



SHERIFFDOM OF LOTHIAN AND BORDERS

PRACTICE NOTE NO 1 OF 2015

FAMILY AND CIVIL PARTNERSHIP ACTIONS

GUIDANCE FOR SHERIFFS AND PRACTITIONERS IN EDINBURGH SHERIFF COURT

PART 1

PURPOSE

1. The purpose of this Practice Note is to secure the efficient management of procedure in family and civil partnership proceedings. It should be read subject to the detailed rules of procedure to be found in Chapters 33, 33A and 33AA of the Ordinary Cause Rules 1993. It will be revised in light of experience and any new primary or secondary legislation.

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COMMENCEMENT

2. This Practice Note applies to all applications lodged or proceedings commenced, on or after 2nd March 2015.

PART II

EXTENSION OF DEFINITION (OCR 1993, rr.33.1 and 33A.1)

3. This Practice Note applies to:-
 - (a) an action within the meaning of OCR 1993, rr.33.1 and 33A.1; and
 - (b) an application under the Matrimonial Homes (Family Protection) (Scotland) Act 1981.

PART III

NON-DISCLOSURE OF ADDRESS

4. If it is considered appropriate not to disclose the address of a party, it must be averred in the writ fully why the address is not being disclosed. It is insufficient simply to aver that the party seeking to withhold her or his address does not wish the other party to know his or her whereabouts. In those circumstances the party is not properly designed and the initial writ is not in proper form and will not be accepted by the court.

5. The party seeking to withhold his or her address should adduce reasons in support of that position which satisfy the court and allow it to exercise its discretion in favour of the party seeking non-disclosure of his or her address.

6. If there are no averments to support the non-disclosure of a party's address, the writ is not in proper form and should not be warranted. If the writ is warranted in error, the action may not be allowed to proceed until the rules of procedure have been complied with.

7. A party will be required to justify an attempt to withhold his or her address at any stage of the proceedings particularly if the averments upon which it is sought to found are of some age or are vague or have been diluted in some way, for example, during amendment procedure.

(See *Doughton v Doughton*, 1958 SLT (Notes) 34; and *A.W.B. v J.P.*,
www.scotcourts.gov.uk/opinions/F99_07.html; *B v P*, 2010 GWD 19-371.)

PART IV

AVERMENTS ABOUT PARENTAL RESPONSIBILITIES AND RIGHTS

8. In an initial writ or minute in which a party is not seeking parental responsibilities and parental rights, there should be included averments about who has or who has not any such responsibilities or rights.

PART V

CITATION OF SECTION 11 REPORTERS AS WITNESSES

9. The reporter is the court's reporter and is in a different position to that of witnesses of fact and expert witnesses instructed by the parties. If a party proposes to call as a witness a reporter or curator who has prepared a report into the circumstances of a child or who has taken the views of a child, that party should be in a position to state to the court, at a case management or pre-proof hearing, the basis for doing so and on what matters it is proposed to question the reporter or curator

(See section 11(4) of the Matrimonial Proceedings (Children) Act 1958 and rule 33AA.4(4)(b) of OCR 1993.)

PART VI

MOTIONS

10. Where a motion to allow a part of process to be received late or to fix a child welfare hearing is made, either orally or in writing, the reason for the lateness or need for

child welfare hearing shall be stated by the party making the motion, and that reason shall be recorded in the interlocutor.

PART VII

UNDEFENDED FAMILY ACTIONS – APPLICATION OF THE YEAR AND A DAY RULE

11. The year and a day period is calculated from the end of the period of notice: *McCulloch v McCulloch*, 1990 SLT (Sh Ct) 63.

12. If no minute for decree has been received during said period (and there has been no other procedure during that period and no judicial step has been taken during that period) then the action falls and the sheriff has no power to make any further order. Any interim orders previously granted have also fallen after the expiry of said period. (See *Home-Drummond v Norman*, (1903) 19 Sh Ct Rep 16.)

13. If a minute for decree has been received during said period but decree has not been granted for some reason, the intervention of the court has been invoked and the court's response has been that the minute has been refused, the lodging of the minute will be treated as a judicial step in the process which interrupts the running of the said period. The action will not therefore fall after a year and a day in these circumstances. (See *The Royal Bank of Scotland plc v Mason*, 1995 SLT (Sh Ct) 32.)

PART VIII

MINUTES

14. In a depending case, upon receipt of a minute averring contempt of court, the sheriff will issue an interlocutor providing for service on the alleged contemnor and the fixing of a procedural hearing.

15. Where the original proceedings have concluded, a summary application must be lodged in respect of any alleged contempt of court such as by failing to obtemper a contact order.

16. Where the minute is to vary a section 11 order, in addition to any order under OCR 1993, r.14.3, the sheriff may fix a child welfare hearing.

17. A minute to vary is generally not competent where the original action has been dismissed. There are no existing orders which can be varied and the court has not determined that it would be in the interests of the child for no orders to be pronounced. An application for a section 11 order must be made by initial writ in those circumstances.

18. Where a family or civil partnership action has been raised previously and final decree has been granted, a party seeking a section 11 order, or the variation, recall or enforcement of a section 11 order, will require to lodge a minute to vary in the process of the original action even if no section 11 order were sought or granted in the original action. (See OCR 1993, rr.33.44 and 33A.41.)

19. After final decree in any of the actions referred to in paragraph 18 above, where a party does not seek to have the other party found in contempt and punished by the court but considers that the other party is not obtempering the court order, he should consider whether the appropriate minute to be enrolled is a minute to enforce the existing order under OCR 1993, r.33.44 or 33A.41.



**Sheriff Principal Mhairi M Stephen QC
Sheriff Principal of Lothian and Borders
Edinburgh, 15 May 2015**