



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 5

### INHIBITION

#### *General and miscellaneous*

#### **164 Power to prescribe forms in the 1868 Act**

- (1) In section 159 of the 1868 Act (no litigiousity before date notice of summons is registered), for the words from “set” to “annexed” substitute “ be in (or as nearly as may be in) the form prescribed. ”.
- (2) After section 159A of that Act (which is inserted by section 162 of this Act) insert—

#### **“159B Power of the Scottish Ministers to prescribe forms**

- (1) In sections 155, 159 and 159A of this Act, “prescribed” means prescribed by the Scottish Ministers by regulations.
- (2) The power conferred on the Scottish Ministers to make regulations under subsection (1) above is exercisable by statutory instrument.
- (3) A statutory instrument containing regulations made under subsection (1) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

#### **Annotations:**

#### **Commencement Information**

- II** S. 164 wholly in force at 22.4.2009; s. 164 not in force at Royal Assent see s. 227; s. 164(1)(2) 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. 164 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)

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**Changes to legislation:** Bankruptcy and Diligence etc. (Scotland) Act 2007, Cross Heading:  
 General and miscellaneous is up to date with all changes known to be in force on or before 21 June  
 2019. There are changes that may be brought into force at a future date. Changes that have been  
 made appear in the content and are referenced with annotations. (See end of Document for details)

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## 165 Expenses of inhibition

- (1) Subject to subsection (3) below, the inhibition expenses are chargeable against the debtor.
- (2) Inhibition expenses are recoverable from the debtor by land attachment or residual attachment executed for the purpose of enforcing payment of the debt to which the inhibition relates but not by any other legal process.
- (3) Where a creditor has executed an inhibition, the expenses of only one further inhibition in relation to the debt to which the first inhibition relates are chargeable against the debtor as inhibition expenses.
- (4) For the purposes of a sequestration or other process in which there is ranking, the inhibition expenses must be treated as part of the debt constituted by the decree or document of debt authorising the inhibition.

### Annotations:

#### Commencement Information

- I2** S. 165 partly in force; s. 165 not in force at Royal Assent see s. 227; s. 165(1)(3)(4) in force at 22.4.2009 by S.S.I. 2009/67, art. 3 (with transitional modifications and savings in arts. 4-6)

## 166 Ascription

- (1) This section applies where—
  - (a) an inhibition has effect; and
  - (b) any sums are paid to account of the sums recoverable from the debtor by virtue of the decree or document of debt authorising the inhibition.
- (2) Such sums must be ascribed to the following in the order in which they are mentioned—
  - (a) the expenses which are chargeable against the debtor incurred in respect of any diligence (other than the inhibition) authorised by the decree or document of debt;
  - (b) the inhibition expenses;
  - (c) any interest which has accrued, at the date on which the inhibition takes effect, on the debt constituted by the decree or document of debt;
  - (d) the debt constituted by the decree or document of debt together with such interest as has accrued after the date on which the inhibition takes effect.

## 167 Keeper's duty to enter inhibition on title sheet

In section 6 of the Land Registration (Scotland) Act 1979 (c. 33) (content of title sheet)

- (a) in subsection (1)(c), at the beginning insert “ subject to subsection (1A) below,  
 ”; and
- (b) after subsection (1) insert—

“(1A) The Keeper shall enter an inhibition registered in the Register of Inhibitions in the title sheet only when completing registration of an

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interest in land where the interest has been transferred or created in breach of the inhibition.”.

## **168 Inhibition effective against judicial factor**

- (1) Notwithstanding the appointment of a judicial factor on a debtor's estate, an inhibition has effect.
- (2) But subsection (1) above does not apply in a case where—
  - (a) a judicial factor is appointed under section 11A of the Judicial Factors (Scotland) Act 1889 (c. 39) (application for judicial factor on deceased person's estate); and
  - (b) the inhibition was effective against the debtor prior to the debtor's death.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied (with modifications) by [S.I. 2018/1125 reg. 8](#)