

2008 No. 122

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 3) (Bankruptcy and Diligence etc. (Scotland) Act 2007)
2008**

Made

13th March 2008

Coming into force

1st April 2008

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 5 of the Court of Session Act 1988(a), section 28A(3) of the Bankruptcy (Scotland) Act 1985(b), sections 15D(2)(a) and 15L(2)(a) of the Debtors (Scotland) Act 1987(c), sections 9C(2)(a), 9F(3)(a)(i), 9L(5)(a), 9M(3)(a) and 9N(2)(a) of the Debt Arrangement and Attachment (Scotland) Act 2002(d) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt is to be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Bankruptcy and Diligence etc. (Scotland) Act 2007) 2008 and comes into force on 1st April 2008.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session

2. The Rules of the Court of Session 1994(e) are amended in accordance with paragraphs 3 and 4.

Interim diligence

3.—(1) Subparagraph (a) of rule 4.11(2) (borrowing of certain documents from process) is omitted.

(2) In rule 13.2(5)(f) (warrants which may be included in summons), the words “for diligence” are omitted.

(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3), by the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45, and by the Vulnerable Witnesses (Scotland) Act 2004, section 14(1).
(b) 1985 c.66. Section 28A was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 12.
(c) 1987 c.18; sections 15D and 15L were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 169.
(d) 2002 asp 17; sections 9C, 9F, 9L, 9M and 9N were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 173.
(e) S.I. 1994/1443, last amended by S.S.I. 2008/120.
(f) Rule 13.2 was amended by S.S.I. 2007/282.

(3) In rule 13.6A(1)(a) (authority for diligence etc before calling), subparagraphs (i) and (ii) are omitted.

(4) In rule 13.8A(b) (authority for diligence etc after calling), subparagraphs (i) and (ii) are omitted.

(5) Rule 13.9(c) (effect of authority for inhibition on the dependence) is omitted.

(6) Rule 13.10(d) (recall etc of arrestment or inhibition) is omitted.

(7) In Form 13.2-A(e) (form of summons and backing), under the heading “**Warrant for diligence**”, the words “[arrestment on the dependence of the action]” and “[inhibition on the dependence of the action]” are omitted.

(8) After Chapter 14 (petitions) insert—

“CHAPTER 14A

INTERIM DILIGENCE

Interpretation

14A.1. In this Chapter—

“the 1987 Act” means the Debtors (Scotland) Act 1987(f); and

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002(g).

Application for interim diligence

14A.2.—(1) The following shall be made by motion—

(a) an application under section 15D(1) of the 1987 Act(h) for warrant for diligence by arrestment or inhibition on dependence of an action or petition or warrant for arrestment on the dependence of an admiralty action;

(b) an application under section 9C of the 2002 Act(i) for interim attachment.

(2) Such an application must be accompanied by a statement in Form 14A.2.

(3) A certified copy of an interlocutor granting a motion under paragraph (1) shall be sufficient authority for execution of the diligence concerned.

Effect of authority for inhibition on the dependence

14A.3.—(1) Where a person has been granted authority for inhibition on the dependence of an action or petition, a certified copy of the interlocutor granting the motion may be registered with a certificate of execution in the Register of Inhibitions and Adjudications.

(2) A notice of a certified copy of an interlocutor granting authority for inhibition under rule 14A.2 may be registered under section 155 of the Titles to Land Consolidation (Scotland) Act 1868(j); and such registration shall have the same effect as registration of a notice under that section.

(a) Rule 13.6A was inserted by S.S.I. 2003/537.

(b) Rule 13.8A was inserted by S.S.I. 2003/537.

(c) Rule 13.9 was substituted by S.S.I. 2003/537.

(d) Rule 13.10 was substituted by S.S.I. 2003/537.

(e) Form 13.2-A was amended by S.I. 1994/2901 and S.S.I. 2003/537.

(f) 1987 c.18.

(g) 2002 asp 9.

(h) Section 15D was inserted by section 169 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(i) Section 9C was inserted by section 173 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(j) 1868 c.101.

Recall etc of arrestment or inhibition

14A.4.—(1) An application by any person having an interest—

- (a) to loose, restrict, vary or recall an arrestment or an interim attachment; or
- (b) to recall, in whole or in part, or vary, an inhibition,

shall be made by motion.

(2) Any person having an interest may apply by motion for a warrant authorising the movement of a vessel or cargo which is the subject of arrestment on the dependence, and paragraphs (2) and (3) of rule 13.11(a) (movement of arrested property) shall apply in such a case as they apply to the case of that rule.

Incidental applications in relation to interim diligence, etc

14A.5. An application to the Court under Part 1A of the 1987 Act(b) or Part 1A of the 2002 Act(c) not otherwise provided for shall be made by motion.”.

(9) In Rule 16.15(d) (forms of diligence), after paragraph (1)(j) insert—

- “(k) in the case of an interim attachment, a schedule in Form 2a, and a report of attachment in Form 2b, in Appendix 1 of Schedule 1 to the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002 (e);”.

(10) In the Appendix, after Form 14.7 insert Form 14A.2 set out in the Schedule to this Act of Sederunt.

(11) But Chapter 13 of the Rules of the Court of Session 1994 as it applied immediately before 1st April 2008 continues to have effect for the purpose of any application for warrant for arrestment on the dependence or inhibition on the dependence made before that date.

Bankruptcy

4.—(1) For Chapter 72 (Bankruptcy (Scotland) Act 1985)(f) substitute—

“CHAPTER 72

BANKRUPTCY (SCOTLAND) ACT 1985

Interpretation of this Chapter

72.1.—(1) In this Chapter, “the Act of 1985” means the Bankruptcy (Scotland) Act 1985(g).

(2) Unless the context otherwise requires, words and expressions used in this Chapter which are also used in the Act of 1985 have the same meaning as in that Act.

Applications for replacement of trustee under section 28A of the Act of 1985

72.2.—(1) An application under section 28A(2) of the Act of 1985(h) (replacement of trustee acting in more than one sequestration) shall include a list of the sequestrations to which the application relates.

(2) Where the court grants an application under section 28A(2) of the Act of 1985, the Accountant in Bankruptcy shall intimate a certified copy of the interlocutor of the court to—

(a) Rule 13.11 was amended by S.S.I. 2003/537.

(b) Part 1A was inserted by section 169 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(c) Part 1A was inserted by section 173 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(d) Rule 16.15 was amended by S.I. 1998/2637 and S.S.I. 2002/560.

(e) S.S.I. 2002/560 as last amended by SSI 2007/466.

(f) Chapter 72 was amended by S.S.I. 2004/514, 2005/268 and 2007/449.

(g) 1985 c.66; amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(h) Section 28A was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007, section 12.

- (a) each sheriff who awarded sequestration or to whom the sequestration was transferred under section 15(2) of the Act of 1985(a) in the sequestrations to which the application relates; and
- (b) any person appointed as the trustee under section 28A(2)(b)(i) of that Act.

(3) The court may make such other orders as it thinks fit for the intimation and advertisement of the appointment of a trustee under section 28A(2)(b) of the Act of 1985.

(4) For the purposes of paragraph (2), a certified copy interlocutor shall be taken to have been intimated to a sheriff where it is sent to the sheriff clerk of the court where the sheriff was sitting when he awarded the sequestration or when sequestration was transferred to him.

Remit of application under section 63(1) of the 1985 Act

72.3.—(1) An application under section 63(3)(b) of the Act of 1985 (application for a direction to remit an application under section 63(1)) shall be made by petition.

(2) A copy of the application under section 63(1) of the Act of 1985 (application to sheriff to cure defects in procedure) certified by the sheriff clerk shall be lodged with any application under section 63(3)(b) of that Act.

(3) Where the court has determined an application under section 63(3)(b) of the Act of 1985, the applicant shall intimate a certified copy of the interlocutor of the court forthwith to—

- (a) the sheriff clerk; and
- (b) the Accountant in Bankruptcy.

(4) Where the court grants an application under section 63(3)(b) of the Act of 1985, the sheriff clerk shall, on receipt of a certified copy of the interlocutor of the court, transmit that application under section 63(1) of that Act, and those parts of the sequestration process in his custody, to the Deputy Principal Clerk.

(5) Where the court has determined the matters raised by the application under section 63(1) of the Act of 1985—

- (a) the applicant under section 63(3)(b) of that Act shall intimate a certified copy of the interlocutor of the court forthwith to—
 - (i) the sheriff clerk; and
 - (ii) the Accountant in Bankruptcy; and
- (b) the Deputy Principal Clerk shall transmit the parts of process transmitted to him under paragraph (4) to the sheriff clerk.

Register of insolvencies

72.4. The register of insolvencies maintained by the Accountant in Bankruptcy under section 1A(1)(b) of the Act of 1985(b) shall contain the information set out in Form 72.4.”.

(2) In the Appendix, for Forms 72.2A to 72.6-E substitute the Form 72.4 set out in the Schedule to this Act of Sederunt.

(a) Section 15(2) was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007, section 16(2).

(b) Section 1A(1)(b) was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007, section 18(5) of and schedule 6.

(3) But Chapter 72 of the Rules of the Court of Session 1994 as it applied immediately before 1st April 2008 continues to have effect in relation to any sequestration in respect of which the petition is presented before that date.

A C HAMILTON
Lord President,
I.P.D.

Edinburgh
13th March 2008

SCHEDULE

Paragraphs 3(10) and 4(2)

Rule 14A.2(2)

FORM 14A.2

Statement to accompany application for interim diligence

DEBTORS (SCOTLAND) ACT 1987 Section 15D

[or DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002 Section 9C]

in the cause (Cause Reference No.)

[A.B.] (designation and address)

Pursuer [or Petitioner]

against

[C.D.] (designation and address)

Defender [or Respondent]

STATEMENT

1. The applicant is the pursuer [or petitioner] [or defender] [or respondent] in the action by [A.B.] (design) against [C.D.] (design).

2. [The following persons have an interest (specify names and addresses).]

3. The application [is or is not] seeking the grant under [section 15E(1) or 9D(1)] of the [1987 Act or 2002 Act] of [warrant for diligence or interim attachment] in advance of a hearing on the application.

4. [Here provide such other information as may be prescribed by regulations made by the Scottish Ministers under section 15D(2)(d) of the 1987 Act or section 9C(2)(d) of the 2002 Act]

..... (Signed)

Solicitor [or Agent] for A.B. [or C.D.] (include full designation)

FORM 72.4

Rule 72.4

Information to be contained in the Register of Insolvencies

Winding up and receivership of business associations

Company number

Company name

Type of proceedings

Name of office holder(s)

Date of appointment of office holder(s)

Date of termination of appointment of office holder(s)

Date of winding-up order (for compulsory liquidations)

Court by which company wound up

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994.

Paragraph 3 makes provision in relation to interim diligence, including a new Chapter 14A in relation to proceedings under the Bankruptcy (Scotland) Act 1985 which takes account of the amendments made to that Act by the Bankruptcy and Diligence etc. (Scotland) Act 2007.

Provision is made as follows:

- (a) a form of application for interim diligence;
- (b) the effect of authority for inhibition on the dependence;
- (c) that applications for recall, restriction or varying etc of arrestment or inhibition are to be made by motion;
- (d) that incidental applications in relation to interim diligence are to be made by motion;
- (e) a form of schedule of inhibition on the dependence and a form for service of inhibition where the address of the defender is not known;
- (f) that references to arrestment on the dependence before service of a initial writ or summons are removed;
- (g) that the rules as they applied immediately before the coming into force of this Act of Sederunt will continue to apply to any application for arrestment on the dependence made before that date.

Paragraph 4 substitutes a new Chapter 72 in relation to proceedings under the Bankruptcy (Scotland) Act 1985 which takes account of the amendments made to that Act by the Bankruptcy and Diligence etc. (Scotland) Act 2007.

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