
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 104

Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Diligence) 2009

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Diligence) 2009 and shall come into force on 22nd April 2009.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994⁽¹⁾ are amended in accordance with subparagraphs (2) to (14).

(2) In rule 14A.3 (effect of authority for inhibition on the dependence)⁽²⁾ for paragraph (2) substitute—

“(2) A notice of a certified copy of an interlocutor granting authority for inhibition under rule 14A.2 may be registered in the Register of Inhibitions and Adjudications; and such registration is to have the same effect as registration of a notice of inhibition under section 155(2) of the Titles to Land Consolidation (Scotland) Act 1868⁽³⁾.”.

(3) In rule 16.15(1) (forms for diligence)—

(a) in subparagraph (f) (arrestment in execution) the words “a schedule in Form 16.15-E and” are omitted; and

(b) subparagraph (h) (inhibition) is omitted.

(4) After rule 16.15 insert—

“Form of Service of copy decree

16.16. The copy final decree served under section 73C(2) of the Debtors (Scotland) Act 1987⁽⁴⁾ shall be in Form 16.16.”.

(5) In rule 25.2 (authority for diligence etc. on counterclaims) for paragraph (4) substitute—

“(4) A notice of a certified copy of an interlocutor granting authority for inhibition under this rule may be registered in the Register of Inhibitions and Adjudications; and such registration is to have the same effect as registration of a notice of inhibition under section 155(2) of the Titles to Land Consolidation (Scotland) Act 1868.”.

(6) In rule 26.3 (authority for diligence etc. on third party notices) for paragraph (4) substitute—

“(4) A notice of a certified copy of an interlocutor granting authority for inhibition under this rule may be registered in the Register of Inhibitions and Adjudications; and

(1) S.I.1994/1443, last amended by S.S.I. 2009/82.

(2) Rule 14A.3 was inserted by S.S.I. 2008/122.

(3) 1868 c. 101. Section 155(2) was substituted by the Bankruptcy and Diligence etc. (Scotland) Act 2007, section 149.

(4) 1987 c. 18. Section 73C was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007, section 206.

such registration is to have the same effect as registration of a notice of inhibition under section 155(2) of the Titles to Land Consolidation (Scotland) Act 1868.”.

(7) In rule 49.7 (warrants for arrestment or inhibition on dependence) for paragraph (4) substitute—

“(4) A notice of a certified copy of the interlocutor containing a warrant for inhibition granted under this rule may be registered in the Register of Inhibitions and Adjudications; and such registration is to have the same effect as registration of a notice of inhibition under section 155(2) of the Titles to Land Consolidation (Scotland) Act 1868.”.

(8) In rule 59.1 (applications for letters of arrestment or inhibition)—

(a) in paragraph (1)—

- (i) the words “or inhibition” are omitted; and
- (ii) subparagraphs (b) to (f) are omitted;

(b) in paragraph (3)—

- (i) the words “Except where the application is in Form 59.1-D or 59.1-E” are omitted; and
- (ii) the words “or inhibition” are omitted;

(c) in paragraph (4), the words “Where the application is in any of Forms 59.1-A to 59.1-C or is in Form 59.1-D or 59.1-F” are omitted;

(d) paragraphs (4A) and (4B) are omitted; and

(e) in paragraph (5), the words “or inhibition” are omitted.

(9) In Form 16.15-B—

(a) for subparagraph (i) after the words “arrest in your hands” substitute—

“(i) the sum of (*amount*), in excess of the Protected Minimum Balance, where applicable (see Note), more or less, due by you to (*defender’s name*) [*or name and address of common debtor if common debtor is not the defender*] or to any other person on his [*or her*] [*or its*] [*or their*] behalf and”;

(b) after the second paragraph in the section headed “NOTE” insert—

“The Protected Minimum Balance is the sum referred to in section 73F(4) of the Debtors (Scotland) Act 1987. This sum is currently set at [*insert current sum*]. The Protected Minimum Balance applies where the arrestment attaches funds standing to the credit of a debtor in an account held by a bank or other financial institution and the debtor is an individual. The Protected Minimum Balance does not apply where the account is held in the name of a company, a limited liability partnership or an unincorporated association or where the amount is operated by the debtor as a trading account.

Under section 73G of the Debtors (Scotland) Act 1987 you must also, within the period of 3 weeks beginning with the day on which the arrestment is executed, disclose to the creditor the nature and value of the funds and/or moveable property which have been attached. This disclosure must be in the form set out in Schedule 8 to the Diligence (Scotland) Regulations 2009. Failure to comply may lead to a financial penalty under section 73G of the Debtors (Scotland) Act 1987 and may also be dealt with as a contempt of court. You must, at the same time, send a copy of the disclosure to the debtor and to any person known to you who owns (or claims to own) attached property, or to whom attached funds are (or are claimed to be) due, solely or in common with the debtor.”.

(10) Form 16.15-E (form of schedule of arrestment) is omitted.

(11) Form 16.15-F (form of schedule of inhibition) is omitted.

(12) In Form 16.15-H (form of certificate of execution of arrestment or inhibition) the following words are omitted:–

- (a) “or inhibition” in each place where they appear;
- (b) “on letters of arrestment”;
- (c) “or inhibiting”
- (d) “or person inhibited”
- (e) “[inhibition]” in each place where it appears.

(13) After Form 16.15-K insert Form 16.16 set out in the Schedule to this Act of Sederunt.

(14) Forms 59.1-B to 59.1-F (which are forms relative to letters of inhibition) are omitted.

Edinburgh
11th March 2009

A.C. Hamilton
Lord President I.P.D.