

**2019 No. 123**

**COURT OF SESSION**

**SHERIFF COURT**

**Act of Sederunt (Rules of the Court of Session 1994 and  
Ordinary Cause Rules 1993 Amendment) (Views of the Child)  
2019**

<i>Made</i> - - - -	<i>28th March 2019</i>
<i>Laid before the Scottish Parliament</i>	<i>29th March 2019</i>
<i>Coming into force</i> - -	<i>24th June 2019</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

**Citation and commencement, etc.**

**1.**—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Views of the Child) 2019.

(2) It comes into force on 24th June 2019.

(3) A certified copy is to be inserted in the Books of Sederunt.

**Amendment of the Rules of the Court of Session 1994**

**2.**—(1) The Rules of the Court of Session 1994(c) are amended in accordance with this paragraph.

(2) In rule 49.8 (warrants for intimation in family actions)(d)—

(a) in paragraph (1)—

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(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).  
(b) 2014 asp 18.  
(c) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2019/97).  
(d) Rule 49.8 was last amended by S.S.I. 2006/206.

- (i) for “paragraphs (5) and (8)”, substitute “paragraph (5) and rule 49.8A (warrants and forms for intimation to a child and for seeking a child’s views)”;
  - (ii) omit sub-paragraph (h);
  - (b) omit paragraphs (7) and (8).
- (3) After rule 49.8, insert—

**“Warrants and forms for intimation to a child and for seeking a child’s views**

**49.8A.**—(1) Subject to paragraph (2), in an action which includes a conclusion for a section 11 order in respect of a child who is not a party to the action, the pursuer must—

- (a) include in the condescendence of the summons averments setting out the reasons why it is appropriate to send Form 49.8A to the child;
- (b) when the summons is presented for signeting—
  - (i) apply by motion for a warrant for intimation and the seeking of the child’s views in Form 49.8A, specifying the articles of condescendence in the summons which contain the reasons for the request;
  - (ii) submit a draft Form 49.8A, showing the details that the pursuer proposes to include when the form is sent to the child.

(2) Where the pursuer considers that it would be inappropriate to send Form 49.8A to the child (for example, where the child is under 5 years of age), the pursuer must—

- (a) when the summons is presented for signeting, apply by motion for the court to dispense with intimation and the seeking of the child’s views in Form 49.8A, specifying the articles of condescendence in the summons which contain the reasons for the request;
- (b) include in the condescendence of the summons averments setting out the reasons why it is inappropriate to send Form 49.8A to the child.

(3) The court must be satisfied that the draft Form 49.8A submitted under paragraph (1)(b) has been drafted appropriately(a).

(4) The court may dispense with intimation and the seeking of views in Form 49.8A or make any other order it considers appropriate.

(5) An order granting warrant for intimation and the seeking of the child’s views in Form 49.8A under this rule must—

- (a) state that the Form 49.8A must be sent in accordance with rule 49.8A(6);
- (b) be signed by the Lord Ordinary.

(6) The Form 49.8A must be sent in accordance with—

- (a) rule 49.20 (views of the child – undefended actions), where the action is undefended;
- (b) rule 49.20A (views of the child – section 11 order sought by pursuer only), where the action is defended and a section 11 order is sought by the pursuer only;
- (c) rule 49.20B (views of the child – section 11 order sought by defender only), where a section 11 order is sought by the defender only; or
- (d) rule 49.20C (views of the child – section 11 orders sought by both pursuer and defender), where a section 11 order is sought by both parties.”.

(4) In rule 49.15 (orders for intimation by the court)(b)—

- (a) in paragraph (1)—

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(a) The Scottish Civil Justice Council has published guidance on the preparation of Form 49.8A in child-friendly language. This document can be viewed online at the “Publications” page of its website ([www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)). Alternatively, a copy can be requested by emailing [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk).

(b) Rule 49.15 was last amended by S.S.I. 2005/632.

- (i) for “In any”, substitute “Except in relation to intimation to a child in Form 49.8A, in any”;
  - (ii) in sub-paragraph (a), omit “subject to paragraph (2),”;
  - (b) omit paragraph (2).
- (5) For rule 49.20 (procedure in respect of children)(a), substitute—

**“Views of the child – undefended actions**

**49.20.**—(1) This rule applies to undefended actions in which a section 11 order is sought and warrant has been granted for intimation and the seeking of the child’s views in Form 49.8A.

- (2) The pursuer must—
  - (a) following the expiry of the period for lodging defences, send the child the Form 49.8A that was submitted and approved under rule 49.8A (warrants and forms for intimation to a child and for seeking a child’s views);
  - (b) lodge with the minute for decree a certificate of intimation in Form 49.8B;
  - (c) not send the child a copy of the summons.
- (3) Except on cause shown, the court must not grant decree in the period of 28 days following the date on which the Form 49.8A was sent to the child.

**Views of the child – section 11 order sought by pursuer only**

**49.20A.**—(1) This rule applies to defended actions in which only the pursuer seeks a section 11 order and warrant has been granted for intimation and the seeking of the child’s views in Form 49.8A.

- (2) The pursuer must—
  - (a) no later than 14 days after defences are lodged, send the child the Form 49.8A that was submitted and approved under rule 49.8A (warrants and forms for intimation to a child and for seeking a child’s views);
  - (b) on the same day, lodge a certificate of intimation in Form 49.8B;
  - (c) not send the child a copy of the summons or the defences.

**Views of the child – section 11 order sought by defender only**

**49.20B.**—(1) This rule applies to defended actions in which only the defender seeks a section 11 order and warrant has been granted for intimation and the seeking of the child’s views in Form 49.8A.

- (2) The defender must—
  - (a) no later than 14 days after warrant to intimate to the child is granted under rule 49.31(7) (defences in family actions), send the child the Form 49.8A that was submitted and approved under rule 49.31;
  - (b) on the same day, lodge a certificate of intimation in Form 49.8B;
  - (c) not send the child a copy of the summons or the defences.

**Views of the child – section 11 orders sought by both pursuer and defender**

**49.20C.**—(1) This rule applies to defended actions in which section 11 orders are sought by both the pursuer and the defender and warrant has been granted for intimation and the seeking of the child’s views in Form 49.8A.

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(a) Rule 49.20 was substituted by S.I. 1996/2587.

- (2) The pursuer must—
- (a) no later than 14 days after defences are lodged, send the child the Form 49.8A that was submitted and approved under rule 49.8A (warrants and forms for intimation to a child and for seeking a child’s views), amended so as also to narrate the section 11 order sought by the defender;
  - (b) on the same day—
    - (i) lodge a certificate of intimation in Form 49.8B;
    - (ii) send the defender a copy of the Form 49.8A that was sent to the child;
  - (c) not send the child a copy of the summons or the defences.

### **Views of the child – the court’s role**

**49.20D.**—(1) In a family action, in relation to any matter affecting a child, where that child has—

- (a) returned a Form 49.8A to the court; or
- (b) otherwise indicated to the court a wish to express views,

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

(2) Where the court is considering making an interim section 11 order before the views of the child have been obtained or heard, the court must consider whether, and if so how, to seek the child’s views in advance of making the order.

(3) Where a child has indicated a wish to express views, the court must order any steps to be taken that it considers appropriate to obtain or hear the views of that child.

(4) The court must not grant an order in a family action, in relation to any matter affecting a child who has expressed views, unless the court has given due weight to the views expressed by that child, having regard to the child’s age and maturity.

(5) In any action in which a section 11 order is sought, where Form 49.8A has not been sent to the child concerned or where it has been sent but the court considers that the passage of time requires it to be sent again, the court may at any time order any party to—

- (a) send the Form 49.8A to that child within a specified timescale;
- (b) on the same day, lodge—
  - (i) a copy of the Form 49.8A that was sent to the child;
  - (ii) a certificate of intimation in Form 49.8C.”.

(6) In rule 49.22(3) (interlocutor appointing a child welfare reporter)(a)—

- (a) in sub-paragraph (c), after “sought”, insert “and include a direction as to whether a copy of the report is to be provided to the parties under paragraph (9)(d)”;
- (b) following sub-paragraph (c), omit “and”;
- (c) after sub-paragraph (d), insert—
  - “; and
- (e) where the appointment is under paragraph (1)(b) and seeking the views of the child forms part of the enquiries to be undertaken, include a direction as to whether the views of the child should be recorded in a separate report and, if so, whether a copy of that report is to be provided to the parties under paragraph (9)(d).”.

(7) In rule 49.28(1) (evidence in certain undefended family actions)(b), omit sub-paragraph (a)(i).

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(a) Rule 49.22 was substituted by S.S.I. 2015/312.  
 (b) Rule 49.28 was last amended by S.S.I. 2014/302.

(8) After rule 49.31(2) (defences in family actions), insert—

“(3) Subject to paragraph (4), where the defences include a conclusion for a section 11 order in respect of a child who is not a party to the action and where the summons does not include a conclusion for a section 11 order, the defender must, when the defences are lodged—

- (a) apply by motion for a warrant for intimation and the seeking of the child’s views in Form 49.8A;
- (b) submit a draft Form 49.8A, showing the details that the defender proposes to include when the form is sent to the child.

(4) Where the defender considers that it would be inappropriate to send Form 49.8A to the child (for example, where the child is under 5 years of age), the defender must—

- (a) when the defences are lodged, apply by motion for the court to dispense with intimation and the seeking of the child’s views in Form 49.8A, specifying which numbered paragraphs of the defences contain the reasons for the request;
- (b) include in the defences averments setting out the reasons why it is inappropriate to send Form 49.8A to the child.

(5) The court must be satisfied that the draft Form 49.8A submitted under paragraph (3)(b) has been drafted appropriately<sup>(a)</sup>.

(6) The court may dispense with intimation and the seeking of views in Form 49.8A or make any other order that it considers appropriate.

(7) An order granting warrant for intimation and the seeking of the child’s views in Form 49.8A under this rule must—

- (a) state that the Form 49.8A must be sent to the child in accordance with rule 49.20B (views of the child – section 11 order sought by defender only);
- (b) be signed by the Lord Ordinary.”.

(9) In rule 49.34 (late appearance by defenders)(b), after paragraph (2), insert—

“(3) Where the court makes an order under paragraph (1)(a), it must order any steps to be taken that it considers appropriate to obtain or hear the views of the child in relation to any section 11 order that may be sought by the defender.”.

(10) In rule 49.41(1) (applications after decree relating to a section 11 order)(c), omit “other than a contact order”.

(11) For rule 49.42 (applications after decree relating to a contact order)(d), substitute—

**“Warrants for intimation to child and permission to seek views relating to section 11 order**

**49.42.**—(1) Subject to paragraph (2), when lodging a minute under rule 49.41 (applications after decree relating to a section 11 order) which includes a crave after final decree for, or the variation or recall of, a section 11 order in respect of a child who is not a party to the action, the minuter must—

- (a) include in the minute a crave for a warrant for intimation and the seeking of the child’s views in Form 49.8A;
- (b) when lodging the minute, submit a draft Form 49.8A, showing the details that the minuter proposes to include when the form is sent to the child.

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(a) The Scottish Civil Justice Council has published guidance on the preparation of Form 49.8A in child-friendly language. This document can be viewed online at the “Publications” page of its website ([www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)). Alternatively, a copy can be requested by emailing [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk).

(b) Rule 49.34 was amended by S.S.I. 2007/548.

(c) Rule 49.41 was amended by S.I. 1996/2587.

(d) Rule 49.42 was amended by S.I. 1996/2587.

(2) Where the minuter considers that it would be inappropriate to send Form 49.8A to the child (for example, where the child is under 5 years of age), the minuter must include in the minute—

- (a) a crave to dispense with intimation and the seeking of the child's views in Form 49.8A;
- (b) averments setting out the reasons why it is inappropriate to send Form 49.8A to the child.

(3) The court must be satisfied that the draft Form 49.8A submitted under paragraph (1)(b) has been drafted appropriately<sup>(a)</sup>.

(4) The court may dispense with intimation and the seeking of views in Form 49.8A or make any other order that it considers appropriate.

(5) An order granting warrant for intimation and the seeking of the child's views in Form 49.8A under this rule must—

- (a) state that the Form 49.8A must be sent in accordance with rule 49.42(6);
- (b) be signed by the Lord Ordinary.

(6) The Form 49.8A must be sent in accordance with—

- (a) rule 49.42A (views of the child – unopposed minutes relating to a section 11 order), where the minute is unopposed;
- (b) rule 49.42B (views of the child – craves relating to a section 11 order sought by minuter only), where the minute is opposed and a section 11 order is sought by the minuter only; or
- (c) rule 49.42C (views of the child – craves relating to a section 11 order sought by both minuter and respondent), where a section 11 order is sought by both the minuter and the respondent.

#### **Views of the child – unopposed minutes relating to a section 11 order**

**49.42A.**—(1) This rule applies to minutes which include a crave after final decree for, or the variation or recall of, a section 11 order in respect of which no answers are lodged and warrant has been granted for intimation and the seeking of the child's views in Form 49.8A.

(2) The minuter must—

- (a) send the child the Form 49.8A that was submitted and approved under rule 49.42 (warrants for intimation to child and permission to seek views relating to section 11 order);
- (b) on the same day, lodge a certificate of intimation in Form 49.8B;
- (c) not send the child a copy of the minute.

(3) Except on cause shown, the court must not determine the minute in the period of 28 days following the date on which the Form 49.8A was sent to the child.

#### **Views of the child – craves relating to a section 11 order sought by minuter only**

**49.42B.**—(1) This rule applies where answers have been lodged in respect of a minute after final decree and a crave for, or the variation or recall of, a section 11 order is sought by the minuter only and warrant has been granted for intimation and the seeking of the child's views in Form 49.8A.

(2) The minuter must—

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(a) The Scottish Civil Justice Council has published guidance on the preparation of Form 49.8A in child-friendly language. This document can be viewed online at the "Publications" page of its website ([www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)). Alternatively, a copy can be requested by emailing [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk).

- (a) no later than 14 days after answers are lodged, send the child the Form 49.8A that was submitted and approved under rule 49.42 (warrants for intimation to child and permission to seek views relating to section 11 order);
- (b) on the same day, lodge a certificate of intimation in Form 49.8B;
- (c) not send the child a copy of the minute or answers.

**Views of the child – craves relating to a section 11 order sought by both minuter and respondent**

**49.42C.**—(1) This rule applies where answers have been lodged in respect of a minute after final decree and craves for, or the variation or recall of, a section 11 order are sought by both the minuter and the respondent and warrant has been granted for intimation and the seeking of the child’s views in Form 49.8A.

(2) The minuter must—

- (a) no later than 14 days after answers are lodged, send the child the Form 49.8A that was submitted and approved under rule 49.42 (warrants for intimation to child and permission to seek views relating to section 11 order), amended so as also to narrate the section 11 order sought by the respondent;
- (b) on the same day—
  - (i) lodge a certificate of intimation in Form 49.8B;
  - (ii) send the respondent a copy of the Form 49.8A that was sent to the child;
- (c) not send the child a copy of the minute or answers.”.

(12) In rule 49.63 (applications after decree)(a)—

- (a) in paragraph (1), omit “other than a contact order”;
- (b) for paragraph (3), substitute—

“(3) Rules 49.42 (warrants for intimation to child and permission to seek views relating to section 11 order) to 49.42C (views of the child – craves relating to a section 11 order sought by both minuter and respondent) apply (with the necessary modifications) to the seeking of the child’s views in relation to a minute lodged in accordance with this rule.”.

(13) For rule 70.16 (intimation on child in child abduction cases where the Council Regulation applies)(b), substitute—

**“Warrants and forms for intimation to a child and for seeking a child’s views**

**70.16.**—(1) Subject to paragraph (2), in a petition under rule 70.5(1) (form of applications under this Part)(c) where the Council Regulation applies, the petitioner must—

- (a) include in the prayer of the petition a crave for a warrant for intimation and the seeking of the child’s views in Form 49.8A;
- (b) include in the statement of facts in the petition averments setting out the reasons why it is appropriate to send Form 49.8A to the child;
- (c) when presenting the petition for first orders, submit a draft Form 49.8A, showing the details that the petitioner proposes to include when the form is sent to the child.

(2) Where the petitioner considers that it would be inappropriate to send Form 49.8A to the child (for example, where the child is under 5 years of age), the petitioner must —

- (a) include in the prayer of the petition a crave to dispense with intimation and the seeking of the child’s views in Form 49.8A;

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(a) Rule 49.63 was amended by S.I. 1996/2587.  
 (b) Rule 70.16 was inserted by S.S.I. 2005/135.  
 (c) Rule 70.5(1) was last amended by S.S.I. 2005/135.

(b) include in the statement of facts in the petition averments setting out the reasons why it is inappropriate to send Form 49.8A to the child.

(3) The court must be satisfied that the draft Form 49.8A submitted under paragraph (1)(c) has been drafted appropriately(a).

(4) The court may dispense with intimation and the seeking of views in Form 49.8A or make any other order that it considers appropriate.

(5) An order granting warrant for intimation and the seeking of the child's views in Form 49.8A under this rule must be signed by the Lord Ordinary.

(6) Where the court orders intimation and the seeking of the child's views in Form 49.8A, the petitioner must—

(a) send Form 49.8A to the child as soon as possible;

(b) on the same day, lodge—

(i) a copy of the Form 49.8A that was sent to the child;

(ii) a certificate of intimation in Form 49.8B;

(c) not send the child a copy of the petition.”.

(14) In rule 70.17(1)(a) (views of child)(b), for “Form 49.8–N (form of notice of intimation to a child)”, insert “Form 49.8A”.

(15) In the Appendix (forms)—

(a) omit Form 49.8–N (form of notice of intimation to a child of a family action in which an order under section 11 of the Children (Scotland) Act 1995 or Article 12 of the Hague Convention when regulated by Council Regulation (E.C.) No. 2201/2003 of 27th November 2003, is sought)(e);

(b) after Form 49.8–P (form of intimation for financial provision on intestacy under section 29(2) of the Family Law (Scotland) Act 2006(d), insert Form 49.8A (form for intimation to a child and for seeking a child's views) in schedule 1;

(c) after Form 49.8A (form for intimation to a child and for seeking a child's views), insert Form 49.8B (form of certificate of intimation of Form 49.8A) in schedule 2;

(d) after Form 49.8B (form of certificate of intimation of Form 49.8A), insert Form 49.8C (form of certificate of intimation of Form 49.8A (where ordered under rule 49.20D)) in schedule 3;

(e) in Form 49.22 (form of annex to interlocutor appointing a child welfare reporter)(e)—

(i) at the end of Part 1, insert—

“Is a copy of the report to be provided to the parties under rule 49.22(9)(d)?

Yes

No”;

(ii) at the end of Part 3, insert—

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(a) The Scottish Civil Justice Council has published guidance on the preparation of Form 49.8A in child-friendly language. This document can be viewed online at the “Publications” page of its website ([www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)). Alternatively, a copy can be requested by emailing [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk).

(b) Rule 70.17 was inserted by S.S.I. 2005/135.

(c) Form 49.8–N was substituted by S.S.I. 2005/135.

(d) Form 49.8–P was inserted by S.S.I. 2006/206.

(e) Form 49.22 was inserted by S.S.I. 2015/312.



“Where the views of the child form part of the enquiries to be undertaken, should the views of the child be recorded in a separate report?

Yes

No

If yes, is a copy of that report to be provided to the parties under rule 49.22(9)(d)?

Yes

No”.

### **Amendment of the Ordinary Cause Rules 1993**

**3.**—(1) The Ordinary Cause Rules 1993(a) are amended in accordance with this paragraph.

(2) In rule 33.7 (warrants and forms for intimation)(b)—

(a) in paragraph (1)—

(i) for “paragraphs (5) and (7)”, substitute “paragraph (5) and rule 33.7A (warrants and forms for intimation to a child and for seeking a child’s views)”;

(ii) omit sub-paragraph (h);

(b) in paragraph (5)—

(i) omit “(h),”;

(ii) after “or (p)”, insert “or a child mentioned in rule 33.7A(1)”;

(c) omit paragraph (7).

(3) After rule 33.7, insert—

#### **“Warrants and forms for intimation to a child and for seeking a child’s views**

**33.7A.**—(1) Subject to paragraph (2), in an action which includes a crave for a section 11 order in respect of a child who is not a party to the action, the pursuer must—

(a) include in the initial writ a crave for a warrant for intimation and the seeking of the child’s views in Form F9;

(b) when presenting the initial writ for warranting, submit a draft Form F9, showing the details that the pursuer proposes to include when the form is sent to the child.

(2) Where the pursuer considers that it would be inappropriate to send Form F9 to the child (for example, where the child is under 5 years of age), the pursuer must include in the initial writ—

(a) a crave to dispense with intimation and the seeking of the child’s views in Form F9;

(b) averments setting out the reasons why it is inappropriate to send Form F9 to the child.

(3) The sheriff must be satisfied that the draft Form F9 submitted under paragraph (1)(b) has been drafted appropriately(c).

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(a) The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and was last amended by S.S.I. 2019/74.

(b) Rule 33.7 was last amended by S.S.I. 2016/242.

(c) The Scottish Civil Justice Council has published guidance on the preparation of Form F9 in child-friendly language. This document can be viewed online at the “Publications” page of its website ([www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)). Alternatively, a copy can be requested by emailing [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk).

(4) The sheriff may dispense with intimation and the seeking of views in Form F9 or make any other order that the sheriff considers appropriate.

(5) An order granting warrant for intimation and the seeking of the child's views in Form F9 under this rule must—

- (a) state that the Form F9 must be sent in accordance with rule 33.7A(6);
- (b) be signed by the sheriff.

(6) The Form F9 must be sent in accordance with—

- (a) rule 33.19 (views of the child – undefended actions), where the action is undefended;
- (b) rule 33.19A (views of the child – section 11 order sought by pursuer only), where the action is defended and a section 11 order is sought by the pursuer only;
- (c) rule 33.19B (views of the child – section 11 order sought by defender only), where a section 11 order is sought by the defender only; or
- (d) rule 33.19C (views of the child – section 11 orders sought by both pursuer and defender), where a section 11 order is sought by both parties.”.

(4) In rule 33.15 (orders for intimation)(a)—

(a) in paragraph (1)—

- (i) for “In any”, substitute “Except in relation to intimation to a child in Form F9, in any”;
- (ii) in sub-paragraph (a), omit “subject to paragraph (2),”;

(b) omit paragraph (2).

(5) For rule 33.19 (procedure in respect of children)(b), substitute—

#### **“Views of the child – undefended actions**

**33.19.**—(1) This rule applies to undefended actions in which a section 11 order is sought and warrant has been granted for intimation and the seeking of the child's views in Form F9.

(2) The pursuer must—

- (a) following the expiry of the period of notice, send the child the Form F9 that was submitted and approved under rule 33.7A (warrants and forms for intimation to a child and for seeking a child's views);
- (b) lodge with the minute for decree a certificate of intimation in Form F9A;
- (c) not send the child a copy of the initial writ.

(3) Except on cause shown, the sheriff must not grant decree in the period of 28 days following the date on which the Form F9 was sent to the child.

#### **Views of the child – section 11 order sought by pursuer only**

**33.19A.**—(1) This rule applies to defended actions in which only the pursuer seeks a section 11 order and warrant has been granted for intimation and the seeking of the child's views in Form F9.

(2) The pursuer must—

- (a) no later than 14 days after the notice of intention to defend is lodged, send the child the Form F9 that was submitted and approved under rule 33.7A (warrants and forms for intimation to a child and for seeking a child's views);

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(a) Rule 33.15 was substituted by S.I. 1996/2167.

(b) Rule 33.19 was substituted by S.I. 1996/2167.

- (b) on the same day, lodge a certificate of intimation in Form F9A;
- (c) not send the child a copy of the initial writ, the notice of intention to defend or the defences.

#### **Views of the child – section 11 order sought by defender only**

**33.19B.**—(1) This rule applies to defended actions in which only the defender seeks a section 11 order and warrant has been granted for intimation and the seeking of the child's views in Form F9.

(2) The defender must—

- (a) no later than 14 days after the notice of intention to defend is lodged, send the child the Form F9 that was submitted and approved under rule 33.34 (notice of intention to defend and defences etc.);
- (b) on the same day, lodge a certificate of intimation in Form F9A;
- (c) not send the child a copy of the initial writ, the notice of intention to defend or the defences.

#### **Views of the child – section 11 orders sought by both pursuer and defender**

**33.19C.**—(1) This rule applies to defended actions in which section 11 orders are sought by both the pursuer and the defender and warrant has been granted for intimation and the seeking of the child's views in Form F9.

(2) The pursuer must—

- (a) no later than 14 days after the notice of intention to defend is lodged, send the child the Form F9 that was submitted and approved under rule 33.7A (warrants and forms for intimation to a child and for seeking a child's views), amended so as also to narrate the section 11 order sought by the defender;
- (b) on the same day—
  - (i) lodge a certificate of intimation in Form F9A;
  - (ii) send the defender a copy of the Form F9 that was sent to the child;
- (c) not send the child a copy of the initial writ, the notice of intention to defend or the defences.

#### **Views of the child – the sheriff's role**

**33.19D.**—(1) In a family action, in relation to any matter affecting a child, where that child has—

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

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

(2) Where the sheriff is considering making an interim section 11 order before the views of the child have been obtained or heard, the sheriff must consider whether, and if so how, to seek the child's views in advance of making the order.

(3) Where a child has indicated a wish to express views, the sheriff must order any steps to be taken that the sheriff considers appropriate to obtain or hear the views of that child.

(4) The sheriff must not grant an order in a family action, in relation to any matter affecting a child who has expressed views, unless the sheriff has given due weight to the views expressed by that child, having regard to the child's age and maturity.

(5) In any action in which a section 11 order is sought, where Form F9 has not been sent to the child concerned or where it has been sent but the sheriff considers that the passage of time requires it to be sent again, the sheriff may at any time order either party to—

- (a) send the Form F9 to that child within a specified timescale;
- (b) on the same day, lodge—
  - (i) a copy of the Form F9 that was sent to the child;
  - (ii) a certificate of intimation in Form F9B.”.

(6) In rule 33.21(3) (interlocutor appointing a child welfare reporter)—

- (a) in sub-paragraph (c), after “sought”, insert “and include a direction as to whether a copy of the report is to be provided to the parties under paragraph (9)(d)”;
- (b) following sub-paragraph (c), omit “and”;
- (c) after sub-paragraph (d), insert—
  - “; and
- (e) where the appointment is under paragraph (1)(b) and seeking the views of the child forms part of the enquiries to be undertaken, include a direction as to whether the views of the child should be recorded in a separate report and, if so, whether a copy of that report is to be provided to the parties under paragraph (9)(d).”.

(7) In rule 33.33A (late appearance and application for recall by defenders)(a)—

- (a) in paragraph (1)—
  - (i) for “(h)”, substitute “(g)”;
  - (ii) after “(q)”, insert “or rule 33.7A(1) (warrants and forms for intimation to a child and for seeking a child’s views)”;
- (b) after paragraph (4), insert—
  - “(4A) Where the sheriff makes an order under paragraph (1) or (3), the sheriff must order any steps to be taken that the sheriff considers appropriate to obtain or hear the views of the child in relation to any section 11 order sought by the defender.”

(8) In rule 33.34 (notice of intention to defend and defences etc.)(b)—

- (a) in paragraph (2)(a), after “period of notice”, insert “and, at the same time, send a copy to the pursuer”;
- (b) omit paragraph (3);
- (c) after paragraph (4), insert—
  - “(4A) Subject to paragraph (4B), where a defender intends to make an application for a section 11 order in respect of a child who is not a party to the action and where the initial writ does not include a crave for a section 11 order, the defender must—
    - (a) include in the notice of intention to defend a crave for a warrant for intimation and the seeking of the child’s views in Form F9;
    - (b) when lodging the notice of intention to defend, submit a draft Form F9, showing the details that the defender proposes to include when the form is sent to the child.
  - (4B) Where the defender considers that it would be inappropriate to send Form F9 to the child (for example, where the child is under 5 years of age), the defender must include in the notice of intention to defend—
    - (a) a crave to dispense with intimation and the seeking of the child’s views in Form F9;
    - (b) averments setting out the reasons why it is inappropriate to send Form F9 to the child.

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(a) Rule 33.33A was inserted by S.S.I. 2008/223 and amended by S.S.I. 2012/188.

(b) Rule 33.34 was last amended by S.S.I. 2012/221.

(4C) The sheriff must be satisfied that the draft Form F9 submitted under paragraph (4A)(b) has been drafted appropriately<sup>(a)</sup>.

(4D) The sheriff may dispense with intimation and the seeking of views in Form F9 or make any other order that the sheriff considers appropriate.

(4E) An order granting warrant for intimation and the seeking of the child's views in Form F9 under this rule must —

- (a) state that the Form F9 must be sent to the child in accordance with rule 33.19B (views of the child – section 11 order sought by defender only);
- (b) be signed by the sheriff.”.

(9) After rule 33.44 (applications after decree relating to a section 11 order)<sup>(b)</sup>, insert—

**“Warrants for intimation to child and permission to seek views**

**33.44A.**—(1) Subject to paragraph (2), when lodging a minute under rule 14.3 (lodging of minutes)<sup>(c)</sup> which includes a crave after final decree for, or the variation or recall of, a section 11 order in respect of a child who is not a party to the action, the minuter must—

- (a) include in the minute a crave for a warrant for intimation and the seeking of the child's views in Form F9;
- (b) when lodging the minute, submit a draft Form F9, showing the details that the minuter proposes to include when the form is sent to the child.

(2) Where the minuter considers that it would be inappropriate to send Form F9 to the child (for example, where the child is under 5 years of age), the minuter must include in the minute—

- (a) a crave to dispense with intimation and the seeking of the child's views in Form F9;
- (b) averments setting out the reasons why it is inappropriate to send Form F9 to the child.

(3) The sheriff must be satisfied that the draft Form F9 submitted under paragraph (1)(b) has been drafted appropriately<sup>(d)</sup>.

(4) The sheriff may dispense with intimation and the seeking of views in Form F9 or make any other order that the sheriff considers appropriate.

(5) An order granting warrant for intimation and the seeking of the child's views in Form F9 under this rule must—

- (a) state that the Form F9 must be sent in accordance with rule 33.44A(6);
- (b) be signed by the sheriff.

(6) The Form F9 must be sent in accordance with—

- (a) rule 33.44B (views of the child – unopposed minutes relating to a section 11 order), where the minute is unopposed;
- (b) rule 33.44C (views of the child – craves relating to a section 11 order sought by minuter only), where the minute is opposed and a section 11 order is sought by the minuter only; or

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(a) The Scottish Civil Justice Council has published guidance on the preparation of Form F9 in child-friendly language. This document can be viewed online at the “Publications” page of its website ([www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)). Alternatively, a copy can be requested by emailing [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk).

(b) Rule 33.44 was last amended by S.S.I. 2000/239.

(c) Rule 14.3 was substituted by S.I. 1996/2445.

(d) The Scottish Civil Justice Council has published guidance on the preparation of Form F9 in child-friendly language. This document can be viewed online at the “Publications” page of its website ([www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)). Alternatively, a copy can be requested by emailing [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk).

- (c) rule 33.44D (views of the child – craves relating to a section 11 order sought by both minuter and respondent), where a section 11 order is sought by both the minuter and the respondent.

#### **Views of the child – unopposed minutes relating to a section 11 order**

**33.44B.**—(1) This rule applies to minutes which include a crave after final decree for, or the variation or recall of, a section 11 order in respect of which no notice of opposition or answers are lodged and warrant has been granted for intimation and the seeking of the child’s views in Form F9.

(2) The minuter must—

- (a) send the child the Form F9 that was submitted and approved under rule 33.44A (warrants for intimation to child and permission to seek views);
- (b) on the same day, lodge a certificate of intimation in Form F9A;
- (c) not send the child a copy of the minute.

(3) Except on cause shown, the sheriff must not determine the minute in the period of 28 days following the date on which the Form F9 was sent to the child.

#### **Views of the child – craves relating to a section 11 order sought by minuter only**

**33.44C.**—(1) This rule applies where a notice of opposition or answers have been lodged in respect of a minute after final decree and a crave for, or the variation or recall of, a section 11 order is sought by the minuter only and warrant has been granted for intimation and the seeking of the child’s views in Form F9.

(2) The minuter must—

- (a) no later than 14 days after the notice of opposition or answers are lodged, send the child the Form F9 that was submitted and approved under rule 33.44A (warrants for intimation to child and permission to seek views);
- (b) on the same day, lodge a certificate of intimation in Form F9A;
- (c) not send the child a copy of the minute, the notice of opposition or answers.

#### **Views of the child – craves relating to a section 11 order sought by both minuter and respondent**

**33.44D.**—(1) This rule applies where a notice of opposition or answers have been lodged in respect of a minute after final decree and craves for, or the variation or recall of, a section 11 order are sought by both the minuter and the respondent and warrant has been granted for intimation and the seeking of the child’s views in Form F9.

(2) The minuter must—

- (a) no later than 14 days after the notice of opposition or answers are lodged, send the child the Form F9 that was submitted and approved under rule 33.44A (warrants for intimation to child and permission to seek views), amended so as also to narrate the section 11 order sought by the respondent;
- (b) on the same day—
  - (i) lodge a certificate of intimation in Form F9A;
  - (ii) send the respondent a copy of the Form F9 that was sent to the child;
- (c) not send the child a copy of the minute, the notice of opposition or answers.”.

(10) In rule 33.65 (applications after decree)(a), after paragraph (2), insert—

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(a) Rule 33.65 was amended by S.I. 1996/2167.

“(3) Rules 33.44A (warrants for intimation to child and permission to seek views) to 33.44D (views of the child – craves relating to a section 11 order sought by both minuter and respondent) apply (with the necessary modifications) to the seeking of the child’s views in relation to a minute lodged in accordance with this rule.”.

(11) In rule 33A.7 (warrants and forms for intimation)—

(a) in paragraph (1)—

(i) for “paragraphs (5) and (7)”, substitute “paragraph (5) and rule 33A.7A (warrants and forms for intimation to a child and for seeking a child’s views)”;

(ii) omit sub-paragraph (f);

(b) in paragraph (5)—

(i) omit “(f),”;

(ii) after “or (k)”, insert “or a child mentioned in rule 33A.7A(1)”;

(c) omit paragraph (7).

(12) After rule 33A.7, insert—

**“Warrants and forms for intimation to a child and for seeking a child’s views**

**33A.7A.**—(1) Subject to paragraph (2), in an action which includes a crave for a section 11 order in respect of a child who is not a party to the action, the pursuer must—

(a) include in the initial writ a crave for a warrant for intimation and the seeking of the child’s views in Form F9;

(b) when presenting the initial writ for warranting, submit a draft Form F9, showing the details that the pursuer proposes to include when the form is sent to the child.

(2) Where the pursuer considers that it would be inappropriate to send Form F9 to the child (for example, where the child is under 5 years of age), the pursuer must include in the initial writ—

(a) a crave to dispense with intimation and the seeking of the child’s views in Form F9;

(b) averments setting out the reasons why it is inappropriate to send Form F9 to the child.

(3) The sheriff must be satisfied that the draft Form F9 submitted under paragraph (1)(b) has been drafted appropriately(a).

(4) The sheriff may dispense with intimation and the seeking of views in Form F9 or make any other order that the sheriff considers appropriate.

(5) An order granting warrant for intimation and the seeking of the child’s views in Form F9 under this rule must—

(a) state that the Form F9 must be sent in accordance with rule 33A.7A(6);

(b) be signed by the sheriff.

(6) The Form F9 must be sent in accordance with—

(a) rule 33A.19 (views of the child – undefended actions), where the action is undefended;

(b) rule 33A.19A (views of the child – section 11 order sought by pursuer only), where the action is defended and a section 11 order is sought by the pursuer only;

(c) rule 33A.19B (views of the child – section 11 order sought by defender only), where a section 11 order is sought by the defender only; or

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(a) The Scottish Civil Justice Council has published guidance on the preparation of Form F9 in child-friendly language. This document can be viewed online at the “Publications” page of its website ([www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)). Alternatively, a copy can be requested by emailing [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk).

- (d) rule 33A.19C (views of the child – section 11 orders sought by both pursuer and defender), where a section 11 order is sought by both parties.”.
- (13) In rule 33A.15 (orders for intimation)—
  - (a) in paragraph (1)—
    - (i) for “In any”, substitute “Except in relation to intimation to a child in Form F9, in any”;
    - (ii) in sub-paragraph (a), omit “subject to paragraph (2),”;
  - (b) omit paragraph (2).
- (14) For rule 33A.19 (procedure in respect of children), substitute—

**“Views of the child – undefended actions**

**33A.19.**—(1) This rule applies to undefended actions in which a section 11 order is sought and warrant has been granted for intimation and the seeking of the child’s views in Form F9.

- (2) The pursuer must—
  - (a) following the expiry of the period of notice, send the child the Form F9 that was submitted and approved under rule 33A.7A (warrants and forms for intimation to a child and for seeking a child’s views);
  - (b) lodge with the minute for decree a certificate of intimation in Form F9A;
  - (c) not send the child a copy of the initial writ.
- (3) Except on cause shown, the sheriff must not grant decree in the period of 28 days following the date on which the Form F9 was sent to the child.

**Views of the child – section 11 order sought by pursuer only**

**33A.19A.**—(1) This rule applies to defended actions in which only the pursuer seeks a section 11 order and warrant has been granted for intimation and the seeking of the child’s views in Form F9.

- (2) The pursuer must—
  - (a) no later than 14 days after the notice of intention to defend is lodged, send the child the Form F9 that was submitted and approved under rule 33A.7A (warrants and forms for intimation to a child and for seeking a child’s views);
  - (b) on the same day, lodge a certificate of intimation in Form F9A;
  - (c) not send the child a copy of the initial writ, the notice of intention to defend or the defences.

**Views of the child – section 11 order sought by defender only**

**33A.19B.**—(1) This rule applies to defended actions in which only the defender seeks a section 11 order and warrant has been granted for intimation and the seeking of the child’s views in Form F9.

- (2) The defender must—
  - (a) no later than 14 days after the notice of intention to defend is lodged, send the child the Form F9 that was submitted and approved under rule 33A.34 (notice of intention to defend and defences);
  - (b) on the same day, lodge a certificate of intimation in Form F9A;
  - (c) not send the child a copy of the initial writ, the notice of intention to defend or the defences.



### **Views of the child – section 11 orders sought by both pursuer and defender**

**33A.19C.**—(1) This rule applies to defended actions in which section 11 orders are sought by both the pursuer and the defender and warrant has been granted for intimation and the seeking of the child’s views in Form F9.

(2) The pursuer must—

- (a) no later than 14 days after the notice of intention to defend is lodged, send the child the Form F9 that was submitted and approved under rule 33A.7A (warrants and forms for intimation to a child and for seeking a child’s views), amended so as also to narrate the section 11 order sought by the defender;
- (b) on the same day—
  - (i) lodge a certificate of intimation in Form F9A;
  - (ii) send the defender a copy of the Form F9 that was sent to the child;
- (c) not send the child a copy of the initial writ, the notice of intention to defend or the defences.

### **Views of the child – the sheriff’s role**

**33A.19D.**—(1) In a civil partnership action, in relation to any matter affecting a child, where that child has—

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

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

(2) Where the sheriff is considering making an interim section 11 order before the views of the child have been obtained or heard, the sheriff must consider whether, and if so how, to seek the child’s views in advance of making the order.

(3) Where a child has indicated a wish to express views, the sheriff must order any steps to be taken that the sheriff considers appropriate to obtain or hear the views of that child.

(4) The sheriff must not grant an order in a civil partnership action, in relation to any matter affecting a child who has expressed views, unless the sheriff has given due weight to the views expressed by that child, having regard to the child’s age and maturity.

(5) In any action in which a section 11 order is sought, where Form F9 has not been sent to the child concerned or where it has been sent but the sheriff considers that the passage of time requires it to be sent again, the sheriff may at any time order either party to—

- (a) send the Form F9 to that child within a specified timescale;
- (b) on the same day, lodge—
  - (i) a copy of the Form F9 that was sent to the child;
  - (ii) a certificate of intimation in Form F9B.”.

(15) In rule 33A.21(3) (interlocutor appointing a child welfare reporter)(a)—

- (a) in sub-paragraph (c), after “sought”, insert “and include a direction as to whether a copy of the report is to be provided to the parties under paragraph (9)(d)”;
- (b) following sub-paragraph (d), omit “and”;
- (c) after sub-paragraph (d), insert—
  - “; and
- (e) where the appointment is under paragraph (1)(b) and seeking the views of the child forms part of the enquiries to be undertaken, include a direction as to whether the

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(a) Rule 33A.21 was substituted by S.S.I. 2016/102.

views of the child should be recorded in a separate report and, if so, whether a copy of that report is to be provided to the parties under paragraph (9)(d).”.

(16) In rule 33A.33A (late appearance and application for recall by defenders)(a), after paragraph (4), insert—

“(4A) Where the sheriff makes an order under paragraph (1) or (3), the sheriff must order any steps to be taken that the sheriff considers appropriate to obtain or hear the views of the child in relation to any section 11 order sought by the defender.”.

(17) In rule 33A.34 (notice of intention to defend and defences)(b)—

- (a) in paragraph (2)(a), after “period of notice”, insert “and, at the same time, send a copy to the pursuer”;
- (b) omit paragraph (3);
- (c) after paragraph (4), insert—

“(4A) Subject to paragraph (4B), where a defender intends to make an application for a section 11 order in respect of a child who is not a party to the action and where the initial writ does not include a crave for a section 11 order, the defender must—

- (a) include in the notice of intention to defend a crave for a warrant for intimation and the seeking of the child’s views in Form F9;
- (b) when lodging the notice of intention to defend, submit a draft Form F9, showing the details that the defender proposes to include when the form is sent to the child.

(4B) Where the defender considers that it would be inappropriate to send Form F9 to the child (for example, where the child is under 5 years of age), the defender must include in the notice of intention to defend—

- (a) a crave to dispense with intimation and the seeking of the child’s views in Form F9;
- (b) averments setting out the reasons why it is inappropriate to send Form F9 to the child.

(4C) The sheriff must be satisfied that the draft Form F9 submitted under paragraph (4A)(b) has been drafted appropriately(c).

(4D) The sheriff may dispense with intimation and the seeking of views in Form F9 or make any other order that the sheriff considers appropriate.

(4E) An order granting warrant for intimation and the seeking of the child’s views in Form F9 under this rule must—

- (a) state that the Form F9 must be sent to the child in accordance with rule 33A.19B (views of the child – section 11 order sought by defender only);
- (b) be signed by the sheriff.”.

(18) After rule 33A.41 (applications after decree relating to a section 11 order), insert—

#### **“Warrants for intimation to child and permission to seek views**

**33A.41A.**—(1) Subject to paragraph (2), when lodging a minute under rule 14.3 (lodging of minutes) which includes a crave after final decree for, or the variation or recall of, a section 11 order in respect of a child who is not a party to the action, the minuter must—

- (a) include in the minute a crave for a warrant for intimation and the seeking of the child’s views in Form F9;

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(a) Rule 33A.33A was inserted by S.S.I. 2008/223.

(b) Rule 33A.34 was amended by S.S.I. 2012/221.

(c) The Scottish Civil Justice Council has published guidance on the preparation of Form F9 in child-friendly language. This document can be viewed online at the “Publications” page of its website ([www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)). Alternatively, a copy can be requested by emailing [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk).

- (b) when lodging the minute, submit a draft Form F9, showing the details that the minuter proposes to include when the form is sent to the child.
- (2) Where the minuter considers that it would be inappropriate to send Form F9 to the child (for example, where the child is under 5 years of age), the minuter must include in the minute—
- (a) a crave to dispense with intimation and the seeking of the child’s views in Form F9;
  - (b) averments setting out the reasons why it is inappropriate to send Form F9 to the child.
- (3) The sheriff must be satisfied that the draft Form F9 submitted under paragraph (1)(b) has been drafted appropriately(a).
- (4) The sheriff may dispense with intimation and the seeking of views in Form F9 or make any other order that the sheriff considers appropriate.
- (5) An order granting warrant for intimation and the seeking of the child’s views in Form F9 under this rule must—
- (a) state that the Form F9 must be sent in accordance with rule 33A.41A(6);
  - (b) be signed by the sheriff.
- (6) The Form F9 must be sent in accordance with—
- (a) rule 33A.41B (views of the child – unopposed minutes relating to a section 11 order), where the minute is unopposed;
  - (b) rule 33A.41C (views of the child – craves relating to a section 11 order sought by minuter only), where the minute is opposed and a section 11 order is sought by the minuter only; or
  - (c) rule 33A.41D (views of the child – craves relating to a section 11 order sought by both minuter and respondent), where a section 11 order is sought by both the minuter and the respondent.

**Views of the child – unopposed minutes relating to a section 11 order**

**33A.41B.**—(1) This rule applies to minutes which include a crave after final decree for, or the variation or recall of, a section 11 order in respect of which no notice of opposition or answers are lodged and warrant has been granted for intimation and the seeking of the child’s views in Form F9.

- (2) The minuter must—
- (a) send the child the Form F9 that was submitted and approved under rule 33A.41A (warrants for intimation to child and permission to seek views);
  - (b) on the same day, lodge a certificate of intimation in Form F9A;
  - (c) not send the child a copy of the minute.
- (3) Except on cause shown, the sheriff must not determine the minute in the period of 28 days following the date on which the Form F9 was sent to the child.

**Views of the child – craves relating to a section 11 order sought by minuter only**

**33A.41C.**—(1) This rule applies where a notice of opposition or answers have been lodged in respect of a minute after final decree and a crave for, or the variation or recall of, a section 11 order is sought by the minuter only and warrant has been granted for intimation and the seeking of the child’s views in Form F9.

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(a) The Scottish Civil Justice Council has published guidance on the preparation of Form F9 in child-friendly language. This document can be viewed online at the “Publications” page of its website ([www.scottishciviljusticecouncil.gov.uk](http://www.scottishciviljusticecouncil.gov.uk)). Alternatively, a copy can be requested by emailing [scjc@scotcourts.gov.uk](mailto:scjc@scotcourts.gov.uk).

- (2) The minuter must—
- (a) no later than 14 days after the notice of opposition or answers are lodged, send the child the Form F9 that was submitted and approved under rule 33A.41A (warrants for intimation to child and permission to seek views);
  - (b) on the same day, lodge a certificate of intimation in Form F9A;
  - (c) not send the child a copy of the minute, the notice of opposition or answers.

**Views of the child – craves relating to a section 11 order sought by both minuter and respondent**

**33A.41D.**—(1) This rule applies where a notice of opposition or answers have been lodged in respect of a minute after final decree and craves for, or the variation or recall of, a section 11 order are sought by both the minuter and the respondent and warrant has been granted for intimation and the seeking of the child’s views in Form F9.

- (2) The minuter must—
- (a) no later than 14 days after the notice of opposition or answers are lodged, send the child the Form F9 that was submitted and approved under rule 33A.41A (warrants for intimation to child and permission to seek views), amended so as also to narrate the section 11 order sought by the respondent;
  - (b) on the same day—
    - (i) lodge a certificate of intimation in Form F9A;
    - (ii) send the respondent a copy of the Form F9 that was sent to the child;
  - (c) not send the child a copy of the minute, the notice of opposition or answers.”.

(19) In rule 33A.57 (applications after decree), after paragraph (2), insert—

“(3) Rules 33A.41A (warrants for intimation to child and permission to seek views) to 33A.41D (views of the child – craves relating to a section 11 order sought by both minuter and respondent) apply (with the necessary modifications) to the seeking of the child’s views in relation to a minute lodged in accordance with this rule.”.

(20) In Appendix 1 (forms)—

- (a) for Form F9 (form of intimation in an action which includes a crave for a section 11 order)(a), substitute Form F9 (form for intimation to a child and for seeking a child’s views) in schedule 4;
- (b) after Form F9 (form for intimation to a child and for seeking a child’s views), insert Form F9A (form of certificate of intimation of Form F9) in schedule 5;
- (c) after Form F9A (form of certificate of intimation of Form F9), insert Form F9B (form of certificate of intimation of Form F9 (where ordered under rule 33.19D or 33A.19D)) in schedule 6;
- (d) for Form F14 (form of warrant of citation in family action), substitute Form F14 (form of warrant of citation in family action) in schedule 7;
- (e) in Form F26 (form of notice of intention to defend in family action)(b), in Part E—
  - (i) for “COMPLETED”, substitute “ANSWERED YES AT”;
  - (ii) after “THIS FORM”, insert “AND THE INITIAL WRIT DOES NOT INCLUDE A CRAVE FOR A SECTION 11 ORDER.”;
  - (iii) for craves (1) and (2), substitute—

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(a) Form F9 was substituted by S.I. 1996/2167 and amended by S.S.I. 2003/26.  
 (b) Form F26 was substituted by S.S.I. 2005/648.

- “(1)\* Warrant for intimation to the child(ren) (insert full name(s) and date(s) of birth) is sought, by way of Form F9, which also seeks the child(ren)’s views.
- (2)\* I seek to dispense with intimation to the child(ren) (insert full name(s) and date(s) of birth) and seeking the child(ren)’s views in Form F9 for the following reasons:—”;
- (f) in Form F44 (form of annex to interlocutor appointing a child welfare reporter)(a)—
- (i) at the end of Part 1, insert—
- “Is a copy of the report to be provided to the parties under rule 33.21(9)(d)?
- Yes
- No”;
- (ii) at the end of Part 3, insert—
- “Where the views of the child form part of the enquiries to be undertaken, should the views of the child be recorded in a separate report?
- Yes
- No
- If yes, is a copy of that report to be provided to the parties under rule 33.21(9)(d)?
- Yes
- No”.
- (g) omit Form CP7 (form of intimation in a civil partnership action which includes a crave for a section 11 order)(b);
- (h) for Form CP14 (form of warrant of citation in a civil partnership action), substitute Form CP14 in schedule 8;
- (i) in Form CP16 (form of notice of intention to defend in a civil partnership action)(c), in Part E—
- (i) for “COMPLETED”, substitute “ANSWERED YES AT”;
- (ii) after “THIS FORM”, insert “AND THE INITIAL WRIT DOES NOT INCLUDE A CRAVE FOR A SECTION 11 ORDER.”;
- (iii) for craves (1) and (2), substitute—
- “(1)\* Warrant for intimation to the child(ren) (insert full name(s) and date(s) of birth) is sought, by way of Form F9, which also seeks the child(ren)’s views.

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(a) Form F44 was inserted by S.S.I. 2015/312.  
 (b) Form CP7 was inserted by S.S.I. 2005/638.  
 (c) Form CP16 was inserted by S.S.I. 2005/638.

- (2)\* I seek to dispense with intimation to the child(ren) (insert full name(s) and date(s) of birth) and seeking the child(ren)'s views in Form F9 for the following reasons:—”;
- (j) in Form CP38 (form of annex to interlocutor appointing a child welfare reporter)(a)—
- (i) at the end of Part 1, insert—
- “Is a copy of the report to be provided to the parties under rule 33A.21(9)(d)?
- Yes
- No”;
- (ii) at the end of Part 3, insert—
- “Where the views of the child form part of the enquiries to be undertaken, should the views of the child be recorded in a separate report?
- Yes
- No
- If yes, is a copy of that report to be provided to the parties under rule 33A.21(9)(d)?
- Yes
- No”.

#### **Application**

4. The amendments made by this Act of Sederunt—
- (a) subject to sub-paragraph (b), do not apply to family actions or civil partnership actions commenced before 24th June 2019;
- (b) apply to family actions and civil partnership actions in which a minute after final decree is lodged on or after 24th June 2019 seeking a section 11 order or the variation or recall of a section 11 order, regardless of when the action was commenced;
- (c) do not apply to child welfare reporters appointed before 24th June 2019.

*CJM SUTHERLAND*  
Lord President  
I.P.D.

Edinburgh  
28th March 2019

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(a) Form CP38 was inserted by S.S.I. 2016/102.

# SCHEDULE 1

Paragraph 2(15)(b)

Court of Session | Ref: [insert case reference] | Form 49.8A

Name  
Address Line 1  
Address Line 2  
City  
Postcode

Dear [insert child's first name]

You have been sent this letter because the judge will need to make a decision about you. The judge is a person who makes important decisions for children and families. [Insert short summary of the section 11 order(s) sought, using child-friendly language.] The judge has to decide about that.

The judge wants to know what you think about that. You have a right to tell the judge what you think, but you do not have to tell the judge what you think if you do not want to. What you think is very important, and it will help the judge to make a decision about what is best for you. Sometimes this might be different from what you would like to happen.

If you want to tell the judge what you think, you can use the **What I Think** form sent with this letter. You can write or draw anything you like. There is no right or wrong answer. Please send the form back to the judge when you have filled it in. We have sent you an envelope, which should already have a stamp on it. Just put the form in the envelope and put the envelope in a post box **within 2 weeks, or as soon as you can**.

The judge might not tell anyone exactly what you have written or said, but the judge has to think about this and say in court what you would like to happen.

If you are not sure what to do, you can show this letter to someone you trust. If you want to know more about what will happen next, you might get free help from a lawyer or from these places that can help children:



**The Scottish Child Law Centre** – the free phone number is 0800 328 8970 or 0300 3301421 (from a mobile) and the website is [www.sclc.org.uk](http://www.sclc.org.uk)

**Clan Childlaw** – the free phone number is 0808 129 0522 and the website is [www.clanchildlaw.org](http://www.clanchildlaw.org)

If there's anything you are worried or upset about and you don't know what to do, you can speak to someone at ChildLine who will listen and help you. You can phone ChildLine free on 0800 1111.

If what you think changes, you can contact a lawyer or call the phone numbers for the Scottish Child Law Centre or Clan Childlaw.

From  
the Clerk of Court (the person who helps the judge)



# What I Think

Name:

How do you feel just now about [insert short summary of the section 11 order(s) sought, using child-friendly language]?



Good




In the middle



Not good

If you would like to tell the judge why you feel like this, use the space below or another piece of paper.



A large rectangular area with a red border, containing ten horizontal lines for writing. A red scribble is located in the top right corner of this area.

Use another piece of paper if you need more space.





Is there anything else you would like to happen?



Would you like to say what you think in a different way?



Yes




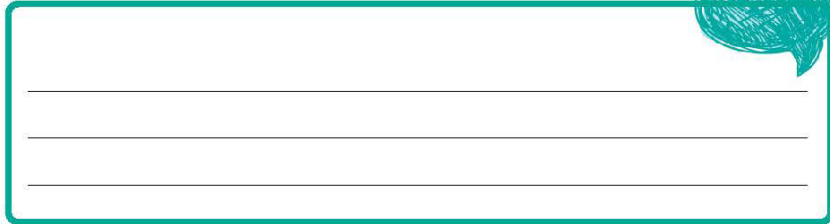
No

What different way would you like to say what you think?



In the letter with this form, there are Freephone numbers for the Scottish Child Law Centre and Clan Childlaw, if you want some other ideas.

If someone has helped you with this **What I Think** form, please write their name and how you know them here:

The judge will think about what you have said. It will help the judge to decide what happens next.

You can put this **What I Think** form in the envelope and send it back to the judge **within 2 weeks, or as soon as you can**. The envelope should already have a stamp on it.

Thank you.



SCHEDULE 2

Paragraph 2(15)(c)

Form 49.8B

Rules 49.20(2)(b), 49.20A(2)(b), 49.20B(2)(b), 49.20C(2)(b)(i), 49.42A(2)(b), 49.42B(2)(b), 49.42C(2)(b)(i) and 70.16(6)(b)(ii)

Form of certificate of intimation of Form 49.8A

CERTIFICATE OF INTIMATION OF FORM 49.8A

Court Ref. No. *(insert)*

I certify that intimation of the Form 49.8A that was submitted to the court under *(rule 49.8A(1)(b)(ii), rule 49.31(3)(b), rule 49.42(1)(b) or rule 70.16(1)(c))* was made to *(insert name(s) of child(ren))* by *(specify whether first class, second class, recorded delivery service etc.)* post to *(insert address)* on *(insert date)*.

*[Where, in approving the draft Form 49.8A as provided for in rule 49.8A(3), 49.31(5), 49.42(3) or 70.16(3), the court has requested an amendment to the draft Form 49.8A that was submitted, The Form 49.8A was amended in accordance with the court's request.]*

*[Where the pursuer or minuter has amended the draft Form 49.8A so as to narrate the section 11 order sought by the defender or respondent, The Form 49.8A was (further) amended as appropriate so as also to narrate the section 11 order sought by the (defender or respondent).]*

Date *(insert date)*

*(Signed)*

Solicitor for the *(pursuer/defender/minuter/respondent)*  
*(add designation and business address)*

*or*

*(Pursuer/Defender/Minuter/Respondent)*

SCHEDULE 3

Paragraph 2(15)(d)

Form 49.8C

Rule 49.20D(5)(b)(ii)

Form of certificate of intimation of Form 49.8A (where ordered under rule 49.20D)

CERTIFICATE OF INTIMATION OF FORM 49.8A

Court Ref. No. *(insert)*

I certify that intimation of the Form 49.8A, a copy of which is attached to this certificate in accordance with rule 49.20D(5)(b)(i) was made to *(insert name(s) of child(ren))* by *(specify whether first class, second class, recorded delivery service, etc.)* post to *(insert address)* on *(insert date)*.

Date *(insert date)*

*(Signed)*

Solicitor for the *(pursuer/defender/minuter/respondent)*  
*(add designation and business address)*

*or*

*(Pursuer/Defender/Minuter/Respondent)*

## Form F9

[Insert court] Sheriff Court | Ref: [insert case reference] | Form F9

Name  
Address Line 1  
Address Line 2  
City  
Postcode

Dear [insert child's first name]

You have been sent this letter because the sheriff will need to make a decision about you. The sheriff (sometimes called a judge) is a person who makes important decisions for children and families. [Insert short summary of the section 11 order(s) sought, using child-friendly language.] The sheriff has to decide about that.

The sheriff wants to know what you think about that. You have a right to tell the sheriff what you think, but you do not have to tell the sheriff what you think if you do not want to. What you think is very important, and it will help the sheriff to make a decision about what is best for you. Sometimes this might be different from what you would like to happen.

If you want to tell the sheriff what you think, you can use the **What I Think** form sent with this letter. You can write or draw anything you like. There is no right or wrong answer. Please send the form back to the sheriff when you have filled it in. We have sent you an envelope, which should already have a stamp on it. Just put the form in the envelope and put the envelope in a post box **within 2 weeks, or as soon as you can**.

The sheriff might not tell anyone exactly what you have written or said, but the sheriff has to think about this and say in court what you would like to happen.

If you are not sure what to do, you can show this letter to someone you trust. If you want to know more about what will happen next, you might get free help from a lawyer or from these places that can help children:



**The Scottish Child Law Centre** – the free phone number is 0800 328 8970 or 0300 3301421 (from a mobile) and the website is [www.sclc.org.uk](http://www.sclc.org.uk)

**Clan Childlaw** – the free phone number is 0808 129 0522 and the website is [www.clanchildlaw.org](http://www.clanchildlaw.org)

If there's anything you are worried or upset about and you don't know what to do, you can speak to someone at ChildLine who will listen and help you. You can phone ChildLine free on 0800 1111.

If what you think changes, you can contact a lawyer or call the phone numbers for the Scottish Child Law Centre or Clan Childlaw.

From  
the Sheriff Clerk (the person who helps the sheriff)



# What I Think Form

Name:

How do you feel just now about [insert short summary of the section 11 order(s) sought, using child-friendly language]?



Good




In the middle



Not good

If you would like to tell the sheriff why you feel like this, use the space below or another piece of paper.



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Use another piece of paper if you need more space.



Is there anything else you would like to happen?



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Would you like to say what you think in a different way?



Yes



No

What different way would you like to say what you think?



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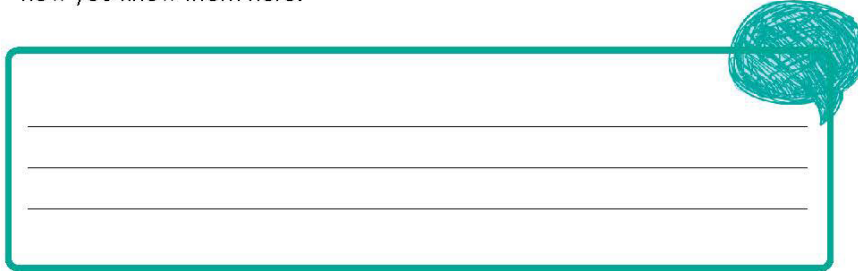
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In the letter with this form, there are Freephone numbers for the Scottish Child Law Centre and Clan Childlaw, if you want some other ideas.

If someone has helped you with this **What I Think** form, please write their name and how you know them here:



The sheriff will think about what you have said. It will help the sheriff to decide what happens next.

You can put this **What I Think** form in the envelope and send it back to the sheriff **within 2 weeks, or as soon as you can**. The envelope should already have a stamp on it.

Thank you.





SCHEDULE 5

Paragraph 3(20)(b)

Form F9A

Rules 33.19(2)(b), 33.19A(2)(b), 33.19B(2)(b), 33.19C(2)(b)(i), 33.44B(2)(b), 33.44C(2)(b), 33.44D(2)(b)(i), 33A.19(2)(b), 33A.19A(2)(b), 33A.19B(2)(b), 33A.19C(2)(b)(i), 33A.41B(2)(b), 33A.41C(2)(b) and 33A.41D(2)(b)(i)

Form of certificate of intimation of Form F9

CERTIFICATE OF INTIMATION OF FORM F9

*(Insert court)* Sheriff Court

Court Ref. No. *(insert)*

I certify that intimation of the Form F9 that was submitted to the sheriff clerk under *(rule 33.7A(1)(b), rule 33.34(4A)(b), rule 33.44A(1)(b), rule 33A.7A(1)(b), rule 33A.34(4A)(b) or rule 33A.41A(1)(b))* was made to *(insert name(s) of child(ren))* by *(specify whether first class, second class, recorded delivery service, etc.)* post to *(insert address)* on *(insert date)*.

*[Where, in approving the draft Form F9 as provided for in rule 33.7A(3), 33.34(4C), 33.44A(3), 33A.7A(3), 33A.34(4C) or 33A.41A(3), the sheriff has requested an amendment to the draft Form F9 that was submitted, The Form F9 was amended in accordance with the sheriff's request.]*

*[Where the pursuer or minuter has amended the draft Form F9 so as to narrate the section 11 order sought by the defender or respondent, The Form F9 was (further) amended as appropriate so as also to narrate the section 11 order sought by the (defender or respondent).]*

Date *(insert date)*

*(Signed)*

Solicitor for the *(pursuer/defender/minuter/respondent)*  
*(add designation and business address)*

*or*

*(Pursuer/Defender/Minuter/Respondent)*

SCHEDULE 6

Paragraph 3(20)(c)

Form F9B

Rule 33.19D(5)(b)(ii) and 33A.19D(5)(b)(ii)

Form of certificate of intimation of Form F9 (where ordered under rule 33.19D or 33A.19D)

CERTIFICATE OF INTIMATION OF FORM F9

*(Insert court)* Sheriff Court

Court Ref. No. *(insert)*

I certify that intimation of the Form F9, a copy of which is attached to this certificate in accordance with rule *(33.19D(5)(b)(i) or 33A.19D(5)(b)(i))* was made to *(insert name(s) of child(ren))* by *(specify whether first class, second class, recorded delivery service, etc.)* post to *(insert address)* on *(insert date)*.

Date *(insert date)*

*(Signed)*

Solicitor for the *(pursuer/defender/minuter/respondent)*  
*(add designation and business address)*

*or*

*(Pursuer/Defender/Minuter/Respondent)*

SCHEDULE 7

Paragraph 3(20)(d)

Form F14

Rule 33.10

Form of warrant of citation in family action

Court Ref. No. *(insert)*

*(Insert place and date)*

Grants warrant to cite the defender *(insert name and address of defender)* by serving upon him [*or her*] a copy of the writ and warrant upon a period of notice of *(insert period of notice)* days, and ordains the defender to lodge a notice of intention to defend with the sheriff clerk at *(insert address of sheriff court)* if he [*or she*] wishes to:

- (a) challenge the jurisdiction of the court;
- (b) oppose any claim made or order sought;
- (c) make any claim or seek any order.

[Meantime grants interim interdict, *or* warrant to arrest on the dependence.]

[*Where a crave for a section 11 order is sought, one of the following must also be included:*

\*Subject to the requirements of rule 33.7A(6), grants warrant for intimation and the seeking of views in Form F9 to *(insert child(ren)'s name(s) and address(es))*.

\*Dispenses with intimation and the seeking of views in Form F9 to *(insert child(ren)'s name(s) and address(es))* for the following reason(s): *(insert summary of reasons)*.

*\*Delete as appropriate.*

*(Signed)*

Sheriff

SCHEDULE 8

Paragraph 3(20)(h)

Form CP14

Rule 33A.10

Form of warrant of citation in civil partnership action

Court Ref. No. *(insert)*

*(Insert place and date)*

Grants warrant to cite the defender *(insert name and address of defender)* by serving upon him [*or her*] a copy of the writ and warrant upon a period of notice of *(insert period of notice)* days, and ordains the defender to lodge a notice of intention to defend with the sheriff clerk at *(insert address of sheriff court)* if he [*or she*] wishes to:

- (a) challenge the jurisdiction of the court;
- (b) oppose any claim made or order sought;
- (c) make any claim or seek any order.

[Meantime grants interim interdict, *or* warrant to arrest on the dependence.]

[*Where a crave for a section 11 order is sought, one of the following must also be included:*

\*Subject to the requirements of rule 33A.7A(6), grants warrant for intimation and the seeking of views in Form F9 to *(insert child(ren)'s name(s) and address(es))*.

\*Dispenses with intimation and the seeking of views in Form F9 to *(insert child(ren)'s name(s) and address(es))* for the following reason(s): *(insert summary of reasons)*.

*\*Delete as appropriate.*

*(Signed)*

Sheriff

## EXPLANATORY NOTE

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

In this Note—

“the Council Regulation” means Council Regulation (EC) No 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000;

“the Hague Convention” means the Convention defined in section 1(1) of the Child Abduction and Custody Act 1985 and as set out in schedule 1 of that Act;

“the OCR” means the Ordinary Cause Rules 1993 in schedule 1 of the Sheriff Courts (Scotland) Act 1907;

“the RCS” means the Rules of the Court of Session 1994 in schedule 2 of Act of Sederunt (Rules of the Court of Session 1994) 1994;

“section 11 order” means an order under section 11 of the Children (Scotland) Act 1995.

This Act of Sederunt amends and supplements the court rules that apply to intimation to the child and seeking the views of the child by way of a court form in family actions where a section 11 order is sought. This Act of Sederunt inserts into the rules a new form to be used for intimation and the seeking of the child’s views (Form 49.8A in the RCS and Form F9 in the OCR). It also sets out the procedure to be followed when making use of these forms. Paragraph 2 amends Chapters 49 (family actions) and 70 (applications under the Child Abduction and Custody Act 1985) and the Appendix (forms) of the RCS. Paragraph 3 amends Chapters 33 (family actions), 33A (civil partnership actions) and Appendix 1 (forms) of the OCR.

### *Application of this Act of Sederunt*

Paragraph 4 provides that the amendments made by this Act of Sederunt—

(a) subject to sub-paragraph (b), do not apply to family actions or civil partnership actions commenced before 24th June 2019;

(b) apply to family actions and civil partnership actions in which a minute after final decree is lodged on or after 24th June 2019 seeking a section 11 order or the variation or recall of a section 11 order, regardless of when the action was commenced;

(c) do not apply to child welfare reporters appointed before 24th June 2019.

### *Amendments to the RCS*

Paragraph 2(3) inserts a new rule 49.8A into the RCS. This requires the pursuer to set out in the summons the reasons why it is either appropriate or inappropriate to send Form 49.8A to the child and to apply by motion for either (i) a warrant for intimation and the seeking of the child’s views in Form 49.8A; or (ii) the court to dispense with intimation and the seeking of the child’s views in Form 49.8A. In the former scenario, the pursuer must submit a draft Form 49.8A along with the summons and the court must be satisfied that this has been drafted appropriately. Rule 49.8A(6) specifies the particular rules that apply to the issuing of the Form 49.8A in the circumstances narrated.

Paragraph 2(5) inserts new rules 49.20 to 49.20D, which set out the particular procedure to be followed, depending on whether (i) the action is undefended (rule 49.20); (ii) the action is defended and a section 11 order is sought by the pursuer only (rule 49.20A); (iii) the action is defended and a section 11 order is sought by the defender only (rule 49.20B); (iv) the action is

defended and a section 11 order is sought by both parties (rule 49.20C); or (v) the court orders a Form 49.8A to be sent to the child at any other time (rule 49.20D).

Rule 49.20D retains the existing statement, in similar terms, of the court's duty not to grant any order unless an opportunity has been given for the views of the child to be obtained or heard. It also clarifies that where the court is considering making an interim section 11 order before the views of the child have been obtained, the court must consider whether, and if so how, to seek the child's views before making the order.

Paragraphs 2(6) and (15)(e) make changes to rules that apply to an interlocutor appointing a child welfare reporter (rule 49.22(3) and Form 49.22).

Paragraph 2(7) amends rule 49.28 to remove actions for a section 11 order from the list of undefended family actions to which the rule does not apply. This makes it clear that rule 49.28 applies to undefended actions in which a section 11 order is sought. The change reflects current Court of Session practice, which is for affidavit evidence to be required.

Paragraph 2(8) amends rule 49.31 to make provision about cases where only the defender seeks a section 11 order. The amendments mirror the terms of new rule 49.8A.

Paragraph 2(9) amends rule 49.34 to provide for the views of the child to be obtained or heard in cases where the defender has entered appearance late.

Paragraphs 2(10) and (11) amend rule 49.41, and for rule 49.42 substitutes new rules, which apply to applications after decree in actions of divorce, dissolution, separation and declarator of nullity of marriage or civil partnership. The new rules remove the existing procedural distinction between contact orders and other types of section 11 orders, with the effect that all post-decree applications relating to section 11 orders will now be dealt with by minute. New rule 49.42 outlines the procedure for seeking the views of the child. This closely aligns with the procedure followed in principal proceedings.

Paragraph 2(12) amends rule 49.63, which applies to applications after decree in non-divorce and non-dissolution cases. Rule 49.63(3) provides that new rules 49.42 to 49.42C apply (with the necessary modifications) to the seeking of the child's views in relation to a minute lodged in accordance with rule 49.63.

Paragraph 2(13) substitutes a new rule 70.16, which makes provision about intimation to a child and seeking the child's views in respect of petitions for the return of a child under the Hague Convention where the Council Regulation applies.

Paragraph 2(15) omits Form 49.8-N, inserts new forms (Forms 49.8A, 49.8B and 49.8C) and amends Form 49.22. Paragraph 2(14) makes a consequential amendment to rule 70.17.

#### *Amendments to the OCR*

Paragraph 3 amends Chapters 33 and 33A of the OCR. As far as possible, this replicates the changes described above. The terminology and detail of certain provisions have been adapted where appropriate in order to align the new rules with sheriff court procedure.



S201903281007 04/2019 19585

<http://www.legislation.gov.uk/id/ssi/2019/123>