

2009 No. 66

ENFORCEMENT

DEBT

DILIGENCE

The Arrestment Jurisdiction (Scotland) Order 2009

<i>Made</i> - - - -	<i>23rd February 2009</i>
<i>Laid before the Scottish Parliament</i>	<i>24th February 2009</i>
<i>Coming into force</i> - -	<i>22nd April 2009</i>

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

Citation and commencement

1. This Order may be cited as the Arrestment Jurisdiction (Scotland) Order 2009 and comes into force on 22nd April 2009.

Interpretation

2. In this Order—

- (a) references to a “decree or document of debt” or to a “judgment” are to a decree or document of debt within the meaning of section 73A of the Debtors (Scotland) Act 1987(b); and
- (b) references to sections are to sections in Part 3A of that Act(c).

Applications to sheriff on failure to disclose property and funds attached on arrestment

3. In relation to an application to the sheriff under section 73H (to penalise failure to disclose property and funds attached), “sheriff” means—

- (a) where the creditor has arrested in pursuance of a warrant granted for diligence on the dependence, the sheriff who granted that warrant; or
- (b) in execution of a decree or document of debt by arrestment—

(a) 2007 asp 3 (“the 2007 Act”).

(b) 1987 c.18. Section 73A was inserted by the 2007 Act, section 206. The 1987 Act is also significantly amended by the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 58(2), schedule 3, Part I, paragraph 17, and by the 2007 Act, sections 169 and 170, 199 to 205, 206, 209(2) to (5), schedule 5, paragraph 16 and schedule 6, Part 1.

(c) 1987 c.18. Part 3A, including sections 73H, 73M, 73N, 73Q and 73R, was inserted by the 2007 Act, section 206.

- (i) the sheriff having jurisdiction over the place where the judgment has been or is to be executed; or
- (ii) the sheriff having jurisdiction over the place where the debtor is domiciled.

Applications to sheriff to recall or restrict arrestment on notice of objection

4. In relation to an application to the sheriff under section 73M(1) (to recall or restrict arrestment on notice of objection), “sheriff” means—

- (a) the sheriff having jurisdiction over the place where the judgment has been or is to be executed by arrestment; or
- (b) the sheriff having jurisdiction over the place where the debtor is domiciled.

Applications to sheriff for release of property as unduly harsh

5. In relation to an application to the sheriff under section 73Q(2) (for release of property as unduly harsh), “sheriff” means—

- (a) the sheriff having jurisdiction over the place where the judgment has been or is to be executed by arrestment; or
- (b) the sheriff having jurisdiction over the place where the debtor is domiciled.

St Andrew’s House,
Edinburgh
23rd February 2009

FERGUS EWING
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for which sheriff is to hear applications under Part 3A of the Debtors (Scotland) Act 1987 inserted by Part 10 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 concerning arrestment–

- to penalise failure to disclose property and funds attached (article 3)
- to recall or restrict arrestment on notice of objection (article 4)
- for the release of property as unduly harsh (article 5)

Where the arrestment is in execution of a decree or document of debt, it is the sheriff having jurisdiction over the place where the judgment has been or is to be executed, or the place where the debtor is domiciled. For penalising failure to disclose property and funds attached, where the creditor has arrested in pursuance of a warrant granted for diligence on the dependence, it is the sheriff who granted the warrant.

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