
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 223

**Act of Sederunt (Sheriff Court Rules)
(Miscellaneous Amendments) 2008**

Late appearance in family actions and civil partnership actions

- 2.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.
(2) After rule 33.33 insert—

“Late appearance and application for recall by defenders

33.33A.—(1) 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.

(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.”.

- (3) After rule 33A.33(1) insert—

“Late appearance and application for recall by defenders

33A.33A.—(1) In a cause mentioned in rule 33A.1(a), (b) or (f), 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.

(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.”.