

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Schedule 5 – Minor and Consequential Amendments (Introduced by Section 226)

851. This schedule contains minor amendments and amendments in consequence of Parts 3 to 16 of this Act. The amendments fall broadly into the following categories—

- amendments consequential on the establishment of the Scottish Civil Enforcement Commission and the creation of judicial officers;
- amendments in consequence of the creation of new diligences (such as land attachment and money attachment);
- amendments in consequence to changes in the law on existing diligences (such as arrestment in execution);
- amendments consequential on the abolition of old diligences (such as adjudication);
- further amendments of the 1985 Act necessary as a result of changes to the law of diligence (see also schedule 1 to this Act);
- further amendments concerning time to pay directions, interim orders and time to pay orders under the 1987 Act (see also section 210 of this Act);
- further amendments of the 2002 Act (see also sections 211 and 212 of this Act).

852. Particular attention is drawn to the following amendments.

Paragraph 10 - Sheriff Courts (Scotland) Act 1971

853. Section 32(1) of the Sheriff Courts (Scotland) Act 1971 provides the Court of Session with power to make sheriff court rules. Paragraph (1) of section 32(1) enables such court rules to provide for a party to proceedings which relate to an attachment to be represented in court by a person who is neither an advocate nor a solicitor (i.e. by a “lay representative”). The section is amended to enable court rules to provide for lay representation in proceedings relating to interim attachment, attachment, money attachment, land attachment and residual attachment.

Paragraph 13(3) - Bankruptcy (Scotland) Act 1985

854. These amendments of section 37 of the 1985 Act, among other things, make provision for the effect of the sequestration of a debtor’s estate on the diligence of land attachment. In short, land attachments created within the 6 month period before the date of sequestration are cut down, no land attachment may be created after the date of

sequestration, and land attachments created earlier than 6 months before that date and subsisting on it cannot be insisted in unless they have reached an advance stage (such as warrant for sale having been granted and missives concluded). Provision is also made in relation to how sequestration affects arrestments to which section 73J of the 1987 Act applies (automatic release of arrested funds).

Paragraph 16 – Debtors (Scotland) Act 1987

855. The majority of the amendments in this paragraph of schedule 5 are amendments of Part 1 of the 1987 Act are concerned with the effect of the making of time to pay directions, interim orders and time to pay orders on diligence.
856. Provision was already made in Part 1 for the effect on existing diligences (such as attachment and arrestment). The amendments here expand the provision in Part 1 to cover the new diligences of interim attachment, money attachment, land attachment and residual attachment. Provision is also made for the effect of time to pay on arrestments to which section 73J applies (automatic release of arrested funds). (In the case of residual attachment, the power in section 129(8) of this Act to make provision about this should be born in mind – see paragraph 379379 above.)
857. In summary—
- the making of a time to pay direction stops diligence being executed against the debtor;
 - an application for a time to pay order may be made, and an order granted, even though diligence has been started but only where it has not reached such an advanced stage that the creditor should be allowed to complete it (e.g. in a land attachment, the sheriff has granted warrant for sale of the attached land);
 - the making of an interim order (an order made pending a decision on an application for a time to pay order) “freezes” existing diligences; and
 - the making of a time to pay order stops diligence being executed and freezes diligences already commenced.

Paragraph 30(4) – Debt Arrangement and Attachment (Scotland) Act 2002

858. Paragraph 30(4) of schedule 5 inserts a new section 13A into the 2002 Act.

New section 13A – schedule of attachment

859. New section 13A provides that a judicial officer executing an attachment must, immediately after doing so, complete an attachment schedule. Subsection (2) provides for the format of the schedule to be provided for in rules of court and that it must specify the articles attached. In addition, it must specify, where known, the value of those articles. Subsection (3) requires the officer to give a copy of the schedule to the debtor (or, if that is not possible, to take other steps, the aim of which is to give the debtor notice that the attachment has been executed). Subsection (4) provides that the attachment is executed on the day on which the officer gives the debtor the schedule (or takes those other steps). This is to make it clear when the attachment is executed and, in particular, to clarify that articles may be attached even though the officer decides (under section 15(3) of the 2002 Act) that a professional valuation of them is needed. In practical terms, it may not be possible to have such a valuation carried out on the same day as the attachment. This section makes it clear that, nevertheless, the articles are still attached pending that valuation.