

CHAPTER 1

SPECIAL RULES OF PROCEDURE

THE ordinary cause rules include special provisions applicable to actions of divorce¹ and, where indicated, actions for dissolution of a civil partnership. Some of these rules are drawn to the attention of practitioners under the relevant subject heading (*e.g.* mental disorder). Others are mentioned in this chapter.

CITATION AND INTIMATION

Citation

Except where the address of the defender is not known to the pursuer and cannot reasonably be ascertained, citation of the defender in an action of divorce or dissolution of a civil partnership requires to be in Form F15 or Form CP15, as the case may be, which must be attached to a copy of the initial writ and warrant of citation in Form F14 or Form CP14 and must have appended to it a notice of intention to defend in Form F26 or Form CP16.² The certificate of citation requires to be in Form F16 or Form CP17, which must be attached to the initial writ.³

Where the address of the defender is not known to the pursuer and cannot reasonably be ascertained, citation of the defender in such actions is effected in accordance with rule 5.6,⁴ which provides as follows:

“(1) Where the address of a person to be cited or served with a document is not known and cannot reasonably be ascertained,

¹ For the purpose of this Chapter, “divorce” is taken to include other family actions (as defined in r. 33.1(1)), as appropriate.

² rr. 33.10 and 33.11(1) or 33A.10 and 33A.11(1). Unless the sheriff otherwise directs, no warrant for citation may 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, or an extract of the relevant entry in the civil partnership register or an equivalent document, as the case may be – r. 33.9(a) or r. 33A.9(1) and (2)(a). See also Chap. 6, text accompanying n. 54. As to service in cases of mental disorder of defender, see r. 33.13 or 33A.13 (set forth in Chap. 2, n. 42).

³ r. 33.11(2) or 33A.11(2).

⁴ r. 5.6 applies to all ordinary causes. In actions of divorce and other family actions and actions of dissolution of civil partnership, there is the additional requirement of intimation in terms of r. 33.7(1)(a) and (6) or r. 33A.7(1)(a) and (6) (as to which, see text accompanying nn. 11 and 30 *infra*). The pursuer must also aver in the condescence what steps have been taken to ascertain the defender’s present whereabouts — r. 3.1(6).

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the sheriff shall grant warrant for citation or service upon that person —

- (a) by the publication of an advertisement in Form G3 in a specified newspaper circulating in the area of the last known address of that person, or
- (b) by displaying on the walls of court a copy of the instance and crave of the initial writ, the warrant of citation and a notice in Form G4;

and the period of notice fixed by the sheriff shall run from the date of publication of the advertisement or display on the walls of court, as the case may be.

(2) Where service requires to be executed under paragraph (1), the pursuer shall lodge a service copy of the initial writ and a copy of any warrant of citation with the sheriff clerk from whom they may be uplifted by the person for whom they are intended.

(3) Where a person has been cited or served in accordance with paragraph (1) and, after the cause has commenced, his address becomes known, the sheriff may allow the initial writ to be amended subject to such conditions as to re-service, intimation, expenses or transfer of the cause as he thinks fit.

(4) Where advertisement in a newspaper is required for the purpose of citation or service under this rule, a copy of the newspaper containing the advertisement shall be lodged with the sheriff clerk by the pursuer.

(5) Where display on the walls of court is required under paragraph (1)(b), the pursuer shall supply to the sheriff clerk for that purpose a certified copy of the instance and crave of the initial writ and any warrant of citation.”

Intimation

The sheriff may, at any time, (i) order intimation of an action of divorce or dissolution of a civil partnership⁵ to be made to such person as he thinks fit; (ii) postpone intimation, where he considers that such postponement is appropriate and, in that case, make such order in respect of postponement of intimation as he thinks fit; or (iii) dispense with intimation, where he considers that such dispensation is

⁵ Intimation of motions and other matters falls to be made in terms of, *e.g.* rr. 33.25 or 33A.26, 33.69(2) or 33A.62(2) and 33.70(2) or 33A.63(2). The requirement to intimate motions does not apply in an action of divorce or dissolution of a civil partnership where no notice of intention to defend has been lodged or insofar as it proceeds as undefended — r. 33.33 and r. 33A.33.

appropriate.⁶ A crave⁷ or motion⁸ to dispense with intimation may be granted by him.

The pursuer requires to include in the initial writ⁹ a crave for a warrant for intimation —

- (a) in an action for divorce or dissolution of a civil partnership 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 or every child of the family (within the meaning of section 101(7) of the Civil Partnership Act 2004¹⁰), as the case may be, 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 or Form CP1 must be attached to the copy of the initial writ intimated to any such person¹¹;
- (b) in an action for divorce where the pursuer alleges that the defender has committed adultery with another person, to that person, unless—
 - (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 Divorce (Scotland) Act 1976 (irretrievable breakdown of marriage by reason of adultery), the initial writ contains

⁶ r. 33.15(1) or r. 33A.15(1). In terms of r. 33.12(3) or r. 33A.12(3) the sheriff may, if he thinks fit, order intimation to a local authority (such intimation requiring to be in Form F8 or Form CP6). Whenever he considers it necessary for the proper disposal of an action of divorce, the sheriff must direct that the action be brought to the notice of the Lord Advocate in order that he may determine whether he should enter appearance therein — Sheriff Courts (Scotland) Act 1907, s. 38B(1). No expenses are claimable by or against the Lord Advocate in any action in which he has entered appearance under that section — Sheriff Courts (Scotland) Act 1907, s. 38B(2).

⁷ r. 33.7(5) or r. 33A.7(5), applicable to pursuers (see text accompanying n. 28 *infra*) and r. 33.15(3) or r. 33A.15(3), applicable to any party (see text accompanying nn. 27 and 28). See also r. 33.7(7) or r. 33A.7(7), n. 19 *infra*.

⁸ r. 33.7(6) or r. 33A.7(6), applicable to any party (see text accompanying n. 30 *infra*). See also r. 33.8 or r. 33A.8 (see nn. 31–34 *infra* and accompanying text).

⁹ In the event that the pursuer makes a crave or averment which, had it been made in the initial writ, would have required a warrant for intimation under r. 33.7 or r. 33A.7, she requires to include in her writ a crave for a warrant for intimation or to dispense with such intimation; and r. 33.7 or r. 33A.7, with the necessary modifications, applies to such a crave as it applies to a crave under the rule — r. 33.15(3) or r. 33A.15(3).

¹⁰ See Chap. 4, n. 7.

¹¹ r. 33.7(1)(a) or r. 33A.7(1)(a).

- 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 must be attached to the copy of the initial writ intimated to any such person¹²;
- (c) in an action for divorce or dissolution of a civil partnership where the defender is a person who is suffering from a mental disorder¹³, to —
- (i) those persons mentioned in sub-paragraph (a)(i) and (ii), *supra*, unless the address of such person is not known to the pursuer and cannot reasonably be ascertained,
 - (ii) the *curator bonis* to the defender, if one has been appointed; and
 - (iii) any person holding the office of guardian or continuing or welfare attorney to the defender under or by virtue of the Adults with Incapacity (Scotland) Act 2000, and a notice of intimation in Form F3 or Form CP2 must be attached to the copy of the initial writ intimated to any such person¹⁴;
- (d) in an action for divorce 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 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 must be attached to the initial writ intimated to any such person;¹⁵
- (e) in an action for divorce or dissolution of a civil partnership where the sheriff may make a section 11 order 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 or Form CP3 must be attached to the initial writ intimated to that authority;
 - (ii) who, being a child of one party to the marriage or one

¹² r. 33.7(1)(b).

¹³ “Mental disorder” has the meaning assigned in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (as to which, see Chap. 2, n. 41)—r. 33.1(2) and r. 33A.1(2).

¹⁴ r. 33.7(1)(c) or r. 33A.7(1)(b).

¹⁵ r. 33.7(1)(d).

- party to the civil partnership, as the case may be, has been accepted as a child of the family by the other party to the marriage or the other party to the civil partnership, as the case may be, and who is liable to be maintained by a third party, to that third party, and a notice of intimation in Form F5 or Form CP3 must be attached to the initial writ intimated to that third party; or
- (iii) in respect of whom a third party in fact exercises care or control, to that third party, and a notice of intimation in Form F6 or Form CP4 must be attached to the initial writ intimated to that third party¹⁶;
- (f) in an action for divorce or dissolution of a civil partnership where the pursuer craves a section 11 order, to any parent or guardian of the child who is not a party to the action, and a notice of intimation in Form F7 or Form CP5 must be attached to the initial writ intimated to any such parent or guardian¹⁷;
- (g) in an action for divorce or dissolution of a civil partnership where the pursuer craves a residence order in respect of a child and the pursuer 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 or Form CP6 must be attached to the initial writ intimated to that authority¹⁸;
- (h) in an action for divorce or dissolution of a civil partnership 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 or Form CP7 must be intimated to that child¹⁹;
- (i) in an action for divorce or dissolution of a civil partnership where the pursuer makes an application for an order under

¹⁶ r. 33.7(1)(e) or r. 33A.7(1)(c).

¹⁷ r. 33.7(1)(f) or r. 33A.7(1)(d).

¹⁸ r. 33.7(1)(g) or r. 33A.7(1)(e). Rule 33.7(4) or rule 33A.7(4) requires a pursuer not resident in Scotland when the initial writ is lodged for warranting who craves a residence order in respect of a child of which he or she is not a parent to include a crave for an order for intimation in Form F8 or Form CP6 to such local authority as the sheriff thinks fit. Note that r. 33.12(3) or r. 33A.12(3) bestows upon the sheriff a general discretionary power to order intimation to a local authority (in Form F8 or Form CP6).

¹⁹ r. 33.7(1)(h) or r. 33A.7(1)(f), subject to r. 33.(7)(7) or r. 33A.7(7), which provides that where a pursuer considers that to order such intimation is inappropriate, he or she must (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 or she thinks fit. Where younger children are involved or where there is a risk