

Draft Order laid before the Scottish Parliament under section 224(4)(a) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2009 No.

**ENFORCEMENT
DEBT
DILIGENCE**

**The Bankruptcy and Diligence etc. (Scotland)
Act 2007 (Inhibition) Order 2009**

Made - - - - 2009

Coming into force - - 22nd April 2009

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 224(2) and 225 of the Bankruptcy and Diligence etc. (Scotland) Act 2007⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 224(4)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Bankruptcy and Diligence etc. (Scotland) Act 2007 (Inhibition) Order 2009 and comes into force on 22nd April 2009.

(2) In this Order, “the Act” means the Bankruptcy and Diligence etc. (Scotland) Act 2007.

Amendments of the Bankruptcy and Diligence etc. (Scotland) Act 2007

2. In section 152 (conversion of limited inhibition on the dependence to inhibition in execution) of the Act—

(a) that section becomes subsection (1);

(b) in that subsection—

(i) at the beginning, insert “Subject to subsection (2) below,”; and

- (ii) for “any inhibition in execution of the decree is not limited to that property” substitute “any inhibition on the dependence which, on decree, becomes an inhibition in execution of that decree, is no longer limited to that property”; and
- (c) after that subsection, insert–
 - “(2) Subsection (1) above has effect from the beginning of the day on which–
 - (a) an extract of the decree (or a copy of the interlocutor certified by the clerk of court); and
 - (b) a notice in (or as nearly as may be in) the form set out in the Schedule to the Bankruptcy and Diligence etc. (Scotland) Act 2007 (Inhibition) Order 2009(2), are registered in the Register of Inhibitions.”.

Form of notice for registration of decree converting limited inhibition on the dependence

3. The form of notice mentioned in section 152(2)(b) of the Act (as inserted by article 2 of this Order) is the form set out in the Schedule to this Order.

Transitional modification – Register of Inhibitions and Adjudications

4. Prior to the day to be appointed for the coming into force of section 80 of the Act (renaming the Register of Inhibitions and Adjudications), the references to the Register of Inhibitions–

- (a) in section 152(2) of the Act (as inserted by article 2 of this Order); and
- (b) in the form set out in the Schedule to this Order,

are to be read as references to the Register of Inhibitions and Adjudications.

St Andrew’s House,
Edinburgh
2009

Authorised to sign by the Scottish Ministers

SCHEDULE

Article 3

Form of Notice of Decree following limited inhibition on the dependence under section 15J(b) of the Debtors (Scotland) Act 1987

Notice of Decree - following limited inhibition on the dependence under section 15J(b) of Debtors (Scotland) Act 1987

Court ref:

To: The Keeper of the Registers of Scotland

I, (*Inhibitor*) give notice that a decree was granted on (*date*) at (*insert applicable Sheriff Court or the Court of Session*) in the action by (*pursuer's name and designation*) against (*defender's name and designation*) ("the debtor").

Warrant for Inhibition on the Dependence of this action was previously granted and registered in the Register of Inhibitions on (*date*). This Warrant was limited under section 15J(b) of the Debtors (Scotland) Act 1987 (inserted by section 169 of the Bankruptcy and Diligence etc. (Scotland) Act 2007) to have effect against the debtor's property at (*place*).

This Notice is accompanied by an extract of the decree, or a copy interlocutor certified by the clerk of court, for registration in the Register of Inhibitions.

(*Signed*)

Agent for the Inhibitor/Inhibitor*

(*Address*)

On behalf of

(*Name and Address of Inhibitor*)

Dated:

* Delete where not applicable.

NOTE

Under section 152 of the Bankruptcy and Diligence etc. (Scotland) Act 2007, any inhibition on the dependence limited to specified property which, on decree, becomes an inhibition in execution of that decree, is no longer limited to that property, and so has effect against all of the debtor's land and heritable property. This widened effect takes place from the beginning of the date of registration of the extract decree, or copy interlocutor certified by the clerk of court, together with this Notice.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Part 5 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (“the Act”) which amends the law of inhibition (the enforcement of judgments, decrees and documents of debt to freeze the heritable property of the debtor).

Where a court grants a warrant for inhibition on the dependence of a court action it may, under section 15J(b) of the Debtors (Scotland) Act 1987, limit the property caught by the inhibition to specified property. If the court then grants a decree for payment of all or part of the principal sum sued for, an inhibition on the dependence of an action converts into an inhibition in execution which is not limited to the specified property under section 152 of the Act.

The Act does not provide for the registration of such a decree in the Register of Inhibitions to give notice to third parties of the removal of limitations on the extent of the inhibition. This Order makes ancillary provision for that. The removal of the limitation to specified property has effect from the date of registration of an extract of the warranted decree, or a certified copy interlocutor in that Register, together with a notice in the prescribed form (article 2(a), (b)(i) and (c)). Article 3 prescribes the form of notice which must accompany the registered decree, and article 4 makes transitional provision prior to the commencement of section 80 of the Act which renames that Register.

This Order also makes ancillary provision for a minor clarification of the wording of section 152 of the Act (article 2(b)(ii)).