

2008 No. 115 (C. 10)

INSOLVENCY

BANKRUPTCY

DEBT

DILIGENCE

**The Bankruptcy and Diligence etc. (Scotland) Act 2007
(Commencement No. 3, Savings and Transitionals) Order 2008**

Made - - - -

12th March 2008

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 224(2) and 227(3) and (4) of the Bankruptcy and Diligence etc. (Scotland) Act 2007(a).

Citation

1. This Order may be cited as the Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No. 3, Savings and Transitionals) Order 2008.

Interpretation

2. In this Order—

“the Act” means the Bankruptcy and Diligence etc. (Scotland) Act 2007;

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985(b);

“the 1987 Act” means the Debtors (Scotland) Act 1987(c); and

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002(d).

(a) 2007 asp 3 (“the Act”).

(b) 1985 c.66 (“the 1985 Act”). The 1985 Act is significantly amended by the Bankruptcy (Scotland) Act 1993 (c.6), sections 1 to 8 and Schedule 1. The 1985 Act is also significantly amended by the Act, provisions of which are commenced by this Order, Part I (except for sections 3, 4, 33 and 34), schedule 1, schedule 5, paragraph 13 and schedule 6, Part 1.

(c) 1987 c.18 (“the 1987 Act”). The 1987 Act is significantly amended by the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 58(2), schedule 3, Part I, paragraph 17. The 1987 Act is also significantly amended by the Act, sections 169 and 170, 199 to 205, 206, 209(2) to (5), schedule 5, paragraph 16 and schedule 6, Part 1.

(d) 2002 asp 17, amended by S.S.I. 2004/ 468 and the Act, sections 173, 209(1), 211 and 212 and schedule 5, paragraph 30, schedule 4, paragraph 10 and schedule 6, Part 1.

Appointed day in respect of provisions of the Act

3.—(1) The following provisions of the Act, in so far as not already in force, come into force on 1st April 2008:—

- (a) Part 1 (bankruptcy), except for—
 - (i) section 18(5) (record of income payment orders and agreements in the register of insolvencies);
 - (ii) section 21 (changes to composition);
 - (iii) in section 25 (debt limits in sequestrations)—
 - (aa) paragraph (a); and
 - (ab) paragraph (b) in so far as it applies to debtor applications; and
 - (iv) section 36 (minor and consequential amendments of the 1985 Act) in so far as it relates to the provisions of schedule 1 excepted from commencement by paragraph (i) and (ii) below;
- (b) in Part 6 (diligence on the dependence)—
 - (i) section 169 except for the insertion of section 15H(4) of the 1987 Act; and
 - (ii) sections 170 and 171;
- (c) Part 7 (interim attachment);
- (d) Part 9 (diligence against earnings);
- (e) in Part 10, section 206 (arrestment and action of furthcoming to proceed only on decree or document of debt) for the purpose of the insertion of section 73A(2) of the 1987 Act;
- (f) in Part 11, section 208 (abolition of sequestration for rent and restriction of landlord's hypothec);
- (g) Part 12 (summary warrants, time to pay and charges to pay);
- (h) in section 226—
 - (i) subsections (1) and (2) in so far as relating to the provisions of schedules 5 and 6 commenced by this Order; and
 - (ii) subsection (3); and
- (i) schedule 1 (minor and consequential amendments of the 1985 Act), except for—
 - (i) paragraph 41(a); and
 - (ii) paragraph 44(1) and (2)(a) in so far as they apply to company insolvencies(a).

(2) The minor and consequential amendments and repeals in schedules 5 and 6 respectively specified in column 1 of Schedules 1 and 2 to this Order come into force on 1st April 2008, subject to paragraph (3).

(3) Where in Schedule 1 or 2 to this Order a purpose is specified in column 2 of the Schedule in relation to an amendment or repeal, it comes into force only for that purpose, but where no purpose is specified it comes into force for all purposes.

(4) The provisions of the Act specified in column 1 of Schedule 3 to this Order come into force on 1st April 2008 only for the purpose of making regulations or orders under the provisions so specified (or under the inserted provisions specified in column 2 of that Schedule).

Transitional modification of the Act – references to “judicial officer”

4.—(1) Any reference to a “judicial officer” in, or having effect by virtue of, any provision of the Act commenced by this Order is to be read as a reference to a messenger-at-arms or a sheriff officer (or a reference to a messenger-at-arms and a sheriff officer as the case may be).

(a) The accounting period under section 52(2) of the Bankruptcy (Scotland) Act 1985 (c.66) is applied for the purposes of company insolvency (see rules 0.2, 2.38, 2.41 and 4.68 of the Insolvency (Scotland) Rules 1986 (S.I. 1986/1915)).

(2) This article ceases to have effect on the day to be appointed for the coming into force of section 60 of the Act (abolition of offices of messenger-at-arms and sheriff officer).

Sequestrations – petitions presented before 1st April 2008

5.—(1) Nothing in any provision brought into force by this Order has effect as regards any sequestration in respect of which the petition is presented before 1st April 2008.

(2) The 1985 Act, as in force immediately before 1st April 2008 continues to apply and have effect in relation to any sequestration in respect of which the petition is presented before that date.

Trust deeds – trust deeds granted before 1st April 2008

6.—(1) Nothing in any provision brought into force by this Order has effect as regards any trust deed granted before 1st April 2008.

(2) Sections 1A(1)(a) and 59 of, and Schedule 5 to, the 1985 Act, as in force immediately before 1st April 2008, continue to apply and have effect in relation to any trust deed granted before that date.

Transitional arrangements – bankruptcy restrictions orders, debt advice and information packages in bankruptcy and definition of apparent insolvency

7. Where a sheriff is considering whether to make a bankruptcy restrictions order or interim bankruptcy restrictions order, or the Accountant in Bankruptcy is determining whether to accept a bankruptcy restrictions undertaking pursuant to section 56A, 56F or 56G, respectively, of the 1985 Act(a), neither the sheriff nor the Accountant in Bankruptcy is to take into account any conduct of the debtor before 1st April 2008.

8. Section 5(2D) of the 1985 Act(b) (creditor to provide debt advice and information package) has no effect in relation to a petition by a creditor presented before 22nd April 2008.

9. Notwithstanding the repeal of section 7(1)(c)(iii) of the 1985 Act by Part 1 of schedule 6 to the Act the apparent insolvency of a debtor may still be constituted by 14 days elapsing without payment following an attachment (or an attempt to attach) or the seizure of moveable property in pursuance of a summary warrant for the recovery of rates or taxes, where the attachment (or attempt to attach) or seizure occurred before 1st April 2008.

Diligence on the dependence, summary warrants, time to pay – proceedings before 1st April 2008

10.—(1) Nothing in any provision brought into force by this Order, except sections 15K and 15L of the 1987 Act (inserted by section 169 of the Act) and section 95A of the 1987 Act (inserted by section 170 of the Act), has effect as regards any diligence on the dependence of an action for which a warrant is applied for before 1st April 2008.

(2) Nothing in any provision brought into force by this Order has effect as regards–

(a) any diligence which is–

(i) authorised by a summary warrant granted before 1st April 2008; and

(ii) executed before 1st July 2008; and

(b) any application for a time to pay direction or a time to pay order made before 1st April 2008.

(a) Sections 56A to 56K of the 1985 Act are inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the Act”).

(b) Section 5(2D) was inserted by section 26 of the Act.

Diligence against earnings – intimation of arrestment schedule and provision of information – schedule or order before 1st April 2008

11. Nothing in section 202 of the Act (intimation of arrestment schedule) has effect as regards any earnings arrestment, current maintenance arrestment or conjoined arrestment order where the earnings arrestment schedule, current maintenance arrestment schedule or conjoined arrestment order is served on the employer of the debtor before 1st April 2008.

12.—(1) Section 70A(1) of the 1987 Act(a) shall not require the information described in section 70A(3) to be sent in respect of an earnings arrestment, current maintenance arrestment or conjoined arrestment order received before 1st April 2008.

(2) In applying section 70A(2) to (4) of the 1987 Act in respect of an earnings arrestment, current maintenance arrestment or conjoined arrestment order received before 1st April 2008, those subsections are to be read as if—

- (a) there is no requirement under section 70A(2) and (4)(a) to send the information mentioned in section 70A(3) as soon as reasonably practicable after 6th April 2008, but instead that information shall be sent no later than 6th October 2008;
- (b) for subsection (3)(b)(ii) there were substituted—
“(ii) where subsection (2) above applies, 6 October 2008”; and
- (c) for subsection (4)(a) there were substituted—
“(a) 6 April 2009”.

Diligence against earnings - transitional restriction on liability of employer

13.—(1) Where a pay-day occurs within a period of 7 days after 1st April 2008 an employer operating an earnings arrestment, current maintenance arrestment or conjoined arrestment order is entitled, but not required, on that day to give effect to sections 199, 200 and 205 of the Act.

(2) Where, in accordance with paragraph (1), the employer on a pay-day (“the previous pay-day”) does not give effect to those sections, the employer must not include in any sum deducted from the net earnings of the debtor on a subsequent pay-day under the arrestment or order any sum in respect of the debtor’s net earnings on the previous pay-day.

(3) Section 69(4) and (5) of the 1987 Act applies to a claim in respect of any deduction under paragraphs (1) and (2) as they apply to any deduction mentioned in those subsections.

Transitional arrangements – debt advice and information package in diligence against earnings, charge to pay

14. Notwithstanding any requirement on a creditor to provide a debt advice and information package by or under section 47(3) and (4), 51(2A) or 60(3A) of the 1987 Act(b), an earnings arrestment, current maintenance arrestment or conjoined arrestment order may come into effect before 22nd April 2008 where no debt advice and information package has been provided to the debtor.

(a) Section 70A to 70D are inserted by section 203 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the Act”).

(b) Those provisions, and a definition of “debt advice and information package” in section 73(1) of the Debtors (Scotland) Act 1987 (c.18) are inserted by section 201 of the Act.

15. Notwithstanding any requirement to serve a charge for payment by or under any provision of the Act commenced by this Order, such a requirement shall not prevent execution of the diligence to which that requirement relates before 15th April 2008 (or where the person on whom the charge is to be served is outside the United Kingdom, before 29th April 2008).

FERGUS EWING

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
12th March 2008

SCHEDULE 1

Article 3(2) and (3)

Provisions of schedule 5 (minor and consequential amendments) coming into force on 1st April 2008

<i>Column 1 – provisions</i>	<i>Column 2 – purpose</i>
1. Paragraph 10 (the Sheriff Courts (Scotland) Act 1971)(a)	For the purpose of substituting “an interim attachment, an attachment”
2. Paragraph 12 (the Civil Jurisdiction and Judgments Act 1982)(b)	
3. In paragraph 13 (the Bankruptcy (Scotland) Act 1985)(c)–	
(a) sub-paragraph (1)	For the purposes of the provisions commenced in this Order
(b) sub-paragraph (2)	
(c) sub-paragraph (3)(a)	
(d) sub-paragraph (3)(c)(i), (d)(i), and (d)(iv)	For the purpose of inserting “, interim attachment”
(e) sub-paragraph (3)(c)(ii)	
(f) sub-paragraph (3)(d)(ii)	
4. In paragraph 16 (the Debtors (Scotland) Act 1987)(d)–	
(a) sub-paragraph (1)	For the purposes of the provisions commenced in this Order
(b) sub-paragraph (2)(c)	For the purposes of the insertion of section 2(2B) of the 1987 Act
(c) sub-paragraph (2)(d) and (e)	
(d) sub-paragraph (3)	
(e) sub-paragraph (4)(a)	For the purposes of the substitution of section 5(5)(a) of the 1987 Act
(f) sub-paragraph (7)(a)(i)	
(g) sub-paragraph (8)(b)	For the purposes of the insertion of section 9(2)(cb) of the 1987 Act
(h) sub-paragraph (8)(d)	

(a) 1971 c.58.
(b) 1982 c.27.
(c) 1985 c.66.
(d) 1987 c.18.

<i>Column 1 – provisions</i>	<i>Column 2 – purpose</i>
(i) sub-paragraph (8)(e)(ii)	
(j) sub-paragraph (8)(g)	
(k) sub-paragraph (8)(i)	
(l) sub-paragraph (9)	
(m) sub-paragraph (10)	
(n) sub-paragraph (12)	
(o) sub-paragraph (13)	
(p) sub-paragraph (14)(a) and (b)	
5. In paragraph 26 (the Water Industry (Scotland) Act 2002)(a)–	
(a) sub-paragraph (1)	For the purposes of the provision commenced in this Order
(b) sub-paragraph (3)	For the purposes of the insertion of the reference to section 39(1) of the Debt Arrangement and Attachment (Scotland) Act 2002
6. In paragraph 30 (the Debt Arrangement and Attachment (Scotland) Act 2002)(b)–	
(a) sub-paragraph (1)	For the purposes of the provisions commenced in this Order
(b) sub-paragraph (2)	
(c) sub-paragraph (12)	
(d) sub-paragraph (14)	

(a) 2002 asp 3.
(b) 2002 asp 17.

SCHEDULE 2

Article 3(2) and (3)

Repeals in schedule 6 coming into force on 1st April 2008

<i>Column 1 – repeal</i>	<i>Column 2 – purpose</i>
1. In the entry in Part 1 in respect of the Debtors (Scotland) Act 1838(a)–	
(a) section 17	
(b) section 22	for the purpose of diligence on the dependence
2. The entry in Part 1 in respect of the Hypothec Amendment (Scotland) Act 1867(b).	
3. The entry in Part 1 in respect of the Hypothec Abolition (Scotland) Act 1880(c).	
4. The entry in Part 1 in respect of the Judicial Factors (Scotland) Act 1889(d).	
5. The entry in Part 1 in respect of the Sheriff Courts (Scotland) Act 1971(e).	
6. The entry in Part 1 in respect of the Sale of Goods Act 1979(f).	
7. The entry in Part 1 in respect of the Family Law (Scotland) Act 1985(g).	for the purpose of diligence on the dependence
8. The entries in Part 1 in respect of the 1985 Act, other than–	
(a) the repeal of section 7(1)(c)(iv);	
(b) the repeals in section 14 (but not the repeal in subsection (4) of “permanent”);	
(c) the repeal in section 15(5)(a);	
(d) the repeal in section 17(8)(a);	
(e) the repeal in section 31(2) of “(reserving the effect of such inhibition on ranking)”;	

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- (a) 1838 c.114.
 - (b) 1867 c.42.
 - (c) 1880 c.12.
 - (d) 1889 c.39.
 - (e) 1971 c.58.
 - (f) 1979 c.54.
 - (g) 1985 c.37.

<i>Column 1 – repeal</i>	<i>Column 2 – purpose</i>
(f) in respect of section 37–	
(i) the repeal of subsection (1)(a); and	
(ii) in subsection (2) the repeals of “which” and “shall be effectual to create a preference for the inhibitor and”	
(iii) the repeal in subsection (8);	
(g) the repeal in section 54(7)(a) of “and adjudications”;	
(h) the repeal in Schedule 5, paragraph 2(1) of “and adjudications”.	
9. The entry in Part 1 in respect of the Insolvency Act 1986(a).	
10. In the entry in Part 1 in respect of the 1987 Act, the repeals of–	
(a) section 8(3);	
(b) in section 9(8), “to grant”;	
(c) paragraph 3 of Schedule 6.	for the purpose of diligence on the dependence
11. In the entry in Part 1 in respect of the Proceeds of Crime Act 2002(b), the repeal of section 285(7)	for the purpose of the abolition of sequestration for rent
12. In the entry in Part 1 in respect of the 2002 Act, the repeals of–	
(a) section 4(2A)(d)	
(b) section 60(1), (2)(b), (4) and (5)	
13. Part 2 (revocation).	

(a) 1986 c.45.
(b) 2002 c.29.

SCHEDULE 3

Article 4

Provisions of the Act coming into force on 1st April 2008 only for the purpose of making regulations or orders

<i>Column 1 – provisions of the Act</i>	<i>Column 2 – enabling power inserted by the Act</i>
Section 21(3), (4) and (7)	Schedule 4 to the 1985 Act, paragraphs 4(c), 5 and 11(3), 8A(1) and (2)
Section 25(a)	the 1985 Act, section 5(2B)(a)
Section 37(7) and (8)	
Section 50(4) and (5)	
Section 58(5)(c)	
Section 61(1), (2) and (3)	
Section 63(1) and (2)	
Section 75(7)	
Section 81(7)	
Section 83(1)(a)	
Section 83(3)(b)	
Section 88(3)(a)	
Section 91(2)	
Section 92(2), (3)(b), (4)(a), (4)(c)(vi), (5)(f) and (7)	
Section 96(5)	
Section 97(7)	
Section 98(6)	
Section 106(2) and (4)	
Section 108(2) and (8)	
Section 111(2)(b)	
Section 113(2)(a)	
Section 114(4)	
Section 117(2), (7)(b) and (8)(a)	
Section 120(5)	
Section 123(2)(a) and (5)	

<i>Column 1 – provisions of the Act</i>	<i>Column 2 – enabling power inserted by the Act</i>
Section 124(2)	
Section 128(3)	
Section 129	
Section 130(2)(a)	
Section 133(2)(a)	
Section 135(2)(a) and (d)(ii)	
Section 140(2)(a) and (5)	
Section 143(5)	
Section 145(2)	
Section 146(9)	
Section 148(3)	
Section 149	Section 155(4) of the Titles to Land Consolidation (Scotland) Act 1968 (c.101)
Section 162	Section 159A(3) of that Act
Section 164(1) and (2)	Sections 159 and 159B of that Act
Section 175(3)	
Section 176(1)(c)	
Section 179(2)(a)(i)	
Section 182(2)(a)	
Section 183(3)(a) and (7)(a)	
Section 185(4)	
Section 188(4)(a)	
Section 189(3)(a)	
Section 196(2)	
Section 198(2)	
Section 206	Sections 73A(5), 73B(2), 73C(2), 73E(3), 73F(6), 73G(2), 73H(1) and (2), 73M(2)(a), 73Q(3)(a), 73S(1) and (2) of the 1987 Act
Section 214(4)	
Section 215	
Section 216(6)	

<i>Column 1 – provisions of the Act</i>	<i>Column 2 – enabling power inserted by the Act</i>
Section 217(1)(c)	
Section 220	
Schedule 2, paragraph 22	
Schedule 3, paragraph 4	
Schedule 5, paragraph 13(3)(f) and (g)	Section 37(8F) and (10) of the 1985 Act
Schedule 5, paragraph 30(4)	Section 13A(2)(a) of the 2002 Act

EXPLANATORY NOTE

(This note is not part of the Order)

Article 3 of this Order brings into force on 1st April 2008 provisions of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the Act”), subject to transitional and saving provisions.

References to “judicial officer” in provisions commenced by the Order are to be read as references to messengers-at-arms or sheriff officers prior to the coming into force of section 60 of the Act (abolition of those offices) (article 4).

Bankruptcy

The bankruptcy provisions brought into force are all of the provisions in Part 1 of the Act with the exception of sections 18(5) (record of income payment order and agreements in the register of insolvencies), section 21 (changes to composition), section 25(a), and section 25(b) for the purposes of debtor applications (debt limits in sequestrations). Related amendments and repeals in schedules 1, 5 and 6 are also brought into force (article 3(1)(i), (2) and (3) and Schedules 1 and 2 to this Order).

The Order also sets out transitional arrangements for the changes to bankruptcy. There are savings for petitions for sequestrations presented, and trust deeds entered into, before 1st April 2008 (articles 5 and 6). There are transitional arrangements for bankruptcy restrictions orders, for the service of debt advice and information packages in bankruptcy and for the definition of apparent insolvency (articles 7 to 9).

Diligence

The diligence provisions brought into force are Part 6 (diligence on the dependence), Part 7 (interim attachment), Part 9 (diligence against earnings), section 73A(2) of the Debtors (Scotland) Act 1987 inserted by section 206 in Part 10 (arrestment in execution), section 208 in Part 11 (abolition of sequestration for rent) and Part 12 (summary warrants, time to pay and charges to pay). Related amendments and repeals in schedules 5 and 6 are also brought into force.

The Order also sets out transitional arrangements for the changes to diligence. There are savings for diligence on the dependence, diligence in pursuance of summary warrants granted and applications for time to pay (article 10). There are transitional arrangements for earnings arrestment (articles 11 to 14) and for service of charges to pay (article 15).

Powers enabling regulations and orders to be made under the remaining provisions of the Act (or inserted by those provisions) are also commenced for the restricted purpose of making regulations and orders.

The Act received Royal Assent on 15th January 2007. Sections 224, 225 and 227 of the Act came into force on Royal Assent and section 222 came into force on the day after Royal Assent.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
s.211	8th March 2007	2007/82
s.212(1), (2) to (6) (partially)		
s.221		
s.223		
s.36 (partially)	31st March 2007	2007/82
s.212(1), (8) to (16) (partially)		
s.226(1) (partially)		
sch. 1, para. 42(a)		
sch. 5, para. 30(1), (5) to (8)(a), (10), (11)(a)(ii) and (b) and (15) (partially)		
s.20	19th February 2007	2008/45
s.35		

2008 No. 115 (C. 10)

INSOLVENCY

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The Bankruptcy and Diligence etc. (Scotland) Act 2007
(Commencement No. 3, Savings and Transitionals) Order 2008

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