the word “any”, insert the words “clerk and any”.
- (38) In rule 28.14 (letters of request)–
- (a) in paragraph (2)–
    - (i) in sub-paragraph (a), for the semi-colon at the end, substitute a comma;
    - (ii) in sub-paragraph (b), at the end, for the full stop substitute a comma; and
    - (iii) after sub-paragraph (b), insert the following sub-paragraphs:–
      - “(c) for the medical examination of any person,
      - (d) for the taking and testing of samples of blood from any person, or
      - (e) for any other order for obtaining evidence,

for which an order could be obtained from the sheriff.”; and
  - (b) in paragraph (4), for the words “shall become personally liable”, substitute the words “, or a party litigant, as the case may be, shall be personally liable, in the first instance,”.
- (39) In rule 29.6 (hearing parts of proof separately), in paragraph (1), for the words “In action with pecuniary conclusions” substitute the words “In any cause”.
- (40) In rule 29.18 (recording of evidence)–
- (a) after “**29.18.**” insert “– (1)”;
  - (b) in paragraph (6)(b), for the word “solicitor”, substitute the word “solicitors”.
- (41) In rule 30.4 (when decrees extractable)–
- (a) in paragraph (1)(a) before the words “a decree in absence”, insert the words “subject to sub-paragraph (c),”; and
  - (b) in paragraph (1)(b) before the words “any decree pronounced”, insert the words “subject to sub-paragraph (c),”.
- (42) In the rule headed “**Form of warrant for execution**” following rule 30.6, for the rule number “**3.7.**”, substitute “**30.7.**”.
- (43) In Chapter 31 (appeals)–
- (a) omit rules 31.4 (reclaiming petition or oral hearing ordered or dispensed with) and 31.5 (appeals in connection with custody, access or aliment);
  - (b) re-number rules 31.6 (interim possession etc. pending appeal) and 31.7 (abandonment of appeal) as rules 31.10 and 31.11 respectively;

- (c) for rule 31.3 (form of appeal and notice to parties) substitute the following rule:–

**“Form of appeal to Court of Session**

**31.3.**—(1) An appeal to the Court of Session shall be marked by writing a note of appeal–

- (a) on the interlocutor sheet or other written record containing the interlocutor appealed against, or
- (b) where the decision appealed against is not available or the proceedings appealed against are recorded in an official book, on a separate sheet lodged with the sheriff clerk,

in the following terms:– “The pursuer [*or defender or as the case may be*] appeals to the Court of Session.”.

(2) A note of appeal under paragraph (1) shall–

- (a) be signed by the appellant or his solicitor;
- (b) bear the date on which it is signed; and
- (c) where the appellant is represented, specify the name and address of the solicitor or other agent who will be acting for him in the appeal.”; and

- (d) after rule 31.3, insert the following rules:–

**“Form of appeal to the sheriff principal**

**31.4.**—(1) An appeal to the sheriff principal shall be marked by lodging a note of appeal in Form A1.

(2) A note of appeal under paragraph (1) shall–

- (a) be signed by the appellant or his solicitor;
- (b) bear the date on which it is signed;
- (c) where the appellant is represented, specify the name and address of the solicitor or other agent who will be acting for him in the appeal; and
- (d) where a note has not been provided by the sheriff, request that the sheriff write a note setting out the reasons for his decision.

(3) The grounds of appeal in a note of appeal shall consist of brief specific numbered propositions stating the grounds on which it is proposed to submit that the appeal should be allowed or as the case may be.

(4) On marking or lodging a note of appeal, the appellant shall send a copy of the note of appeal to every other party.

(5) An appellant–

- (a) may amend the grounds of appeal at any time up to 14 days before the date assigned for the hearing of the appeal; and
- (b) shall at the same time send or deliver a copy of such amendment to every other party.

(6) Where any party wishes to cross-appeal, he shall–

- (a) lodge a note of the grounds of appeal in accordance with paragraph (1) not less than 7 days before the date assigned for the hearing of the appeal; and
- (b) at the same time send a copy of the note to every other party.

(7) The sheriff principal may, on cause shown, shorten or dispense with the time limits mentioned in paragraphs (5) and (6).

(8) On a note of appeal being lodged, the sheriff clerk shall note on the interlocutor sheet that an appeal has been marked and the date of the appeal.

#### **Transmission of process and notice to parties**

**31.5.**—(1) Where an appeal is marked in terms of rule 31.3 (appeal to Court of Session) or 31.4 (appeal to sheriff principal), the sheriff clerk shall transmit the process of the cause—

- (a) in an appeal to the sheriff principal, to him; or
- (b) in an appeal to the Court of Session, to the Deputy Principal Clerk of Session, within the period specified in rule 40.6 of the Rules of the Court of Session 1994(3).

(2) On transmitting the process in terms of paragraph (1), the sheriff clerk shall—

- (a) send written notice of the appeal to every party; and
- (b) certify on the interlocutor sheet that he has done so.

(3) Failure of the sheriff clerk to comply with paragraph (2) shall not invalidate the appeal.

#### **Record of pleadings etc.**

**31.6.** In an appeal to him, the sheriff principal may order the appellant to lodge a record of the pleadings containing all adjustments made in the cause with—

- (a) a copy of all relevant interlocutors;
- (b) any other document lodged in process by any party or produced by order of the sheriff, whether or not pursuant to a commission and diligence for its recovery; and
- (c) any other document to which reference is intended to be made in the appeal, by any party.

#### **Determination of appeal**

**31.7.** In an appeal to him, the sheriff principal shall—

- (a) hear parties at an oral hearing; or
- (b) on the motion of the parties, and if he thinks fit, dispose of the appeal without ordering an oral hearing.

#### **Fixing of Options Hearing or making other order following appeal**

**31.8.** On determination of an appeal from a decision of the sheriff made before or at an Options Hearing or any continuation of it, the sheriff principal may order the sheriff clerk to fix a new date for a hearing under rule 9.12 (options hearing) or may make such other order as he thinks fit.

### **Appeals in connection with orders under section 11 of the Children (Scotland) Act 1995 or aliment**

**31.9.** Where an appeal is marked against an interlocutor making an order under section 11 of the Children (Scotland) Act 1995(4) (court orders relating to parental responsibilities etc.) or in respect of aliment, the marking of that appeal shall not excuse obedience to or implement of that order unless by order of the sheriff, the sheriff principal or the Court of Session, as the case may be.”

(44) In rule 33.3(5) (averments where custody sought) in paragraph (2), for the word “person”, substitute the word “party”.

(45) In rule 33.7(6) (warrants and forms for intimation)–

(a) in paragraph (1)–

(i) in sub-paragraph (g), for the word “intitial”, substitute the word “initial”;

(ii) at the end of sub-paragraph (j), omit the word “and”;

(iii) at the end of sub-paragraph (k), for the full-stop, substitute “; and”; and

(iv) after sub-paragraph (k), insert the following sub-paragraph:–

“(l) in an action where the pursuer makes an application for an order under section 8(1)(ba) of the Act of 1985(7) (orders under section 12A of the Act of 1985 for pension lump sum), to the trustees or managers of the pension scheme, and a notice of intimation in Form F12A shall be attached to the initial writ intimated to any such person.”; and

(b) in paragraph (5), for the words “or (k)”, substitute the words “, (k) or (l)”.

(46) In rule 33.14 (notices in certain actions of divorce or separation), in paragraph (2), for the word “service”, substitute the word “citation”.

(47) In rule 33.16 (appointment of curators *ad litem* to defenders), in paragraph (3)(b),–

(a) for the words “the notice”, substitute the words “any notice”; and

(b) for the word “sherrif”, substitute the word “sheriff”.

(48) In rule 33.33 (disapplication of Chapter 15 to undefended family actions)–

(a) before the word “Chapter”, insert the words “Other than rule 15.1(1),”; and

(b) after the word “lodged”, insert the words “, or to a family action in so far as it proceeds as undefended”.

(49) In rule 33.37 (decree by default), in paragraph (1)(c), for the word “to” where it second occurs, substitute the word “or”.

(50) In rule 33.51 (applications relating to orders for financial provision), after paragraph (2), insert the following paragraph:–

“(3) An application under–

(a) paragraph (5) of section 12A of the Act of 1985(8) (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),

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(4) 1995 c. 36.

(5) Rule 33.3 was amended by S.I. 1996/2167.

(6) Rule 33.7 was amended by S.I. 1996/2167.

(7) 1985 c. 37; section 8(1)(ba) was inserted by the Pensions Act 1995 (c. 26), section 167(1).

(8) Section 12A of the Family Law (Scotland) Act 1985 (c. 37) was inserted by the Pensions Act 1995 (c. 26), section 167(3).

shall be made by minute in the process of the action to which the application relates.”.

(51) In rule 33.55 (applications for financial provision)–

- (a) in the heading, at the end, insert the words “**after overseas divorce or annulment**”;
- (b) in paragraph (3)(b), for the word “or” where it second occurs, substitute the word “of”;
- (c) paragraph (4) shall become paragraph (5); and
- (d) after paragraph (3), insert the following paragraph:–

“(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.”.

(52) In rule 33.62(9), in the heading, for the word “**Defences**”, substitute the word “**Defenders**”.

(53) In rule 33.72 (certificates of delivery of documents to chief constable), in paragraph (2), for the word “matromonial”, substitute the word “matrimonial”.

(54) In rule 33.74 (form of applications), in paragraph (1)(b), for “F32”, substitute “F31”.

(55) In rule 33.84 (form of applications and intimation to Court of Session), in paragraph (5), for the words “paragraph (1)”, substitute the words “paragraph (2)”.

(56) In rule 33.88 (interpretation of part relating to the Child Support Act 1991)–

- (a) omit “–(1)”; and
- (b) in the definition of “maintenance assessment”, for “55”, substitute “54”.

(57) In rule 34.1, in the heading, for the words “**for rent**”, substitute the words “**of rent**”.

(58) In rule 34.2 (warrant to inventory and secure), in paragraph (2), omit the comma after the word “open”.

(59) In rule 34.6 (form of notice of removal), in paragraph (1), for the words “this Act”, substitute the words “the Sheriff Courts (Scotland) Act 1907(10)”.

(60) In rule 34.7 (form of notice under section 37 of this Act)–

- (a) in the heading, for the words “**this Act**”, substitute the words “**the Act of 1907**”; and
- (b) for the words “this Act”, substitute the words “the Sheriff Courts (Scotland) Act 1907”.

(61) In rule 34.8 (giving notice of removal), for the words “this Act” wherever they occur, substitute the words “the Sheriff Courts (Scotland) Act 1907”.

(62) In rule 36.6 (connected persons entering process), in paragraph (4), for the words “Paragraphs (1) to (4) of rule 14.3 (procedure in minutes)”, substitute the words “Rule 14.13 (procedure following grant of minute)”.

(63) In rule 36.18 (causes under section 66 of the Act of 1975), in paragraph (2), for the words “an action”, substitute the words “a cause”.

(64) In rule 37.2 (parties to, and service and intimation of, actions of declarator), in paragraph (1), after the words “rule 5.6” insert “(1)(a)”.

(65) In Appendix 1 (forms)–

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(9) Rule 33.62 was substituted by S.I. 1996/2167.

(10) 1907 c. 51.

- (a) in Form G5 after the words “Standard Procedure of the Ordinary Cause Rules of the Sheriff Court”, insert the words “or, where applicable, rule 33.37 (decree by default in a family action)”;
- (b) for Forms G7, G8 and G9, substitute Forms G7, G8 and G9 set out in the Schedule to this Act of Sederunt;
- (c) after Form G7, insert Forms G7A, G7B and G7C set out in the Schedule to this Act of Sederunt;
- (d) in Form G10, omit the words “\*Delete as appropriate”;
- (e) in Form G11, in the rule reference “Rule 28.3(1)” at the top right hand side of the form, at the end, insert “and (3)”;
- (f) in Form G12, for the rule reference “Rules 28.3(3)” at the top right hand side of the form, substitute “Rules 28.4(4)”;
- (g) in Form O4 for the word “*execued*” in the first box in that form, substitute the word “*executed*”;
- (h) in Form O10–
  - (i) in the first alternative, for the words “if he is liable”, substitute the words “if he [*or she*] is liable”; and
  - (ii) in the third alternative, for the words “any liability he shares”, substitute the words “any liability he [*or she*] shares”;
- (i) after Form O10, insert Form A1 set out in the Schedule to this Act of Sederunt;
- (j) in Form F12, for the words “section of”, substitute the word “section”;
- (k) after Form F12, insert Form F12A set out in the Schedule to this Act of Sederunt;
- (l) in Form F17, for the words “personally to the”, substitute the words “personally to”;
- (m) in Form F31–
  - (i) before the part of the form headed “CONSENT BY APPLICANT'S SPOUSE TO DIVORCE”, insert the following:–

## **“PART 2**

### NOTICE TO CONSENTING SPOUSE

*(Insert name and address of consenting spouse)*

CONSENT TO APPLICATION FOR DIVORCE (HUSBAND AND WIFE  
HAVING LIVED APART FOR AT LEAST TWO YEARS)

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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In Part 1 of the enclosed application form your spouse is applying for divorce on the ground that the marriage has broken down irretrievably because you and he [or she] have lived apart for at least two years and you consent to the divorce being granted.

Such consent must be given formally in writing at Part 2 of the application form. BEFORE completing that part, you are requested to read it over carefully so that you understand the effect of consenting to divorce. Thereafter if you wish to consent–

- (a) check the details given by the Applicant at Part 1 of the form to ensure that they are correct to the best of your knowledge;
- (b) complete Part 2 (Consent by Applicant’s spouse to divorce) by entering your name and address at the appropriate place and adding your signature and the date; and
- (c) return the whole application form to your spouse at the address given in Part 1.

Once your husband or wife has completed the remainder of the form and has submitted it to the court, a copy of the whole application

(including your consent) will later be served upon you formally by the sheriff clerk.

In the event of the divorce being granted, you will automatically be sent a copy of the extract decree. (Should you change your address before receiving the copy extract decree, please notify the sheriff clerk immediately.)

If you do NOT wish to consent please return the application form, with Part 2 uncompleted, to your spouse and advise him or her of your decision.

The sheriff will NOT grant a divorce on this application if Part 2 of the form is not completed by you.

Sheriff clerk (depute)  
Sheriff Court (*insert address*)

- (ii) in Part 2 of Form F31 as amended by head (i) above, for the words “Signature of applicant”, substitute the words “Signature of applicant’s spouse”.
  - (n) omit Form F32;
  - (o) in Form F33, in paragraph 6 (jurisdiction), in Part B(vi) for the words “paragraph 2”, substitute the words “paragraph 3”;
  - (p) in Form M4, for the words “in medio”, substitute the words “*in medio*”; and
  - (q) in Form M5, in the first box headed “NOTE”, omit the word “it” where it occurs after the word “conducted”.
- (66) In Appendix 2 (forms for extract decrees), omit Form 8.