



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 5

### INHIBITION

#### *Creation*

#### **146 Certain decrees and documents of debt to authorise inhibition without need for letters of inhibition**

- (1) Inhibition in execution is competent to enforce—
  - (a) payment of a debt constituted by a decree or document of debt;
  - (b) subject to subsection (2) below, an obligation to perform a particular act (other than payment) contained in a decree.
- (2) Inhibition under subsection (1)(b) above is competent only if the decree is a decree—
  - (a) in an action containing an alternative conclusion or crave for payment of a sum other than by way of expenses; or
  - (b) for specific implement of an obligation to convey heritable property to the creditor or to grant in the creditor's favour a real right in security, or some other right, over such property.
- (3) In section 3 of the Writs Execution (Scotland) Act 1877 (c. 40) (warrant in extract writ to authorise diligence), after paragraph (b) insert—
  - (ba) in relation to an ordinary debt within the meaning of the Debtors (Scotland) Act 1987, inhibition against the debtor;”.
- (4) In section 7(1) of the Sheriff Courts (Scotland) Extracts Act 1892 (c. 17) (warrant in extract decree to authorise diligence), after paragraph (b) insert—
  - (ba) in relation to an ordinary debt within the meaning of the Debtors (Scotland) Act 1987, inhibition against the debtor;”.
- (5) In section 87(2) of the 1987 Act (warrant in extract decree to authorise diligence), after paragraph (b) insert—

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“(ba) in relation to an ordinary debt, inhibition against the debtor;”.

- (6) It is not competent for the Court of Session to grant letters of inhibition.
- (7) In a case where inhibition is executed under subsection (1)(b) above—
- (a) sections 165 and 166 of this Act do not apply; and
  - (b) sections 158, 159, 160 and 163 of this Act have effect as if references to a “debtor” or “creditor” were references to the debtor or creditor in the obligation.
- (8) In this Part—
- “decree” has the meaning given by section 221 of this Act, except that paragraphs (c), (g) and (h) of the definition of “decree” in that section do not apply; and
- “document of debt” has the meaning given by section 221 of this Act.
- (9) The Scottish Ministers may by order modify the definitions of “decree” and “document of debt” in subsection (8) above by—
- (a) adding types of decree or document to;
  - (b) removing types of decree or document from; or
  - (c) varying the description of,
- the types of decree or document to which those definitions apply.

#### Commencement Information

- II** [S. 146](#) wholly in force at 22.4.2009; [s. 146](#) not in force at Royal Assent see [s. 227](#); [s. 146\(9\)](#) in force for certain purposes at 1.4.2008 by [S.S.I. 2008/115](#), [art. 3\(4\)](#), [Sch. 3](#) (with [arts. 4-6, 10](#)); [s. 146](#) otherwise in force at 22.4.2009 by [S.S.I. 2009/67](#), [art. 3\(1\)](#) (with transitional modifications and savings in [arts. 4-6](#))

#### 147 Provision of debt advice and information package when executing inhibition

Where the debtor is an individual, a schedule of inhibition served in execution of an inhibition under section 146(1) of this Act (other than an inhibition such as is mentioned in section 146(2)(b)) must be accompanied with a debt advice and information package.

#### 148 Registration of inhibition

- (1) An inhibition is registered only by registering—
- (a) the schedule of inhibition; and
  - (b) the certificate of execution of the inhibition,
- in the Register of Inhibitions.
- (2) References in any enactment to registering or, as the case may be, recording an inhibition must, unless the context otherwise requires, be construed as references to registration in accordance with subsection (1) above.
- (3) The—
- (a) schedule of inhibition; and
  - (b) certificate of execution of the inhibition,

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must be in (or as nearly as may be in) the form prescribed by the Scottish Ministers by regulations.

#### Commencement Information

- I2** S. 148 wholly in force; s. 148 not in force at Royal Assent see s. 227; s. 148(3) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, art. 3(4), Sch. 3 (with arts. 4-6, 10); s. 148 otherwise in force at 22.4.2009 by S.S.I. 2009/67, art. 3(1) (with transitional modifications and savings in arts. 4-6)

#### [<sup>F1</sup>148A Register of Inhibitions: electronic signature of documents

- (1) This section applies in relation to a document which is required or permitted to be registered or recorded in the Register of Inhibitions.
- (2) An electronic signature fulfils any requirement (however expressed) that the document be signed in order to be registered or recorded in the Register.
- (3) Any requirement (however expressed) that the document be given to the Keeper in order to be registered or recorded in the Register may be fulfilled by transmitting it to the Keeper electronically.
- (4) For the purposes of subsection (3), the document must be transmitted by a means (and in a form) which is specified on the Keeper’s website as being acceptable for those purposes.
- (5) In this section—
  - “document” includes a copy of a document,
  - “electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000, but includes a version of an electronic signature which is reproduced on a paper document,
  - “the Keeper” means the Keeper of the Registers of Scotland,
  - “the Keeper’s website” means the website maintained by, or on behalf of, the Keeper of the Registers of Scotland.]

#### Textual Amendments

- F1** S. 148A inserted (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), ss. 34(2), 59(1) (with s. 48(1)(c)(2)(c)(3)(b))

#### 149 Date on which inhibition takes effect

In the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (in this Chapter, the “1868 Act”), for section 155 (date on which inhibitions take effect) substitute—

##### “155 Date on which inhibition takes effect

- (1) An inhibition has effect from the beginning of the day on which it is registered unless the circumstances referred to in subsection (2) below apply.
- (2) Those circumstances are—
  - (a) a notice of inhibition is registered in the Register of Inhibitions;

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- (b) the schedule of inhibition is served on the debtor after that notice is registered; and
  - (c) the inhibition is registered before the expiry of the period of 21 days beginning with the day on which the notice is registered.
- (3) In those circumstances the inhibition has effect from the beginning of the day on which the schedule of inhibition is served.
- (4) A notice of inhibition must be in (or as nearly as may be in) the form prescribed.”.

#### Commencement Information

- I3** S. 149 wholly in force at 22.4.2009; s. 149 not in force at Royal Assent see s. 227; s. 149 in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, art. 3(4), Sch. 3 (with arts. 4-6, 10); s. 149 otherwise in force at 22.4.2009 by S.S.I. 2009/67, art. 3(1) (with transitional modifications and savings in arts. 4-6)

**Changes to legislation:**

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