

**SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE
POLICY PAPER BY THE SCOTTISH GOVERNMENT
PROPOSED REMOVAL OF ORDINARY CAUSE RULES 33.8 AND 33A.8, COURT
OF SESSION RULE 49.9, AND ASSOCIATED COURT FORMS**

1. This is an **open** paper by the Scottish Government and can be published on the Scottish Civil Justice Council website.
2. This paper proposes the removal of
 - Ordinary Cause Rule 33.8 (OCR 33.8) (Intimation where alleged association) and associated Form F 13 (Form of intimation to person with whom an improper association is alleged to have occurred).
 - Ordinary Cause Rule 33A.8 (Intimation where alleged association) and associated Form CP 13 (Form of intimation to person with whom an association is alleged to have occurred in a civil partnership action).
 - Court of Session Rule 49.9 (Intimation where relevant association) and associated Form 49.9.
3. The terms of OCR 33.8 are attached as an Annex to this paper for ease of reference.
4. Some of the language used in OCR 33.8 now seems inappropriate. In addition, it is not clear exactly what the rule is for. There is a separate form (F2) for intimation when an action of divorce is relying on the defender having committed adultery. It may be that OCR 33.8 relates to alleged conduct by a spouse with a third party which would mean that the other spouse could not reasonably be expected to cohabit with the spouse who has carried out the conduct.
5. The terms of Ordinary Cause Rule 33A.8 are similar but “association” is defined to include heterosexual relationships as well. Court of Session Rule 49.9 also refers to heterosexual relationships. This perhaps reflects that civil partnership used only to be open to same sex couples. However, it remains uncertain what the underlying purpose of these rules and forms are.
6. Given that some of the language used in these rules now seems inappropriate and given it is uncertain what the purpose of these rules and forms is, the Scottish Government suggests they be removed. Alternatively, as outlined above, the rules and forms may relate to alleged conduct other than adultery. If that is the case and the Committee wishes to retain the rules and forms, the Scottish Government suggests they be recast to remove references to particular types of conduct. Instead, information on the alleged conduct could be completed by the pursuer or their agents.
7. This is not an urgent matter and removal of the rules and forms or changes to them could be done in the next appropriate Act of Sederunt.

8. The Scottish Government asks the Committee to agree either that the rules and forms be removed or that they be recast.

**Scottish Government
September 2025**

ANNEX

Intimation where alleged association

- 33.8.** (1) In a family action where the pursuer founds upon an association between the defender and another named person, the pursuer shall, immediately after the expiry of the period of notice, lodge a motion for an order for intimation to that person or to dispense with such intimation
- (2) In determining a motion under paragraph (1), the sheriff may-
- (a) make such order for intimation as he thinks fit; or
 - (b) dispense with intimation; and
 - (c) where he dispenses with intimation, order that the name of that person be deleted from the condescendence of the initial writ.
- (3) Where intimation is ordered under paragraph (2), a copy of the initial writ and an intimation in Form F13 shall be intimated to the named person.
- (4) In paragraph (1), "association" means sodomy, incest or any homosexual relationship.