

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 9 – Diligence Against Earnings

Section 203 – Provision of information

660. **Section 203** inserts four new sections into the 1987 Act concerned with the provision of information.

New section 70A – Employer’s duty to provide information

661. New section 70A is inserted into the 1987 Act and places a duty on an employer, on whom an earnings arrestment schedule, a current maintenance arrestment schedule or a conjoined arrestment order is served, to provide the debtor, creditor and, in the case of a conjoined arrestment order, the sheriff clerk with certain specified information. It also specifies the dates on which the information is to be provided. The information to be provided is set out in subsection (3) and relates to details of the debtor’s pay and any deductions from it. A power is given to the Scottish Ministers to prescribe, by regulations, other types of information to be provided under this subsection. That power is exercisable by regulations subject to negative resolution procedure. Subsection (5) also imposes a duty on employers, where an arrestment against earnings is in effect to advise the creditor and, in the case of a conjoined arrestment order, the sheriff clerk if the debtor ceases to be employed by the employer and to provide details of any new employer of the debtor if known.

New section 70B – Failure to give notice under section 70A(5)

662. This section provides that where an employer fails to notify the creditor when a debtor’s employment is terminated and provide details of any new employment, the sheriff may, on the application by the creditor, make an order requiring the employer to provide whatever information is known by that employer to the creditor. The sheriff may also order the employer to pay the creditor an amount not exceeding twice the amount which that creditor would have received on the debtor’s next pay day had the debtor still been employed by the employer. Subsection (2) provides that payment of this amount will reduce the debt owed to the creditor by the same amount.
663. Under subsection (3) the employer may, within 14 days of the order being made, appeal, on point of law only, to the sheriff principal, whose decision will be final.
664. By virtue of an amendment of section 105 of the 1987 Act by paragraph 16(13)(c) of schedule 5 to this Act, section 70B does not apply to Her Majesty as an employer.

New section 70C – Creditor’s duty to provide information

665. This section specifies the information to be provided by the creditor to the employer and, in the case of a conjoined arrestment order, to the sheriff clerk and the dates on which that information is to be supplied. The information to be provided relates to how much of the debt is still outstanding and how much the creditor has received under the arrestment towards paying off that debt.

New section 70D – Debtor’s duty to provide information

666. This section provides that a debtor, who is subject to an arrestment against the debtor’s earnings, must notify the creditor and, in the case of a conjoined arrestment order, the sheriff clerk of any change of his or her employer.