
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 104

CRIMINAL LAW

**The Enforcement of Fines (Diligence)
(Scotland) Regulations 2008**

<i>Made</i>	- - - -	<i>6th March 2008</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>7th March 2008</i>
<i>Coming into force</i>	- -	<i>1st April 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 226F(6) and (7) of the Criminal Procedure (Scotland) Act 1995⁽¹⁾ and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Enforcement of Fines (Diligence) (Scotland) Regulations 2008 and come into force on 1st April 2008.

(2) In these Regulations “FEO” means a fines enforcement officer⁽²⁾.

Arrestment of earnings

2. Where an FEO executes an arrestment of earnings, the application of the provisions of the following enactments shall be modified—

(a) section 7(1)(a) of the Sheriff Courts (Scotland) Extracts Act 1892⁽³⁾ (import of the warrant for execution) to dispense with the requirement for service of a charge for payment; and

(b) the Debtors (Scotland) Act 1987—

(i) section 50(3) (review of earnings arrestment) to allow an FEO to make an application to the sheriff seeking a determination of any dispute as to the operation of such an arrestment of earnings;

(1) 1995 c. 46, as relevantly amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 55 inserting sections 226A to 226I.
(2) Fines enforcement officers are persons authorised by the Scottish Ministers under section 226A of the Criminal Procedure (Scotland) Act 1995 for any, or all, of the purposes of that section and of sections 226B to 226H of that Act.
(3) 1892 c. 17 (55 & 56 Vict.). Section 7 was relevantly amended by the Debtors (Scotland) Act 1987 c. 18, section 87(3).

- (ii) section 57(4) (creditor’s duty when arrestment ceases to have effect) to extend the duty on creditors to inform the offender’s employer when such an arrestment of earnings ceases to have effect to FEOs;
- (iii) section 65(1)(b) (operation of conjoined arrestment order) to allow an FEO who executed an arrestment of earnings which is being enforced by a conjoined arrestment order to make an application to the sheriff seeking the determination of any dispute as to the operation of the conjoined arrestment order;
- (iv) section 66(2)(b) and (6) (recall and variation of conjoined arrestment order) to allow an FEO who executed an arrestment of earnings which is being enforced by a conjoined arrestment order to make an application to the sheriff seeking the recall or variation of the order;
- (v) section 70C(4) (creditor’s duty to provide information) to extend the duty on creditors to provide information to FEOs;
- (vi) section 90(1) (provisions relating to charges for payment) shall have no application; and
- (vii) section 106 (interpretation) to extend the meaning of “officer of court” for the purposes of section 70 to FEOs.

Arrestment in execution

3.—(1) Where an FEO executes an arrestment of funds standing in accounts held at any bank or other financial institution—

- (a) the application of sections 1 and 2 of the Execution of Diligence (Scotland) Act 1926(5) shall be modified so as to extend to an FEO the authority to execute the arrestment in execution;
- (b) it shall be competent for an FEO to enforce payment of more than one relevant penalty payable to him by the same offender by means of a single arrestment in execution, whether the arrestment is executed in pursuance of the same warrant or of 2, or more, different warrants authorising diligence; and
- (c) on the cessation of an arrestment in execution, following either the payment of the relevant penalty or the recall of the arrestment, the FEO shall, as soon as is reasonably practicable, inform the arrestee in writing that this is the case.

(2) In this regulation—

“arrestee” means a bank or other financial institution with which an offender has an account in respect of which an arrestment in execution has been carried out; and

“relevant penalty” has the meaning given in section 226I of the Criminal Procedure (Scotland) Act 1995.

St Andrew’s House,
Edinburgh
6th March 2008

KENNY MACASKILL
A member of the Scottish Executive

(4) Section 70C of the Debtors (Scotland) Act 1987 was inserted by section 203 of the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#).

(5) [1926 c. 16](#) (16 & 17 Geo. 5).

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 226A to 226I of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) were inserted by section 55 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. These sections make provision regarding the enforcement of “relevant penalties”, as defined in section 226I of the 1995 Act.

Under section 226A of the 1995 Act the Scottish Ministers may authorise persons, including classes of persons, to act as fines enforcement officers (“FEOs”). They have the general functions of providing information and advice to offenders regarding the payment of relevant penalties and of securing compliance with enforcement orders. These orders provide general information to the offender regarding the amount of the penalty, the arrangements for repayment and their effect.

Under the terms of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 3 and Savings) Order 2008 ([S.S.I. 2008/42](#)), FEOs may carry out their functions in relation to relevant penalties imposed by and enforcement orders made by a “relevant court”, as defined in section 226I of the 1995 Act.

FEOs have a wide range of powers, including the power to execute civil diligence. FEOs may execute arrestment of earnings and arrestment of funds standing in accounts held in a bank or other financial institution. These Regulations make such provision and such modifications as are necessary for diligence to be executed by an FEO.

Regulation 2 makes provision regarding an FEO’s functions relating to arrestment of earnings.

Regulation 2(a) modifies the application of section 7(1)(a) of the Sheriff Courts (Scotland) Extracts Act 1892 so as to provide that the warrant for execution seeking payment of the money authorises an FEO to execute an earnings arrestment without the prior requirement of the service, and expiry without full payment, of a charge for payment.

Regulation 2(b)(i) modifies the application of section 50(3) of the Debtors (Scotland) Act 1987 (“the 1987 Act”) so that an FEO may apply to the sheriff for an order determining any dispute as to the operation of an earnings arrestment executed by an FEO in accordance with the Regulations.

Regulation 2(b)(ii) modifies the application of section 57(4) of the 1987 Act so that an FEO shall have a duty to inform the offender’s employer, as soon as is reasonably practicable, that the earnings arrestment has come to an end following the payment or by such other reason causing the relevant penalty to be extinguished.

Regulation 2(b)(iii) modifies the application of section 65(1)(b) of the 1987 Act so as to allow an FEO who executed an earnings arrestment which is being enforced by a conjoined arrestment order to make an application to the sheriff for an order determining any dispute as to the operation of such a conjoined arrestment order in the same way as a creditor is so able to do.

Regulation 2(b)(iv) modifies the application of section 66(2)(b) and (6) of the 1987 Act. This allows an FEO who executed an earnings arrestment which is being enforced by a conjoined arrestment order to make an application to the sheriff for an order to recall or vary the conjoined arrestment order.

Regulation 2(b)(v) modifies the application of section 70C of the 1987 Act so that it applies to FEOs in the same way as it does creditors. It provides that FEOs shall, in the execution of an arrestment of earnings, be obliged to provide information to the employer or, in the case of a conjoined arrestment

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order to the sheriff clerk, as to the sum owed by the offender, the amount received by an FEO and the dates on which the payments were made following the service of the arrestment or order.

Regulation 2(b)(vi) provides that section 90(1) of the Debtors (Scotland) Act 1987 does not apply in cases where an earnings arrestment is executed by an FEO. That section provides that an earnings arrestment may only be competent following the service, and expiry, without payment of a charge for payment on the debtor.

Regulation 2(b)(vii) modifies the definition of “officer of court” where it appears in section 106 of the 1987 Act. The modification extends its meaning in section 70 to an FEO in relation to the execution and intimation of an earnings arrestment schedule.

Regulation 3 makes provision regarding an FEO’s functions of obtaining the amount of the relevant penalty through the arrestment of funds standing in the offender’s bank (or other financial institution) account.

Regulation 3(a) is the corresponding provision for arrestments in execution as regulation 2(b)(v) is for earnings arrestments. It modifies the application of sections 1 and 2 of the Execution of Diligence (Scotland) Act 1926 to allow an FEO to execute and intimate an arrestment in execution in the same way as a messenger-at-arms or a sheriff officer may so do.

Regulation 3(b) provides that it is competent for an FEO to enforce payment of more than one fine payable by the same offender by way of a single arrestment in execution, whether that be by way of the same warrant or of 2 or more warrants authorising diligence.

Regulation 3(c) provides that when such an arrestment ceases either due to the relevant penalty being paid or following the court ordering its recall, an FEO shall, as soon as is reasonably practicable, inform the bank, or such other financial institution, of this fact.