

2009 No. 67 (C. 4)

DEBT

DILIGENCE

**The Bankruptcy and Diligence etc. (Scotland) Act 2007
(Commencement No. 4, Savings and Transitionals) Order 2009**

Made - - - -

23rd February 2009

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 224(2) and 227(3) and (4) of the Bankruptcy and Diligence etc. (Scotland) Act 2007^(a).

Citation

1. This Order may be cited as the Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No. 4, Savings and Transitionals) Order 2009.

Interpretation

2. In this Order—

“the Act” means the Bankruptcy and Diligence etc. (Scotland) Act 2007; and

“the 1987 Act” means the Debtors (Scotland) Act 1987^(b).

Appointed day in respect of provisions of the Act

3.—(1) The following provisions of the Act, in so far as not already in force, come into force on 22nd April 2009:—

- (a) Part 5 (inhibition), except for section 165(2) (inhibition expenses only recoverable by land attachment or residual attachment);
- (b) Part 10 (arrestment in execution and action of furthcoming), except for the insertion of section 73D (debt advice and information) into the 1987 Act;
- (c) section 169 (diligence on the dependence) in so far as it inserts section 15H(4) (protecting minimum balance for arrestment on dependence) of the 1987 Act; and
- (d) section 226(1) and (2) in so far as relating to the provisions of schedules 5 and 6 (minor and consequential amendments and repeals) commenced by this Order.

(2) The minor and consequential amendments and repeals in schedule 5 and Part 1 of schedule 6 respectively specified in column 1 of Schedules 1 and 2 to this Order, in so far as not already in force, come into force on 22nd April 2009, subject to paragraph (3).

(a) 2007 asp 3 (“the Act”).

(b) 1987 c.18 (“the 1987 Act”). The 1987 Act is significantly amended by the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 58(2), schedule 3, Part I, paragraph 17. The 1987 Act is also significantly amended by the Act, sections 169 and 170, 199 to 205, 206, 209(2) to (5), schedule 5, paragraph 16 and schedule 6, Part 1.

(3) Where in Schedule 1 or 2 to this Order a purpose is specified in column 2 of the Schedule in relation to an amendment or repeal, it comes into force only for that purpose, but where no purpose is specified it comes into force for all purposes, in so far as not already in force.

Transitional modification of the Act – references to “judicial officer”

4.—(1) Any reference to a “judicial officer” in, or having effect by virtue of, any provision of the Act commenced by this Order is to be read as a reference to a messenger-at-arms or a sheriff officer (or a reference to a messenger-at-arms and a sheriff officer as the case may be).

(2) This article ceases to have effect on the day to be appointed for the coming into force of section 60 of the Act (abolition of offices of messenger-at-arms and sheriff officer).

Transitional modification of the Act – references to the Registers of Inhibitions

5.—(1) Any reference to “the Register of Inhibitions” in, or having effect by virtue of, any provision of the Act commenced by this Order is to be read as a reference to the Register of Inhibitions and Adjudications.

(2) This article ceases to have effect on the day to be appointed for the coming into force of section 80 of the Act (renaming of the Register of Inhibitions and Adjudications).

Inhibition and arrestment – execution before 22nd April 2009

6. Nothing in any provision brought into force by this Order has effect as regards an inhibition or arrestment executed before 22nd April 2009, unless—

- (a) the inhibition was on the dependence of an action and it converts to an inhibition in execution on or after 22nd April 2009; or
- (b) the arrestment was on the dependence of an action and the creditor obtains a final decree in that action (within the meaning of Part 3A of the 1987 Act^(a)) on or after 22nd April 2009.

Diligence against earnings – intimation of arrestment schedule and provision of information – schedule or order before 1st April 2008 – transitional arrangements

7. For article 12(2)(b) and (c) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No. 3, Savings and Transitionals) Order 2008^(b), substitute—

- “(b) in sending the information under paragraph (a) above, the pay-day for the purposes of section 70A(3)(b) is the date of the debtor’s pay-day next following 6 October 2008; and
- (c) the information mentioned in section 70A(3) is also required to be sent as soon as reasonably practicable after—
 - (i) 6 April 2009; and
 - (ii) each 6 April thereafter,and those dates shall apply for the purposes of subsection (3)(b)(ii).”.

FERGUS EWING

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
23rd February 2009

(a) See section 73C(1) of the Debtors (Scotland) Act 1987 (c.18) for the meaning of “final decree”. Part 3A was inserted by section 206 of the Act.
(b) S.S.I. 2008/115.

SCHEDULE 1

Article 3(2) and (3)

Provisions of schedule 5 (minor and consequential amendments) coming into force on 22nd April 2009

<i>Column 1 – provisions</i>	<i>Column 2 – purpose</i>
1. Paragraph 5 (the Judicial Factors (Scotland) Act 1889)(a)	
2. In paragraph 7 (the Execution of Diligence (Scotland) Act 1926)(b)–	
(a) sub-paragraph (1)	For the purposes of the provisions commenced in this Order
(b) sub-paragraph (2)(b)(iii), (d) and (3)(b)	
(c) sub-paragraph (2)(c)	For the purposes of the substitution of the term “solicitor” for “law agent”
3. In paragraph 13 (the Bankruptcy (Scotland) Act 1985)(c)–	
(a) sub-paragraph (1)	For the purposes of the provision commenced in this Order
(b) sub-paragraph (3)(b)	
4. In paragraph 16 (the Debtors (Scotland) Act 1987)(d)–	
(a) sub-paragraph (1)	For the purposes of the provisions commenced in this Order
(b) sub-paragraph (2)(c)	
(c) sub-paragraph (2)(f)	
(d) sub-paragraph (4)(c)	
(e) sub-paragraph (5)	
(f) sub-paragraph (6)	
(g) sub-paragraph (7)(a), (ii), (iv) and (b)	
(h) sub-paragraph (8)(e)(i), (f) and (h)	
5. Paragraph 18(a)(ii) (the Child Support Act 1991)(e).	For all purposes except substituting the reference to an action of adjudication
6. Paragraph 22 (the Proceeds of Crime (Scotland) Act 1995)(f).	
7. Paragraph 29 (the Proceeds of Crime (Scotland) Act 2002)(g).	

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- (a) 1889 c.39.
 (b) 1926 c.16.
 (c) 1985 c.66.
 (d) 1987 c.18.
 (e) 1991 c.48.
 (f) 1995 c.43.
 (g) 2002 c.29.

<i>Column 1 – provisions</i>	<i>Column 2 – purpose</i>
8. In paragraph 30 (the Debt Arrangement and Attachment (Scotland) Act 2002)(a)–	
(a) sub-paragraph (1)	For the purposes of the provisions commenced in this Order
(b) sub-paragraphs (4), (9) and (11)(a)(i)	

(a) 2002 asp 17, amended by S.S.I. 2004/ 468 and the Act, sections 173, 209(1), 211 and 212 and schedule 5, paragraph 30, schedule 4, paragraph 10 and schedule 6, Part 1.

SCHEDULE 2

Article 3(2) and (3)

Repeals in schedule 6 coming into force on 22 April 2009

<i>Column 1 – repeal</i>	<i>Column 2 – purpose</i>
1. The entry in respect of the Arrestments Act 1617 (a) .	
2. The entry in respect of section 22 of the Debtors (Scotland) Act 1838 (b) .	
3. The entry in respect of Schedules PP and RR of the Titles to Land Consolidation (Scotland) Act 1868 (c) .	In so far as it repeals– (a) Schedule PP; and (b) Schedule RR for the purpose of notice of Summons for breach of inhibition
4. The entry in respect of section 29 of the Sheriff Courts (Scotland) Act 1907 (d) .	
5. The entry in respect of the Taxes Management Act 1970 (e) .	
6. The entry in respect of the Rent (Scotland) Act 1984 (f) .	
7. The entry in respect of the Family Law (Scotland) Act 1985 (g) .	
8. In the entry in respect of the Bankruptcy (Scotland) Act 1985 (h) –	
(a) the repeal of section 14(5);	
(b) the repeal in section 31(2) of “(reserving the effect of such inhibition on ranking)”;	
(c) in respect of section 37(2), the repeals of “which” and “shall be effectual to create a preference for the inhibitor and”.	
9. In the entry in respect of the Debtors (Scotland) Act 1987 (i) , the repeal of paragraph 3 of Schedule 6.	
10. In the entry in respect of the Proceeds of Crime Act 1995 (j) –	
(a) the repeal in section 32(2) (from “as” to the end);	
(b) the repeal of section 32(3).	
11. In the entry in respect of the Proceeds of Crime Act 2002 (k) , the repeal in section 123(4).	

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- (a) 1617 c.17.
 (b) 1838 c.114.
 (c) 1868 c.101.
 (d) 1907 c.51.
 (e) 1970 c.9.
 (f) 1984 c.58.
 (g) 1985 c.37.
 (h) 1985 c.66.
 (i) 1987 c.18.
 (j) 1995 c.43.
 (k) 2002 c.29.

EXPLANATORY NOTE

(This note is not part of the Order)

Article 3 of this Order brings into force on 22nd April 2009 provisions of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the Act”), subject to transitional and saving provisions.

The provisions brought into force are Part 5 (inhibition), Part 10 (arrestment in execution and actions of furthcoming), except for the requirement to send a debt advice and information package, and section 169 (diligence on the dependence) for all remaining purposes. Related amendments and repeals in schedules 5 and 6 are brought into force, together with some further consequential amendments and repeals.

Articles 4 to 6 set out transitional arrangements. References to “judicial officer” in provisions commenced by the Order are to be read as references to messengers-at-arms or sheriff officers prior to the coming into force of section 60 of the Act (abolition of those offices) (article 4). References to the Register of Inhibitions are to be read as references to the Register of Inhibitions and Adjudications prior to the coming into force of section 80 of the Act renaming that Register accordingly (article 5).

Article 6 means that the provisions commenced by this Order do not apply to inhibitions or arrestments executed before 22nd April 2009, except for diligence on the dependence where the court grant decree. From that point, that inhibition and arrestment may be subject to the provisions of the Act commenced by this Order.

Article 7 corrects the transitional arrangements for provision of information in earnings arrestment in S.S.I. 2008/115.

The Act received Royal Assent on 15th January 2007. Sections 224, 225 and 227 of the Act came into force on Royal Assent and section 222 came into force on the day after Royal Assent.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
s.211	8th March 2007	2007/82
s.212(1), (2) to (6) (partially)		
s.221		
s.223		
s.36 (partially)	31st March 2007	2007/82
s.212(1), (8) to (16) (partially)		
s.226(1) (partially)		
sch. 1, para. 42(a)		
sch. 5, para. 30(1), (5) to (8)(a), (10), (11)(a)(ii) and (b) and (15) (partially)		
s.20	19th February 2007	2008/45
s.35		
ss.1 to 17	1st April 2008	2008/115
s.18(1) to (4)		
ss.19 and 20		
ss.22 to 24		
s.25(a)		
s.25(b) (partially)		
s.36 (partially)		
s.169 (partially)		
ss.170 and 171		

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
s.173		
ss.199 to 205		
s.206 (partially)		
s.208		
ss.209 and 210		
sch.1, paras. 1 to 40		
sch.1, para. 41(b)		
sch.1, paras. 42 and 43		
sch.1, para. 44(partially)		
sch.1, paras.45 to 62		
sch.5, para. 10 (partially)		
sch.5, para. 12		
sch.5, para. 13 (partially)		
sch.5, para. 16 (partially)		
sch.5, para. 26 (partially)		
sch.5, para. 30 (partially)		
sch.6, Part 1 (partially)		
sch.6, Part 2		
s.21(3), (4) and (7), 25(a), 37(7) and (8), 50(4) and (5), 58(5)(c), 61(1), (2) and (3), 63(1) and (2), 75(7), 81(7), 83(1)(a) and (3)(b), 88(3)(a), 91(2), (3)(b), (4)(a), (4)(c)(vi), (5)(f) and (7), 96(5), 97(7), 98(6), 106(2) and (4), 108(2) and (8), 111(2)(b), 113(2)(a), 114(4), 117(2), (7)(b) and (8)(a), 120(5), 123(2)(a) and (5), 124(2), 128(3), 129, 130(2)(a), 133(2)(a), 135(2)(a) and (d)(ii), 140(2)(a) and (5), 143(5), 145(2), 146(9), 148(3), 149, 162, 164(1) and (2), 175(3), 176(1)(c), 179(2)(a)(i), 182(2)(a), 183(3)(a) and (7)(a), 185(4), 188(4)(a), 189(3)(a), 196(2), 198(2), 206, 214(4), 215, 216(6), 217(1)(c), 220, sch.2, para. 22, sch.3, para. 4, sch.5, para. 13(3)(f) and (g), sch.5, para. 30(4) (for the purposes of making regulations or orders)		

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