



Matrimonial Homes (Family Protection) (Scotland) Act 1981

1981 CHAPTER 59

Matrimonial interdicts

17 Procedure after arrest.

- (1) The provisions of this section shall apply only where—
 - (a) the non-applicant spouse has not been liberated under section 16(1) of this Act; and
 - (b) the procurator fiscal decides that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest.
- (2) The non-applicant spouse who has been arrested under section 15(3) of this Act shall wherever practicable be brought before the sheriff sitting as a court of summary criminal jurisdiction for the district in which he or she was arrested not later than in the course of the first day after the arrest, such day not being a Saturday, a Sunday or a court holiday prescribed for that court under section 10 of the ^{M1}Bail etc. (Scotland) Act 1980:
Provided that nothing in this subsection shall prevent the non-applicant spouse from being brought before the sheriff on a Saturday, a Sunday or such a court holiday where the sheriff is in pursuance of the said section 10 sitting on such day for the disposal of criminal business.
- (3) Subsections (1) and (2) of section 3 of the ^{M2}Criminal Justice (Scotland) Act 1980 (intimation to a named person) shall apply to a non-applicant spouse who has been arrested under section 15(3) of this Act as they apply to a person who has been arrested in respect of any offence.
- (4) The procurator fiscal shall at the earliest opportunity, and in any event prior to the non-applicant spouse being brought before the sheriff under subsection (2) above, take all reasonable steps to intimate—
 - (a) to the applicant spouse; and

Status: Point in time view as at 01/02/1991. This version of this provision has been superseded.

Changes to legislation: Matrimonial Homes (Family Protection) (Scotland) Act 1981, Section 17 is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) to the solicitor who acted for that spouse when the interdict was granted or to any other solicitor who the procurator fiscal has reason to believe acts for the time being for that spouse,
that the criminal proceedings referred to in subsection (1) above will not be taken.
- (5) On the non-applicant spouse being brought before the sheriff under subsection (2) above, the following procedure shall apply—
- (a) the procurator fiscal shall present to the court a petition containing—
- (i) a statement of the particulars of the non-applicant spouse;
 - (ii) a statement of the facts and circumstances which gave rise to the arrest; and
 - (iii) a request that the non-applicant spouse be detained for a further period not exceeding 2 days;
- (b) if it appears to the sheriff that—
- (i) the statement referred to in paragraph (a)(ii) above discloses *prima facie* breach of interdict by the non-applicant spouse;
 - (ii) proceedings for breach of interdict will be taken; and
 - (iii) there is a substantial risk of violence by the non-applicant spouse against the applicant spouse or any child of the family,
- he may order the non-applicant spouse to be detained for a further period not exceeding 2 days;
- (c) in any case to which paragraph (b) above does not apply, the non-applicant spouse shall, unless in custody in respect of any other matter, be released from custody;
- and in computing the period of two days referred to in paragraphs (a) and (b) above, no account shall be taken of a Saturday or Sunday or of any holiday in the court in which the proceedings for breach of interdict will require to be raised.

Marginal Citations

M1 1980 c. 4.

M2 1980 c. 62.

Status:

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