

Status: Point in time view as at 01/01/1994.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

^{F1}FIRST SCHEDULE

ORDINARY CAUSE RULES 1993

Textual Amendments

- F1** Sch. 1 (with appendices 1 and 2) substituted (1.1.1994) for Sch. 1 (with appendix) by [S.I. 1993/1956](#), para. 2, [Sch.1](#).
Sch. 1 (except rule 29.10) excluded (1.4.1997) by [S.I. 1997/291](#), [rule 3.24](#), Sch. 3
Sch. 1 extended (14.2.2000) by [S.I. 2000/124](#), [reg. 30\(5\)](#)

[^{F1}SPECIAL PROVISIONS IN RELATION TO PARTICULAR CAUSES]

CHAPTER 33

FAMILY ACTIONS

PART X

ACTIONS UNDER THE MATRIMONIAL HOMES (FAMILY PROTECTION) (SCOTLAND) ACT 1981

Interpretation of this Part

- 33.66. Unless the context otherwise requires, words and expressions used in this Part which are also used in the ^{M1}Act of 1981 have the same meaning as in that Act.

Marginal Citations

- M1** 1981 c.59.

Form of applications

- 33.67. (1) Subject to any other provision in this Chapter, an application for an order under the Act of 1981 shall be made—
- (a) by an action for such an order;
 - (b) by a crave in the initial writ or in defences, as the case may be, in any other family action; or
 - (c) where the application is made by a person other than a party to any action mentioned in paragraph (a) or (b), by minute in that action.

Status: Point in time view as at 01/01/1994.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (2) An application under section 7(1) (dispensing with consent of non-entitled spouse to a dealing) or section 11 (application in relation to poiding) shall, unless made in a depending family action, be made by summary application.

Defenders

- 33.68. The applicant for an order under the Act of 1981 shall call as a defender—
- (a) where he is seeking an order as a spouse, the other spouse;
 - (b) where he is a third party making an application under section 7(1) (dispensing with consent of non-entitled spouse to a dealing), or 8(1) (payment from non-entitled spouse in respect of loan), of the Act of 1981, both spouses; and
 - (c) where the application is made under section 18 of the Act of 1981 ^{M2} (occupancy rights of cohabiting couples), or is one to which that section applies, the other partner.

Marginal Citations

M2 Section 18 was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c.73\)](#), [section 13\(9\)](#).

Applications by motion

- 33.69. (1) An application under any of the following provisions of the Act of 1981 shall be made by motion in the process of the depending action to which the application relates:—
- (a) section 3(4) (interim order for regulation of rights of occupancy, etc.);
 - (b) section 4(6) (interim order suspending occupancy rights);
 - (c) section 7(1) (dispensing with consent of non-entitled spouse to a dealing);
 - (d) section 15(1) (order attaching power of arrest), if made after application for matrimonial interdict; and
 - (e) the proviso to section 18(1) ^{F1} (extension of period of occupancy rights).
- (2) Intimation of a motion under paragraph (1) shall be given—
- (a) to the other spouse or partner, as the case may be;
 - (b) where the motion is under paragraph (1)(a), (b) or (e) and the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
 - (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

Textual Amendments

F1 Section 18(1) of the Act of 1981 was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c.73\)](#), [section 13\(9\)\(a\)](#).

Status: Point in time view as at 01/01/1994.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Applications by minute

- 33.70. (1) An application for an order under—
- (a) section 5 of the Act of 1981 (variation and recall of orders regulating occupancy rights and of exclusion order), or
 - (b) section 15(2) and (5) of the Act of 1981 (variation and recall of matrimonial interdict and power of arrest),
- shall be made by minute.
- (2) A minute under paragraph (1) shall be intimated—
- (a) to the other spouse or partner, as the case may be;
 - (b) where the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
 - (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

Sist of actions to enforce occupancy rights

- 33.71. Unless the sheriff otherwise directs, the sist of an action by virtue of section 7(4) of the Act of 1981 (where action raised by non-entitled spouse to enforce occupancy rights) shall apply only to such part of the action as relates to the enforcement of occupancy rights by a non-entitled spouse.

Certificates of delivery of documents to chief constable

- 33.72. (1) Where an applicant is required to comply with section 15(4) or (5), as the case may be, of the Act of 1981 ^{F2} (delivery of documents to chief constable where power of arrest attached to matrimonial interdict is granted, varied or recalled), he shall, after such compliance, lodge in process a certificate of delivery in Form F30.
- (2) Where a matrimonial interdict to which a power of arrest under section 15(1) of the Act of 1981 has been attached ceases to have effect by reason of a decree of divorce being pronounced by the sheriff, the pursuer shall send—
- (a) to the chief constable of the police area in which the matrimonial home is situated, and
 - (b) if the applicant spouse (within the meaning of section 15(6) of the Act 1981) resides in another police area, to the chief constable of that other police area,
- a copy of the interlocutor granting decree and lodge in process a certificate of delivery in Form F30.

Textual Amendments

- F2** Section 15(4) was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c.40\)](#), [section 64\(b\)](#).

Status:

Point in time view as at 01/01/1994.

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations.