
STATUTORY INSTRUMENTS

1996 No. 2167 (S.174)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Family Proceedings in the Sheriff Court) 1996

Made - - - - *15th August 1996*

Coming into force - - *1st November 1996*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(1), section 91 of the Children (Scotland) Act 1995(2) and of all other powers enabling them in that behalf, having approved with modifications draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Family Proceedings in the Sheriff Court) 1996 and shall come into force on 1st November 1996.

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

Amendments to Ordinary Cause Rules 1993

2. Schedule 1 to the Sheriff Courts (Scotland) Act 1907(3) (Ordinary Cause Rules 1993) shall be amended in accordance with the Schedule to this Act of Sederunt.

Amendment to Judicial Factors Rules

3. In paragraph 3(1) of the Act of Sederunt (Judicial Factors Rules) 1992(4)—
- (a) at the end of sub-paragraph (b), omit the word “and”;
 - (b) at the end of sub-paragraph (c), for the full-stop, substitute “; and”; and
 - (c) after sub-paragraph (c), insert the following sub-paragraph:—

(1) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1958 (c. 73), Schedule 2, paragraph 12, by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4) and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2).
(2) 1995 c. 36.
(3) 1907 c. 51; Schedule 1 was substituted by S.I.1993/1956 and amended by S.I. 1993/3218.
(4) S.I. 1992/272, amended by S.I. 1994/2354.

Status: This is the original version (as it was originally made).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

“(d) judicial factors appointed under section 11(2)(g) of the Children (Scotland) Act 1995⁽⁵⁾, except where such appointment is sought in the crave of a family action within the meaning of rule 33.1(1) of the Ordinary Cause Rules 1993.”.

Summary applications to appoint or remove guardian under Children (Scotland) Act 1995

4. An application for the appointment or removal of a person as a guardian under section 11(2)(h) of the Children (Scotland) Act 1995 (except where such appointment or removal is sought in the crave of a family action within the meaning of rule 33.1(1) of the Ordinary Cause Rules 1993) shall be made by summary application.

Edinburgh,
15th August 1996

Hope of Craighead
Lord President, I.P.D.

(5) 1995 c. 36.

SCHEDULE

Paragraph 2

AMENDMENT TO ORDINARY CAUSE RULES 1993

1. In rule 7.2 (minute for granting of decree without attendance), in paragraph (2)(b)(iii), for the words “parental rights”, substitute the words “a section 11 order”.
2. In rule 9.1 (notice of intention to defend), in paragraph (1), after the words “Form O7”, insert the words “and, at the same time, send a copy to the pursuer”.
3. In rule 9.6 (defences)—
 - (a) in paragraph (1), after the word “shall”, insert the words “(subject to paragraph (3))”; and
 - (b) after paragraph (2), insert the following paragraph:—

“(3) In a family action (within the meaning of rule 33.1(1)), neither a crave nor averments need be made in the defences which relate to any order under section 11 of the Children (Scotland) Act 1995.”.
4. In rule 33.1 (interpretation of Chapter 33)—
 - (a) for paragraph (1)(h), substitute the following paragraph:—

“(h) an action or application for, or in respect of, an order under section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.), except—
 - (i) an application for the appointment of a judicial factor mentioned in section 11(2)(g) of the Act of 1995 to which Part I of the Act of Sederunt (Judicial Factors Rules) 1992 applies; and
 - (ii) an application for the appointment or removal of a person as a guardian mentioned in section 11(2)(h) of the Act of 1995 to which paragraph 4 of the Act of Sederunt (Family Proceedings in the Sheriff Court) 1996 applies;”;
 - (b) in paragraph (2)—
 - (i) after the definition of “the Act of 1985”, insert the following definitions:—

““the Act of 1995” means the Children (Scotland) Act 1995;

“contact order” has the meaning assigned in section 11(2)(d) of the Act of 1995;”;
 - (ii) omit the definition of “child”;
 - (iii) for the definition of “local authority”, substitute the following definition—

““local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(6);”; **and**
 - (iv) for the definition of “parental rights”, substitute the following definitions—

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

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

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

“section 11 order” means an order under section 11 of the Act of 1995.”;
 - (c) in paragraph (3), for the word “custody”, substitute the words “section 11 order”.
5. In rule 33.3 (averments where custody sought)—

(6) 1994 c. 39; section 2(2) was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

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- (a) for the heading to the rule, substitute the following heading:–
- “Averments where section 11 order sought”;**
- (b) in paragraph (1), for the words from “action for a custody order” to “Family Law Act 1986”, substitute the words “action for a section 11 order”;
- (c) in paragraph (1)(a) and paragraph (2), for the words “custody order” wherever they occur, substitute the words “section 11 order”.
6. In rule 33.7 (warrants and forms for intimation)–
- (a) in paragraph (1)–
- (i) at the beginning of the paragraph, for the words “In the initial writ”, substitute the words “Subject to paragraphs (5) and (7), in the initial writ”;
 - (ii) in sub-paragraph (e), for the words “an order for any parental rights”, substitute the words “a section 11 order”;
 - (iii) in head (iii) of sub-paragraph (e), for the words “exercises such rights *de facto*”, substitute the words “in fact exercises care or control”;
 - (iv) in sub-paragraph (f), for the words “the custody of a child”, substitute the words “a section 11 order”;
 - (v) in sub-paragraph (g), for the words “the custody”, substitute the words “a residence order in respect”; and
 - (vi) for sub-paragraph (h), substitute the following sub-paragraph–
 - “(h) in an action which includes a crave for a section 11 order, to the child to whom such an order would relate if not a party to the action, and a notice of intimation in Form F9 shall be intimated to that child;”;
- (b) in paragraph (4), for sub-paragraphs (a) and (b), substitute the following sub-paragraphs:–
- “(a) craves a residence order in respect of a child,
 - (b) is not a parent of the child, and
 - (c) is not resident in Scotland when the initial writ is lodged for warranting;”;
- (c) after paragraph (6), insert the following paragraph:–
- “(7) Where a pursuer considers that to order intimation to a child under paragraph (1) (h) is inappropriate, he shall–
 - (a) include a crave in the initial writ to dispense with intimation to that child, and
 - (b) include in the initial writ averments setting out the reasons why such intimation is inappropriate;and the sheriff may dispense with such intimation or make such other order as he thinks fit.”.
7. In rule 33.9 (productions in action of divorce or where order for custody may be made)–
- (a) in the heading to the rule, for the words “**order for custody**”, substitute the words “**section 11 order**”; and
- (b) in paragraph (b), for the words “in an action where the sheriff may make an order in respect of the custody of a child”, substitute the words “in a family action which includes a crave for a section 11 order”.
8. In rule 33.12 (execution of service on, or intimation to, local authority)–

- (a) in paragraph (1), for the word “custody” wherever it occurs, substitute the words “residence order”;
 - (b) paragraph (3) shall become paragraph (4);
 - (c) after paragraph (2), insert the following paragraph—

“(3) In any family action, the sheriff may, if he thinks fit, order intimation to a local authority; and such intimation shall be in Form F8.”; and
 - (d) in new paragraph (4), for the words “rule 33.7(1)(g), 33.7(4) or 33.15(2), intimation of an application for custody”, substitute the words “paragraph (3) of this rule or rule 33.7(1)(g) or 33.7(4), intimation of an application for a residence order”.
9. For rule 33.15 (orders for intimation by sheriff), substitute the following rule:—

“Orders for intimation

33.15.—(1) In any family action, the sheriff may, at any time—

- (a) subject to paragraph (2), order intimation to be made on such person as he thinks fit;
- (b) postpone intimation, where he considers that such postponement is appropriate and, in that case, the sheriff shall make such order in respect of postponement of intimation as he thinks fit; or
- (c) dispense with intimation, where he considers that such dispensation is appropriate.

(2) Where the sheriff is considering whether to make a section 11 order by virtue of section 12 of the Act of 1995 (restrictions on decrees for divorce, separation or annulment affecting children), he shall, subject to paragraph (1)(c) and without prejudice to paragraph (1)(b) of this rule, order intimation in Form F9 to the child to whom the section 11 order would relate unless—

- (a) intimation has been given to the child under rule 33.7(1)(h); or
- (b) the sheriff considers that the child is not of sufficient age or maturity to express his views.

(3) Where a party makes a crave 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 include a crave in his writ for a warrant for intimation or to dispense with such intimation; and rule 33.7 shall, with the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.”.

10. For rules 33.19 and 33.20, substitute the following rules:—

“Procedure in respect of children

33.19. –

(1) In a family action, in relation to any matter affecting a child, where that child has—

- (a) returned to the sheriff clerk Form F9, or
- (b) otherwise indicated to the court a wish to express views on a matter affecting him,

the sheriff shall not grant any order unless an opportunity has been given for the views of that child to be obtained or heard.

(2) Where a child has indicated his wish to express his views, the sheriff shall order such steps to be taken as he considers appropriate to ascertain the views of that child.

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(3) The sheriff shall not grant an order in a family action, in relation to any matter affecting a child who has indicated his wish to express his views, unless due weight has been given by the sheriff to the views expressed by that child, having due regard to his age and maturity.

Recording of views of the child

33.20.—(1) This rule applies where a child expresses a view on a matter affecting him whether expressed personally to the sheriff or to a person appointed by the sheriff for that purpose or provided by the child in writing.

(2) The sheriff, or the person appointed by the sheriff, shall record the views of the child in writing; and the sheriff may direct that such views, and any written views, given by a child shall—

- (a) be sealed in an envelope marked “Views of the child—confidential”;
- (b) be kept in the court process without being recorded in the inventory of process;
- (c) be available to a sheriff only;
- (d) not be opened by any person other than a sheriff; and
- (e) not form a borrowable part of the process.”.

11. In rule 33.21 (appointment of local authority or reporter to report on a child):—

(a) for sub-paragraph (a) of paragraph (1), substitute the following sub-paragraph—

“(a) a local authority, whether under section 11(1) of the Matrimonial Proceedings (Children) Act 1958(7) (reports as to arrangements for future care and upbringing of children) or otherwise, or”;

(b) in paragraph (6), for the words “the custody”, substitute the words “a section 11 order in respect”.

12. For rule 33.22 (referral to family mediation and conciliation service), substitute the following rules:—

“Referral to family mediation

33.22. In any family action in which an order in relation to parental responsibilities or parental rights is in issue, the sheriff may, at any stage of the action, where he considers it appropriate to do so, refer that issue to a mediator accredited to a specified family mediation organisation.

Child Welfare Hearing

33.22A.—(1) Where—

- (a) on the lodging of a notice of intention to defend in a family action in which the initial writ seeks or includes a crave for a section 11 order, a defender wishes to oppose any such crave or order, or seeks the same order as that craved by the pursuer,
- (b) on the lodging of a notice of intention to defend in a family action, the defender seeks a section 11 order which is not craved by the pursuer, or

(7) 1958 c. 40; section 11(1) was amended by the Social Work (Scotland) Act 1968 (c. 49), Schedule 8, paragraph 43, the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 2, the Family Law Act 1986 (c. 55), Schedule 1, paragraph 7 and by the Children (Scotland) Act 1995, Schedule 4, paragraph 9.

(c) in any other circumstances in a family action, the sheriff considers that a Child Welfare Hearing should be fixed and makes an order (whether at his own instance or on the motion of a party) that such a hearing shall be fixed, the sheriff clerk shall fix a date and time for a Child Welfare Hearing on the first suitable court date occurring not sooner than 21 days after the lodging of such notice of intention to defend, unless the sheriff directs the hearing to be held on an earlier date.

(2) On fixing the date for the Child Welfare Hearing, the sheriff clerk shall intimate the date of the Child Welfare Hearing to the parties in Form F41.

(3) The fixing of the date of the Child Welfare Hearing shall not affect the right of a party to make any other application to the court whether by motion or otherwise.

(4) At the Child Welfare Hearing (which may be held in private), the sheriff shall seek to secure the expeditious resolution of disputes in relation to the child by ascertaining from the parties the matters in dispute and any information relevant to that dispute, and may—

- (a) order such steps to be taken, or
- (b) make such order, if any, or
- (c) order further procedure,

as he thinks fit.

(5) All parties (including a child who has indicated his wish to attend) shall, except on cause shown, attend the Child Welfare Hearing personally.

(6) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the Child Welfare Hearing.”.

13. In rule 33.24 (applications in relation to removal of children), in paragraph (1), for the word “custody”, substitute the words “a residence order”.

14. In rule 33.25 (intimation to local authority before supervised access)—

- (a) in the heading, for the word “**access**”, substitute the words “**contact order**”;
- (b) for the words “of his own motion”, substitute the words “at his own instance”;
- (c) for the words “an award of access or interim access”, substitute the words “a contact order or an interim contact order”;
- (d) for the words “for access or interim access”, substitute the words “for such an order”; and
- (e) in paragraph (b), for the word “access”, substitute the words “the contact order”.

15. In rule 33.26 (joint minutes)—

- (a) in paragraph (a), for the words “any parental rights in respect of a child”, substitute the words “a section 11 order”; and
- (b) for the words “and the sheriff”, substitute the words “and, subject to rule 33.19(3) (no order before views of child expressed), the sheriff”.

16. In rule 33.28 (evidence in certain undefended family actions), in paragraph (1)(a)(i), for the words “any parental rights or”, substitute the words “a section 11 order or for”.

17. In rule 33.31 (procedure in undefended family actions for parental rights)—

- (a) in the heading to the rule, for the words “**parental rights**”, substitute the words “**section 11 order**”; and
- (b) in paragraph (1), for the words “any parental rights or any right or authority relating to the welfare or upbringing of a child”, substitute the words “a section 11 order”.

18. In rule 33.34 (notice of intention to defend and defences):—

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- (a) in paragraph (1)(b)(iii), for the words “an order relating to parental rights”, substitute the words “a section 11 order”; and
 - (b) after paragraph (2), insert the following paragraph—
 - “(3) Where a defender intends to make an application for a section 11 order which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, the defender shall include a crave in his notice of intention to defend for a warrant for intimation or to dispense with such intimation; and rule 33.7 shall, with the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.”.
19. In rule 33.38(application and interpretation of this Part)–
- (a) after “33.38.”, omit “-(1)”; and
 - (b) omit paragraph (2).
20. In 33.39 (applications in actions to which this Part applies), in paragraph (2)(a), for the words “any parental rights”, substitute the words “a section 11 order”.
21. Rule 33.40 (intimation before committal to care or supervision) shall be omitted.
22. Rule 33.41 (care or supervision orders) shall be omitted.
23. Rule 33.42 (intimation of certain applications by local authorities and other persons) shall be omitted.
24. For rule 33.43 (applications in depending actions by motion), substitute the following rule:–

“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 for, or for variation of, an order for–

- (a) interim aliment for a child under the age of 18, or
- (b) a residence order or a contact order,

shall be made by motion.”.

25. In rule 33.44 (applications after decree relating to parental rights, care or supervision)–
- (a) in the heading to the rule, for the words “**parental rights, care or supervision**”, substitute the words “**a section 11 order**”; and
 - (b) for paragraph (1), substitute the following paragraph–
 - “(1) An application after final decree for, or for the variation or recall of, a section 11 order shall be made by minute in the process of the action to which the application relates.”.
26. In Part IX of Chapter 33, for the cross-heading to the Part, substitute the following cross-heading:–

*“APPLICATIONS FOR ORDERS UNDER SECTION
11 OF THE CHILDREN (SCOTLAND) ACT 1995.”.*

27. For rule 33.60 (application and interpretation of this Part), substitute the following rule:–

“Application of this Part

33.60. This Part applies to an application for a section 11 order in a family action other than in an action of divorce or separation.”.

- 28.** In rule 33.61 (form of applications)—
- (a) for the words “an order for any parental rights in respect of a child”, substitute the words “a section 11 order”; and
 - (b) in paragraph (a), for the words “parental rights”, substitute the words “a section 11 order”.
- 29.** For rule 33.62 (defences in actions for parental rights), substitute the following rule:—

“Defences in action for a section 11 order

33.62. In an action for a section 11 order, 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 treated the child as a child of his family;
- (d) any person who in fact exercises care or control in respect of the child; and
- (e) in any case where there is no person falling within paragraphs (a) to (d), the Lord Advocate.”.

30. In rule 33.63 (applications relating to interim orders in depending actions), for the words “interim custody and interim access”, substitute the words “an interim residence order or an interim contact order.”.

31. Rule 33.64 (care and supervision by local authorities) shall be omitted.

32. In rule 33.65 (applications after decree), for paragraph (1), substitute the following paragraph:—

“(1) An application after final decree for variation or recall of a section 11 order shall be made by minute in the process of the action to which the application relates.”.

33. After Part XIII of Chapter 33 (Child Support Act 1991), insert the following Parts:—

“PART XIV

REFERRALS TO PRINCIPAL REPORTER

Application and interpretation of this Part

33.92.—(1) This Part applies where a sheriff, in a family action, refers a matter to the Principal Reporter under section 54 of the Act of 1995 (reference to the Principal Reporter by court).

(2) In this Part, “Principal Reporter” has the meaning assigned in section 93(1) of the Act of 1995.

Intimation to Principal Reporter

33.93. Where a matter is referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995, the interlocutor making the reference shall be intimated by the sheriff clerk forthwith to the Principal Reporter; and that intimation shall specify which of the conditions in paragraph (2)(a) to (h), (j), (k) or (l) of that section it appears to the sheriff has been satisfied.

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Intimation of decision by Principal Reporter

33.94.—(1) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such investigation as he thinks appropriate and having reached the view that compulsory measures of supervision are necessary, arranges a children’s hearing under section 69 of that Act (continuation or disposal of referral by children’s hearing), the Principal Reporter shall intimate to the court which referred the matter to him—

- (a) the decision to arrange such children’s hearing;
- (b) where there is no appeal made against the decision of that children’s hearing once the period for appeal has expired, the outcome of the children’s hearing; and
- (c) where such an appeal has been made, that an appeal has been made and, once determined, the outcome of that appeal.

(2) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such investigation as he thinks appropriate and having considered whether compulsory measures of supervision are necessary, decides not to arrange a children’s hearing under section 69 of that Act, the Principal Reporter shall intimate that decision to the court which referred the matter to him.

PART XV

MANAGEMENT OF MONEY PAYABLE TO CHILDREN

33.95. Where the sheriff has made an order under section 13 of the Act of 1995 (awards of damages to children), an application by a person for an order by virtue of section 11(1) (d) of that Act (administration of child’s property) may be made in the process of the cause in which the order under section 13 of that Act was made.”.

34. In rule 36.14 (orders for payment and management of money), in paragraph (1), after the words “legal disability”, insert the words “(other than a person under the age of 18 years)”.

35. In appendix 1 (forms)—

- (a) for Forms F5, F6, F7, F8, F9, F19, F21, F23, F24 and F26, substitute the forms so numbered respectively in the appendix to this Schedule;
- (b) Form F25 shall be omitted; and
- (c) after Form 40, insert Form 41 in the appendix to that Schedule.

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APPENDIX

Schedule, paragraph 35
FORM F5 Form of intimation to a local authority or third party who may be liable to maintain a child
Rule 33.7(1)(e)(i) and (ii)

To *(insert name and address as in warrant)*

Court ref. no.

YOU ARE GIVEN NOTICE that in this action, the court may make an order under section 11 of the Children (Scotland) Act 1995 in respect of *(insert name and address)*, a child in your care [or liable to be maintained by you]. A copy of the initial writ is attached. If you wish to appear as a party, you must lodge a minute with the sheriff clerk *(insert address of sheriff clerk)* for leave to do so. Your minute must be lodged within 21 days of *(insert date on which intimation was given. N.B. Rule 5.3(2) relating to postal service or intimation)*.

Date *(insert date)*

Signed
Solicitor for the pursuer

NOTE: If you decide to lodge a minute it may be in your best interests to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of *(insert amount)* and a copy of this intimation.

IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

FORM F6 Form of intimation to person who in fact exercises care or control of a child

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

Rule 33.7(1)(e)(iii)

To *(insert name and address as in warrant)*

Court ref. no.

YOU ARE GIVEN NOTICE that in this action, the court may make an order under section 11 of the Children (Scotland) Act 1995 in respect of *(insert name and address)* a child at present in your care or control. A copy of the initial writ is attached. If you wish to appear as a party, you must lodge a minute with the sheriff clerk *(insert address of sheriff clerk)* for leave to do so. Your minute must be lodged within 21 days of *(insert date on which intimation was given. N.B. Rule 5.3(2) relating to postal service or intimation)*.

Date *(insert date)*

Signed
Solicitor for the pursuer

NOTE: If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of *(insert amount)* and a copy of this intimation.

IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

FORM F7 Form of notice to parent or guardian in action for a section 11 order in respect of a child
Rule 33.7(1)(f)

1 YOU ARE GIVEN NOTICE that in this action, the pursuer is applying for an order under section 11 of the Children (Scotland) Act 1995 in respect of the child *(insert name of child)*. A copy of the initial writ is served on you and is attached to this notice.

2. If you wish to oppose this action, or oppose the granting of any order applied for by the pursuer in respect of the child, you must lodge a notice of intention to defend (Form F26). See Form F26 attached for further details.

Date *(insert date)*

Signed
Pursuer
or Solicitor for the pursuer *(add designation and business address)*

NOTE: IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

FORM F8 Form of notice to local authority requesting a report in respect of a child

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Rules 33.7(1)(g), 33.7(4) and 33.12(2) and (3)

To *(insert name and address)*

Court ref. no.

1. YOU ARE GIVEN NOTICE that in an action in the Sheriff Court at *(insert address)* the pursuer has applied for a residence order in respect of the child *(insert name of child)*. A copy of the initial writ is enclosed.

2. You are required to submit to the court a report on all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child.

Date *(insert date)*

Signed
Solicitor for the pursuer *(add designation and business address)*

FORM F9 Form of intimation in an action which includes a crave for a section 11 order

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

Rules 33.7(1)(h)

Court Ref. No.

PART A

This part must be completed by the Pursuer's solicitor in language a child is capable of understanding.

To (1)

The Sheriff (the person who has to decide about your future) has been asked by (2) to decide:-

- (a) (3) and (4)
- (b) (5)
- (c) (6)

If you want to tell the Sheriff what you think about the things your (2) has asked the Sheriff to decide about your future you should complete Part B of this form and send it to the Sheriff Clerk at (7) by (8). An envelope which does not need a postage stamp is enclosed for you to use to return the form.

IF YOU DO NOT UNDERSTAND THIS FORM OR IF YOU WANT HELP TO COMPLETE IT you may get help from a SOLICITOR or contact the SCOTTISH CHILD LAW CENTRE ON the FREE ADVICE TELEPHONE LINE ON 0800 317 500.

If you return the form it will be given to the Sheriff. The Sheriff may wish to speak with you and may ask you to come and see him or her.

NOTES FOR COMPLETION

(1) Insert name and address of child.	(2) Insert relationship to the child of party making the application to court.
(3) Insert appropriate wording for residence order sought.	(4) Insert address.
(5) Insert appropriate wording for contact order sought.	(6) Insert appropriate wording for any other order sought.
(7) Insert address of sheriff clerk.	(8) Insert the date occurring 21 days after the date on which intimation is given. N.B. Rule 5.3(2) relating to intimation and service.
(9) Insert court reference number.	(10) Insert name and address of parties to the action.

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PART B

IF YOU WISH THE SHERIFF TO KNOW YOUR VIEWS ABOUT YOUR FUTURE YOU SHOULD COMPLETE THIS PART OF THE FORM

To the Sheriff Clerk, (7)

Court Ref. No. (9)

(10)

QUESTION (1): DO YOU WISH THE SHERIFF TO KNOW WHAT YOUR VIEWS ARE ABOUT YOUR FUTURE?

(PLEASE TICK BOX)

Yes	
No	

If you have ticked YES please also answer Question (2) or (3)

QUESTION (2): WOULD YOU LIKE A FRIEND, RELATIVE OR OTHER PERSON TO TELL THE SHERIFF YOUR VIEWS ABOUT YOUR FUTURE?

(PLEASE TICK BOX)

Yes	
No	

If you have ticked YES please write the name and address of the person you wish to tell the Sheriff your views in Box (A) below. You should also tell that person what your views are about your future.

BOX A:	(NAME)
	(ADDRESS)

Is this person:-	A friend? <input type="checkbox"/>
	A relative? <input type="checkbox"/>
	A teacher? <input type="checkbox"/>
	Other? <input type="checkbox"/>

OR

QUESTION (3): WOULD YOU LIKE TO WRITE TO THE SHERIFF AND TELL HIM WHAT YOUR VIEWS ARE ABOUT YOUR FUTURE?

(PLEASE TICK BOX)

Yes	
No	

If you decide that you wish to write to the Sheriff you can write what your views are about your future in Box (B) below or on a separate piece of paper. If you decide to write your views on a separate piece of paper you should send it along with this form to the Sheriff Clerk in the envelope provided.

BOX B:	<u>WHAT I HAVE TO SAY ABOUT MY FUTURE:-</u>

NAME:

ADDRESS:

DATE:

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

FORM F19 Form of notice to defender where it is stated that defender consents to the granting of decree of divorce

Rule 33.14(1)(a)(i)

YOU ARE GIVEN NOTICE that the copy initial writ served on you with this notice states that you consent to the grant of decree of divorce.

- 1. If you do so consent the consequences for you are that:—
 - (a) provided the pursuer establishes the fact that he [or she] has not cohabited with you at any time during a continuous period of two years after the date of your marriage and immediately preceding the bringing of this action and that you consent, a decree of divorce will be granted;
 - (b) on the grant of a decree of divorce you may lose your rights of succession to the pursuer's estate; and
 - (c) decree of divorce will end the marriage thereby affecting any right to such pension as may depend on the marriage continuing, or, on your being left a widow the state widow's pension will not be payable to you when the pursuer dies.

Apart from these, there may be other consequences for you depending upon your particular circumstances.

2. You are entitled, whether or not you consent to the grant of decree of divorce in this action, to apply to the sheriff in this action—

- (a) to make financial or other provision for you under the Family Law (Scotland) Act 1985;
- (b) for an order under section 11 of the Children (Scotland) Act 1995 in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age; or
- (c) for any other competent order.

3. **IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS** you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26).

4. If, after consideration, you wish to consent to the grant of decree of divorce in this action, you should complete and sign the attached notice of consent (Form F20) and send it to the sheriff clerk at the sheriff court referred to in the initial writ within 21 days of (insert the date on which service was executed. *N.B. Rule 5.3(2) relating to postal service*).

5. If, at a later stage, you wish to withdraw your consent to decree being granted against you in this action, you must inform the sheriff clerk immediately in writing.

Date (insert date)

Signed
Solicitor for the pursuer (add designation and business address)

FORM F21 Form of notice to defender where it is stated that defender consents to the granting of decree of separation

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

Rule 33.14(1)(a)(ii)

YOU ARE GIVEN NOTICE that the copy initial writ served on you with this notice states that you consent to the grant of decree of separation.

1. If you do so consent the consequences for you are that—
 - (a) provided the pursuer establishes the fact that he [or she] has not cohabited with you at any time during a continuous period of two years after the date of your marriage and immediately preceding the bringing of this action and that you consent, a decree of separation will be granted;
 - (b) on the grant of decree of separation you will be obliged to live apart from the pursuer but the marriage will continue to subsist; you will continue to have a legal obligation to support your wife [or husband] and children;

Apart from these, there may be other consequences for you depending upon your particular circumstances.

2. You are entitled, whether or not you consent to the grant of decree of separation in this action, to apply to the sheriff in this action

- (a) to make financial or other provision for you under the Family Law (Scotland) Act 1985;
- (b) for an order under Section 11 of the Children (Scotland) Act 1995 in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age; or
- (c) for any other competent order.

3. **IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS** you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26).

4. If, after consideration, you wish to consent to the grant of decree of separation in this action, you should complete and sign the attached notice of consent (Form F22) and send it to the sheriff clerk at the sheriff court referred to in the initial writ and other papers within 21 days of (*insert the date on which service was executed. N.B. Rule 5.3(2) relating to postal service or intimation*).

5. If, at a later stage, you wish to withdraw your consent to decree being granted against you in this action, you must inform the sheriff clerk immediately in writing.

Date (*insert date*)

Signed
Solicitor for the pursuer (*add designation and business address*)

FORM F23 Form of notice to defender in an action of divorce where it is stated that there has been five years' non-cohabitation

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

Rule 33.14(1)(b)(i)

YOU ARE GIVEN NOTICE that-

1. The copy initial writ served on you with this notice states that there has been no cohabitation between you and the pursuer at any time during a continuous period of five years after the date of the marriage and immediately preceding the commencement of this action. If the pursuer establishes this as a fact and the Sheriff is satisfied that the marriage has broken down irretrievably, a decree will be granted, unless the sheriff is of the opinion that to grant decree would result in grave financial hardship to you.

2. Decree of divorce will end the marriage thereby affecting any right to such pension as may depend the marriage continuing, or, on your being left a widow the state widow's pension will not be payable to you when the pursuer dies. You may also lose your rights of succession to the pursuer's estate.

3. You are entitled, whether or not you dispute that there has been no such cohabitation during that five year period, to apply to the sheriff in this action-

- (a) to make financial or other provision for you under the Family Law (Scotland) Act 1985;
- (b) for an order under section 11 of the Children (Scotland) Act 1995 in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age; or
- (c) for any other competent order.

4. IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26).

Date (*insert date*)

Signed
Solicitor for the pursuer (*add designation and business address*)

FORM F24Form of notice to defender in an action of separation where it is stated that there has been five years' non-cohabitation

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

Rule 33.14(1)(b)(ii)

YOU ARE GIVEN NOTICE that—

1. The copy initial writ served on you together with this notice states that there has been no cohabitation between you and the pursuer at any time during a continuous period of five years after the date of the marriage and immediately preceding the commencement of this action and that if the pursuer establishes this as a fact, and the sheriff is satisfied that there are grounds justifying decree of separation, a decree will be granted, unless the sheriff is of the opinion that to grant decree would result in grave financial hardship to you.

2. On the granting of decree of separation you will be obliged to live apart from the pursuer but the marriage will continue to subsist. You will continue to have a legal obligation to support your wife [or husband] and children.

3. You are entitled, whether or not you dispute that there has been no such cohabitation during that five year period, to apply to the sheriff in this action—

- (a) to make provision under the Family Law (Scotland) Act 1985;
- (b) for an order under section 11 of the Children (Scotland) Act 1995 in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age; or
- (c) for any other competent order.

4. **IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS** you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26).

Date (insert date)

Signed
Solicitor for the pursuer (add designation and
business address)

FORM F26 Form of notice of intention to defend in a family action

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

Rules 33.11(1) and 33.34(2)(a)

NOTICE OF INTENTION TO DEFEND

PART A

(This section to be completed by the pursuer's solicitor before service.)

Court ref. no.

(Insert name and business address of solicitor for the pursuer)

In an action brought in Sheriff Court
.....
.....
.....
Pursuer
.....
.....
Defender

Date of service:

Date of expiry of period of notice:

PART B

(This section to be completed by the defender or defender's solicitor, and both parts of the form to be returned to the sheriff clerk at the above sheriff court on or before the date of expiry of the period of notice referred to in Part A above.)

(Insert place and date)

{C.D.] *(insert designation and address)*, Defender, intends to

- (a) challenge the jurisdiction of the court;
- (b) oppose a crave in the initial writ;
- (c) make a claim;
- (d) seek an order;

in the action against him [or her] raised by {A, B.]. *(insert designation and address)*, Pursuer.

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PART C

(This section to be completed by the defender or the defender's solicitor where an order under section 11 of the Children (Scotland) Act 1995 in respect of a child is sought by the pursuer or is to be sought by the defender.)

DO YOU WISH TO OPPOSE THE MAKING OF ANY ORDER CRAVED BY THE PURSUER IN RESPECT OF A CHILD?

YES/NO*
*delete as appropriate

If you have answered YES to the above question, please state here the order(s) which you wish to oppose and the reasons why the court should not make such order(s).

DO YOU WISH THE COURT TO MAKE ANY ORDER UNDER SECTION 11 OF THE CHILDREN (SCOTLAND) ACT 1995 IN RESPECT OF A CHILD?

YES/NO*
*delete as appropriate

If you have answered YES to the above question, please state here the order(s) which you wish the court to make and the reasons why the court should make such order(s).

PART D

IF YOU HAVE COMPLETED PART C OF THIS FORM YOU MUST INCLUDE EITHER CRAVE (1) OR (2) BELOW (*delete as appropriate)

- (1) *Warrant for intimation of notice in terms of Form F9 on the child(ren) (insert name(s)) is sought.
- (2) *I seek to dispense with intimation on the child(ren) (insert names) for the following reasons:-

Signed
(C.D.) Defender
or [X.Y.] (add designation and business address)
Solicitor for Defender

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

FORM F41 Form of intimation to parties of a Child Welfare Hearing

Rule 33.22A(2)

FORM F41

Rule 33.22A(2)

Form of intimation to parties of a Child Welfare Hearing

Sheriff Court (*insert address and telephone number*)

Court Ref. No.

In the action of [A.B.], (*design*), Pursuer against [C.D.], (*design*), Defender

YOU ARE GIVEN NOTICE that a Child Welfare Hearing has been fixed for (*insert time*) on (*insert date*) at (*insert place*) at which you must attend personally.

Date (*insert date*)

Signed

Sheriff Clerk (Depute)

NOTE TO BE ADDED WHERE PARTY IS UNREPRESENTED

IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may be eligible for legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain information from any Citizens' Advice Bureau or other advice agency.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends the Ordinary Cause Rules 1993 and the Judicial Factors Rules of the Sheriff Court in relation to, and makes provision for, proceedings under Part I of the Children (Scotland) Act 1995 (c. 36). Part I of the Act makes new provision for parental responsibilities and parental rights, guardianship, the administration of a child's property and court orders with respect to these matters.