
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 188

**Act of Sederunt (Sheriff Court Rules)
(Miscellaneous Amendments) 2012**

Ordinary Cause Rules: Applications under section 28 or 29 of the Family Law (Scotland) Act 2006

5.—(1) Chapter 33 (family actions)(1) of the Ordinary Cause Rules is amended in accordance with the following subparagraphs.

(2) In rule 33.1 (interpretation of Chapter 33: family actions)(2)—

(a) after paragraph (1)(p) insert—

“(q) an application under section 28 or 29 of the Act of 2006 (financial provision for former co-habitants)(3).”;

(b) in paragraph (2) after the definition of “the Act of 1995” insert—

““the Act of 2006” means the Family Law (Scotland) Act 2006;”.

(3) After rule 33.6 (averments where aliment or financial provision sought)(4)—

“Application by survivor for provision on intestacy

33.6A.—(1) In an action for an order under section 29(2) of the Act of 2006 (application by survivor for provision on intestacy), the pursuer shall call the deceased’s executor as a defender.

(2) An application under section 29(9) of the Act of 2006 for variation of the date or method of payment of the capital sum shall be made by minute in the process of the action to which the application relates.

(3) Words and expressions used in this rule shall have the same meaning as in section 29 of the Act of 2006.”.

(4) In rule 33.7 (warrants and forms for intimation)(5)—

(a) in paragraph (1)(a)(i), for “every child of the marriage” substitute “every person who is a child of the family (as defined in section 12(4)(a) of the Act of 1995)”;

(b) in paragraph (1)(b), for “in an action” substitute “in an action of divorce”;

(c) after paragraph (1)(o), insert—

“(p) in an action where a pursuer makes an application for an order under section 29(2) of the Act of 2006 (application by survivor for provision on intestacy) to any person having an interest in the deceased’s net estate, and a notice of intimation in Form F12E shall be attached to the initial writ intimated to any such person.”;

(d) for paragraph (2) substitute—

(1) Chapter 33 was last amended by [S.S.I. 2011/386](#).
(2) Rule 33.1 was last amended by [S.S.I. 2011/193](#).
(3) [2006 asp 2](#).
(4) Rule 33.6 was last amended by [S.S.I. 2003/26](#).
(5) Rule 33.7 was last amended by [S.S.I. 2011/193](#).

“(2) Expressions used in—

(a) paragraph (1)(k) which are also used in the Act of 1981; and

(b) paragraph (1)(p) which are also used in section 29 of the Act of 2006,

shall have the same meanings as in that Act or section, as the case may be.”;

(e) in paragraph (5), for “or (m)” substitute “, (m) or (p)”.

(5) In rule 33.16(1) (appointment of *curators ad litem* to defenders)(**6**), for “This rule applies to an action of divorce, separation or declarator of nullity of marriage” substitute “This rule applies to a family action”.

(6) In rule 33.26 (joint minutes)(**7**)—

(a) at the end of subparagraph (b) omit “or”;

(b) after subparagraph (c), insert—

“or

(d) an order under section 28 or 29 of the Act of 2006.”.

(7) In rule 33.28 (evidence in certain undefended family actions)(**8**), after paragraph (1)(a)(v) insert—

“(vi) for an order under section 28 or 29 of the Act of 2006;”.

(8) In rule 33.33A(1) (late appearance and application for recall by defenders)(**9**) for “(n) to (p)” substitute “(n) to (q)”.

(9) In rule 33.34 (notice of intention to defend and defences)—

(a) at the end of paragraph (1)(b)(ii) and (iii) omit “or” in each case;

(b) after paragraph (1)(b)(iii) insert—

“(iv) an order for financial provision under section 28 or 29 of the Family Law (Scotland) Act 2006; or”.

(10) In rule 33.37(2)(b) (decree by default)(**10**) after “(m)” insert “or (q)”.

(6) Rule 33.16 was last amended by [S.S.I. 2006/207](#).

(7) Rule 33.26 was last amended by [S.I. 1996/2167](#).

(8) Rule 33.28 was last amended by [S.S.I. 2010/416](#).

(9) Rule 33.33A was last amended by [S.S.I. 2010/416](#).

(10) Rule 33.37 was last amended by [S.S.I. 2010/416](#).