
EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Part 5 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (“the Act”) which amends the law of inhibition (the enforcement of judgments, decrees and documents of debt to freeze the heritable property of the debtor).

Where a court grants a warrant for inhibition on the dependence of a court action it may, under section 15J(b) of the Debtors (Scotland) Act 1987, limit the property caught by the inhibition to specified property. If the court then grants a decree for payment of all or part of the principal sum sued for, an inhibition on the dependence of an action converts into an inhibition in execution which is not limited to the specified property under section 152 of the Act.

The Act does not provide for the registration of such a decree in the Register of Inhibitions to give notice to third parties of the removal of limitations on the extent of the inhibition. This Order makes ancillary provision for that. The removal of the limitation to specified property has effect from the date of registration of an extract of the warranted decree, or a certified copy interlocutor in that Register, together with a notice in the prescribed form (article 2(a), (b)(i) and (c)). Article 3 prescribes the form of notice which must accompany the registered decree, and article 4 makes transitional provision prior to the commencement of section 80 of the Act which renames that Register.

This Order also makes ancillary provision for a minor clarification of the wording of section 152 of the Act (article 2(b)(ii)).