



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 12 **S**

SUMMARY WARRANTS, TIME TO PAY AND CHARGES TO PAY

209 Summary warrants, time to pay and charges to pay **S**

- (1) Section 10(4) of the 2002 Act (no charge required for attachment in pursuance of summary warrant) is repealed.
- (2) In section 1 of the 1987 Act (time to pay direction)—
 - (a) subsection (5)(e) (certain debts in relation to which a time to pay direction cannot be granted); and
 - (b) subsection (9) (interpretation),are repealed.
- (3) In section 5 of the 1987 Act (time to pay order)—
 - (a) subsection (4)(c) and (e) (certain debts in relation to which a time to pay order cannot be granted); and
 - (b) subsection (9) (interpretation),are repealed.
- (4) In section 15(3) of the 1987 Act (interpretation)—
 - (a) in the definition of “decree or document of debt”, after paragraph (a) insert—

“(aa) a summary warrant;”;
 - (b) the words “or a summary warrant” are repealed.
- (5) In section 90 of the 1987 Act (provisions relating to charges)—
 - (a) in subsection (1), the words “Subject to subsection (2) below,” and “an attachment or” are repealed;
 - (b) after subsection (1) insert—

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“(1A) The following subsections of this section apply to any case where it is competent to execute diligence only if a charge for payment has been served on the debtor.”;

- (c) subsection (2) (no charge required for attachment or earnings arrestment in pursuance of summary warrant) is repealed;
- (d) in subsection (5), for “an attachment or an earnings arrestment” substitute “diligence”; and
- (e) in subsection (6), for “an attachment or an earnings arrestment” substitute “diligence”.

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(1) The 1987 Act is further amended as follows.

(2) In section 1 (time to pay directions)—

- (a) in subsection (1)—
 - (i) after “Act,” insert “ on an application by the debtor, ”; and
 - (ii) for the words “may, on an application by the debtor,” substitute “ , shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard in particular to the matters mentioned in subsection (1A) below, ”; and
- (b) after subsection (1) insert—

“(1A) The matters referred to in subsection (1) above are—

- (a) the nature of and reasons for the debt in relation to which decree is granted;
- (b) any action taken by the creditor to assist the debtor in paying that debt;
- (c) the debtor's financial position;
- (d) the reasonableness of any proposal by the debtor to pay that debt; and
- (e) the reasonableness of any refusal by the creditor of, or any objection by the creditor to, any proposal by the debtor to pay that debt.”.

(3) In section 5 (time to pay orders)—

- (a) in subsection (2), for the words “may, on an application by the debtor,” substitute “ , on an application by the debtor, shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard in particular to the matters mentioned in subsection (2A) below, ”; and
- (b) after subsection (2), insert—

“(2A) The matters referred to in subsection (2) above are—

- (a) the nature of and reasons for the debt in relation to which the order is sought;
- (b) any action taken by the creditor to assist the debtor in paying that debt;
- (c) the debtor's financial position;
- (d) the reasonableness of any proposal by the debtor to pay that debt; and

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- (e) the reasonableness of the objection by the creditor to the offer by the debtor to pay that debt.”.

Changes to legislation:

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