

1982 No. 1432 (S. 165)

SHERIFF COURT, SCOTLAND

**Act of Sederunt (Applications under the Matrimonial Homes
(Family Protection) (Scotland) Act 1981) 1982**

Made - - - - - 7th October 1982
Coming into Operation 29th October 1982

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and of all other powers competent to them in that behalf do hereby enact and declare:—

Citation and commencement

1. This Act of Sederunt may be cited as the Act of Sederunt (Applications under the Matrimonial Homes (Family Protection) Act 1981) 1982 and shall come into operation on 29th October 1982.

Interpretation

2.—(1) In this Act of Sederunt, unless the context otherwise requires:—

“the 1981 Act” means the Matrimonial Homes (Family Protection) (Scotland) Act 1981(b)

(2) Unless the context otherwise requires, words and expressions used in these rules and in the 1981 Act shall have the same meaning in these rules as they have in the Act.

Intimation to third parties

3.—(1) The applicant shall intimate a copy of the application or the terms of the motion by which the application is made—

- (a) in an application under sections 2(1)(e) and 2(4)(a) (authorisation of non-essential repairs etc), 4 (exclusion orders), 7 (dispensation with consent to dealing), 13 (transfer of tenancy) and 18 (occupancy rights of cohabitating couples) of the 1981 Act, to the landlord if the entitled spouse is a tenant of the matrimonial home;
- (b) in an application under sections 2(1) (rights consequential to occupancy), 2(4)(a), 3(1) and (2) (rights of occupancy), 4, 7 and 18 of the 1981 Act, to the third party if the entitled spouse is permitted by a third party to occupy the matrimonial home;
- (c) to any person as the sheriff may order in any application.

(a) 1971 c. 58.

(b) 1981 c. 59.

(2) A person to whom intimation of an application has been made in terms of this paragraph may lodge answers within such period as the sheriff may allow or if the application is made by motion may appear or be represented and may oppose the motion.

4. An order for intimation to be made under the last foregoing paragraph may be contained in the original warrant for citation or intimation may be appointed to be made at a later date.

Form of applications

5.—(1) Except as otherwise provided in this Act of Sederunt an application under the 1981 Act shall be brought as an ordinary cause except where the application falls within the definition of a summary cause in section 35 of the Sheriff Court (Scotland) Act 1971 in which case it shall be brought as a summary cause.

(2) Where civil proceedings to which this paragraph refers (hereinafter referred to as “the principal proceedings”) have been raised it shall be competent for a defender in the principal proceedings or other person who is entitled to make an application under the 1981 Act to lodge such an application in the process of the principal proceedings.

(3) An application lodged in terms of this paragraph shall be by minute signed by the applicant or his solicitor, shall be served upon the pursuer in the principal proceedings and shall contain:

- (a) a crave or craves in a form which, if the application had been made by way of a separate action would have been appropriate in such separate action;
- (b) a statement of facts setting out in numbered paragraphs the facts on which the application is founded; and
- (c) a note of the pleas-in-law which are necessary to support the application.

(4) In any application lodged in terms of this paragraph the sheriff may make such order for any warrant for intimation, service or arrestment and may regulate the procedure as he thinks fit and may dispose of the application as if it had been stated in a substantive action.

(5) The principal proceedings are:

- (i) an action of separation and aliment;
- (ii) an action of adherence and aliment;
- (iii) an action of interim aliment;
- (iv) an action of affiliation and aliment;
- (v) any application under the 1981 Act.

6.—(1) Applications for the variation or recall of orders which have been made under sections 3 or 4 of the 1981 Act shall be made by minute lodged in the original process in which the order was made.

(2) The sheriff shall order that any minute lodged in terms of this paragraph be served on the opposite party or parties and be intimated to—

- (a) the landlord if the entitled spouse is a tenant of the matrimonial home,
- (b) the third party if the entitled spouse is permitted to occupy the matrimonial home by a third party,
- (c) any other person as the sheriff may order.

(3) The sheriff shall appoint answers to be lodged to any minute lodged in terms of this paragraph within a specified time and shall thereafter, without closing the record, and after such proof or other procedure as he may deem necessary, dispose of the application.

7. An application for an order under section 7 of the 1981 Act shall be made by initial writ under the Sheriff Courts (Scotland) Acts 1907(a) and 1913(b) and such application shall be dealt with as a Summary Application as defined in those Acts:

Provided that in any civil proceedings which involve proceedings in relation to a matrimonial home an application for an order under section 7 of the 1981 Act, by any party to such proceedings entitled to make such an application, shall be made by motion.

8. An application under section 11 (pounding) for a declarator or order of the 1981 Act shall be made by initial writ under the Sheriff Courts (Scotland) Acts 1907 and 1913 and such application shall be dealt with as a Summary Application as defined in those Acts.

And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt.

Edinburgh,
7th October 1982.

Emslie,
Lord President.

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt makes provision for certain applications made to the Sheriff under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 by making new procedural provisions in respect of such applications.

(a) 1907 c. 51.

(b) 1913 c. 28 (2 & 3 Geo. 5).

SI 1982/1432
ISBN 0-11-027432-6



780110 274324