

2009 No. 110

CRIMINAL LAW

**The Enforcement of Fines etc. (Diligence) (Scotland)
Regulations 2009**

<i>Made</i> - - - -	<i>12th March 2009</i>
<i>Laid before the Scottish Parliament</i>	<i>13th March 2009</i>
<i>Coming into force</i> - -	<i>22nd April 2009</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 226F(6) and (7) of the Criminal Procedure (Scotland) Act 1995(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Enforcement of Fines etc. (Diligence) (Scotland) Regulations 2009 and come into force on 22nd April 2009.

(2) In these Regulations “FEO” means a fines enforcement officer(b).

Arrestment in execution

2. Where an FEO executes an arrestment of funds standing in accounts held at any bank or other financial institution, the application of the following provisions of the Debtors (Scotland) Act 1987(c) shall be modified—

- (a) section 73D(d) (debt advice and information) shall have no application;
- (b) section 73G(2) (arrestee’s duty of disclosure), so as to impose on the arrestee the duty to send to an FEO the form of disclosure by the arrestee, as prescribed by Schedule 8 to the Diligence (Scotland) Regulations 2009(e); and

(a) 1995 c.46, as relevantly amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 55 inserting sections 226A to 226I.
(b) Fines enforcement officers are persons authorised by the Scottish Ministers under section 226A of the Criminal Procedure (Scotland) Act 1995 for any, or all, of the purposes of that section and of sections 226B to 226H of that Act.
(c) 1987 c.18, as relevantly amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 206 which inserted new Part 3A.
(d) Section 73D of the Debtors (Scotland) Act 1987, inserted by section 206 of the Bankruptcy and Diligence etc. (Scotland) Act 2007, has not yet been commenced.
(e) SSI 2009/68.

- (c) section 73J(2) (automatic release of arrested funds), so as to provide that the arrestee shall or may, as the case may be, release to an FEO, from the attached funds, a sum calculated in accordance with section 73K.

St Andrew's House,
Edinburgh
12th March 2009

KENNY MACASKILL
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 226A to 226I of the Criminal Procedure (Scotland) Act 1995 were inserted by section 55 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. They make provision regarding the enforcement of a “relevant penalty”, as defined in section 226I of the Criminal Procedure (Scotland) Act 1995.

The Scottish Ministers may, by section 226A of the Criminal Procedure (Scotland) Act 1995, authorise persons, including classes of persons, to act as fines enforcement officers (“FEOs”). They have the general functions of providing information and advice to offenders regarding the payment of relevant penalties and of securing compliance with enforcement orders. Such orders specify the amount of the relevant penalty, the arrangement for payment and their effect.

FEOs have a wide range of powers, including the power to execute two types of civil diligence, namely arrestment of earnings and arrestment of funds standing in accounts held at any bank or other financial institution. These Regulations make such provision and such modifications as are necessary for diligence to be executed by an FEO.

Part 10 of the Bankruptcy and Diligence etc. (Scotland) Act 2007, which amends the Debtors (Scotland) Act 1987 (“the 1987 Act”) concerning arrestments in execution and actions of furthcoming, is being commenced on 22nd April 2009, with the exception of the insertion of section 73D (debt advice and information) into the 1987 Act.

Regulation 2(a) provides that section 73D of the 1987 Act does not apply. Consequently, following the commencement of that provision, an FEO when executing the arrestment of funds of an offender standing in an account in any bank, or other financial institution, does not require to provide the offender with a debt advice and information package.

Regulation 2(b) modifies the application of section 73G(2) of the 1987 Act to impose a duty on the arrestee to provide a prescribed form of disclosure of the arrestment to an FEO in those cases where an FEO executes an arrestment of funds standing in an account in a bank or other financial institution.

Regulation 2(c) modifies the application of section 73J(2) of the 1987 Act to provide that the arrestee shall or may, as the case may be, release funds under that provision to an FEO in the same way as an arrestee shall, or may, so do to a creditor.

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