

2009 No. 104

COURT OF SESSION

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

Made - - - - - *11th March 2009*

Coming into force - - - - - *22nd April 2009*

The Lords of Council and Session, under and by virtue of the powers conferred by section 73C(2) of the Debtors (Scotland) Act 1987(a) and section 5 of the Court of Session Act 1988(b) and of all other powers enabling them in that behalf, do hereby enact and declare:

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(c) are amended in accordance with subparagraphs (2) to (14).

(2) In rule 14A.3 (effect of authority for inhibition on the dependence)(d) 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(e).”.

(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—

(a) 1987 c.18. Section 73C was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 206.
(b) 1988 c.36. Section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3), the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1).
(c) S.I. 1994/1443, last amended by S.S.I. 2009/82.
(d) Rule 14A.3 was inserted by S.S.I. 2008/122.
(e) 1868 c.101. Section 155(2) was substituted by the Bankruptcy and Diligence etc. (Scotland) Act 2007, section 149.

“Form of Service of copy decree

16.16. The copy final decree served under section 73C(2) of the Debtors (Scotland) Act 1987(a) 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 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.

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

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.

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

Edinburgh
11th March 2009

Schedule

Form 16.16

Rule 16.16

Form of Service of copy final decree under section 73C of the Debtors (Scotland) Act 1987

1. Date (*date of service*)
To (*name and address of arrestee*)

2. On (*date*) the court granted decree against (*name of debtor*) for payment of £ (*insert sum*) to (*insert name of creditor*). A copy of the final decree is attached.

3. An arrestment on the dependence of this action attaching funds in your hands was executed on (*insert date*).

4. You are now required to release to the creditor, on the expiry of 14 weeks beginning with this date (or earlier where a mandate authorises you to do so) the lowest of—
 - (a) the sum attached by the arrestment;
 - (b) the sum due by you to the debtor; or
 - (c) the sum of £ (*insert sum*), which is the sum calculated in accordance with section 73K(c) of the Debtors (Scotland) Act 1987.

5. This must be done unless:
 - (a) an application is made under section 73M(1) of the Debtors (Scotland) Act 1987;
 - (b) the debtor applies to the sheriff under section 73Q(2) of that Act;
 - (c) an action of multiplepointing is raised in relation to the funds attached by the arrestment; or
 - (d) the arrestment is recalled, restricted or otherwise ceases to have effect.

(Signed)

Date

Creditor

[or Solicitor for Creditor]

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS DOCUMENT, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session 1994 in consequence of the commencement of Parts 5 (inhibition) and 10 (arrestment in execution and action of furthcoming) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”).

Paragraph 2(2), (3), (5), (6) and (7) makes provision in consequence of sections 148 and 149 of the 2007 Act in relation to registration of inhibition.

Paragraph 2(4) and (13) provides for the form of service of copy decree under new section 73C(2) of the Debtors (Scotland) Act 1987, inserted by section 206 of the 2007 Act.

Paragraph 2(8) and (14) makes provision in consequence of the abolition, by section 146(6) of the 2007 Act, of the process of applying for letters of inhibition.

Paragraph 2(9) amends the form of schedule of arrestment on the dependence to reflect the new provisions in section 73F of the Debtors (Scotland) Act 1987 on the protected minimum balance.

Paragraph 2(10) removes the form of schedule of arrestment in execution from the Rules as that form is now prescribed by Scottish Ministers under new section 73B of the Debtors (Scotland) Act 1987.

Paragraph 2(11) removes the form of schedule of inhibition from the Rules as that form is now prescribed by Scottish Ministers under section 148 of the 2007 Act.

Paragraph 2(12) amends Form 16.15-H so that it now provides only for the form of certificate of execution of an inhibition.

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3) (Diligence) 2009

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