

## **EXECUTIVE NOTE**

### **THE ARRESTMENT JURISDICTION (SCOTLAND) ORDER 2009 SSI/2009/66**

This instrument is made in exercise of powers contained in sections 224(2) and 225 of the Bankruptcy and Diligence etc. (Scotland) Act 2007. This instrument is subject to negative resolution procedure.

#### **Policy Objectives**

This instrument amends and supplements Part 3A of the Debtors (Scotland) Act 1987 as inserted by Part 10 (arrestment in execution and action of forthcoming) of the Bankruptcy and Diligence etc. (Scotland) Act 2007.

Part 10 of the 2007 Act introduces changes to the law of arrestment which is currently wholly provided for by the common law.

Arrestment is a diligence used against the property of a debtor in the hands of a third party. Arrestment is most commonly directed against funds belonging to the debtor held by banks or other financial institutions but can also be used against other moveable property, for example, goods held in a warehouse.

Arrestment involves three parties – the debtor, the creditor and a third party known as the arrestee. Arrestment attaches property belonging to the debtor but does not automatically transfer ownership or any right to dispose of or realise the value of assets to the creditor.

Part 10 of the 2007 Act modifies certain aspects of the law of arrestment in execution and action of forthcoming and introduces new Part 3A into the Debtors (Scotland) Act 1987. Aspects of arrestment unchanged by the 2007 Act remain subject to the common law.

In particular the changes introduce 3 instances where the sheriff may hear applications from the debtor, the arrestee or a third party.

These are:-

- an application of the creditor under new section 73H of the 1987 Act to penalise an arrestee where they fail without reasonable cause to send the prescribed form to the creditor in satisfaction of the arrestee's duty of disclosure under new section 73G of the 1987 Act
- an application by notice of objection of the debtor, arrestee or a third party under new section 73M of the 1987 Act for an order recalling or restricting the arrestment
- an application by the debtor under new section 73Q of the 1987 Act for release of property where the arrestment is unduly harsh

A sheriff representative on the Lord President's Advisory Group on Diligence suggested that Part 10 of the 2007 Act should make specific provision for jurisdiction.

Following extensive discussion with the Lord President's Advisory Group and through this Group liaison with the Sheriff Court Rules Council, it was concluded that it would be helpful

to supplement the provisions in Schedule 8 of the Civil Jurisdiction and Judgements Act 1982, which deals with jurisdiction in Scottish courts with provision for which sheriff is to hear applications under Part 3A of the Debtors (Scotland) Act 1987. The Order provides as follows –

- 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
- 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.

This order is subject to negative resolution.

### **Consultation**

This order will make ancillary and technical supplemental provisions to add to the arrestment provisions in the Bankruptcy and Diligence etc. (Scotland) Act 2007 with limited effect on the process of arrestment. No formal public consultation has been carried out, but extensive discussion has taken place with relevant stakeholders and draft provisions have been shared with stakeholders, including the Lord President's Advisory Group on Diligence and the Members of the Sheriff Court Rules Council.

### **Financial Effect**

A Regulatory Impact Assessment has not been carried out as the effect of this order is not expected to have any financial impact on the Scottish Government or on Scottish businesses.

Accountant in Bankruptcy  
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