

SCOTTISH CIVIL JUSTICE COUNCIL

POLICY NOTE

ACT OF SEDERUNT (ORDINARY CAUSE RULES 1993 AMENDMENT) (CASE MANAGEMENT OF DEFENDED FAMILY AND CIVIL PARTNERSHIP ACTIONS) 2022

SSI 2022/289

CASE MANAGEMENT IN SHERIFF COURT FAMILY AND CIVIL PARTNERSHIP ACTIONS

1. This Policy Note is published to accompany the Act of Sederunt (Ordinary Cause Rules 1993 Amendment) (Case Management of Defended Family and Civil Partnership Actions) 2022 made by the Court of Session on 28th September 2022.
2. The Policy Note has been prepared by the Scottish Civil Justice Council Secretariat to set out the Council's policy behind the rules. It does not form part of the Rules.

Background

3. The Act of Sederunt provides new rules to Chapters 33 and 33A in relation to Family and Civil Partnership Actions in the Sheriff Court. These rules introduce Initial Case Management Hearings and Full Case Management Hearings to these chapters.
4. On 25 April 2022, the Scottish Civil Justice Council considered and approved the draft rules developed by its Family Law Committee, agreeing that they be submitted to the Court of Session for consideration.

Policy Objectives

5. The overall policy intention of the rule changes is to improve the operation of Sheriff Court family rules of court, enhancing Case Management more generally by ensuring consistent and effective case management of family and civil partnership actions. Particular regard is paid to preventing undue delay in proceedings relating to the welfare of children.
6. Through research conducted by the Family Law Committee, it was noted that there was possible confusion between some standard ordinary procedures and family specific procedures. The disapplication of some ordinary procedures from family is intended to give simpler and family specific procedural clarity.
7. In developing the rules, efforts have been made to achieve greater consistency of practice between courts and to modernise the language where possible to promote accessibility and ease of understanding.
8. The draft rules provide that:

- Chapters 9 and 10 will no longer apply to Family Actions with the provisions being accommodated within the new Chapters 33 and 33A instead. This provides simpler and family specific procedural clarity.
- The existing Chapter 33AA has been removed with the provisions incorporated into Chapters 33 and 33A. These case management provisions will apply to all family and civil partnership actions in the Sheriff Court with the intention that greater judicial management will secure expeditious resolution of matters.
- Options hearings have been replaced with an initial case management hearing, and a full case management hearing has been introduced. These hearings have a checklist where parties are expected to advise the court to each matter. This is expected to provide for more expeditious resolution of matters, and potentially reduce system churn with fewer continuations.
- The Sheriff has the discretion to combine the initial case management hearing with a Child Welfare Hearing where they deem it appropriate to do so in order to reduce court sittings.
- The Rules have been updated to require that the F9 form is lodged regardless of whether the pursuer has Section 11 craves.
- Sists will be until a specific date, with the interlocutor specifying the reason for and the length of the sist. The provision also requires a review of sist hearing not later than 30 days after the expiration of the sist.
- A list of witnesses should include a summary of the evidence that each witness is to give. This will allow the Sheriff to ascertain what evidence is to be given and if necessary request experts to confer, exchange opinions, and prepare a note on what can be agreed and the reasons for their disagreements as per recommendation 121 of the Scottish Civil Courts Review.¹
- Rules on mediation have been expanded to include all family actions, not just those with a section 11 crave. This rule implements recommendation 77 of the Scottish Civil Courts Review. There are exceptions in relation to cases with allegations of domestic abuse.
- New rules in relation to judicial continuity have been introduced in order to partially implement recommendation 50 of the Scottish Civil Courts Review.

¹ [Scottish Civil Courts Review \(scotcourts.gov.uk\)](http://scotcourts.gov.uk)

SCJC Secretariat
28th September 2022