
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2010 No.

The Applications by Creditors (Pre-Action Requirements) (Scotland) Order 2010

Requirement to make reasonable efforts to agree proposals

3.—(1) In complying with the pre-action requirement contained in section 5B(3) of the 1894 Act and section 24A(3) of the 1970 Act the creditor must—

- (a) make reasonable attempts to contact the debtor to discuss the default;
- (b) provide the debtor with details of any proposal made by the creditor, set out in such a way as to allow the debtor to consider the proposal;
- (c) allow the debtor reasonable time to consider any proposal made by the creditor;
- (d) notify the debtor within a reasonable time of any decision taken by the creditor to accept or reject a proposal made by the debtor; and
- (e) consider the affordability of any proposal for the debtor taking into account, where known to the creditor, the debtor's personal and financial circumstances.

(2) Where a proposal is made by the debtor which the creditor rejects the creditor must provide reasons for rejecting the proposal in writing within 10 working days of the notification referred to in paragraph (1)(d).

(3) Where the debtor fails to comply with any condition of an agreement reached with the creditor in respect of any proposal and the creditor decides to make an application under section 5(1) of the 1894 Act⁽¹⁾ or section 24(1B) of the 1970 Act⁽²⁾, and the debtor has not previously failed to comply with any condition of the agreement, the following provisions of this paragraph apply—

- (a) the creditor must give the debtor notice in writing of the decision to make an application and the ground of the proposed application;
- (b) the creditor must not make an application before the expiry of 15 working days beginning with the date on which the debtor is deemed to receive the notice; and
- (c) the creditor must not make an application if the failure by the debtor to comply with a condition of the agreement, constituting the ground of the proposed application, is remedied during that period.

(4) For the purposes of this article, the debtor is deemed to receive the notice given under paragraph (3)(a)—

- (a) if sent by post, at the time at which the letter would be delivered in the ordinary course of post;
- (b) if sent by electronic communication, on the day after the day on which the electronic communication containing it was sent; and
- (c) if otherwise given to the debtor, at the time of delivery.

(5) In this article—

(1) Section 5 was renumbered section 5(1) by the Act, section 3(1)(a).
(2) Section 24(1B) was inserted by the Act, section 2(2).

- (a) “working day” means a day that is not a Saturday or Sunday, nor any day that is a bank holiday under the Banking and Financial Dealings Act 1971⁽³⁾ in any part of the United Kingdom; and
- (b) “electronic communication” has the meaning given by section 15(1) of the Electronic Communications Act 2000⁽⁴⁾; such communications referred to in paragraph (4) must be sent to an address notified to the creditor by the debtor for the purpose of receiving communications relating to the security, and must be—
 - (i) capable of being accessed by the recipient;
 - (ii) legible in all other material respects; and
 - (iii) sufficiently permanent to be used for subsequent reference.

⁽³⁾ 1971 c.80.

⁽⁴⁾ 2000 c.7. Section 15(1) was relevantly amended by the Communications Act 2003 (c.21.), Schedule 17, paragraph 158.