



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

1951 CHAPTER 65

PART I

PROTECTION AGAINST CERTAIN LEGAL REMEDIES

Provisions as to Scotland

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

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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has given a previous notice to the like effect the later notice shall have no operation unless the previous notice was withdrawn with the consent of the proper person before it expired.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.
- (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.