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## SCHEDULES

### <sup>F1</sup>FIRST SCHEDULE **S**

#### ORDINARY CAUSE RULES 1993

##### Textual Amendments

- F1** Sch. 1 (with appendices 1 and 2) substituted (1.1.1994) for Sch. 1 (with appendix) by [S.I. 1993/1956](#), para. 2, [Sch.1](#).  
Sch. 1 (except rule 29.10) excluded (1.4.1997) by [S.I. 1997/291](#), [rule 3.24](#), Sch. 3  
Sch. 1 extended (14.2.2000) by [S.I. 2000/124](#), [reg. 30\(5\)](#)

### <sup>F1</sup>SPECIAL PROVISIONS IN RELATION TO PARTICULAR CAUSES] **S**

#### CHAPTER 33 **S**

##### FAMILY ACTIONS

###### *PART I*

##### *GENERAL PROVISIONS*

##### *Intepretation of this Chapter*

- 33.1. (1) In this Chapter, “family action” means—
- (a) an action of divorce;
  - (b) an action of separation;
  - (c) an action of declarator of legitimacy;
  - (d) an action of declarator of illegitimacy;
  - (e) an action of declarator of parentage;
  - (f) an action of declarator of non-parentage;
  - (g) an action of declarator of legitimation;
  - (h) an action or application for any parental rights;
  - (i) an action of affiliation and aliment;
  - (j) an action of, or application for or in respect of, aliment;
  - (k) an action or application for financial provision after a divorce or annulment in an overseas country within the meaning of Part IV of the Matrimonial and Family Proceedings Act 1984 <sup>F1</sup>;
  - (l) an action or application for an order under the Act of 1981;
  - (m) an application for the variation or recall of an order mentioned in section 8(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 <sup>F2</sup>.

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- (2) In this Chapter, unless the context otherwise requires—
- “the Act of 1975” means the Children Act 1975 <sup>F3</sup>;
  - “the Act of 1976” means the Divorce (Scotland) Act 1976 <sup>F4</sup>;
  - “the Act of 1981” means the Matrimonial Homes (Family Protection) (Scotland) Act 1981 <sup>F5</sup>;
  - “the Act of 1985” means the Family Law (Scotland) Act 1985 <sup>F6</sup>;
  - “child” means a person under the age of 16 years;
  - “local authority” means a regional or islands council;
  - “mental disorder” means mental illness or mental handicap however caused or manifested;
  - “order for financial provision” means, except in Part VII of this Chapter (financial provision after overseas divorce or annulment), an order mentioned in section 8(1) of the Act of 1985;
  - “parental rights” has the meaning assigned in section 8 of the Law Reform (Parent and Child) (Scotland) Act 1986 <sup>F7</sup>.
- (3) For the purposes of rules 33.2 (averments in actions of divorce or separation about other proceedings) and 33.3 (averments where custody sought) and, in relation to proceedings in another jurisdiction, Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973 <sup>F8</sup> (sisting of consistorial actions in Scotland), proceedings are continuing at any time after they have commenced and before they are finally disposed of.

#### Textual Amendments

- F1** 1984 c.42; Part IV was amended by the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraphs 12 and 13.
- F2** 1966 c.19; section 8(1) was amended by the Guardianship Act 1973 (c.29), **Schedule 5**, the Divorce (Scotland) Act 1976 (c.39), **Schedule 1**, the Matrimonial and Family Proceedings Act 1984 (c.42), **Schedule 1**, paragraph 7 and the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraph 5.
- F3** 1975 c.72.
- F4** 1976 c.39.
- F5** 1981 c.59.
- F6** 1985 c.37.
- F7** 1986 c.9.
- F8** 1973 c.45; Schedule 3 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), **Schedule 1**, paragraphs 19 and 20.

#### *Averments in actions of divorce or separation about other proceedings*

- 33.2. (1) This rule applies to an action of divorce or separation.
- (2) In an action to which this rule applies, the pursuer shall state in the condescendence of the initial writ—
- (a) whether to his knowledge any proceedings are continuing in Scotland or in any other country in respect of the marriage to which the initial writ relates or are capable of affecting its validity or subsistence; and
  - (b) where such proceedings are continuing—

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- (i) the court, tribunal or authority before which the proceedings have been commenced;
- (ii) the date of commencement;
- (iii) the names of the parties;
- (iv) the date, or expected date of any proof (or its equivalent) in the proceedings; and
- (v) such other facts as may be relevant to the question of whether or not the action before the sheriff should be sisted under Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973.

(3) Where—

- (a) such proceedings are continuing;
- (b) the action before the sheriff is defended; and
- (c) either—
  - (i) the initial writ does not contain the statement referred to in paragraph (2)(a), or
  - (ii) the particulars mentioned in paragraph (2)(b) as set out in the initial writ are incomplete or incorrect,

any defences or minute, as the case may be, lodged by any person to the action shall include that statement and, where appropriate, the further or correct particulars mentioned in paragraph (2)(b).

*Averments where custody sought*

33.3. (1) A party to a family action, who makes an application in that action for a custody order (within the meaning assigned in section 1(1)(b) of the Family Law Act 1986<sup>F9</sup> in respect of a child shall include in his pleadings—

- (a) where that action is an action of divorce or separation, averments giving particulars of any other proceedings known to him, whether in Scotland or elsewhere and whether concluded or not, which relate to the child in respect of whom the custody order is sought;
- (b) in any other family action—
  - (i) the averments mentioned in paragraph (a); and
  - (ii) averments giving particulars of any proceedings known to him which are continuing, whether in Scotland or elsewhere, and which relate to the marriage of the parents of that child.

(2) Where such other proceedings are continuing or have taken place and the averments of the applicant for such a custody order—

- (a) do not contain particulars of the other proceedings, or
- (b) contain particulars which are incomplete or incorrect,

any defences or minute, as the case may be, lodged by any person to the family action shall include such particulars or such further or correct particulars as are known to him.

(3) In paragraph 1(b)(ii), “child” includes a child of the family within the meaning assigned in section 42(4) of the Family Law Act 1986.

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### Textual Amendments

**F9** 1986 c.55.

#### *Averments where identity or address of person not known*

- 33.4. In a family action, where the identity or address of any person referred to in rule 33.7 as a person in respect of whom a warrant for intimation requires to be applied for is not known and cannot reasonably be ascertained, the party required to apply for the warrant shall include in his pleadings an averment of that fact and averments setting out what steps have been taken to ascertain the identity or address, as the case may be, of that person.

#### *Averments about maintenance orders*

- 33.5. In a family action in which an order for aliment or periodical allowance is sought, or is sought to be varied or recalled, by any party, the pleadings of that party shall contain an averment stating whether and, if so, when and by whom, a maintenance order (within the meaning of section 106 of the <sup>M1</sup>Debtors (Scotland) Act 1987) has been granted in favour of or against that party or of any other person in respect of whom the order is sought.

### Marginal Citations

**M1** 1987 c.18; section 106 was amended by the [Child Support Act 1991 \(c.48\)](#), [Schedule 5](#), paragraph 8(7).

#### *Averments where aliment or financial provision sought*

- 33.6. (1) In this rule—  
 “the Act of 1991” means the <sup>M2</sup>Child Support Act 1991;  
 “child” has the meaning assigned in section 55 of the Act of 1991;  
 “crave relating to aliment” means—  
 (a) for the purposes of paragraph (2), a crave for decree of aliment in relation to a child or for recall or variation of such a decree; and  
 (b) for the purposes of paragraph (3), a crave for decree of aliment in relation to a child or for recall or variation of such a decree or for the variation or termination of an agreement on aliment in relation to a child;  
 “maintenance assessment” has the meaning assigned in section 55 of the Act of 1991.
- (2) A family action containing a crave relating to aliment and to which section 8(6), (7), (8) or (10) of the Act of 1991 (top up maintenance orders) applies shall—  
 (a) include averments stating, where appropriate—  
 (i) that a maintenance assessment under section 11 of that Act (maintenance assessments) is in force;  
 (ii) the date of the maintenance assessment;  
 (iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance assessment; and

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- (iv) the grounds on which the sheriff retains jurisdiction under section 8(6), (7), (8) or (10) of that Act; and
  - (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the party intimating the making of the maintenance assessment referred to in sub-paragraph (a).
- (3) A family action containing a crave relating to aliment, and to which section 8(6), (7), (8) or (10) of the Act of 1991 does not apply, shall include averments stating—
  - (a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of that Act, is furth of the United Kingdom;
  - (b) that the child is not a child within the meaning of section 55 of that Act; or
  - (c) where the action is lodged for warranting before 7th April 1997, the grounds on which the sheriff retains jurisdiction.
- (4) In an action for declarator of non-parentage or illegitimacy—
  - (a) the initial writ shall include an article of condescendence stating whether the pursuer previously has been alleged to be the parent in an application for a maintenance assessment under section 4, 6 or 7 of the Act of 1991 (applications for maintenance assessment); and
  - (b) where an allegation of paternity has been made against the pursuer, the Secretary of State shall be named as a defender in the action.
- (5) A family action involving parties in respect of whom a decision has been made in any application, review or appeal under the Act of 1991 relating to any child of those parties, shall—
  - (a) include averments stating that such a decision has been made and giving details of that decision; and
  - (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the parties intimating that decision.

#### **Marginal Citations**

**M2** 1991 c.48.

#### *Warrants and forms for intimation*

- 33.7. (1) In the initial writ in a family action, the pursuer shall include a crave for a warrant for intimation—
- (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 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, and a notice of intimation in Form F1 shall be attached to the copy of the initial writ intimated to any such person;
  - (b) in an action where the pursuer alleges that the defender has committed adultery with another person, to that person, unless—

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- (i) that person is not named in the initial writ and, if the adultery is relied on for the purposes of section 1(2)(a) of the Act of 1976 (irretrievable breakdown of marriage by reason of adultery), the initial writ contains an averment that his or her identity is not known to the pursuer and cannot reasonably be ascertained, or
  - (ii) the pursuer alleges that the defender has been guilty of rape upon or incest with, that named person,

and a notice of intimation in Form F2 shall be attached to the copy of the initial writ intimated to any such person;
- (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) an (ii), unless the address of such person is not known to the pursuer and cannot reasonably be ascertained, and
  - (ii) the curator bonis to the defender, if one has been appointed,

and a notice of intimation in Form F3 shall be attached to the copy of the initial writ intimated to any such person;
- (d) in an action relating to a marriage which was entered into under a law which permits polygamy where—
  - (i) one of the decrees specified in section 2(2) of the Matrimonial Proceedings (Polygamous Marriages) Act 1972 <sup>F10</sup> is sought, and
  - (ii) either party to the marriage in question has any spouse additional to the other party,

to any such additional spouse, and a notice of intimation in Form F4 shall be attached to the initial writ intimated to any such person;
- (e) in an action of divorce or separation where the sheriff may make an order for any parental rights in respect of a child—
  - (i) who is in the care of a local authority, to that authority and a notice of intimation in Form F5 shall be attached to the initial writ intimated to that authority;
  - (ii) who, being a child of one party to the marriage, has been accepted as a child of the family by the other party to the marriage and who is liable to be maintained by a third party, to that third party, and a notice of intimation in Form F5 shall be attached to the initial writ intimated to that third party; or
  - (iii) in respect of whom a third party exercises such rights de facto, to that third party, and a notice of intimation in Form F6 shall be attached to the initial writ intimated to that third party;
- (f) in an action where the pursuer craves the custody of a child, to any parent or guardian of the child who is not a party to the action, and a notice of intimation in Form F7 shall be attached to the initial writ intimated to any such parent or guardian;
- (g) in an action where the pursuer craves the custody of a child and he is—
  - (i) not a parent of that child, and
  - (ii) resident in Scotland when the initial writ is lodged,

to the local authority within which area the pursuer resides, and a notice of intimation in Form F8 shall be attached to the initial writ intimated to that authority;

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- (h) in an action which affects a child, to that child if not a party to the action, and a notice of intimation in Form F9 shall be attached to the initial writ intimated to that child;
  - (i) in an action where the pursuer makes an application for an order under section 8(1)(aa) of the Act of 1985 <sup>F11</sup> (transfer of property) and—
    - (i) the consent of a third party to such a transfer is necessary by virtue of an obligation, enactment or rule of law, or
    - (ii) the property is subject to a security,to the third party or creditor, as the case may be, and a notice of intimation in Form F10 shall be attached to the initial writ intimated to any such person;
  - (j) in an action where the pursuer makes an application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions), to—
    - (i) any third party in whose favour the transfer of, or transaction involving, the property is to be or was made, and
    - (ii) any other person having an interest in the transfer of, or transaction involving, the property,and a notice of intimation in Form F11 shall be attached to the initial writ intimated to any such person; and
  - (k) in an action where the pursuer makes an application for an order under the Act of 1981 <sup>F12</sup>—
    - (i) where he is a non-entitled partner and the entitled partner has a spouse, to that spouse, 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,and a notice of intimation in Form F12 shall be attached to the initial writ intimated to any such person.
- (2) Expressions used in paragraph (1)(k) which are also used in the Act of 1981 have the same meaning as in that Act.
- (3) A notice of intimation under paragraph (1) shall be on a period of notice of 21 days unless the sheriff otherwise orders; but the sheriff shall not order a period of notice of less than 2 days.
- (4) In a family action, where the pursuer—
  - (a) craves for the custody of a child, and
  - (b) is not resident in Scotland when the initial writ is lodged for warranting,he shall include a crave for an order for intimation in form F8 to such local authority as the sheriff thinks fit.
- (5) Where the address of a person mentioned in paragraph (1)(b), (d), (e), (f), (h), (i), (j) or (k) is not known and cannot reasonably be ascertained, the pursuer shall include a crave in the initial writ to dispense with intimation; and the sheriff may grant that crave or make such other order as he thinks fit.
- (6) Where the identity or address of a person to whom intimation of a family action is required becomes known during the course of the action, the party who would have been required to insert a warrant for intimation to that person shall lodge a motion for a warrant for intimation to that person or to dispense with such intimation.

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#### **Textual Amendments**

- F10** 1972 c.38; section 2(2) was amended by the [Divorce Jurisdiction, Court Fees and Legal Aid \(Scotland\) Act 1983 \(c.12\)](#), [Schedule 1](#), paragraphs 13, the [Law Reform \(Husband and Wife\) \(Scotland\) Act 1984 \(c.15\)](#), [Schedule 1](#), paragraph 6, the [Family Law \(Scotland\) Act 1985 \(c.37\)](#), [Schedule 1](#), paragraph 8 and the [Statute Law \(Repeals\) Act 1986 \(c.12\)](#), [Schedule 1](#), Part I.
- F11** 1985 c.37; section 8(1)(aa) was inserted by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c.40\)](#), [Schedule 8](#), paragraph 34.
- F12** 1981 c.59.

#### *Intimation where improper association*

- 33.8. (1) In a family action where the pursuer alleges an improper association between the defender and another named person, the pursuer shall, immediately after the expiry of the period of notice, lodge a motion for an order for intimation to that person or to dispense with such intimation
- (2) In determining a motion under paragraph (1), the sheriff may—
- (a) make such order for intimation as he thinks fit; or
  - (b) dispense with intimation; and
  - (c) where he dispenses with intimation, order that the name of that person be deleted from the condescendence of the initial writ.
- (3) Where intimation is ordered under paragraph (2), a copy of the initial writ and an intimation in Form F13 shall be intimated to the named person.
- (4) In paragraph (1), “improper association” means sodomy, incest or any homosexual relationship.

#### *Productions in action of divorce or where order for custody may be made*

- 33.9. Unless the sheriff otherwise directs—
- (a) in an action of divorce, a warrant for citation shall not be granted without there being produced with the initial writ an extract of the relevant entry in the register of marriages or an equivalent document; and
  - (b) in an action where the sheriff may make an order in respect of the custody of a child, a warrant for citation shall not be granted without there being produced with the initial writ an extract of the relevant entry in the register of births or an equivalent document.

#### *Warrant of citation*

- 33.10. The warrant of citation in a family action shall be in Form F14.

#### *Form of citation and certificate*

- 33.11. (1) Subject to rule 5.6 (service where address of person is not known), citation of a defender shall be in Form F15, which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form F26.



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- (2) The certificate of citation shall be in Form F16 which shall be attached to the initial writ.

*Execution of service on, or intimation to, local authority*

- 33.12. (1) Where a local authority referred to in rule 33.7(1)(g) (custody sought by non-parent resident in Scotland) or 33.7(4) (custody sought by pursuer not resident in Scotland) is named as a defender in an initial writ at the time it is lodged, service of the initial writ on that local authority shall be executed within 7 days after the date of granting of the warrant of citation.
- (2) Where in a family action—
- (a) to which rule 33.7(1)(g) applies, or
  - (b) in which a motion under rule 33.7(4) is required,
- the local authority referred to in that provision is named as a defender in the initial writ at the time it is lodged, a notice in Form F8 shall be attached to the copy of the initial writ served on that local authority.
- (3) Where, by virtue of rule 33.7(1)(g), 33.7(4) or 33.15(2), intimation of an application for custody is to be made to a local authority, intimation to that local authority shall be given within 7 days after the date on which a warrant of citation, or an order for intimation, as the case may be, has been granted.

*Service in cases of mental disorder of defender*

- 33.13. (1) In a family action where the defender suffers or appears to suffer from mental disorder and is resident in a hospital or other similar institution, citation shall be executed by registered post or the first class recorded delivery service addressed to the medical officer in charge of that hospital or institution; and there shall be included with the copy of the initial writ—
- (a) a citation in Form F15;
  - (b) any notice required by rule 33.14(1);
  - (c) a request in Form F17;
  - (d) a form of certificate in Form F18 requesting the medical officer to—
    - (i) deliver and explain the initial writ, citation and any notice or form of notice of consent required under rule 33.14(1) personally to the defender; or
    - (ii) certify that such delivery or explanation would be dangerous to the health or mental condition of the defender; and
  - (e) a stamped envelope addressed for return of that certificate to the pursuer or his solicitor, if he has one.
- (2) The medical officer referred to in paragraph (1) shall send the certificate in Form F18 duly completed to the pursuer or his solicitor, as the case may be.
- (3) The certificate mentioned in paragraph (2) shall be attached to the certificate of citation.
- (4) Where such a certificate bears that the initial writ has not been delivered to the defender, the sheriff may, at any time before decree—
- (a) order such further medical inquiry, and
  - (b) make such order for further service or intimation,

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as he thinks fit.

*Notices in certain actions of divorce or separation*

- 33.14. (1) In the following actions of divorce or separation there shall be attached to the copy of the initial writ served on the defender—
- (a) in an action relying on section 1(2)(d) of the Act of 1976 <sup>F13</sup> (no cohabitation for two years with consent of defender to decree)—
    - (i) which is an action of divorce, a notice in form F19 and a notice of consent in form F20;
    - (ii) which is an action of separation, a notice in Form F21 and a form of notice of consent in form F22;
  - (b) in an action relying on section 1(2)(e) of the Act of 1976 (no cohabitation for five years)—
    - (i) which is an action of divorce, a notice in Form F23;
    - (ii) which is an action of separation, a notice in Form F24.
- (2) The certificate of service of an initial writ in an action mentioned in paragraph (1) shall state which notice or form mentioned in paragraph (1) has been attached to the initial writ.

**Textual Amendments**

**F13** [1976 c.39.](#)

*Orders for intimation by sheriff*

- [33.15(1) In any family action, the sheriff may order intimation to be made to such person as he thinks fit.
- (2) Where a party makes an application or averment in a family action which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, that party shall lodge a motion for a warrant for intimation or to dispense with such intimation.]

*Appointment of curators ad litem to defenders*

- 33.16. (1) This rule applies to an action of divorce or separation where it appears to the court that the defender is suffering from a mental disorder.
- (2) In an action to which this rule applies, the sheriff shall—
- (a) appoint a curator ad litem to the defender;
  - (b) where the facts set out in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on—
    - (i) make an order for intimation of the ground of the action to the Mental Welfare Commission for Scotland; and
    - (ii) include in such an order a requirement that the Commission sends to the sheriff clerk a report indicating whether in its opinion the defender is capable of deciding whether or not to give consent to the granting of decree.

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- (3) Within 7 days after the appointment of a curator ad litem under paragraph (2)(a), the pursuer shall send to him—
  - (a) a copy of the initial writ and any defences (including any adjustments and amendments) lodged; and
  - (b) a copy of the notice in Form G5 sent to him by the sherrif clerk.
- (4) On receipt of a report required under paragraph (2)(b)(ii), the sheriff clerk shall—
  - (a) lodge the report in process; and
  - (b) intimate that this has been done to—
    - (i) the pursuer;
    - (ii) the solicitor for the defender, if known; and
    - (iii) the curator ad litem.
- (5) The curator ad litem shall lodge in process one of the writs mentioned in paragraph (6)—
  - (a) within 14 days after the report required under paragraph (2)(b)(ii) has been lodged in process; or
  - (b) where no such report is required, within 21 days after the date of his appointment under paragraph (2)(a).
- (6) The writs referred to in paragraph (5) are—
  - (a) a notice of intention to defend;
  - (b) defences to the action;
  - (c) a minute adopting defences already lodged; and
  - (d) a minute stating that the curator ad litem does not intend to lodge defences.
- (7) Notwithstanding that he has lodged a minute stating that he does not intend to lodge defences, a curator ad litem may appear at any stage of the action to protect the interests of the defender.
- (8) If, at any time, it appears to the curator ad litem that the defender is not suffering from mental disorder, he may report that fact to the court and seek his own discharge.
- (9) The pursuer shall be responsible, in the first instance, for payment of the fees and outlays of the curator ad litem incurred during the period from his appointment until—
  - (a) he lodges a minute stating that he does not intend to lodge defences;
  - (b) he decides to instruct the lodging of defences or a minute adopting defences already lodged; or
  - (c) being satisfied after investigation that the defender is not suffering from mental disorder, he is discharged.

#### *Applications for sist*

- 33.17. An application for a sist, or the recall of a sist, under Schedule 3 to the <sup>M3</sup>Domicile and Matrimonial Proceedings Act 1973 shall be made by written motion.

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### Marginal Citations

**M3** 1973 c.45; Schedule 3 was amended by the [Divorce Jurisdiction, Court Fees and Legal Aid \(Scotland\) Act 1983 \(c.12\)](#), [Schedule 1](#), paragraphs 19 and 20.

### *Notices of consent to divorce or separation*

- 33.18. (1) Where, in an action of divorce or separation in which the facts in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on, the defender wishes to consent to the grant of decree of divorce or separation he shall do so by giving notice in writing in Form F20 (divorce) or Form F22 (separation), as the case may be, to the sheriff clerk.
- (2) The evidence of one witness shall be sufficient for the purpose of establishing that the signature on a notice of consent under paragraph (1) is that of the defender.
- (3) In an action of divorce or separation where the initial writ includes, for the purposes of section 1(2)(d) of the Act of 1976, an averment that the defender consents to the grant of decree, the defender may give notice by letter sent to the sheriff clerk stating that he has not so consented or that he withdraws any consent which he has already given.
- (4) On receipt of a letter under paragraph (3), the sheriff clerk shall intimate the terms of the letter to the pursuer.
- (5) On receipt of any intimation under paragraph (4), the pursuer may, within 14 days after the date of the intimation, if none of the other facts mentioned in section 1(2) of the Act of 1976 is averred in the initial writ, lodge a motion for the action to be sisted.
- (6) If no such motion is lodged, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.
- (7) If a motion under paragraph (5) is granted and the sist is not recalled or renewed within a period of 6 months from the date of the interlocutor granting the sist, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.

### *Consents to grant of custody*

- [33.19(1) Where a party who requires a consent under section 47(2) of the Act of 1975 <sup>F14</sup> to the grant of custody, executes service on, or gives intimation to, a person who may give such consent, he shall—
- (a) include with the copy of the initial writ or other pleadings, as the case may be—
- (i) a notice in Form F7; and
- (ii) a form of notice of consent in Form F25; and
- (b) in the certificate of service or intimation, as the case may be, state expressly that such notice and form of notice of consent was included.
- (2) Where a parent or guardian wishes to consent to the grant of an application for custody, he shall—
- (i) complete and sign the notice of consent in Form F25;
- (ii) have his signature witnessed; and

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- (iii) send the notice of consent to the sheriff clerk.
- (3) Where a person, who has consented under paragraph (2) to the grant of such an application, wishes to withdraw that consent, he shall give notice by letter sent to the sheriff clerk stating that he withdraws his consent.
- (4) On receipt of a letter under paragraph (3), the sheriff clerk shall intimate the terms of the letter to the applicant and to every other party.]

#### **Textual Amendments**

**F14** 1975 c.72; section 47(2) was amended by the [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c.9\)](#), [Schedule 1](#), paragraph 14(1).

#### *Reports by local authorities under section 49(2) of the Act of 1975*

- 33.20. (1) On completion of a report made under section 49(2) of the Act of 1975 (reports by local authority on child in certain custody applications), the local authority shall—
- (a) send the report, with a copy for each party, to the sheriff clerk; and
  - (b) where a curator ad litem has been appointed to the child in respect of whom the application for custody has been made, send a copy of the report to him.
- (2) On receipt of such a report, the sheriff clerk shall send a copy of the report to each party.
- (3) Where intimation is given to a local authority under rule 33.7(1)(g) or (4) for the purposes of section 49(2) of the Act of 1975, an application for the custody of the child shall not be determined until the report of the local authority has been lodged.
- (4) When disposing of an application for custody, the sheriff shall determine which party or parties are to be liable for the expenses of the local authority incurred in the preparation of any report made under section 49(2) of the Act of 1975.

#### *Appointment of local authority or reporter to report on a child*

- 33.21. (1) This rule applies where, at any stage of a family action, the sheriff appoints—
- (a) a local authority under section 11(1) of the Matrimonial Proceedings (Children) Act 1958<sup>F15</sup> or section 12(2)(a) of the Guardianship Act 1973<sup>F16</sup> (which both relate to a report on a child with respect to custody, or
  - (b) another person (referred to in this rule as a “reporter”), whether under a provision mentioned in sub-paragraph (a) or otherwise,
- to investigate and report to the court on the circumstances of a child and on proposed arrangements for the care and upbringing of the child.
- (2) On making an appointment referred to in paragraph (1), the sheriff shall direct that the party who sought the appointment or, where the court makes the appointment of its own motion, the pursuer or minuter, as the case may be, shall—
- (a) instruct the local authority or reporter; and
  - (b) be responsible, in the first instance, for the fees and outlays of the local authority or reporter appointed.
- (3) Where a local authority or reporter is appointed—
- (a) the party who sought the appointment, or

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- (b) where the sheriff makes the appointment of his own motion, the pursuer or minuter, as the case may be, shall, within 7 days after the date of the appointment, intimate the name and address of the local authority or reporter to any local authority to which intimation of the family action has been made.
- (4) On completion of a report referred to in paragraph (1), the local authority or reporter, as the case may be, shall send the report, with a copy of it for each party, to the sheriff clerk.
- (5) On receipt of such a report, the sheriff clerk shall send a copy of the report to each party.
- (6) Where a local authority or reporter has been appointed to investigate and report in respect of a child, an application for the custody of that child shall not be determined until the report of the local authority or reporter, as the case may be, has been lodged.

#### Textual Amendments

**F15** 1958 c.40; section 11(1) was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c.9), **Schedule 2** and the Family Law Act 1986 (c.55), **Schedule 1**, paragraph 7.

**F16** 1973 c.29; section 12(2)(a) was amended by the Children Act 1975 (c.72), **section 48(4)**.

#### *Referral to family mediation and conciliation service*

- [33.22. In any family action in which the custody of, or access to, a child is in dispute, the sheriff may, at any stage of the action, where he considers it appropriate to do so, refer that dispute to a specified family mediation and conciliation service.]

#### *Applications for orders to disclose whereabouts of children*

- 33.23. (1) An application for an order under section 33(1) of the <sup>M4</sup>Family Law Act 1986 (which relates to the disclosure of the whereabouts of a child) shall be made by motion.
- (2) Where the sheriff makes an order under section 33(1) of the Family Law Act 1986, he may ordain the person against whom the order has been made to appear before him or to lodge an affidavit.

#### Marginal Citations

**M4** 1986 c.55.

#### *Applications in relation to removal of children*

- 33.24. (1) An application for leave under section 51(1) of the Act of 1975 <sup>F17</sup> (authority to remove a child from the care and possession of the applicant for custody) or for an order under section 35(3) of the Family Law Act 1986 (application for interdict or interim interdict prohibiting removal of child from jurisdiction) shall be made—
- (a) by a party to the action, by motion; or
- (b) by a person who is not a party to the action, by minute.

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- (2) An application under section 35(3) of the Family Law Act 1986 need not be served or intimated.
- (3) An application under section 23(2) of the Child Abduction and Custody Act 1985<sup>F18</sup> (declarator that removal of child from United Kingdom was unlawful) shall be made—
- (a) in an action depending before the sheriff—
    - (1) by a party, in the initial writ, defences or minute, as the case may be, or by motion; or
    - (ii) by any other person, by minute; or
  - (b) after final decree, by minute in the process of the action to which the application relates.

#### Textual Amendments

**F17** Section 51(1) was amended by the [Health and Social Services and Social Security Adjudications Act 1983 \(c.41\)](#), [Schedule 2](#), paragraph 25.

**F18** 1985 c.60.

#### *Intimation to local authority before supervised access*

- 33.25. Where the sheriff, of his own motion or on the motion of a party, is considering making an award of access or interim access subject to supervision by the social work department of a local authority, he shall ordain the party moving for access or interim access to intimate to the chief executive of that local authority (where not already a party to the action and represented at the hearing at which the issue arises)—
- (a) the terms of any relevant motion;
  - (b) the intention of the sheriff to order that access be supervised by the social work department of that local authority; and
  - (c) that the local authority shall, within such period as the sheriff has determined—
    - (i) notify the sheriff clerk whether it intends to make representations to the sheriff; and
    - (ii) where it intends to make representations in writing, to do so within that period.

#### *Joint minutes*

- 33.26. Where any parties have reached agreement in relation to—
- (a) any parental rights in respect of a child,
  - (b) aliment for a child, or
  - (c) an order for financial provision,
- a joint minute may be entered into expressing that agreement; and the sheriff may grant decree in respect of those parts of the joint minute in relation to which he could otherwise make an order, whether or not such a decree would include a matter for which there was no crave.

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### *Affidavits*

- 33.27. The sheriff may accept evidence by affidavit at any hearing for an order or interim order.

## *PART II*

### *UNDEFENDED FAMILY ACTIONS*

#### *Evidence in certain undefended family actions*

- 33.28. (1) This rule—
- (a) subject to sub-paragraph (b), applies to all family actions in which no notice of intention to defend has been lodged, other than a family action—
    - (i) for any parental rights or aliment;
    - (ii) of affiliation and aliment;
    - (iii) for financial provision after an overseas divorce or annulment within the meaning of Part IV of the Matrimonial and Family Proceedings Act 1984 <sup>F19</sup>; or
    - (iv) for an order under the Act of 1981 <sup>F20</sup>;
  - (b) applies to a family action in which a curator ad litem has been appointed under rule 33.16 where the curator ad litem to the defender has lodged a minute intimating that he does not intend to lodge defences;
  - (c) applies to any family action which proceeds at any stage as undefended where the sheriff so directs;
  - (d) applies to the merits of a family action which is undefended on the merits where the sheriff so directs, notwithstanding that the action is defended on an ancillary matter.
- (2) Unless the sheriff otherwise directs, evidence shall be given by affidavit.
- (3) Unless the sheriff otherwise directs, evidence relating to the welfare of a child shall be given by affidavit, at least one affidavit being emitted by a person other than a parent or party to the action.
- (4) Evidence in the form of a written statement bearing to be the professional opinion of a duly qualified medical practitioner, which has been signed by him and lodged in process, shall be admissible in place of parole evidence by him.

#### **Textual Amendments**

**F19** 1984 c.42; Part IV was amended by the Act of 1985 (c.37), Schedule 1, paragraphs 12 and 13.

**F20** 1981 c.59.

#### *Procedure for decree in actions under rule 33.28*

- 33.29. (1) In an action to which rule 33.28 (evidence in certain undefended family actions) applies, the pursuer shall at any time after the expiry of the period for lodging a notice of intention to defend—
- (a) lodge in process the affidavit evidence; and
  - (b) endorse a minute in Form F27 on the initial writ.



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- (2) The sheriff may, at any time after the pursuer has complied with paragraph (1), without requiring the appearance of parties—
- (a) grant decree in terms of the motion for decree; or
  - (b) remit the cause for such further procedure, if any, including proof by parole evidence, as the sheriff thinks fit.

#### *Extracts of undefended decree*

- 33.30. In an action to which rule 33.28 (evidence in certain undefended family actions) applies, the sheriff clerk shall, after the expiry of 14 days after the grant of decree under rule 33.29 (procedure for decree in actions under rule 33.28), issue to the pursuers and the defender an extract decree.

#### *Procedure in undefended family actions for parental rights*

- 33.31. (1) Where no notice of intention to defend has been lodged in a family action for any parental rights or any right or authority relating to the welfare or upbringing of a child, any proceedings in the cause shall be dealt with by the sheriff in chambers.
- (2) In an action to which paragraph (1) applies, decree may be pronounced after such inquiry as the sheriff thinks fit.

#### *No recording of evidence*

- 33.32. It shall not be necessary to record the evidence in any proof in a family action which is not defended.

#### *Disapplication of Chapter 15*

- 33.33. Chapter 15 (motions) shall not apply to a family action in which no notice of intention to defend has been lodged.

### *PART III*

#### *DEFENDED FAMILY ACTIONS*

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

- 33.34. (1) This rule applies where the defender in a family action seeks—
- (a) to oppose any crave in the initial writ;
  - (b) to make a claim for—
    - (i) aliment;
    - (ii) an order for financial provision within the meaning of section 8(3) of the Act of 1985; or
    - (iii) an order relating to parental rights; or
  - (c) an order—
    - (i) under section 16(1)(b) or (3) of the Act of 1985 <sup>F21</sup> (setting aside or varying agreement as to financial provision);
    - (ii) under section 18 of the Act of 1985 (which relates to avoidance transactions); or
    - (iii) under the Act of 1981; or

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- (d) to challenge the jurisdiction of the court.
- (2) In an action to which this rule applies, the defender shall—
  - (a) lodge a notice of intention to defend in Form F26 before the expiry of the period of notice; and
  - (b) make any claim or seek any order referred to in paragraph (1), as the case may be, in those defences by setting out in his defences—
    - (i) craves;
    - (ii) averments in the answers to the condescendence in support of those craves; and
    - (iii) appropriate pleas-in-law.

#### Textual Amendments

**F21** 1985 c.37.

#### *Abandonment by pursuer*

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

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

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

#### *Decree by default*

- 33.37. (1) In a family action in which the defender has lodged a notice of intention to defend, where a party fails—
- (a) to lodge, or intimate the lodging of, any production or part of process,
  - (b) to implement an order of the sheriff within a specified period, or
  - (c) to appear to be represented at any diet,
- that party shall be in default.
- (2) Where a party is in default under paragraph (1), the sheriff may—
- (a) where the family action is one mentioned in rule 33.1(1)(a) to (h), allow that action to proceed as undefended under Part II of this Chapter; or
  - (b) where the family action is one mentioned in rule 33.1(1)(i) to (m), grant decree as craved; or
  - (c) grant decree of absolvitor; or
  - (d) dismiss the family action or any claim made or order sought; and
  - (e) award expenses.
- (3) Where no party appears at a diet in a family action, the sheriff may dismiss that action.
- (4) In a family action, the sheriff may, on cause shown, prorogate the time for lodging any production or part of process, or for intimating or implementing any order.

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## PART IV

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

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

33.38. (1) This Part applies to an action of divorce or separation.

(2) In this Part, “the Act of 1958” means the Matrimonial Proceedings (Children) Act 1958 <sup>F22</sup>.

#### Textual Amendments

**F22** 1958 c.40.

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

33.39. (1) An application for an order mentioned in paragraph (2) shall be made—

- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
- (b) where the application is made by a person other than the pursuer or defender, by minute in that action.

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

- (a) an order for any parental rights; and
- (b) an order for aliment for a child.

#### *Intimation before committal to care or supervision*

33.40. Where the sheriff is considering making an order under section 10(1) of the Act 1958 <sup>F23</sup> (committal of care of child to an individual other than one of the parties to the marriage or to a local authority) or under section 12(1) of that Act <sup>F24</sup> (placing child under supervision of a local authority), he shall ordain one of the parties to intimate to that person or to the chief executive of the appropriate local authority, as the case may be, where not already a party to the action and represented at the hearing at which the issue arises—

- (a) a copy of the pleadings (including any adjustments and amendments);
- (b) the terms of any relevant motion; and
- (c) notice of intimation in Form F28 requiring any representations which that person or that local authority wishes to make to the sheriff to be made by minute in the process of the action within the period specified.

#### Textual Amendments

**F23** Section 10(1) of the Act of 1958 was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c.9), **Schedule 2** and the Family Law (Scotland) Act 1986 (c.55), **Schedule 1**, paragraph 6.

**F24** Section 12(1) of the Act of 1958 was amended by the Social Work (Scotland) Act 1968 (c.49), **Schedule 9**.

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### *Care or supervision orders*

- 33.41. Where the sheriff makes, varies or recalls an order under section 10(1) (committal of care of child to an individual other than one of the parties to the marriage or to a local authority), or section 12(1) (placing child under supervision of a local authority), of the Act of 1958, the sheriff clerk shall send a copy of the interlocutor making the order and a notice of intimation in Form F29 to the chief executive of the local authority or other person concerned.

### *Intimation of certain applications to local authorities or other persons*

- 33.42. Where a child is subject to an order under section 10(1) (committal of care of child to an individual other than one of the parties to the marriage or to a local authority), or section 12(1) (placing child under supervision of a local authority), of the Act of 1958, any motion or minute lodged which relates to that child shall be intimated to the chief executive of the local authority or other person concerned.

### *Applications in depending actions by motion*

- [33.43. An application by a party in an action depending before the court to which this Part applies—
- (a) for, or for variation of, an order—
    - (i) for interim aliment for a child under the age of 18 years, or
    - (ii) for interim custody of, or interim access to, a child, or
  - (b) for variation or recall of an order under section 10(1) (committal of care of child to an individual other than one of the parties to the marriage or to a local authority), or section 12(1) (placing child under supervision of a local authority), of the Act of 1958,
- shall be made by motion.]

### *Applications after decree relating to parental rights, care or supervision*

- 33.44. (1) An application after final decree—
- (a) for, or for the variation or recall of, an order relating to parental rights,
  - (b) for an order under section 10(1) of the Act of 1958 (committal of care of child to an individual other than one of the parties to the marriage or to a local authority), or
  - (c) an order under section 12(1) of the Act of 1958 (placing child under supervision of a local authority),
- shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute has been lodged under paragraph (1), any party may apply by motion for any interim order which may be made pending the determination of the application.

### *Applications after decree relating to aliment*

- 33.45. (1) An application after final decree for, or for the variation or recall of, an order for aliment for a child shall be made by minute in the process of the action to which the application relates.

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- (2) Where a minute has been lodged under paragraph (1), any party may lodge a motion for any interim order which may be made pending the determination of the application.

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

33.46. (1) A person—

- (a) to whom an obligation of aliment is owed under section 1 of the <sup>M5</sup>Act of 1985,
- (b) in whose favour an order for aliment while under the age of 18 years was made in an action to which this Part applies, and
- (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,

shall apply by minute in the process of that action.

- (2) An application for interim aliment pending the determination of an application under paragraph (1) shall be made by motion.
- (3) Where a decree has been pronounced in an application under paragraph (1) or (2), any application for variation or recall of any such decree shall be made by minute in the process of the action to which the application relates.

**Marginal Citations**

**M5** 1985 c.37.

*PART V*

*ORDERS RELATING TO FINANCIAL PROVISION*

*Application and interpretation of this Part*

33.47. (1) This Part applies to an action of divorce.

- (2) In this Part, “incidental order” has the meaning assigned in section 14(2) of the Act of 1985.

*Applications in actions to which this Part applies*

33.48. (1) An application for an order mentioned in paragraph (2) shall be made—

- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
- (b) where the application is made by a person other than the pursuer or defender, by minute in that action.

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

- (a) an order for financial provision within the meaning of section 8(3) of the Act of 1985;
- (b) an order under section 16(1)(b) or (3) of the Act of 1985 (setting aside or varying agreement as to financial provision);

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- (c) an order under section 18 of the Act of 1985 (which relates to avoidance transactions); and
- (d) an order under section 13 of the <sup>M6</sup>Act of 1981 (transfer or vesting of tenancy).

#### **Marginal Citations**

**M6** 1981 c.59; section 13 was amended by the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraph 11 and the Housing (Scotland) Act 1987 (c.26), **Schedule 23**, paragraph 26.

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

- 33.49. (1) In an action depending before the sheriff to which this Part applies—
- (a) the pursuer or defender, notwithstanding rules 33.34(2) (application by defender for order for financial provision) and 33.48(1)(a) (application for order for financial provision in initial writ or defences), may apply by motion for an incidental order; and
  - (b) the sheriff shall not be bound to determine such a motion if he considers that the application should properly be by a crave in the initial writ or defences, as the case may be.
- (2) In an action depending before the sheriff to which this Part applies, an application under section 14(4) of the Act of 1985 for the variation or recall of an incidental order shall be made by minute in the process of the action to which the application relates.

#### *Applications relating to interim aliment*

- 33.50. An application for, or for the variation or recall of, an order for interim aliment for the pursuer or defender shall be made by motion.

#### *Applications relating to orders for financial provision*

- 33.51. (1) An application—
- (a) after final decree under any of the following provisions of the Act of 1985—
    - (i) section 8(1) for periodical allowance,
    - (ii) section 12(1)(b) (payment of capital sum or transfer of property),
    - (iii) section 12(4) (variation of date or method of payment of capital sum or date of transfer of property), or
    - (iv) section 13(4) (variation, recall, backdating or conversion of periodical allowance), or
  - (b) after the grant or refusal of an application under—
    - (i) section 8(1) or 14(3) for an incidental order, or
    - (ii) section 14(4) (variation or recall of incidental order),
 shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute is lodged under paragraph (1), any party may lodge a motion for any interim order which may be made pending the determination of the application.

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*Applications after decree relating to agreements and avoidance transactions*

- 33.52. An application for an order—
- (a) under section 16(1)(a) or (3) of the Act of 1985 (setting aside or varying agreements as to financial provision), or
  - (b) under section 18 of the Act of 1985 (which relates to avoidance transactions),
- made after final decree shall be made by minute in the process of the action to which the application relates.

*PART VI*

*APPLICATIONS RELATING TO AVOIDANCE TRANSACTIONS*

*Form of applications*

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

*PART VII*

*FINANCIAL PROVISION AFTER OVERSEAS DIVORCE OR ANNULMENT*

*Interpretation of this Part*

- 33.54. In this Part—
- “the Act of 1984” means the <sup>M7</sup>Matrimonial and Family Proceedings Act 1984;
  - “order for financial provision” has the meaning assigned in section 30(1) of the Act of 1984;
  - “overseas country” has the meaning assigned in section 30(1) of the Act of 1984.

**Marginal Citations**

**M7** [1984 c.42.](#)

*Applications for financial provision*

- 33.55. (1) An application under section 28 of the Act of 1984 <sup>F25</sup> for an order for financial provision after a divorce or annulment in an overseas country shall be made by initial writ.
- (2) An application for an order in an action to which paragraph (1) applies made before final decree under—
- (a) section 13 of the Act of 1981 <sup>F26</sup> (transfer of tenancy of matrimonial home),

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- (b) section 29(4) of the Act of 1984 for interim periodical allowance, or
  - (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),
- shall be made by motion.
- (3) An application for an order in an action to which paragraph (1) applies made after final decree under—
- (a) section 12(4) of the Act of 1985 (variation of date or method of payment of capital sum or date of transfer of property),
  - (b) section 13(4) of the Act of 1985 (variation, recall, backdating or conversion or periodical allowance), or
  - (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),
- shall be made by minute in the process of the action to which the application relates.
- (4) Where a minute has been lodged under paragraph (3), any party may apply by motion for an interim order pending the determination of the application.

#### **Textual Amendments**

- F25** [Section 28](#) was extended by section 29A (inserted by the Act of 1985, Schedule 1, paragraph 12) to an annulment.
- F26** [1981 c.51](#); [section 13\(2\)](#) was amended by the Act of 1985, Schedule 1, paragraph 11.

### *PART VIII*

#### *ACTIONS OF ALIMENT*

##### *Interpretation of this Part*

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

##### *Undefended actions of aliment*

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

##### *Applications relating to aliment*

- 33.58. (1) An application for, or for variation of, an order for interim aliment in a depending action of aliment shall be made by motion.
- (2) An application after final decree for the variation or recall of an order for aliment in an action of aliment shall be made by minute in the process of the action to which the application relates.
- (3) A person—



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- (a) to whom an obligation of aliment is owed under section 1 of the <sup>M8</sup>Act of 1985,
  - (b) in whose favour an order for aliment while under the age of 18 years was made in an action of aliment, or
  - (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,
- shall apply by minute in the process of that action.
- (4) An application for interim aliment pending the determination of an application under paragraph (2) or (3) shall be made by motion.
- (5) Where a decree has been pronounced in an application under paragraph (2) or (3), any application for variation or recall of any such decree shall be made by minute in the process of the action to which the application relates.

**Marginal Citations**

**M8** 1985 c.37.

*Applications relating to agreements on aliment*

- 33.59. (1) Subject to paragraph (2), an application under section 7(2) of the Act of 1985 (variation or termination of agreement on aliment) shall be made by summary application.
- (2) In a family action in which a crave for aliment may be made, an application under section 7(2) of the Act of 1985 shall be made by a crave in the initial writ or in defences, as the case may be.

*PART IX*

*ACTIONS RELATING TO PARENTAL RIGHTS*

*Application and interpretation of this Part*

- [33.60(1) This Part applies to an application for any parental rights in a family action other than in an action of divorce or separation.
- (2) In this Part, “the Act of 1973” means the Guardianship Act 1973 <sup>F27</sup>.]

**Textual Amendments**

**F27** 1973 c.29.

*Form of applications*

- 33.61. Subject to any other provision in this Chapter, an application for an order for any parental rights in respect of a child shall be made—
- (a) by an action for parental rights;
  - (b) by a crave in the initial writ or defences, as the case may be, in any other family action to which this Part applies; or

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- (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.

*Defences in actions for parental rights*

- 33.62. In an action for parental rights, the pursuer shall call as a defender—
- (a) the parents or other parent of the child in respect of whom the order is sought;
  - (b) any guardian of the child;
  - (c) any person who has accepted the child into his family;
  - (d) any person having the de facto custody of the child;
  - (e) any local authority in whose care or under whose supervision the child is; and
  - (f) in any case where there is no person falling within paragraphs (a) to (e), the Lord Advocate.

*Applications relating to interim orders in depending actions*

- 33.63. An application, in an action depending before the sheriff to which this Part applies, for, or for the variation or recall of, an order for interim custody or interim access shall be made—
- (a) by a party to the action, by motion; or
  - (b) by a person who is not a party to the action, by minute.

*Care and supervision by local authorities*

- 33.64. (1) Where the sheriff is considering making an order under section 11(1) of the Act of 1973 <sup>F28</sup> (committal of care of child to a local authority or order that child be under supervision of a local authority), he shall ordain one of the parties to intimate to the chief executive of the appropriate local authority unless a party to the cause and represented at the hearing at which the issue arises—
- (a) a copy of the pleadings (including any adjustments and amendments);
  - (b) the terms of any relevant motion;
  - (c) a notice of intimation in Form F28 requiring any representations which the local authority wishes to make to the court to be made by minute in the process of the action within the period specified.
- (2) Where the sheriff makes, varies or recalls an order placing a child under the supervision of a local authority under section 11(1) of the Act of 1973, the sheriff clerk shall send a copy of the interlocutor making the order and a notice of intimation in Form F29 to the chief executive of that local authority.
- (3) Where a child is subject to an order made under section 11(1) of the Act of 1973, any motion or minute lodged which relates to that child shall be intimated to the chief executive of the local authority concerned.

**Textual Amendments**

**F28** Section 11(1) was amended by the Act of 1975 (c.72), section 48(3).

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### *Applications after decree*

- 33.65. (1) An application after final decree—
- (a) for variation or recall of an order relating to parental rights, or
  - (b) for, or for variation or recall of, an order under section 11(1) of the Act of 1973 (committal of care of child to a local authority or order that child be under the supervision of a local authority),
- shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute has been lodged under paragraph (1), any party may apply by motion for an interim order pending the determination of the application.

## *PART X*

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

### *Interpretation of this Part*

- 33.66. Unless the context otherwise requires, words and expressions used in this Part which are also used in the <sup>M9</sup>Act of 1981 have the same meaning as in that Act.

#### **Marginal Citations**

**M9** 1981 c.59.

### *Form of applications*

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

### *Defenders*

- 33.68. The applicant for an order under the Act of 1981 shall call as a defender—
- (a) where he is seeking an order as a spouse, the other spouse;
  - (b) where he is a third party making an application under section 7(1) (dispensing with consent of non-entitled spouse to a dealing), or 8(1) (payment from non-entitled spouse in respect of loan), of the Act of 1981, both spouses; and
  - (c) where the application is made under section 18 of the Act of 1981 <sup>M10</sup> (occupancy rights of cohabiting couples), or is one to which that section applies, the other partner.

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### Marginal Citations

**M10** Section 18 was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c.73\)](#), [section 13\(9\)](#).

### *Applications by motion*

- 33.69. (1) An application under any of the following provisions of the Act of 1981 shall be made by motion in the process of the depending action to which the application relates:—
- (a) section 3(4) (interim order for regulation of rights of occupancy, etc.);
  - (b) section 4(6) (interim order suspending occupancy rights);
  - (c) section 7(1) (dispensing with consent of non-entitled spouse to a dealing);
  - (d) section 15(1) (order attaching power of arrest), if made after application for matrimonial interdict; and
  - (e) the proviso to section 18(1) <sup>F29</sup> (extension of period of occupancy rights).
- (2) Intimation of a motion under paragraph (1) shall be given—
- (a) to the other spouse or partner, as the case may be;
  - (b) where the motion is under paragraph (1)(a), (b) or (e) and the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
  - (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

### Textual Amendments

**F29** Section 18(1) of the Act of 1981 was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c.73\)](#), [section 13\(9\)\(a\)](#).

### *Applications by minute*

- 33.70. (1) An application for an order under—
- (a) section 5 of the Act of 1981 (variation and recall of orders regulating occupancy rights and of exclusion order), or
  - (b) section 15(2) and (5) of the Act of 1981 (variation and recall of matrimonial interdict and power of arrest),
- shall be made by minute.
- (2) A minute under paragraph (1) shall be intimated—
- (a) to the other spouse or partner, as the case may be;
  - (b) where the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
  - (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

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

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

### *Certificates of delivery of documents to chief constable*

- 33.72. (1) Where an applicant is required to comply with section 15(4) or (5), as the case may be, of the Act of 1981 <sup>F30</sup> (delivery of documents to chief constable where power of arrest attached to matrimonial interdict is granted, varied or recalled), he shall, after such compliance, lodge in process a certificate of delivery in Form F30.
- (2) Where a matrimonial interdict to which a power of arrest under section 15(1) of the Act of 1981 has been attached ceases to have effect by reason of a decree of divorce being pronounced by the sheriff, the pursuer shall send—
- (a) to the chief constable of the police area in which the matrimonial home is situated, and
  - (b) if the applicant spouse (within the meaning of section 15(6) of the Act 1981) 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 F30.

#### **Textual Amendments**

**F30** Section 15(4) was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c.40\)](#), [section 64\(b\)](#).

## *PART XI*

### *SIMPLIFIED DIVORCE APPLICATIONS*

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

- 33.73. (1) This Part applies to an application for divorce by a party to a marriage made in the manner prescribed in rule 33.74 (form of applications) if, but only if—
- (a) that party relies on the facts set out in section 1(2)(d) (no cohabitation for two years with consent of defender to decree), or section 1(2)(e) (no cohabitation for five years), of the <sup>M11</sup>Act of 1976;
  - (b) in an application under section 1(2)(d) of the Act of 1976, the other party consents to decree of divorce being granted;
  - (c) no other proceedings are pending in any court which could have the effect of bringing the marriage to an end;
  - (d) there are no children of the marriage under the age of 16 years;
  - (e) neither party to the marriage applies for an order for financial provision on divorce; and
  - (f) neither party to the marriage suffers from mental disorder.
- (2) If an application ceases to be one to which this Part applies at any time before final decree, it shall be deemed to be abandoned and shall be dismissed.

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- (3) In this Part “simplified divorce application” means an application mentioned in paragraph (1).

**Marginal Citations**

**M11** 1976 c.39.

*Form of applications*

- 33.74. (1) A simplified divorce application in which the facts set out in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on shall be made in Form F31 and shall only be of effect if—
- (a) it is signed by the applicant; and
  - (b) the form of consent in Part 2 of Form F32 is signed by the party to the marriage giving consent.
- (2) A simplified divorce application in which the facts set out in section 1(2)(e) of the Act of 1976 (no cohabitation for five years) are relied on shall be made in Form F33 and shall only be of effect if it is signed by the applicant.

*Lodging of applications*

- 33.75. The applicant shall send a simplified divorce application to the sheriff clerk with—
- (a) an extract or certified copy of the marriage certificate; and
  - (b) the appropriate fee.

*Citation and intimation*

- 33.76. (1) This rule is subject to rule 33.77 (citation where address not known).
- (2) It shall be the duty of the sheriff clerk to cite any person or intimate any document in connection with a simplified divorce application.
  - (3) The form of citation—
    - (a) in an application relying on the facts in section 1(2)(d) of the Act of 1976 shall be in Form F34; and
    - (b) in an application relying on the facts in section 1(2)(e) of the Act of 1976 shall be in Form F35.
  - (4) The sheriff clerk shall arrange for the citation or intimation required by paragraph (2) to be made—
    - (a) by registered post or the first class recorded delivery service in accordance with rule 5.3 (postal service or intimation);
    - (b) on payment of an additional fee, by a sheriff officer in accordance with rule 5.4(1) and (2) (service within Scotland by sheriff officer); or
    - (c) where necessary, in accordance with rule 5.5 (service on persons furth of Scotland).

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*Citation where address not known*

- 33.77. (1) In a simplified divorce application in which the facts in section 1(2)(e) of the Act of 1976 (no cohabitation for five years) are relied on and the address of the other party to the marriage is not known and cannot reasonably be ascertained—
- (a) citation shall be executed by displaying a copy of the application and a notice in Form F36 on the walls of court on a period of notice of 21 days; and
  - (b) intimation shall be made to—
    - (i) every child of the marriage between the parties who has reached the age of 16 years, and
    - (ii) one of the next-of-kin of the other party to the marriage who has reached that age, unless the address of such person is not known and cannot reasonably be ascertained.
- (2) Intimation to a person referred to in paragraph (1)(b) shall be given by intimating a copy of the application and a notice of intimation in Form F37.

*Opposition to applications*

- 33.78. (1) Any person on whom service or intimation of a simplified divorce application has been made may give notice by letter sent to the sheriff clerk that he challenges the jurisdiction of the court or opposes the grant of decree of divorce and giving the reasons for his opposition to the application.
- (2) Where opposition to a simplified divorce application is made under paragraph (1), the sheriff shall dismiss the application unless he is satisfied that the reasons given for the opposition are frivolous.
- (3) The sheriff clerk shall intimate the decision under paragraph (2) to the applicant and the respondent.
- (4) The sending of a letter under paragraph (1) shall not imply acceptance of the jurisdiction of the court.

*Evidence*

- 33.79. Parole evidence shall not be given in a simplified divorce application.

*Decree*

- 33.80. (1) The sheriff may grant decree in terms of the simplified divorce application on the expiry of the period of notice if such application has been properly served provided that, when the application has been served in a country to which the <sup>M12</sup>Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15 November 1965 applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of article 15 of that Convention have been complied with.
- (2) The sheriff clerk shall, not sooner than 14 days after the granting of decree in terms of paragraph (1), issue to each party to the marriage an extract of the decree of divorce in Form F38.

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#### **Marginal Citations**

**M12** Cmnd. 3986 (1969).

#### *Appeals*

- 33.81. Any appeal against an interlocutor granting decree of divorce under rule 33.80 (decree) may be made, within 14 days after the date of decree, by sending a letter to the court giving reasons for the appeal.

#### *Applications after decree*

- 33.82. Any application to the court after decree of divorce has been granted in a simplified divorce application which could have been made if it had been made in an action of divorce shall be made by minute.

### *PART XII*

#### *VARIATION OF COURT OF SESSION DECREES*

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

- 33.83. (1) This Part applies to an application to the sheriff for variation or recall of any order to which section 8 of the <sup>M13</sup>Act of 1966(variation of certain Court of Session orders) applies.
- (2) In this Part, the “Act of 1966” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966.

#### **Marginal Citations**

**M13** 1966 c.19; section 8 was amended by the Guardianship Act 1973 (c.29), **Schedule 5**, the Divorce (Scotland) Act 1976 (c.39), **Schedule 1**, the Matrimonial and Family Proceedings Act 1984 (c.42), **Schedule 1**, paragraph 7, the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraph 5 and the Family Law Act 1986 (c.53), **Schedule 1**, paragraph 8 and Schedule 2.

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

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



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- (5) The sheriff may, on cause shown, prorogate the time for lodging the certified copy of the interlocutor required under paragraph (1).

#### *Defended actions*

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

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

- 33.86. (1) Where decree has been granted or the cause otherwise disposed of—
- (a) and the period for marking an appeal has elapsed without an appeal being marked, or
  - (b) after the determination of the cause on any appeal,
- the sheriff clerk shall transmit to the Court of Session the sheriff court process and the documents from the process of the cause in the Court of Session which have been lodged in the sheriff court process.
- (2) A sheriff court process transmitted under paragraph (1) shall form part of the process of the cause in the Court of Session in which the original order was made.

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

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

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### PART XIII

#### CHILD SUPPORT ACT 1991

##### *Interpretation of this Part*

33.88. (1) In this Part—

- “the Act of 1991” means the Child Support Act 1991 <sup>F31</sup>;
- “child” has the meaning assigned in section 55 of the Act of 1991;
- “maintenance assessment” has the meaning assigned in section 55 of the Act of 1991.

##### **Textual Amendments**

**F31** 1991 c.48.

##### *Restriction of expenses*

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

##### *Effect of maintenance assessments*

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

##### *Effect of maintenance assessments on extracts relating to aliment*

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

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

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

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

**Status:**

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