

2008 No. 121

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules Amendment) (Diligence)
2008**

Made - - - - - *13th March 2008*

Coming into force - - - - - *1st April 2008*

The Lords of Council and Session, under and by virtue of the powers conferred by sections 15D(2)(a) and 15L(2)(a) of the Debtors (Scotland) Act 1987(a), section 32 of the Sheriff Courts (Scotland) Act 1971(b), sections 9C(2)(a), 9F(3)(a)(i), 9L(5)(a), 9M(3)(a) and 9N(2)(a) of the Debt Arrangement and Attachment (Scotland) Act 2002(c) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules Amendment) (Diligence) 2008 and shall come into force on 1st April 2008.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Abolition of sequestration for rent

2.—(1) The following provisions (which make provision in relation to actions for sequestration for rent) are revoked, namely—

(a) in the Ordinary Cause Rules(d), Part 1 of Chapter 34 and Form H1; and

(b) in the Summary Cause Rules(e), Chapter 31 and Forms 4, 4A, 4B, 28C and 28D.

(2) But those rules and forms continue to have effect for the purpose of any cause commenced before 1st April 2008.

(a) 1987 c.18; sections 15D and 15L were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 169.

(b) 1971 c.58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13, the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2), and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49.

(c) 2002 asp 17; sections 9C, 9F, 9L, 9M and 9N were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 173.

(d) 1907 c.51. The Ordinary Cause Rules are contained in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c.51), which was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445, S.S.I. 2000/239 and 408, 2001/8 and 144, 2002/7, 128 and 566, 2003/25 and 26, 2004/197 and 350, 2005/20, 189, 638 and 648 and 2006/207, 293, 410 and 509 and 2007/6, 339, 440 and 463.

(e) The Summary Cause Rules are contained in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132), which was amended by S.S.I. 2002/516, 2003/216, 2004/197, 2005/648, 2006/509 and 2007/6, 339, 440 and 463.

Applications for time to pay orders

3.—(1) The Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988(a) is amended in accordance with subparagraph (2).

(2) In Form 2(b) in the Schedule, in the Extract from section 5(4) and (5) of the Debtors (Scotland) Act 1987—

(a) subsections (4)(c) and (e) are omitted;

(b) for subsection (5)(a) substitute—

“(a) articles belonging to the debtor have been attached and notice of an auction given under section 27(4) of the Debt Arrangement and Attachment (Scotland) Act 2002(c) (asp 17) but no auction has yet taken place;

(aa) money owed by the debtor has been attached and removed;”.

4. But the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988 as it applied immediately before 1st April 2008 continues to have effect for the purpose of any application for a time to pay order made before before 1st April 2008.

Interim diligence

5.—(1) The Ordinary Cause Rules are amended in accordance with subparagraphs (2) to (7).

(2) Rule 3.5 (warrants and precepts for arrestment on dependence)(d) is revoked.

(3) In rule 5.6 (service where address of person is not known) at the beginning insert—

“(A1) Subject to rule 6.A7 this rule applies to service where the address of a person is not known.”.

(4) Chapter 6 is renamed “INTERIM DILIGENCE”.

(5) At the beginning of that Chapter, insert—

“Interpretation

6.A1. In this Chapter—

“the 1987 Act” means the Debtors (Scotland) Act 1987(e); and

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002(f).

Application for interim diligence

6.A2.—(1) The following shall be made by motion—

(a) an application under section 15D(1) of the 1987 Act(g) for warrant for diligence by arrestment or inhibition on the dependence of an action or warrant for arrestment on the dependence of an admiralty action;

(b) an application under section 9C of the 2002 Act(h) for warrant for interim attachment.

(2) Such an application must be accompanied by a statement in Form G4A.

(3) A certified copy of an interlocutor granting a motion under paragraph (1) shall be sufficient authority for the execution of the diligence concerned.

(a) S.I. 1988/2013, amended by S.I. 1991/1920, 1993/920, 1994/3086, 1995/1876, 1996/2709, 1999/1820 and S.S.I. 2002/560.

(b) Form 2 was amended by S.S.I. 2002/560.

(c) 2002 asp 17.

(d) Rule 3.5 was amended by S.S.I. 2004/197.

(e) 1987 c.18.

(f) 2002 asp 9.

(g) Section 15D was inserted by section 169 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(h) Section 9C was inserted by section 173 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

Effect of authority for inhibition on the dependence

6.A3.—(1) Where a person has been granted authority for inhibition on the dependence of an action, a certified copy of the interlocutor granting the motion may be registered with a certificate of execution in the Register of Inhibitions and Adjudications.

(2) A notice of a certified copy of an interlocutor granting authority for inhibition under rule 6.A2 may be registered under section 155 of the Titles to Land Consolidation (Scotland) Act 1868(a); and such registration shall have the same effect as registration of a notice under that section.

Recall etc of arrestment or inhibition

6.A4. An application by any person having an interest—

- (a) to loose, restrict, vary or recall an arrestment or an interim attachment; or
- (b) to recall, in whole or in part, or vary, an inhibition,

shall be made by motion.

Incidental applications in relation to interim diligence, etc

6.A5. An application under Part 1A of the 1987 Act(b) or Part 1A of the 2002 Act(c) other than mentioned above shall be made by motion.

Form of schedule of inhibition on the dependence

6.A6.—(1) An inhibition on the dependence shall be served by serving the schedule of inhibition on the defender in Form G4B.

(2) A certificate of execution shall be lodged with the sheriff clerk in Form G4C.

Service of inhibition on the dependence where address of defender not known

6.A7.—(1) Where the address of a defender is not known to the pursuer, an inhibition on the dependence shall be deemed to have been served on the defender if the schedule of inhibition is left with or deposited at the office of the sheriff clerk of the sheriff court district where the defender's last known address is located.

(2) Where service of an inhibition on the dependence is executed under paragraph (1), a copy of the schedule of inhibition shall be sent by the sheriff officer by first class post to the defender's last known address.”.

(6) Rule 6.2 (arrestment on dependence before service) is revoked.

(7) After Form G4 in Appendix 1 to Schedule 1, insert Forms G4A, G4B and G4C set out in Schedule 1 to this Act of Sederunt.

6.—(1) The Summary Cause Rules are amended in accordance with subparagraphs (2) to (9).

(2) In rule 5.6 (service where address of person is not known) at the beginning insert—

“(A1) Subject to rule 6.A7 this rule applies to service where the address of a person is not known.”.

(3) Chapter 6 is renamed “INTERIM DILIGENCE”.

(4) At the beginning of that Chapter, insert—

“Interpretation

6.A1. In this Chapter—

(a) 1868 c.101.

(b) Part 1A was inserted by section 169 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(c) Part 1A was inserted by section 173 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

“the 1987 Act” means the Debtors (Scotland) Act 1987; and

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002.

Application for interim diligence

6.A2.—(1) The following shall be made by incidental application—

- (a) an application under section 15D(1)(a) of the 1987 Act for warrant for diligence by arrestment or inhibition on the dependence of an action or warrant for arrestment on the dependence of an admiralty action;
- (b) an application under section 9C of the 2002 Act(b) for warrant for interim attachment.

(2) Such an application must be accompanied by a statement in Form 15a.

(3) A certified copy of an interlocutor granting an application under paragraph (1) shall be sufficient authority for execution of the diligence concerned.

Effect of authority for inhibition on the dependence

6.A3.—(1) Where a person has been granted authority for inhibition on the dependence of an action, a certified copy of the interlocutor granting the application may be registered with a certificate of execution in the Register of Inhibitions and Adjudications.

(2) A notice of a certified copy of an interlocutor granting authority for inhibition under rule 6.A2 may be registered under section 155 of the Titles to Land Consolidation (Scotland) Act 1868; and such registration shall have the same effect as registration of a notice under that section.

Recall etc of arrestment or inhibition

6.A4.—(1) An application by any person having an interest—

- (a) to loose, restrict, vary or recall an arrestment or an interim attachment; or
- (b) to recall, in whole or in part, or vary, an inhibition,

shall be made by incidental application.

(2) Paragraph (1) does not apply to an application made orally at a hearing under section 15K that has been fixed under section 15E(4) of the Act of 1987(c).

Incidental applications in relation to interim diligence, etc

6.A5. An application under Part 1A of the 1987 Act(d) or Part 1A of the 2002 Act(e) other than mentioned above shall be made by incidental application.

Form of schedule of inhibition on the dependence

6.A6.—(1) An inhibition on the dependence shall be served by serving the schedule of inhibition on the defender in Form 15b.

(2) A certificate of execution shall be lodged with the Sheriff Clerk in Form 15c.

Service of inhibition on the dependence where address of defender not known

6.A7.—(1) Where the address of a defender is not known to the pursuer, an inhibition shall be deemed to have been served on the defender if the schedule of inhibition is left

(a) Section 15D was inserted by section 169 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).
(b) Section 9C was inserted by section 173 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).
(c) Sections 15K and 15E were inserted by section 169 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).
(d) Part 1A was inserted by section 169 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).
(e) Part 1A was inserted by section 173 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

with or deposited at the office of the sheriff clerk of the sheriff court district where the defender's last known address is located.

(2) Where service of an inhibition on the dependence is executed under paragraph (1), a copy of the schedule of inhibition shall be sent by the sheriff officer by first class post to the defender's last known address.”.

(5) In rule 6.2 (arrestment on dependence before service), the words “or an arrestment on the dependence of an action” are omitted.

(6) In Form 1 in Appendix 1 to Schedule 1 (form of summons) in box 6, the words “, *arrestment on the dependence” are omitted.

(7) In Form 1a in Appendix 1 to Schedule 1 (defender's copy summons where time to pay direction or time order may be applied for), the application for recall or restriction of an arrestment is omitted.

(8) In Form 1a, Form 1b (defender's copy summons where time to pay direction or time order may not be applied for) and Form 1c (defender's copy summons – non monetary claim) in Appendix 1 to Schedule 1, in each form–

(a) in the notes to “Application for service of a third party notice” the words “or to arrest on the dependence of the action” are omitted;

(b) in the form of application for service of a third party notice, the words “to arrest on the dependence” are omitted.

(9) After Form 15 in Appendix 1 to Schedule 1, insert Forms 15a, 15b and 15c set out in Schedule 2 to this Act of Sederunt.

7.—(1) The Small Claim Rules are amended in accordance with subparagraphs (2) to (8).

(2) In rule 6.6 (service where address of person is not known) at the beginning insert–

“(A1) Subject to rule 7.A7 this rule applies to service where the address of a person is not known.”.

(3) Chapter 7 is renamed “INTERIM DILIGENCE”.

(4) At the beginning of that Chapter, insert–

“Interpretation

7.A1. In this Chapter–

“the 1987 Act” means the Debtors (Scotland) Act 1987; and

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002.

Application for interim diligence

7.A2.—(1) The following shall be made by incidental application–

(a) an application under section 15D(1) of the 1987 Act^(a) for warrant for diligence by arrestment or inhibition on the dependence of an action or warrant for arrestment on the dependence of an admiralty action;

(b) an application under section 9C of the 2002 Act^(b) for interim attachment.

(2) Such an application must be accompanied by a statement in Form 9a.

(3) A certified copy of an interlocutor granting an application under paragraph (1) shall be sufficient authority for execution of the diligence concerned.

(a) Section 15D was inserted by section 169 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(b) Section 9C was inserted by section 173 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

Effect of authority for inhibition on the dependence

7.A3.—(1) Where a person has been granted authority for inhibition on the dependence of an action, a certified copy of the interlocutor granting the application may be registered with a certificate of execution in the Register of Inhibitions and Adjudications.

(2) A notice of a certified copy of an interlocutor granting authority for inhibition under rule 7.A2 may be registered under section 155 of the Titles to Land Consolidation (Scotland) Act 1868; and such registration shall have the same effect as registration of a notice under that section.

Recall etc of arrestment or inhibition

7.A4.—(1) An application by any person having an interest—

- (a) to loose, restrict, vary or recall an arrestment or an interim attachment; or
- (b) to recall, in whole or in part, or vary, an inhibition,

shall be made by incidental application.

(2) Paragraph (1) does not apply to an application made orally at a hearing under section 15K that has been fixed under section 15E(4) of the Act of 1987(a).

Incidental applications in relation to interim diligence, etc

7.A5. An application under Part 1A of the 1987 Act(b) or Part 1A of the 2002 Act(c) other than mentioned above shall be made by incidental application.

Form of schedule of inhibition on the dependence

7.A6.—(1) An inhibition on the dependence shall be served by serving the schedule of inhibition on the defender in Form 9b.

(2) A certificate of execution shall be lodged with the Sheriff Clerk in Form 9c.

Service of inhibition on the dependence where address of defender not known

7.A7.—(1) Where the address of a defender is not known to the pursuer, an inhibition shall be deemed to have been served on the defender if the schedule of inhibition is left with or deposited at the office of the sheriff clerk of the sheriff court district where the defender's last known address is located.

(2) Where service of an inhibition on the dependence is executed under paragraph (1), a copy of the schedule of inhibition shall be sent by the sheriff officer by first class post to the defender's last known address.”.

(5) In rule 7.2 (arrestment on dependence before service) in Appendix 1 to Schedule 1, the words “or an arrestment on the dependence of an action” are omitted.

(6) In Form 1 (form of summons) in Appendix 1 to Schedule 1, in box 6, the words “, *arrestment on the dependence” are omitted.

(7) In Form 1a (defender's copy summons where time to pay direction or time order may be applied for) in Appendix 1 to Schedule 1, the application for recall or restriction of an arrestment is omitted.

(8) After Form 9 in Appendix 1 to Schedule 1, insert Forms 9a, 9b and 9c set out in Schedule 3 to this Act of Sederunt.

(a) Sections 15K and 15E were inserted by section 169 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(b) Part 1A was inserted by section 169 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(c) Part 1A was inserted by section 173 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

8.—(1) The Rules for Applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002(a) are amended in accordance with subparagraphs (2) and (3).

(2) After Chapter 1, insert—

“CHAPTER 1A
INTERIM ATTACHMENT”

Application for extension of hours of attachment

6B.—(1) An application by an officer of court under section 12(2) to extend the hours of an interim attachment shall be made by minute, which shall be lodged in the process of the action in which the warrant for interim attachment was granted.

(2) The minute shall specify—

- (a) the extension sought; and
- (b) the reason for the extension.

(3) The minute does not need to be intimated to any party and the sheriff may grant or refuse it without a hearing.

Procedure for executing attachment

6C.—(1) When executing an interim attachment the officer of court shall be accompanied by another person who shall witness the whole proceedings.

(2) Before attaching any article the officer of court shall—

- (a) show to every person present a certified copy of the interlocutor authorising the interim attachment; and
- (b) make enquiries as to the ownership in common of that article (and in particular ownership in common of that article by the debtor and any other person).

(3) The officer of court shall prepare a schedule (the “schedule of interim attachment”) in Form 2a.

(4) The officer of court and the witness shall sign the schedule of interim attachment.

(5) The officer of court shall—

- (a) deliver a copy of the signed schedule of interim attachment to any person then in possession of the articles or leave it at the premises occupied by that person; and
- (b) if the person in possession of the articles is not the debtor and it is reasonably practicable to do so, serve a copy of the signed schedule of interim attachment by first class post on the debtor.

Application of rules 10, 11 and 12 in relation to interim attachment

6D.—(1) Rules 10, 11 and 12 apply in relation to interim attachment as they apply in relation to attachment.

(2) The application of rule 11 is subject to the following modifications—

(a) for Part C of Form 6 there is substituted—

“An action has been raised by the Creditor against the Debtor in the Court of Session/Sheriff Court at on . On the court granted warrant for interim attachment.”; and

(b) in Part D of that form, for “attachment” there is substituted “interim attachment”.

(a) The Rules are contained in Schedule 1 to S.S.I. 2002/560 as amended by S.S.I. 2004/505 and 2007/466.

Report of attachment

6E.—(1) A report under section 17(1) by an officer of court of the execution of an interim attachment shall be in Form 2b.

(2) The sheriff clerk shall retain the report of the attachment.

(3) An application by an officer of court under section 17(1) to extend the time for lodging the report shall be made by minute stating the reasons for the extension, which shall be lodged in the process of the action in which the warrant for interim attachment was granted.”.

(3) In Appendix 1 to Schedule 1, after Form 2 insert Forms 2a and 2b set out in Schedule 4 to this Act of Sederunt.

9. But the Ordinary Cause Rules, Summary Cause Rules and Small Claim Rules as they applied immediately before 1st April 2008 continue to have effect for the purpose of any application for arrestment on the dependence made before that date.

Earnings arrestment

10.—(1) The Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988(a) is amended in accordance with subparagraphs (2) to (7).

(2) In rule 38 (earnings arrestment schedules), in paragraph (3) after “section 49(1) to (6)” insert “and section 49A”(b).

(3) After rule 65 insert—

“Application where employer fails to give notice under section 70A(5) of the Act

65A.—(1) An application by a creditor under section 70B of the Act(c) shall be in Form 59a.

(2) An application to which paragraph (1) of this rule applies shall specify—

(a) the name and address of the applicant, the debtor, the employer and the officer of court who served the arrestment schedule in respect of the debt due to the applicant; and

(b) the date of service of the applicant’s earnings arrestment schedule, current maintenance arrestment schedule or conjoined arrestment order.

(3) On the lodging of such an application the sheriff clerk shall—

(a) fix a date for a hearing;

(b) obtain from the sheriff a warrant for intimation;

(c) intimate the application and warrant to the applicant and the employer; and

(d) complete a certificate of intimation.

(4) The sheriff clerk shall intimate the sheriff’s decision on such an application to the employer if the employer was not present when the application was determined.”.

(4) In Form 30 (earnings arrestment schedule)(d)—

(a) after “section 49(1) to (6)” in each place where it occurs insert “, section 49A”;

(b) in paragraph (2) of the notes, the words “as amended by the Child Support Act 1991” are omitted; and

(c) in paragraph (3) of the notes, after the paragraph that refers to section 69(5)(a) insert—

(a) S.I. 1988/2013, amended by S.I. 1991/1920, 1993/920, 1994/3086, 1995/1876, 1996/2709, 1999/1820 and S.S.I. 2002/560.

(b) Section 49A was inserted into the 1987 Act by section 200 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(c) Section 70B was inserted into the 1987 Act by section 203 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(d) Form 30 was amended by S.I. 1993/920.

“70(4A) Employer’s duty to intimate a copy of an earnings arrestment schedule to the debtor and to give certain information to the debtor.

70A Employer’s duty to give certain information to the creditor or, as the case may be, the sheriff clerk and to send a copy of certain information to the debtor.”.

(5) In Form 34 (current maintenance arrestment schedule)(a), in paragraph (2) of notes for employer, after the paragraph that refers to section 69(5)(6) insert–

“70(4A) Employer’s duty to intimate a copy of a current maintenance arrestment schedule to the debtor and to give certain information to the debtor.

70A Employer’s duty to give certain information to the creditor or, as the case may be, the sheriff clerk and to send a copy of certain information to the debtor.”.

(6) In Form 45 (conjoined arrestment order)(b), in paragraph (2) of the notes, after the paragraph that refers to section 69(3) insert–

“70(4A) Employer’s duty to intimate a copy of a conjoined arrestment order to the debtor and to give certain information to the debtor.

70A Employer’s duty to give certain information to the creditor or, as the case may be, the sheriff clerk and to send a copy of certain information to the debtor”.

(7) In the Schedule, after Form 59 insert Form 59a set out in Schedule 5 to this Act of Sederunt.

A. C. Hamilton
Lord President I.P.D.

Edinburgh
13th March 2008

(a) Form 34 was amended by S.I. 1993/920.
(b) Form 45 was amended by S.I. 1993/920.

SCHEDULE 1

Paragraph 5(7)

Rule 6.A2(2)

FORM G4A

Statement to accompany application for interim diligence

DEBTORS (SCOTLAND) ACT 1987 Section 15D [or DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002 Section 9C]

Sheriff Court:.....

In the Cause (Cause Reference No.)

[A.B.] (*designation and address*)

Pursuer

against

[C.D.] (*designation and address*)

Defender

STATEMENT

1. The applicant is the pursuer [*or* defender] in the action by [A.B] (*design*) against [C.D.] (*design*).
2. [The following persons have an interest (*specify names and addresses*)].
3. The applicant is [*or* is not] seeking the grant under section 15E(1) of the 1987 Act of warrant for diligence [*or* section 9D(1) of the 2002 Act of interim attachment] in advance of a hearing on the application.
4. [*Here provide such other information as may be prescribed by regulations made by the Scottish Ministers under section 15D(2)(d) of the 1987 Act or 9C(2)(d) of the 2002 Act*]

(Signed)

Solicitor [*or* Agent] for A.B. [*or* C.D.] (*include full designation*)

Rule 6.A6(1)

Form G4B

Form of schedule of inhibition

SCHEDULE OF INHIBITION

Date: *(date of execution)*

To: *(name and address of person on whom served)*

IN HER MAJESTY'S NAME AND AUTHORITY, I, *(name)*, Sheriff Officer, by virtue of an order of the Sheriff at *(place)* granted on *(date)*, a copy of which is attached, inhibit you from selling, disposing of, burdening or otherwise affecting your land and other heritable property [*or (specify property)*] to the prejudice of *(name and address of person entitled to inhibit)*.

This I do in the presence of *(name, occupation and address of witness)*.

(Signed)

Sheriff Officer

(Address)

NOTE

This document forbids you from disposing of or dealing with any land or buildings in Scotland in which you have an interest [*or (specify property)*] without a further order from the court.

If you are in the course of or are contemplating a transaction which affects any land or building in Scotland in which you have an interest [*or (specify property)*] you should tell your solicitor immediately about this document.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS DOCUMENT, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

Form of certificate of execution of inhibition

CERTIFICATE OF EXECUTION

I, *(name)*, Sheriff Officer, certify that I executed an inhibition, by virtue of an interlocutor of the Sheriff at *(place)* on *(date)* obtained at the instance of *(name and address of party inhibiting)* against *(name and address of person inhibited)* on *(name of person on whom executed)*–

- * by delivering the schedule of inhibition to *(name of defender or other person)* at *(place)* personally on *(date)*.
- * by leaving the schedule of inhibition with *(name and occupation of person with whom left)* at *(place)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made resides at the place but is not available.)*
- * by depositing the schedule of inhibition in *(place)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made resides at the place but is not available.)*
- * by leaving the schedule of inhibition with *(name and occupation of person with whom left)* at *(place of business)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made carries on business at the place.)*
- * by depositing the schedule of inhibition at *(place of business)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made carries on business at that place.)*
- * by leaving the schedule of inhibition at *(registered office or place of business)* on *(date)*, in the hands of *(name of person)*.
- * by leaving [*or depositing*] the schedule of inhibition at *(registered office, official address or place of business)* on *(date)* in such a way that it was likely to come to the attention of *(name of defender or other person on whom served)*. *(Specify how left.)*
- * by leaving the schedule of inhibition with *(name and occupation of person with whom left)* at the office of the sheriff clerk at *(place)* on *(date)* and sending a copy of the schedule by first class post to *(defender's last known address)* on *(date)*.

I did this in the presence of *(name, occupation and address of witness)*.

(Signed)

Sheriff Officer

(Address)

(Signed)

Witness

* Delete where not applicable.

SCHEDULE 2

Paragraph 6(9)

Rule 6.A2(2)

Form 15a

Statement to accompany application for interim diligence

DEBTORS (SCOTLAND) ACT 1987 Section 15D [*or* DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002 Section 9C]

Sheriff Court:.....

In the Cause (Cause Reference No.)

[A.B.] (*designation and address*)

Pursuer

against

[C.D.] (*designation and address*)

Defender

STATEMENT

1. The applicant is the pursuer [*or* defender] in the action by [A.B] (*design*) against [C.D.] (*design*).
2. [The following persons have an interest [*specify names and addresses*].]
3. The application is [*or* is not] seeking the grant under section 15E(1) of the 1987 Act of warrant for diligence [*or* section 9D(1) of the 2002 Act of interim attachment] in advance of a hearing on the application.
4. [*Here provide such other information as may be prescribed by regulations made by the Scottish Ministers under section 15D(2)(d) of the 1987 Act or 9C(2)(d) of the 2002 Act*]

(Signed)

Solicitor [*or* Agent] for A.B. [*or* C.D.] (*include full designation*)

Rule 6.A6(1)

Form 15b

Form of schedule of inhibition

SCHEDULE OF INHIBITION

Date: *(date of execution)*

To: *(name and address of person on whom served)*

IN HER MAJESTY'S NAME AND AUTHORITY, I, *(name)*, Sheriff Officer, by virtue of an order of the Sheriff at *(place)* granted on *(date)*, a copy of which is attached, inhibit you from selling, disposing of, burdening or otherwise affecting your land and other heritable property [*or (specify property)*] to the prejudice of *(name and address of person entitled to inhibit)*.

This I do in the presence of *(name, occupation and address of witness)*.

(Signed)

Sheriff Officer

(Address)

NOTE

This document forbids you from disposing of or dealing with any land or buildings in Scotland in which you have an interest [*or (specify property)*] without a further order from the court.

If you are in the course of or are contemplating a transaction which affects any land or building in Scotland in which you have an interest [*or (specify property)*] you should tell your solicitor immediately about this document.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS DOCUMENT, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

Form of certificate of execution of inhibition

CERTIFICATE OF EXECUTION

I, *(name)*, Sheriff Officer, certify that I executed an inhibition, by virtue of an interlocutor of the Sheriff at *(place)* on *(date)* obtained at the instance of *(name and address of party inhibiting)* against *(name and address of person inhibited)* on *(name of person on whom executed)*–

- * by delivering the schedule of inhibition to *(name of defender or other person)* at *(place)* personally on *(date)*.
- * by leaving the schedule of inhibition with *(name and occupation of person with whom left)* at *(place)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made resides at the place but is not available.)*
- * by depositing the schedule of inhibition in *(place)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made resides at the place but is not available.)*
- * by leaving the schedule of inhibition with *(name and occupation of person with whom left)* at *(place of business)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made carries on business at the place.)*
- * by depositing the schedule of inhibition at *(place of business)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made carries on business at that place.)*
- * by leaving the schedule of inhibition at *(registered office or place of business)* on *(date)*, in the hands of *(name of person)*.
- * by leaving [or depositing] the schedule of inhibition at *(registered office, official address or place of business)* on *(date)* in such a way that it was likely to come to the attention of *(name of defender or other person on whom served)*. *(Specify how left.)*
- * by leaving the schedule of inhibition with *(name and occupation of person with whom left)* at the office of the sheriff clerk at *(place)* on *(date)* and sending a copy of the schedule by first class post to *(defender's last known address)* on *(date)*.

I did this in the presence of *(name, occupation and address of witness)*.

(Signed)

Sheriff Officer

(Address)

(Signed)

Witness

* Delete where not applicable.

SCHEDULE 3

Paragraph 7(8)

Rule 7.A2(2)

Form 9a

Statement to accompany application for interim diligence

DEBTORS (SCOTLAND) ACT 1987 Section 15D [*or* DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002 Section 9C]

Sheriff Court:.....

In the Cause (Cause Reference No.)

[A.B.] (*designation and address*)

Pursuer

against

[C.D.] (*designation and address*)

Defender

STATEMENT

1. The applicant is the pursuer [*or* defender] in the action by [A.B] (*design*) against [C.D.] (*design*).

2. [The following persons have an interest [*specify names and addresses*].]

3. The application is [*or* is not] seeking the grant under section 15E(1) of the 1987 Act of warrant for diligence [*or* section 9D(1) of the 2002 Act of interim attachment] in advance of a hearing on the application.

4. [*Here provide such other information as may be prescribed by regulations made by the Scottish Ministers under section 15D(2)(d) or 9C(2)(d) of the 1987 Act*]

(Signed)

Solicitor [*or* Agent] for A.B. [*or* C.D.] (*include full designation*)

Rule 7.A6(1)

Form 9b

Form of schedule of inhibition

SCHEDULE OF INHIBITION

Date: *(date of execution)*

To: *(name and address of person on whom served)*

IN HER MAJESTY'S NAME AND AUTHORITY, I, *(name)*, Sheriff Officer, by virtue of an order of the Sheriff at *(place)* granted on *(date)*, a copy of which is attached, inhibit you from selling, disposing of, burdening or otherwise affecting your land and other heritable property [*or (specify property)*] to the prejudice of *(name and address of person entitled to inhibit)*.

This I do in the presence of *(name, occupation and address of witness)*.

(Signed)

Sheriff Officer

(Address)

NOTE

This document forbids you from disposing of or dealing with any land or buildings in Scotland in which you have an interest [*or (specify property)*] without a further order from the court.

If you are in the course of or are contemplating a transaction which affects any land or building in Scotland in which you have an interest [*or (specify property)*] you should tell your solicitor immediately about this document.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS DOCUMENT, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

Form of certificate of execution of inhibition

CERTIFICATE OF EXECUTION

I, *(name)*, Sheriff Officer, certify that I executed an inhibition, by virtue of an interlocutor of the Sheriff at *(place)* on *(date)* obtained at the instance of *(name and address of party inhibiting)* against *(name and address of person inhibited)* on *(name of person on whom executed)*–

- * by delivering the schedule of inhibition to *(name of defender or other person)* at *(place)* personally on *(date)*.
- * by leaving the schedule of inhibition with *(name and occupation of person with whom left)* at *(place)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made resides at the place but is not available.)*
- * by depositing the schedule of inhibition in *(place)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made resides at the place but is not available.)*
- * by leaving the schedule of inhibition with *(name and occupation of person with whom left)* at *(place of business)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made carries on business at the place.)*
- * by depositing the schedule of inhibition at *(place of business)* on *(date)*. *(Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made carries on business at that place.)*
- * by leaving the schedule of inhibition at *(registered office or place of business)* on *(date)*, in the hands of *(name of person)*.
- * by leaving [*or depositing*] the schedule of inhibition at *(registered office, official address or place of business)* on *(date)* in such a way that it was likely to come to the attention of *(name of defender or other person on whom served)*. *(Specify how left.)*
- * by leaving the schedule of inhibition with *(name and occupation of person with whom left)* at the office of the sheriff clerk at *(place)* on *(date)* and sending a copy of the schedule by first class post to *(defender's last known address)* on *(date)*.

I did this in the presence of *(name, occupation and address of witness)*.

(Signed)

Sheriff Officer

(Address)

(Signed)

Witness

* Delete where not applicable.

SCHEDULE 4

Paragraph 8(3)

Rule 6C(3)

FORM 2a

Court:

In the Cause: (*Cause Ref No.*)

SCHEDULE OF INTERIM ATTACHMENT

To (*name and address of defender, person in possession of attached articles or any person who claims to own attached articles*)

On (*date of warrant*) a warrant for interim attachment was issued in the court in an action by

(*name and address*) **PURSUER(S)**

against

(*name and address*) **DEFENDER(S) ***

in which the *Pursuer(s)** is/are claiming (*Specify the amount of claim*)

By virtue of said warrant I, (*name and address*), Officer of Court on the instruction of the said (*name of Pursuer*) (or their legal representatives) attach at (*insert address*) the articles belonging to the defender* (*insert other designation if different*) specified in the list attached.

*You may move the attached article(s) to another location only if the pursuer or the officer of court has consented in writing to this or the court has authorised their removal.

*You (*insert name of person present claiming to own article in common with defender*) have the right to apply to the court for an order that an attached article is owned in common with the defender

* delete as appropriate

This interim attachment is carried out by me today (*date*) and is witnessed by (*name and address*)

I deliver/leave this interim attachment schedule to/for you (*name*) today at (*address*)

(signature)	(signature)
Witness	Officer of court
(designation)	(designation)

PLEASE NOTE

1. Any unauthorised removal of the attached articles or any wilful damage or destruction of them by the debtor or persons who know the articles have been attached shall be a breach of attachment and may be dealt with as a contempt of court.

2. The theft of any attached article should be notified to the creditor and to me together with details of any claim on insurance. Failure to do so is also a breach of the attachment and may be dealt with as a contempt of court. A form is available for this purpose and may be obtained from the sheriff clerk or any citizens advice bureau or local advice centre.

LIST SPECIFYING ATTACHED ARTICLE(S)

ARTICLES ATTACHED	VALUE FIXED
Witness	Officer of court

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/THE CLERK OF COURT OR A SOLICITOR

Rule 6E(1)

FORM 2b

Debt Arrangement and Attachment (Scotland) Act 2002

Court _____

Case No: _____

REPORT OF INTERIM ATTACHMENT

Date of execution of Interim Attachment:

On (*date of warrant*) a warrant for interim attachment was issued in the court in an action by

(name and address) **PURSUER(S)**

against

(name and address) **DEFENDER(S) ***

in which the *Pursuer(s) ** is/are claiming (*specify the amount of claim*)

I (*name and address*) Officer of Court attended at (*address*) along with the witness (*name and address*) on the instructions of the Pursuer(s) (*name and address*) AND/OR *their legal representative (name and address)* showed the warrant to attach to every person present and having made enquiry of those present as to the ownership of the articles I proposed to attach, and in particular whether there were any persons who owned any of the articles in common with the defender*(*insert other designation if different*). I attached the articles belong to the said (*name of defender*) specified in the list attached at the valuation shown.

I advised the person(s) present (if appropriate) of their rights to apply for the attachment to cease to have effect in terms of section 9K(1), 9K(2), 9L(3) of the Debt Arrangement and Attachment Act 2002.

I warned those present that any unauthorised removal of the attached article(s) or any wilful damage or destruction of them by the defender or person(s) who knew the article(s) had been attached would be a breach of attachment and could be dealt with as a contempt of court.

ARTICLES ATTACHED

VALUE FIXED

I *delivered/left an interim attachment schedule signed by myself and the witness to the attachment to/for (name of defender/person in possession of the articles)

at on the

day of

*and served a copy of it by first class post on the said defender(s) * (*insert other designation if different*).

(signature)	(signature)
Witness	Officer of court
(designation)	(designation)

Notes

1. Any assertion made before the submission of this report to the Court, that any attached article does not belong to the defender(s) must be noted in this report.

2. Where the report relates to a further or second attachment to enforce the same debt the officer of court must specify in the report the circumstances justifying the further or second attachment.

**delete as appropriate*

SCHEDULE 5

Paragraph 10(7)

Rule 65A

FORM 59a

The Debtors (Scotland) Act 1987, section 70B

Sheriff Court:.....

(Court Ref No.)

APPLICATION UNDER SECTION 70B OF THE ACT

APPLICANT:

- A. The applicant is:
- B. The employer is:
- C. The debtor is:
- D. The *earnings arrestment/current maintenance assessment schedule/conjoined arrestment order** was served on the employer by *[insert name] sheriff officer / messenger-at-arms** on the instructions of the applicant on *[insert date]*.
- E. The employer has ceased to be the employer of the debtor but has failed to give notice under section 70A(5) of the Debtors (Scotland) Act 1987 of that fact and of the name and address of any new employer of the debtor.

This application is made under section 70B(1) of the Debtors (Scotland) Act 1987.

- F. The applicant asks the court–
 - 1. to fix a hearing;
 - 2. to order the sheriff clerk to intimate this application and the date of the hearing to the applicant and the employer;
 - 3. to make an order under section 70B(1) in respect of the employer; and
 - 4. to award expenses (if competent).

Date *(Signed)*
Applicant

* *delete as applicable*

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends the sheriff court rules in consequence of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”).

The provisions in the Ordinary Cause Rules and the Summary Causes Rules which make provision about actions for sequestration for rent are revoked. That diligence is abolished by section 208 of the 2007 Act.

Paragraph 3 makes amendments to Form 2 of the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988 (application for time to pay orders) to reflect changes made to the Debtor (Scotland) 1987 by the 2007 Act. Paragraph 4 provides that the rules in that Act of Sederunt as they immediately applied before this Act of Sederunt comes into force will continue to apply to applications for time to pay orders made before that date.

Paragraphs 5 to 9 make provision in the Ordinary Cause Rules, Summary Causes Rules, Small Claims Rules and the Rules for Applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002 in relation to interim diligence. New rules are inserted into the above sets of rules providing as follows:

- (a) a form of application for interim diligence;
- (b) the effect of authority for inhibition on the dependence;
- (c) that applications for recall, restriction or varying etc of arrestment or inhibition are to be made by motion;
- (d) that incidental applications in relation to interim diligence are to be made by motion;
- (e) a form of schedule of inhibition on the dependence and a form for service of inhibition where the address of the defender is not known;
- (f) that references to arrestment on the dependence before service of a initial writ or summons are removed;
- (g) that the rules as they applied immediately before the coming into force of this Act of Sederunt will continue to apply to any application for arrestment on the dependence made before that date.

Paragraph 10 makes provision in the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988 in relation to earnings arrestment including the insertion of a new rule making provision for an application by a creditor under section 70B of the 1987 Act (failure of employer to give notice under section 70A(5)) and making various consequential amendments to Forms 30, 34 and 45.

£4.00

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