

Status: Point in time view as at 28/09/2009.

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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\(5\)](#)

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.

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- (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; ^{F1} . . .
 - (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. [^{F2}; and
 - (d) where the application is made under section 18A of the Act of 1981 ^{M3}(application for domestic interdict), the other partner.]

Textual Amendments

- F1** Word in [Sch. 1 rule 33.68\(b\)](#) omitted (4.5.2006) by virtue of Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 ([S.S.I. 2006/207](#)), {rule 2(32)(a)}
- F2** [Sch. 1 rule 33.68\(d\)](#) and word inserted (4.5.2006) by Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 ([S.S.I. 2006/207](#)), {rule 2(32)(b)}

Marginal Citations

- M2** [Section 18](#) was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c.73\)](#), [section 13\(9\)](#).
- M3** [Section 18A](#) was inserted by section 31 of the Family Law (Scotland) Act 2006 (asp2).

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) ^{F3}
 - (e) the proviso to section 18(1) ^{F4} (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).

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Textual Amendments

- F3** Sch. 1 rule 33.69(1)(d) omitted (4.5.2006) by virtue of Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 (S.S.I. 2006/207), {rule 2(33)}
- F4** 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).

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) ^{F5}
- 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).

Textual Amendments

- F5** Sch. 1 rule 33.70(1)(b) omitted (4.5.2006) by virtue of Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 (S.S.I. 2006/207), {rule 2(34)}

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.
- 33.72. ^{F6}

Textual Amendments

- F6** Sch. 1 rule 33.72 omitted (4.5.2006) by virtue of Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 (S.S.I. 2006/207), {rule 2(35)}

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