



# Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951

1951 CHAPTER 65 14 and 15 Geo 6

## PART I

### PROTECTION AGAINST CERTAIN LEGAL REMEDIES

#### *Provisions as to Scotland*

#### **8 General restrictions on execution and other remedies.**

- (1) In the cases mentioned in the next following section no person shall be entitled, subject to the provisions of this Part of this Act, to enforce, except with the leave of the appropriate court, a decree of any court (whether pronounced before or after the commencement of this Act) for the payment of a sum of money or for the recovery of possession of land:

Provided that nothing in this subsection shall apply to—

- (a) any decree for damages in respect of loss or damage arising from any wrongful act or omission;
  - (b) any decree based upon a contract made after the relevant date;
  - (c) any decree for expenses;
  - (d) any decree for aliment or any decree or order enforceable by virtue of any enactment in like manner as a decree for aliment,<sup>F1</sup> . . . or
  - (e) any order made in criminal proceedings, or an order for the recovery of a penalty due in respect of a contravention of, or failure to comply with, any Act.
- (2) In the cases mentioned in the next following section no person shall be entitled, subject to the provisions of this Part of this Act, except with the leave of the appropriate court—
- (a) to do any diligence (not being diligence used only on the dependence of an action *orad fundandam jurisdictionem*);
  - (b) to enforce any irritancy, legal or conventional;

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- (c) to realise any security or forfeit any deposit;
- (d) to exercise any power of sale conferred by a heritable security;
- (e) to institute an action of maills and duties; or
- (f) to take or resume possession of any property by reason of any default by any person in the payment of money or the performance of any obligation:

Provided that this subsection shall not apply to any remedy or proceedings available in consequence of any default in the payment of a debt arising by virtue of a contract made after the relevant date or the performance of an obligation so arising, and nothing in this subsection shall affect—

- (i) any right or power of pawnbrokers to deal with pledges; or
- (ii) any remedy competent to a heritable creditor in possession of the security subjects at the relevant date;
- (iii) any right or power of a person to sell goods in his custody arising by reason of default in the payment of a debt.

(3) If on any application for such leave as is required under this section for the enforcement of any decree or the exercise of any right or remedy mentioned in the foregoing provisions of this section, the appropriate court is of opinion that the person liable to implement such decree or perform the obligation in respect of which such right or remedy arises, is unable immediately to do so by reason of circumstances directly or indirectly attributable to his or someone else’s performing or having performed a period of relevant service, the court may, subject to the provisions of this Part of this Act, refuse leave to enforce the decree or to exercise the right or remedy or give leave therefor subject to such restrictions and conditions as the court thinks proper.

Any order pronounced under this subsection may be suspended, rescinded or varied by a subsequent order.

(4) The appropriate court, in determining for the purpose of the last foregoing subsection whether a person is unable immediately to implement the decree or perform the obligation in question by reason of any such circumstances as are mentioned in that subsection, or in determining the restrictions and conditions (if any) subject to which leave is to be given under that subsection, may take account of other liabilities, whether present or future, of that person.

(5) Where—

- (a) a petition for sequestration has been presented against any debtor, and it is shown to the satisfaction of the court before which such petition depends that his inability to pay his debts is due to circumstances directly or indirectly attributable to his or someone else’s performing or having performed a period of relevant service; <sup>F2</sup> . . .

<sup>F2</sup>(b) . . . . .

the court may sist the proceedings in the petition for such time and subject to such conditions as the court thinks fit.

<sup>F2</sup> . . .

**Textual Amendments**

**F1** Words in s. 8(1)(d) repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5**; S.I. 1996/2203, art. 3(3), **Sch.** Table

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**F2** Words in s. 8(5), s. 8(5)(b) and the preceding word “or” repealed (5.11.1993) by 1993 c. 50, s. 1(1), [Sch. 1 Pt. V](#) Group 1

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 8(2)(e) repealed by [2007 asp 3 Sch. 6 Pt. 1](#)