



Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951

1951 CHAPTER 65

PART I

PROTECTION AGAINST CERTAIN LEGAL REMEDIES

Provisions as to Scotland

7 Application of sections eight to twelve

The five next following sections shall apply to Scotland only.

8 General restrictions on execution and other remedies

- (1) In the cases mentioned in the next following section no person shall be entitled, subject to the provisions of this Part of this Act, to enforce, except with the leave of the appropriate court, a decree of any court (whether pronounced before or after the commencement of this Act) for the payment of a sum of money or for the recovery of possession of land:

Provided that nothing in this subsection shall apply to—

- (a) any decree for damages in respect of loss or damage arising from any wrongful act or omission;
- (b) any decree based upon a contract made after the relevant date;
- (c) any decree for expenses ;
- (d) any decree for aliment or any decree or order enforceable by virtue of any enactment in like manner as a decree for aliment, or any order for payment under subsection (2) of section three, or subsection (4) of section five, of the Guardianship of Infants Act, 1925 ; or
- (e) any order made in criminal proceedings, or an order for the recovery of a penalty due in respect of a contravention of, or failure to comply with, any Act.

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- (2) In the cases mentioned in the next following section no person shall be entitled, subject to the provisions of this Part of this Act, except with the leave of the appropriate court—
- (a) to do any diligence (not being diligence used only on the dependence of an action or ad fundandam jurisdictionem);
 - (b) to enforce any irritancy, legal or conventional;
 - (c) to realise any security or forfeit any deposit;
 - (d) to exercise any power of sale conferred by a heritable security;
 - (e) to institute an action of maills and duties ; or
 - (f) to take or resume possession of any property by reason of any default by any person in the payment of money or the performance of any obligation:

Provided that this subsection shall not apply to any remedy or proceedings available in consequence of any default in the payment of a debt arising by virtue of a contract made after the relevant date or the performance of an obligation so arising, and nothing in this subsection shall affect—

- (i) any right or power of pawnbrokers to deal with pledges; or
- (ii) any remedy competent to a heritable creditor in possession of the security subjects at the relevant date ;
- (iii) any right or power of a person to sell goods in his custody arising by reason of default in the payment of a debt.

- (3) If on any application for such leave as is required under this section for the enforcement of any decree or the exercise of any right or remedy mentioned in the foregoing provisions of this section, the appropriate court is of opinion that the person liable to implement such decree or perform the obligation in respect of which such right or remedy arises, is unable immediately to do so by reason of circumstances directly or indirectly attributable to his or someone else's performing or having performed a period of relevant service, the court may, subject to the provisions of this Part of this Act, refuse leave to enforce the decree or to exercise the right or remedy or give leave therefor subject to such restrictions and conditions as the court thinks proper.

Any order pronounced under this subsection may be suspended, rescinded or varied by a subsequent order.

- (4) The appropriate court, in determining for the purpose of the last foregoing subsection whether a person is unable immediately to implement the decree or perform the obligation in question by reason of any such circumstances as are mentioned in that subsection, or in determining the restrictions and conditions (if any) subject to which leave is to be given under that subsection, may take account of other liabilities, whether present or future, of that person.

- (5) Where—
- (a) a petition for sequestration has been presented against any debtor, and it is shown to the satisfaction of the court before which such petition depends that his inability to pay his debts is due to circumstances directly or indirectly attributable to his or someone else's performing or having performed a period of relevant service; or
 - (b) a winding-up petition has been presented against an exempt private company on the ground that it is unable to pay its debts, and it is shown to the satisfaction of the court before which such petition depends that its inability to pay its

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debts is due to circumstances directly or indirectly attributable to any person's performing or having performed a period of relevant service;
the court may sist the proceedings in the petition for such time and subject to such conditions as the court thinks fit.

In this subsection the expression " an exempt private company " shall be construed in accordance with subsection (4) of section one hundred and twenty-nine of the Companies Act, 1948.

9 Scope of protection

- (1) Subject to the following provisions of this section, the provisions of subsection (1) or (2) of the last foregoing section shall apply to the exercise of any right or remedy in the following cases and in the following cases only, that is to say:—
 - (a) they shall apply (by virtue of this paragraph) where the person liable to implement the decree or to perform the obligation in question is for the time being performing a period of relevant service;
 - (b) they shall apply (by virtue of this paragraph but subject to any order of the appropriate court directing that they shall not so apply or shall cease so to apply) where the person liable as aforesaid has been performing a period of relevant service and while he was so doing an application was made to the appropriate court for leave under the last foregoing section to exercise the right or remedy;
 - (c) they shall apply in any case where—
 - (i) the appropriate court by order so directs, on the application of the person liable as aforesaid and on being satisfied that he is unable immediately to implement the decree or to perform the obligation in question by reason of circumstances directly or indirectly attributable to his or someone else's performing or having performed a period of relevant service; or
 - (ii) the person liable as aforesaid has made to the appropriate court an application for an order under this paragraph, and the application has not been disposed of, or not having made such an application has given to the proper person written notice of his intention to do so.
- (2) A notice given for the purpose of paragraph (c) of the foregoing subsection shall expire at the expiration of fourteen days (or, if given in a class of case as to which a longer period is prescribed for the purposes of this subsection, at the expiration of that period) from the date on which it was given, and where the person giving a notice for that purpose has given a previous notice to the like effect the later notice shall have no operation unless the previous notice was withdrawn with the consent of the proper person before it expired.
- (3) For the purpose of the foregoing subsections, the expression " the proper person " means the person seeking to exercise the right or remedy in question, but a notice shall be deemed to be given to the proper person if given to any person (whether the proper person or his agent or not) proceeding to enforce that right or remedy.
- (4) Where the appropriate court makes an order under paragraph (c) of subsection (1) of this section with respect to the exercise of any right or remedy the powers of the court under the last foregoing section shall thereupon be exercisable as if an application for leave to exercise the right or remedy in question had been made under that section.

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- (5) The appropriate court, in determining for the purpose of the said paragraph (c) whether the applicant is unable immediately to implement the decree or to perform the obligation in question by reason of any such circumstances as are mentioned in that paragraph, may take account of other liabilities, whether present or future, of his.
- (6) Any reference in subsection (3) of the last foregoing section or subsection (1) of this section to the person liable to implement the decree or to perform the obligation in question shall in a case where it is sought to exercise a right or remedy against one such person separately from any others who are also so liable, be construed as referring to him only and not including any such other person but, in a case where it is sought to exercise it against two or more such persons jointly, shall be construed as referring to all or any of the persons against whom it is sought to exercise the right or remedy; and in this subsection references to exercising a right or a remedy against a person shall include references to exercising it against property in which he has an interest or of which he is in possession.
- (7) For the purposes of the last foregoing section, a person in right of a decree who presents a petition for sequestration or a winding up petition founded on the non-payment of money due under the decree shall be deemed to be enforcing the decree.
- (8) For the purposes of the last foregoing section, the expression " the relevant date " means the date on which the service man in question began to perform the period of relevant service:

Provided that—

- (a) for the purposes of any reference in that section to a contract made after the relevant date where a service man performs two or more periods of relevant service the said expression means the date on which he began the later or latest of those periods of service; and
- (b) for the purposes of the proviso to subsection (2) of that section—
 - (i) where the said date was before the commencement of this Act, then subject to sub-paragraph (ii) of this paragraph the said expression means the date of that commencement; and
 - (ii) in a case to which the last foregoing section applies by virtue of paragraph (c) of subsection (1) of this section, the said expression means the date on which that section began so to apply.

10 Property in goods subject to hire-purchase agreement

- (1) Where the appropriate court refuses leave under subsection (3) of section eight of this Act to take or resume possession of goods let under a hire-purchase agreement or to do diligence on any decree for the delivery of any such goods, or gives such leave subject to restrictions, and conditions, and the hirer or purchaser, before possession is taken or resumed or diligence is done, pays to the owner a sum equal to the total of the unpaid instalments, the property in the goods shall thereupon, notwithstanding any failure to pay any such instalment at the time required by the agreement, pass to the hirer or purchaser.
- (2) Where the owner of goods let under a hire-purchase agreement has taken possession of the goods, the appropriate court on an application made under paragraph (c) of subsection (1) of section nine of this Act may, if it sees fit so to do deal with the case as if he were proceeding to take possession of them and, if it makes an order under that paragraph, may direct accordingly that the goods shall be restored to the hirer;

and if, after the owner has taken possession of the goods, notice is given under that paragraph with respect to them, he shall not, so long as the notice is in force or any application in pursuance thereof is undisposed of, deal with the goods in such a way as to prejudice the powers of the appropriate court under this subsection.

- (3) In this section the expression "hire-purchase agreement" means any contract to which the Hire Purchase and Small Debt (Scotland) Act, 1932, applies or would apply if the limitation as to value contained in section one of that Act were omitted and the expressions "hirer", "instalment", "owner" and "purchaser" have the like meanings as in that Act.

11 Appropriate courts and procedure

- (1) The appropriate court for the purposes of any of the provisions of this Part of this Act applying to Scotland shall be such court as the Court of Session may by Act of Sederunt designate, and different courts may be designated in relation to different classes of proceedings.
- (2) The Court of Session may by Act of Sederunt make provision for requiring, or dispensing with, service of notice of any application under this Part of this Act upon persons who may be affected, whether by virtue of subsection (4) of section eight or subsection (5) of section nine of this Act or otherwise, and for enabling any such persons to be heard at the hearing, and may also make provision for the making of applications ex parte in such cases as may be prescribed by the Act of Sederunt.
- (3) Any power conferred on the Court of Session by the foregoing provisions of this section shall be exercisable by statutory instrument and the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing an Act of Sederunt made in the exercise of the said power in like manner as if the Act of Sederunt had been made by a Minister of the Crown.

12 Interpretation of sections eight to eleven

For the purposes of sections eight to eleven of this Act the expression "heritable security" includes a security constituted by ex facie absolute disposition.