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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 632**

**Act of Sederunt (Rules of the Court of Session  
Amendment No. 9) (Civil Partnership Act 2004 etc.) 2005**

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 9) (Civil Partnership Act 2004 etc.) 2005 and shall come into force on 8th December 2005.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

**Amendment of the Rules of the Court of Session**

2.—(1) The Rules of the Court of Session 1994<sup>(1)</sup> shall be amended in accordance with the following sub-paragraphs.

(2) In Chapter 49 (family actions), for rule 49.1<sup>(2)</sup> (interpretation) there shall be substituted the following:—

**“Interpretation of this Chapter**

**49.1.—(1)** In this Chapter, “family action” means—

- (a) an action of divorce;
- (b) an action of dissolution of a civil partnership;
- (c) an action of separation of spouses or of civil partners;
- (d) an action of declarator of nullity of marriage or civil partnership;
- (e) an action of declarator of marriage;
- (f) an action of declarator of legitimacy;
- (g) an action of declarator of illegitimacy;
- (h) an action of declarator of parentage;
- (i) an action of declarator of non-parentage;
- (j) an action of declarator of legitimation;
- (k) an action or application for, or in respect of, an order under section 11 of the Children (Scotland) Act 1995<sup>(3)</sup> (court orders relating to parental responsibilities etc.) except a petition for the appointment of a judicial factor;
- (l) an action of, or application for or in respect of, aliment;

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<sup>(1)</sup> S.I.1994/1443, last amended by S.S.I. 2005/521.

<sup>(2)</sup> Rule 49.1 was amended by S.I. 1996/2587 and S.S.I. 2005/193.

<sup>(3)</sup> 1995 c. 36; section 11 was amended by S.S.I. 2005/42.

- (m) an action or application for financial provision after a divorce or annulment an in overseas country with the meaning of Part IV of the Matrimonial and Family Proceedings Act 1984**(4)**;
  - (n) an action or application for financial provision after a dissolution or annulment of a civil partnership in an overseas country within the meaning of section 125 of and Schedule 11 to the Civil Partnership Act 2004**(5)**;
  - (o) an action or application for an order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981**(6)**;
  - (p) an action or application for an order under Chapter 3 or 4 of Part 3 of the Civil Partnership Act 2004.
- (2) In this Chapter, unless the context otherwise requires–
- “the Act of 1975” means the Children Act 1975**(7)**;
  - “the Act of 1976” means the Divorce (Scotland) Act 1976**(8)**;
  - “the Act of 1973” means the Domicile and Matrimonial Proceedings Act 1973**(9)**;
  - “the Act of 1981” means the Matrimonial Homes (Family Protection) (Scotland) Act 1981;
  - “the Act of 1985” means the Family Law (Scotland) Act 1985**(10)**;
  - “the Act of 1995” means the Children (Scotland) Act 1995;
  - “the Act of 2004” means the Gender Recognition Act 2004**(11)**;
  - “the CP Act of 2004” means the Civil Partnership Act 2004;
  - “civil partnership” has the same meaning as in section 1(1) of the CP Act of 2004;
  - “contact order” has the same meaning as in section 11(2)(d) of the Act of 1995;
  - “corrected gender recognition certificate” means a certificate issued under section 6(4) of the Act of 2004;
  - “dissolution of a civil partnership” means a decree granted under section 117(2) of the CP Act of 2004;
  - “full gender recognition certificate” and “interim gender recognition certificate” have the same meanings as in section 25 of the Act of 2004;
  - “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**(12)**;
  - “mental disorder” has the same meaning as in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003**(13)**;
  - “action for declarator of nullity of a civil partnership” means an action for declarator that a civil partnership is void within the meaning of section 123 of the CP Act of 2004;
  - “order for financial provision” means, except in Parts VII and VIIA of this Chapter (financial provision after overseas divorce, dissolution of a civil partnership, or

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**(4)** 1984 c. 42; Part IV was amended by the Family Law (Scotland) Act 1985 (c. 37), Schedule 1, paragraphs 12 and 13 and by S.I. 2001/3929.

**(5)** 2004 c. 33.

**(6)** 1981 c. 59.

**(7)** 1975 c. 72.

**(8)** 1976 c. 39.

**(9)** 1973 c. 45.

**(10)** 1985 c. 37.

**(11)** 2004 c. 7.

**(12)** 1994 c. 39; section 2(2) was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

**(13)** 2003 asp 13.

annulment of marriage or civil partnership), an order mentioned in section 8(1) of the Act of 1985;

“parental responsibilities” has the same meaning as in section 1(3) of the Act of 1995;

“parental rights” has the same meaning as in section 2(4) of the Act of 1995;

“residence order” has the same meaning as in section 11(2) of the Act of 1995;

“section 11 order” means an order under section 11 of the Act of 1995<sup>(14)</sup>;

“action of separation of civil partners” means an action for decree under section 120 of the CP Act of 2004.

(3) For the purposes of rule 49.2<sup>(15)</sup> (averments in certain family actions about other proceedings) and rule 49.3<sup>(16)</sup> (averments where section 11 order sought), and in relation to proceedings in another jurisdiction, Schedule 3 to the Act of 1973<sup>(17)</sup> (sisting of consistorial actions in Scotland) and rule 49.18A (applications for sist in actions involving civil partnerships), proceedings are continuing at any time after they have commenced and before they are finally disposed of.”

(3) In rule 49.2 (averments in certain family actions about other proceedings)–

(a) in paragraph (1), “or” shall be omitted and after “nullity of marriage” there shall be inserted “dissolution of a civil partnership, separation of civil partners or declarator of nullity of a civil partnership”;

(b) in paragraph (2)(a) after “in respect of the marriage” there shall be inserted “or civil partnership”;

(c) for paragraph (2)(b)(v) there shall be substituted the following:–

“(v) such other facts as may be relevant to the question of whether or not the action in the Court of Session should be sisted under Schedule 3 to the Act of 1973, or rule 49.18A.”

(4) In rule 49.3 (averments where section 11 order sought)–

(a) in paragraph (1)(a), “or” shall be omitted and after “nullity of marriage” there shall be inserted “, dissolution of a civil partnership, separation of civil partners or declarator of nullity of a civil partnership”;

(b) in paragraph (1)(b)(ii)–

(i) after “marriage” there shall be inserted “or civil partnership”;

(ii) after “parents” there shall be inserted “or either of the parents”.

(5) In rule 49.8 (warrants for intimation in family actions)–

(a) for paragraph (1)(a) there shall be substituted the following:–

“(a) in an action where the address of the defender is not known to the pursuer and cannot reasonably be ascertained, to–

(i) every child of the marriage between the parties, or child who has been accepted by both partners of a civil partnership as a child of the family, who has reached the age of 16 years, and

(ii) one of the next-of-kin of the defender who has reached that age,

unless the address of such a person is not known to the pursuer and cannot reasonably be ascertained, in the following terms:– “Warrant to intimate to (*name*

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<sup>(14)</sup> Section 11 was amended by [S.S.I. 2005/42](#).

<sup>(15)</sup> Rule 49.2 was amended by [S.I. 1994/2901](#).

<sup>(16)</sup> Rule 49.3 was amended by [S.I. 1996/2587](#).

<sup>(17)</sup> Schedule 3 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act [1983 \(c. 12\)](#), Schedule 1, paragraphs 19 and 20.

*and address*) as a child of the marriage [or to *(name and address)* as a child who has been accepted by both partners of a civil partnership as a child of the family] [or to *(name and address)* the *(relationship to defender)*, as one of the next-of-kin of the defender].””;

(b) for paragraph (1)(c) there shall be substituted the following:–

“(c) in an action where the defender is a person who is suffering from a mental disorder, to–

- (i) those persons mentioned in sub-paragraph (a)(i) and (ii), unless the address of such person is not known to the pursuer and cannot reasonable be ascertained;
- (ii) any person holding the office of curator bonis to the defender, if one has been appointed; and
- (iii) any person holding the office of guardian, or continuing or welfare attorney to the defender under or by virtue of the Adults with Incapacity (Scotland) Act 2000(18), if one has been appointed,

in the following terms:– “Warrant to intimate to *(name and address)* as a child of the marriage [or to *(name and address)* as a child who has been accepted by both partners of a civil partnership as a child of the family], *(name and address)* the *(relationship to the defender)* as one of the next-of-kin of the defender and *(name and address)* guardian [or continuing [or welfare] attorney] to the defender.””;

(c) for paragraph (1)(e) there shall be substituted the following:–

“(e) in an action of divorce, separation, declarator of nullity of marriage, dissolution of a civil partnership, separation of civil partners or declarator of nullity of a civil partnership where the court may make a section 11 order in respect of a child–

- (i) who is in the care of a local authority, to that local authority in the following terms:–“Warrant to intimate to the chief executive of *(name and address of local authority)* as the local authority having care of *(name and address of child)*.””;
- (ii) who, being a child of one party to the marriage who has been accepted as a child of the family by the other party to the marriage or is a child of one partner in a civil partnership who has been accepted by both partners as a child of the family, and who is liable to be maintained by a third party, to that third party in the following terms:–“Warrant to intimate to *(name and address)* as a person liable to maintain *(name and address of child)*.””;
- (iii) in relation to whom a third party in fact exercises care or control, to that third party in the following terms:– “Warrant to intimate to *(name and address)* as a person who in fact exercises care or control of *(name and address of child)*.””;

(d) for paragraph (1)(k) there shall be substituted the following:–

“(k) in an action where the pursuer makes an application for an order under the Act of 1981–

- (i) where he is a non-entitled partner and the entitled partner has a spouse, or civil partner, to that spouse or civil partner, or
- (ii) where the application is under section 2(1)(e), 2(4)(a), 3(1), 3(2), 4, 7, 13, or 18 of that Act, and the entitled spouse or entitled partner is a tenant

or occupies the matrimonial home by permission of a third party, to the landlord or the third party, as the case may be,

in the following terms:—“Warrant to intimate to (name and address) as a person with an interest in the order sought in the (number) conclusion of this summons.””;

(e) after paragraph (1)(l) there shall be inserted the following:—

“(m) in an action where the pursuer makes an application for an order under Chapter 3 of Part 3 of the CP Act of 2004 where the application is under section 102(1)(e), 102(4)(a), 103(1), 103(2), 104, 107 or 112 of that Act and the entitled civil partner is a tenant or occupies the family home by permission of a third party, to the landlord or the third party, as the case may be, in the following terms:—“Warrant to intimate to (*name and address*) as a person with an interest in the order sought in the (*number*) conclusion of this summons.””;

(f) for paragraph (2) there shall be substituted the following:—

“(2) Expressions used in paragraph (1)(k) which are also used in the Act of 1981, and expressions used in paragraph (1)(l) which are also used in the CP Act of 2004, have the meanings given in those Acts, as the case may be.”;

(g) at the end of paragraph (3) there shall be inserted the following:—

“(m) under paragraph (1)(m) (order sought under Chapter 3 of Part 3 of the CP Act of 2004), in Form 49.8–O.”.

(6) In rule 49.9(4) (intimation where relevant association) after “homosexual relationship” there shall be inserted “, and where the family action is in relation to a civil partnership shall include any heterosexual relationship.”.

(7) For rule 49.10(19) (productions in action of divorce or where section 11 order may be made) there shall be substituted the following:—

**“Productions in action of divorce, dissolution of civil partnership, or where section 11 order may be made**

**49.10.**—(1) There shall be lodged as a production with the principal writ when first lodged in process—

(a) in an action of divorce—

- (i) an extract or certified copy of the relevant entry in the register of marriages; and
- (ii) where an action relies on section 1(1)(b) of the Act of 1976 (grounds of divorce: interim gender recognition certificate)(20), the interim gender recognition certificate or a certified copy of it;

(b) in an action of dissolution of a civil partnership—

- (i) an extract or certified copy of the relevant entry in the civil partnership register; and
- (ii) where the action relies on section 117(2)(b) of the CP Act of 2004 (grounds for dissolution of civil partnership: interim gender recognition certificate), the interim gender recognition certificate or a certified copy of it; and

(c) in a family action in which the court may make a section 11 order, an extract or certified copy of the relevant entry in the register of births.

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(19) Rule 49.10 was amended by [S.S.I. 2005/193](#).

(20) Section 1(1)(b) was inserted by paragraph 6 of Schedule 2 to the Gender Recognition Act 2004 (c. 7).

(2) In the application of sub-paragraph (a) of paragraph (1) to an action of divorce, or sub-paragraph (b) of paragraph (1) in an action of dissolution of a civil partnership, where the address of the defender is not known, the documents to be lodged under those sub-paragraphs, as the case may be, shall be obtained and dated within three months before the date on which it is lodged.”.

(8) In rule 49.13 (service in cases of mental disorder of defenders)–

(a) for paragraph (1)(a) there shall be substituted the following:–

“(a) any notice required by rule 49.14(1) (notices in certain actions of divorce or separation) or by rule 49.14A(1) (notices in certain actions of dissolution of civil partnership or separation of civil partners);”;

(b) in paragraph (1)(b)(i) after “rule 49.14(1)” there shall be inserted “or rule 49.14A(1)”.

(9) After rule 49.14(21) (notices in certain actions of divorce or separation) there shall be inserted the following:–

**“Notices in certain actions of dissolution of civil partnership or separation of civil partners**

**49.14A.**—(1) In the following actions of dissolution of civil partnership or separation of civil partners, there shall be attached to the copy of the summons served on the defender–

(a) in an action relying on section 117(3)(c) of the CP Act of 2004 (no cohabitation for two years with consent of defender to decree)–

(i) which is an action of dissolution of a civil partnership, a notice in Form 49.14A–A and a form of notice of consent in Form 49.14A–B;

(ii) which is an action of separation of civil partners, a notice in Form 49.14A–C and a form of notice of consent in Form 49.14A–D;

(b) in an action relying on section 117(3)(d) of the CP Act of 2004 (no cohabitation for five years)–

(i) which is an action of dissolution of a civil partnership, a notice in Form 49.14A–E;

(ii) which is an action of separation of civil partners, a notice in Form 49.14A–F;

(c) in an action relying on section 117(2)(b) of the CP Act of 2004 (grounds of dissolution: interim gender recognition certificate), a notice in Form 49.14A–G.

(2) The certificate of service of a summons in an action mentioned in paragraph (1) shall state which notice or form mentioned in paragraph (1) has been included with the summons.”.

(10) In rule 49.15(2)(22) (orders for intimation by the court) for “or annulment” there shall be substituted “, annulment, dissolution of civil partnership, separation of civil partners, or annulment of civil partnership”.

(11) In rule 49.17 (appointment of curators ad litem to defenders)–

(a) in paragraph (1) for “or separation” there shall be substituted “, separation, dissolution of a civil partnership, or separation of civil partners,”;

(b) in paragraph (2)(b) after “Act of 1976” there shall be inserted “or section 117(3)(c) of the CP Act of 2004”.

(12) After rule 49.18 (applications for sist) there shall be inserted the following:–

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(21) Rule 14.14 was amended by [S.S.I. 2005/193](#).

(22) Rule 49.15 was amended by [S.I. 1996/2587](#).

“Applications for sist in actions involving civil partnerships

**49.18A.**—(1) Schedule 3 to the Act of 1973(23) (sisting of consistorial actions in Scotland) shall apply to actions for dissolution of civil partnerships, separation of civil partners or declarator of nullity of civil partnerships subject to the following modifications:—

- (a) for “consistorial action”, wherever it appears, there shall be substituted “action concerning a civil partnership”;
- (b) for “divorce”, wherever it appears there shall be substituted “dissolution of a civil partnership”;
- (c) for “separation”, wherever it appears, there shall be substituted “separation of civil partners”;
- (d) for “declarator of nullity of marriage”, wherever it appears, there shall be substituted “declarator of nullity of a civil partnership”;
- (e) for “marriage”, wherever it appears, there shall be substituted “civil partnership”;
- (f) for “spouse”, wherever it appears, there shall be substituted “civil partner”;
- (g) in paragraph 2 “declarator of marriage” shall be omitted;
- (h) in paragraph 8(b) for “marriage was contracted” there shall be substituted “civil partnership was registered”;
- (i) in paragraphs 4(a), 7, and 9(4) “or in a sheriff court” shall be omitted;
- (j) in paragraph 8 “or in the Sheriff Court” shall be omitted;
- (k) in paragraph 9(1) “or in a sheriff court” shall be omitted.

(2) An application for a sist or a recall of a sist under Schedule 3 to the Act of 1973 as it applies under paragraph (1) shall be made by motion.”.

(13) In rule 49.19 (notices of consent to divorce or separation)—

- (a) for the heading there shall be substituted “Notices of consent to divorce, separation, dissolution of civil partnership or separation of civil partners”;
- (b) for paragraph (1) there shall be substituted the following:—

“(1) Where, in an action of divorce, or separation in which the facts in section 1(2)(d) of the Act of 1976, or dissolution of a civil partnership or separation of civil partners in which the facts in section 117(3)(d) of the CP Act of 2004, (no cohabitation for two years with consent of defender to decree) are relied on, the defender wishes to consent to the grant of decree—

- (a) of divorce or separation he shall do so by giving notice in writing in Form 49.14–B (divorce) or Form 49.14–D (separation), as the case may be; or
- (b) of dissolution of a civil partnership or separation of civil partners, he shall do so by giving notice in writing in Form 49.14A–B (dissolution) or Form 49.14A–D (separation of civil partners), as the case may be;

to the Deputy Principal Clerk.”;

(c) for paragraph (3) there shall be substituted the following:—

“(3) In an action of divorce, separation, dissolution of a civil partnership, or separation of civil partners where the summons includes for the purposes of section 1(2)(d) of the Act of 1976, or section 117(3)(d) of the CP Act of 2004, as the case may be, an averment that the defender consents to the grant of decree, the defender may give notice by letter to

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(23) Schedule 3 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12), Schedule 1, paragraphs 19 and 20.

the Deputy Principal Clerk stating that he has not so consented or that he withdraws any consent which he has already given.”;

(d) in paragraph (5) after “the Act of 1976” there shall be inserted “or section 117(3) of the CP Act of 2004, as the case may be,”.

(14) At the end of rule 49.28(1)(a) (evidence in certain undefended family actions) there shall be inserted the following:–

“(iv) for financial provision after overseas proceedings to dissolve or annul a civil partnership within the meaning of Schedule 11 to the CP Act of 2004; or

(v) for an order under Chapter 3 or 4 of Part 3 of the CP Act of 2004;”.

(15) In rule 49.30 (no suspension in undefended divorce actions)–

(a) for the heading there shall be substituted “No suspension in undefended actions of divorce or dissolution of civil partnerships”;

(b) after “decree of divorce” there shall be inserted “or dissolution of a civil partnership”.

(16) At the end of rule 49.31(1)(c) (defences in family actions) there shall be inserted the following:–

“(iv) under Chapter 3 or 4 of Part 3 of the CP Act of 2004”.

(17) In rule 49.33(5)(a) (adjustment and further procedure) after “the Act of 1981” there shall be inserted “or rule 49.71E(24) (procedure for minutes in causes under Chapters 3 and 4 of Part 3 of the CP Act of 2004) as the case may be”.

(18) For rule 49.35(25) (application and interpretation) of Part IV (applications and orders relating to children in certain actions) there shall be substituted the following:–

“Application of this Part

**49.35.** This Part applies to actions of divorce, separation, declarator of nullity of marriage, dissolution of a civil partnership, separation of civil partners and declarator of nullity of a civil partnership.”.

(19) For rule 49.45(1) (application and interpretation) of Part V (orders relating to financial provision etc.) there shall be substituted the following:–

“**49.45.**—(1) This Part applies to an action of divorce, declarator of nullity of marriage, dissolution of a civil partnership, or declarator of nullity of a civil partnership.”.

(20) At the end of rule 49.46(2) (applications in actions to which this Part applies) there shall be inserted the following:–

“(e) an order under section 112 of the CP Act of 2004.”.

(21) After Part VII(26) (financial provision after overseas divorce or annulment) there shall be inserted the following:–

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(24) Rule 49.71E is inserted by paragraph 2(23) of this Act of Sederunt.

(25) Rule 49.35 was amended by S.I. 1996/2587.

(26) Part VII was amended by S.S.I. 2000/412.



## “PART VIIA

### FINANCIAL PROVISION AFTER OVERSEAS DISSOLUTION OR ANNULMENT OF A CIVIL PARTNERSHIP

#### *Interpretation of this Part*

**49.53A.** In this Part—

“order for financial provision” has the meaning given in paragraph 4 of Part 4 of Schedule 11 to the CP Act of 2004;

“overseas proceedings” means proceedings in a country or territory outside the British Islands.

#### *Applications for financial provision after overseas dissolution or annulment of civil partnership*

**49.53B.**—(1) An application under paragraph 2 of Schedule 11 to the CP Act of 2004 for an order for financial provision after a dissolution or annulment of a civil partnership in overseas proceedings shall be made by summons.

(2) An application for an order in an action to which paragraph (1) applies—

(a) made before or after final decree under—

(i) section 112 of the CP Act of 2004 (transfer of tenancy of family home);

(ii) paragraph 3(4) of Schedule 11 to the CP Act of 2004 (interim periodical allowance);

(iii) section 14(4) of the Act of 1985 (variation or recall of an incidental order); or

(b) made after final decree under—

(i) section 12(4) of the Act of 1985 (variation of date or method of payment of capital sum of date of transfer of property);

(ii) section 13(4) of the Act of 1985 (variation, recall, backdating or conversion of periodical allowance); or

(iii) section 14(4) of the Act of 1985 (variation or recall of incidental orders);

shall be made by motion.

(3) Rule 49.43 (applications after decree relating to aliment) shall apply to a motion under paragraph (2) of this rule as it applies to a motion under that rule.

(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 person responsible for the pension arrangement);

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

(22) For rule 49.58(27) (application) of Part IX (applications for orders under section 11 of the Children (Scotland) Act 1995) there shall be substituted the following:—

“Application of this Part

**49.58.** This Part applies to an application for a section 11 order in a family action other than in an action of divorce, separation, declarator of nullity of marriage, dissolution of a civil partnership, separation of civil partners, or declarator of nullity of a civil partnership.”

(23) After Part X (causes under the Matrimonial Homes (Family Protection) (Scotland) Act 1981) there shall be inserted the following:–

“PART XA

CAUSES UNDER CHAPTERS 3 AND 4 OF PART  
3 OF THE CIVIL PARTNERSHIP ACT 2004

*Interpretation of this Part*

**49.71A.**—(1) In this Part, unless the context otherwise requires, words and expressions used in this Part which are also used in Chapters 3 and 4 of Part 3 of the CP Act of 2004 have the meaning given in those Chapters.

*Forms of applications under Chapters 3 and 4 of Part 3 of the Act of 2004*

**49.71B.** Subject to any other provision in this Chapter, an application for an order under Chapter 3 or 4 of Part 3 of the CP Act of 2004 shall be made—

- (a) by an action for such an order;
- (b) by a conclusion in the summons 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 an action mentioned in paragraph (a) or (b), by minute in that action.

*Defenders in causes under Chapters 3 and 4 of Part 3 of the CP Act of 2004*

**49.71C.** The applicant for an order under Chapter 3 or 4 of Part 3 of the CP Act of 2004 shall call as a defender—

- (a) where he is seeking an order as a civil partner, the other civil partner; and
- (b) where he is a third party making an application under section 107(1) (dispensing with the consent of non-entitled partner to a dealing), or section 108(1) (payment from non-entitled partner in respect of loan) of the CP Act of 2004, both partners.

*Applications by motion under Chapters 3 and 4 of the CP Act of 2004*

**49.71D.**—(1) An application under any of the following provisions of the CP Act of 2004 shall be made by motion—

- (a) section 103(4) (interim order for regulation of rights of occupancy etc.);
- (b) section 104(6) (interim order suspending occupancy rights);
- (c) section 105 (variation and recall or orders regulating occupancy rights and exclusion orders);
- (d) section 114(1) (order attaching a power of arrest), if made after application of relevant interdict; and
- (e) section 114(3) and (6) (variation and recall of relevant interdict and power of arrest).

(2) Written intimation of a motion under paragraph (1) shall be given not less than 7 days before the date on which the motion is enrolled—

- (a) to the other civil partner;
- (b) where the motion is under paragraph (1)(a), (b), or (c) and the entitled partner is a tenant or occupies the family 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 49.8(1)(m)(28) (warrant for intimation to certain persons in actions for orders (warrant for intimation to certain persons in actions for orders under Chapters 3 and 4 of Part 3 of the CP Act of 2004) or rule 49.15 (orders for intimation by the court).

#### *Procedure for minutes*

**49.71E.** Where an application is made by minute under rule 49.71B(c) (form of application under Chapter 3 or 4 of Part 3 of the CP Act of 2004) by a person other than a party and answers to that minute are lodged, the minute and answers shall not be included with the other pleadings in the action in any record, but shall be made up separately in the form of a record; and rule 49.33(5)(b) and (c) (lodging etc. of records) shall apply to that record as it applies to a record under that rule.

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

**49.71F.** Unless the court otherwise directs, the sist of an action by virtue of section 107(4) of the CP Act 2004 (where the action raised by non-entitled partner 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 partner.

#### *Certificates of execution of delivery to the chief constable*

**49.71G.—**(1) Where an applicant is required to comply with section 114(5) or (6), as the case may be, of the Act of 2004 (delivery of documents to chief constable where power of arrest attached to a relevant interdict is granted, varied or recalled), he shall, after such compliance, lodge in process a certificate of delivery in Form 49.70.

(2) Where a relevant interdict to which a power of arrest under section 114(1) of the CP Act of 2004 has been attached ceases to have effect by reason of a decree of dissolution of a civil partnership being pronounced by the court, the pursuer in the action for dissolution of the civil partnership shall send—

- (a) to the chief constable of the police area in which the family home is situated, and
  - (b) if the applicant civil partner (within the meaning of section 114(7) of the CP Act of 2004) resides in another police area, to the chief constable of that other police area,
- a copy of the interlocutor granting decree, and lodge in process a certificate of delivery in Form 49.70.

#### *Evidence in causes under Chapter 3 or 4 of Part 3 of the Act of 2004*

**49.71H.—**(1) For the purposes of proof in any application for an order under Chapter 3 or 4 of the CP Act of 2004, evidence by affidavit shall be admissible in place of parole evidence.

(2) Rule 36.8 (conditions for receiving certain written statements in evidence) shall not apply in a cause to which paragraph (1) of this rule applies.”

(24) Part XI (simplified divorce applications) is amended as follows:–

(a) In rule 49.72(1)(a)–

(i) “or” shall be omitted; and

(ii) after “five years)” there shall be inserted “or section 1(1)(b)(issue of interim gender recognition certificate)”;

(b) in rule 49.73, after paragraph (2) there shall be inserted–

“(3) A simplified divorce application in which the facts set out in section 1(1)(b) of the Act of 1976(29) (grounds of divorce: interim gender recognition certificate) are relied on shall be made in Form 49.73– C and shall only be of effect if signed by the applicant.”;

(c) in rule 49.74–

(i) in paragraph (1)(a) “and” shall be omitted; and

(ii) after paragraph (1)(b) there shall be inserted–

“; and

(c) n an application under section 1(1)(b) of the Act of 1976, the interim gender recognition certificate or a certified copy.”;

(d) in rule 49.75, in paragraph (2), after “five years)” there shall be inserted “or section 1(1)(b) of the Act of 1976 (grounds of divorce: interim gender recognition certificate)”;

(e) in rule 49.76(3)–

(i) “or” shall be omitted; and

(ii) after “five years)” there shall be inserted “or Form 49.76–BA (interim gender recognition certificate)”.

(25) After Part XI (simplified divorce applications) there shall be inserted the following:–

## *“PART XIA*

### *SIMPLIFIED APPLICATIONS FOR DISSOLUTION OF CIVIL PARTNERSHIPS*

#### *Application and interpretation of, and directions under, this Part*

**49.80A.**—(1) In this Part—

“child of family” has the meaning given in section 12(4)(b) of the Act of 1995;

“simplified dissolution application” means an application mentioned in paragraph (2).

(2) This Part applies to an application for dissolution of a civil partnership by a party to a civil partnership made in the manner prescribed in rule 49.80B (form of application for simplified dissolution of a civil partnership) if, but only if–

(a) that party relies on the facts set out in section 117(3)(c) (no cohabitation for two years with consent of defender to decree), section 117(3)(d) (no cohabitation for five years), or section 117(2)(b) (issue of a gender recognition certificate) of the CP Act of 2004,

(b) in an application under section 117(3)(c) of the CP Act of 2004, the other party consents to a decree of dissolution being granted;

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(29) 1976 c. 39; section 1(1)(b) was inserted by paragraph 6 of Schedule 2 to the Gender Recognition Act 2004 c. 7.

- (c) no other proceedings are pending in any court which could have the effect of bringing the civil partnership to an end;
- (d) there are no children of the family under the age of 16 years;
- (e) neither party to the civil partnership applies for an order for financial provision on dissolution of the civil partnership; and
- (f) neither party to the civil partnership suffers from a mental disorder.

(3) 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.

(4) The Principal Clerk shall give directions in relation to the administrative procedures to be followed on the lodging of a simplified dissolution application for—

- (a) the registration and service of such an application;
- (b) having it brought before the court for consideration;
- (c) in the event of decree of dissolution of the civil partnership being granted, for notification to the parties; and
- (d) connected purposes;

and such directions shall have effect subject to the provisions of this Part.

#### *Form of application for simplified dissolution of a civil partnership*

**49.80B.**—(1) A simplified dissolution application in which the facts set out in section 117(3)(c) of the CP Act of 2004 (no cohabitation for two years with consent of defender to decree) are relied on shall be made in Form 49.80B–A 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 49.80B–A is signed by the party to the civil partnership giving consent.

(2) A simplified dissolution application in which the facts set out in section 117(3)(d) of the CP Act of 2004 (no cohabitation for five years) are relied on shall be made in Form 49.80B–B and shall only be of effect if signed by the applicant.

(3) A simplified dissolution application in which the facts set out in section 117(2)(b) of the CP Act of 2004 (issue of interim gender recognition certificate) are relied on shall be made in Form 49.80B–C and shall only be of effect if signed by the applicant.

#### *Lodging and registration of simplified dissolution applications*

**49.80C.**—(1) The applicant shall send a simplified dissolution application to the Deputy Principal Clerk with—

- (a) an extract or certified copy of the certificate of civil partnership;
- (b) the appropriate fee; and
- (c) in an application under section 117(2)(b) of the CP Act of 2004, the interim gender recognition certificate or a certified copy.

(2) Subject to the following rules of this Part, a simplified dissolution application shall, on being registered in accordance with any directions made under rule 49.80A(4), be treated as a summons in an action of dissolution of a civil partnership which has commenced.

*Warrants for service or intimation of simplified dissolution applications*

**49.80D.**—(1) On registration of a simplified dissolution application where the address of the other party to the civil partnership is known, a clerk of session shall grant warrant for service of the application.

(2) On registration of an application in which the facts set out in section 117(3)(d) (no cohabitation for five years) or section 117(2)(b) (issue of interim gender recognition certificate) of the Act of 2004 are relied on where the address of the other party to the civil partnership is not known to the applicant and cannot reasonably be ascertained—

- (a) the Deputy Principal Clerk shall grant warrant for intimation of the application to—
  - (i) every child of the family, and
  - (ii) one of the next-of-kin of the other party who has reached the age of 16 years, unless the address of such person is not known and cannot reasonably be ascertained; and
- (b) the application shall thereafter be placed before the Lord Ordinary for such order under rule 16.5 (service where address of person is not known) as he thinks fit.

(3) A warrant granted under paragraph (1) or (2)(a) shall be sufficient authority for such service and intimation.

*Execution of service or intimation of simplified dissolution application*

**49.80E.**—(1) Subject to the following paragraphs, service or intimation of a simplified dissolution application on a warrant granted under rule 49.80D on any person whose address is known to the applicant shall be made—

- (a) by the Deputy Principal Clerk by post in accordance with rule 16.4 (service by post); or
- (b) by a messenger-at-arms.

(2) In the application of Part I of Chapter 16 (service and intimations) to service and intimation under this rule, the following provisions of that Part of that Chapter shall not apply:—  
 rule 16.1(3) (which relates to party lodging a certificate of service in process),  
 rule 16.3(1)(b) (form of citation and certificate of service by messenger-at-arms),  
 rule 16.4(2)(b) (service by post by agent),  
 rule 16.4(4) (form of citation in service by post).

(3) In the case of service of a simplified dissolution application on the other party to the civil partnership under paragraph (1), the person executing service shall complete a citation in Form 49.80E–A (no cohabitation for two years with consent to divorce), Form 49.80E–B (no cohabitation for five years), or Form 49.80E–C (interim gender recognition certificate) as the case may be.

(4) In the case of intimation of a simplified dissolution application on a person under paragraph (1) the person giving intimation shall complete a notice of intimation in Form 49.80E–D.

(5) A certificate of service or intimation in Form 49.80E–E (certificate by Deputy Principal Clerk) or Form 49.80E–F (certificate by messenger-at-arms), as the case may be, shall be—

- (a) completed by the person executing service or giving intimation;
- (b) in the case of a certificate completed by a messenger-at-arms, sent to the Deputy Principal Clerk; and
- (c) attached to the application by the Deputy Principal Clerk.

*Opposition to simplified dissolution application*

**49.80F.**—(1) Any person on whom service or intimation of a simplified dissolution application has been made may give notice by letter sent to the Deputy Principal Clerk within the period of notice that he challenges the jurisdiction of the court or opposes the grant of the decree of dissolution and giving the reasons for his opposition to the application.

(2) Where opposition to a simplified dissolution application is made under paragraph (1), the court shall dismiss the application unless it is satisfied that the reasons given for the opposition are frivolous.

(3) The Deputy Principal Clerk shall give written intimation of 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 jurisdiction of the court.

*Evidence in simplified dissolution applications*

**49.80G.**—(1) Parole evidence shall not be given in a simplified dissolution application.

(2) Rule 36.8(30) (conditions for receiving certain written statements in evidence) shall not apply in a simplified dissolution application.

*No reclaiming in simplified dissolution applications*

**49.80H.** A decree pronounced in a simplified dissolution application may not be reclaimed against.

*Applications after decree in simplified dissolution applications*

**49.80I.**—(1) Any application to the court after decree of dissolution has been granted in a simplified dissolution application which could not have been made if it had been an action of dissolution of a civil partnership shall be made by minute.

(2) On lodging a minute under paragraph (1), the minuter shall lodge a process.”.

(26) For rule 50.2(4)(a)(i) (causes under the Presumption of Death (Scotland) Act 1977)(31) there shall be substituted the following:—

“(i) spouse or civil partner, and”

(27) In the appendix—

- (a) in Form 49.8–M (notice of intimation in divorce: pension lump sum) after “matrimonial” there shall be inserted “[or family]”;
- (b) after Form 49.8–N (notice of intimation: child in family action) there shall be inserted the form set out in Part 1 of the Schedule to this Act of Sederunt;
- (c) in Form 49.13–A (request for medical officer of hospital or similar institution) after “rule 49.14(1)” there shall be inserted “[or rule 49.14A(1)]”;
- (d) after Form 49.14–G (notice to defender in divorce: interim gender recognition certificate) there shall be inserted the forms set out in Part 2 of the Schedule to this Act of Sederunt;
- (e) in Form 49.70 (certificate of delivery of documents to chief constable) after “Rule 49.70(1) and (2)” there shall be inserted “and 49.71G(1)”;

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(30) Rule 36.8 was amended by S.S.I. 2001/305.

(31) 1977 c. 27.

- (f) in Forms 49.73–A, 49.73–B, 49.76–A and 49.76–B, for “Divorce Section” wherever it appears, there shall be substituted “Extracts Department”;
- (g) in Form 49.73–A—
  - (i) in the Note on Section 3 of Part 1—
    - (aa) the words “at item (i) or (iii) opposite” shall be omitted; and
    - (bb) at the end there shall be inserted—

“the Council Regulation” means Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility (O.J. No L. 338, 23.12.2003, p.1)”;
  - (ii) in paragraph (i) of Part B of Section 3, for the words “consider myself to be” there shall be substituted “am”;
  - (iii) in paragraph (ii) of Part B of Section 3, for the words “considers himself or herself to be there shall be substituted “is”; and
  - (iv) Part C of Section 3 of Part 1 shall be omitted.
- (h) in Form 49.73–B—
  - (i) in the Note on Section 5 of Part 1—
    - (aa) the words “at Item (i) or (iii) opposite” shall be omitted; and
    - (bb) at the end there shall be inserted—

“the Council Regulation” means Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility (O.J. No L. 338, 23.12.2003, p.1)”;
  - (ii) in paragraph (i) of Part B of Section 5, for the words “consider myself to be” there shall be substituted “am”;
  - (iii) in paragraph (ii) of Part B of Section 5, for the words “considers himself or herself to be there shall be substituted “is”; and
  - (iv) Part C of Section 5 of Part 1 shall be omitted.
- (i) after Form 49.73–B (under the Divorce (Scotland) Act 1976, section 1(2)(e) simplified procedure) there shall be inserted the Form 49.73–C set out in Part 3 of the Schedule to this Act of Sederunt;
- (j) after Form 49.76–B (form of citation in simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976) there shall be inserted the Form 49.76–BA set out in Part 3 of the Schedule to this Act of Sederunt;
- (k) for Form 49.76–C (form of intimation to child or next of kin in simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976) there shall be substituted the Form 49.76–C set out in Part 3 of the Schedule to this Act of Sederunt; and
- (l) after Form 49.76–E (simplified divorce: certificate of service by messenger-at-arms) there shall be inserted the forms set out in Part 4 of the Schedule to this Act of Sederunt.



Edinburgh  
7th December 2005

*A.C. Hamilton*  
Lord President I.P.D.