

2009 No. 396

ENFORCEMENT

DEBT

DILIGENCE

The Diligence (Scotland) Amendment Regulations 2009

<i>Made</i>	- - - -	<i>12th November 2009</i>
<i>Laid before the Scottish Parliament</i>		<i>13th November 2009</i>
<i>Coming into force</i>	- -	<i>7th December 2009</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 155(4), 159 and 159A(3) of the Titles to Land Consolidation (Scotland) Act 1868^(a) and sections 148(3)(b) and 224(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007^(b) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Diligence (Scotland) Amendment Regulations 2009 and come into force on 7th December 2009.

Amendment of the Diligence (Scotland) Regulations 2009 – inhibition forms

2.—(1) The Diligence (Scotland) Regulations 2009^(c) are amended as follows.

(2) In regulation 2, at the end, insert—

““Agent” means a solicitor or any person entitled to practise as an agent in a court of law in Scotland”.

(3) In regulation 3, at the end, insert—

“(3) The form of the copy of the notice of Summons for breach of inhibition registered or recorded under section 159A(2)(b) of the 1868 Act (registration of notice of Summons)^(d) must be a certified copy of the notice of Summons required by paragraph (1)(e) and Schedule 5 to these Regulations.

^(a) 1868 c.101 (“the 1868 Act”). Section 155 was substituted, section 159 amended, and section 159A inserted by, sections 149, 164(1) and 162 respectively of the Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3 (“the 2007 Act”). Section 164(2) of the 2007 Act inserts section 159B of the 1868 Act which contains a definition of “prescribed” relevant to the powers under which these Regulations are made.

^(b) 2007 asp 3.

^(c) S.S.I. 2009/68.

^(d) Section 159A was inserted by section 162 of the 2007 Act.

(4) The form of discharge of notice of Summons for breach of inhibition prescribed for registration under section 159A(3)(b) of the 1868 Act (decree of reduction not obtained) is a certified copy of the discharge of notice of Summons required by paragraph (1)(f) and Schedule 6 to these Regulations.”.

(4) After regulation 3, insert—

“3A. Schedule (RR.) (Notice of Summons of Reduction, Adjudication etc.) of the 1868 Act is prescribed as the form of notice of Summons under section 159 of that Act, except for breach of inhibition.”.

(5) In Schedules 2 and 3 (Court of Session and Sheriff Court forms of certificate of execution of inhibition)—

- (a) for “*occupation*” in each place it occurs substitute “*designation*”; and
- (b) for “and, where the debtor is an individual, a Debt Advice and Information Package as defined by Section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002”, in each place those words occur, substitute “[*AND (*as appropriate, where the debtor is an individual*) a Debt Advice and Information Package as defined by Section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002]”.

(6) In Schedule 3 (Sheriff Court form of certificate of execution), for “Sheriff Officer”—

- (a) in the first place it occurs, substitute “[*Sheriff Officer (or, where appropriate, *other person for service furth of Scotland (title of that other person)*)]”; and
- (b) in the signing docquet, substitute—

“[*Sheriff Officer] [*Other person for service furth of Scotland (*Title*)]”.

(7) In Schedule 4 (form of notice of inhibition), for “Agent for the Inhibitor” substitute—

“[*Agent for the Inhibitor] [*Messenger-at-Arms] [*Sheriff Officer]”.

(8) In Schedules 5 and 6 (forms of Notice and Discharge of Summons for breach of inhibition), for “[*Messenger-at-Arms] [*Sheriff Officer]” substitute “Agent for the Inhibitor”.

(9) In Schedule 5—

- (a) after the signing docquet, insert—

“*[AND (as appropriate, where this is a copy of the Notice of Summons)

I certify that this is a true copy of the original Notice of Summons

(Signed)

Agent for the Inhibitor]”.

- (b) in the Note—

- (i) omit “(and if possible on the same day)”; and

- (ii) after “registered”, the third time it occurs, insert “(if possible on the same day)”.

(10) In Schedule 6—

(a) after the signing docquet, insert—

“*[AND (as appropriate, where this is a copy of the Discharge)

I certify that this is a true copy of the original Discharge

(Signed)

Agent for the Inhibitor]”; and

(b) in the Note, for “after the Summons is signeted this Notice” substitute “where a decree of reduction is not obtained this Discharge”.

St Andrew’s House,
Edinburgh
12th November 2009

FERGUS EWING
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make modifications in relation to the forms to be used for the diligence procedure of inhibition prescribed in the Diligence (Scotland) Regulations 2009.

They require the copies of certain forms submitted to the Keeper of the Registers to be certified copies (regulation 2(3)).

They provide for a solicitor or officer of court to sign a Notice of Inhibition and for a solicitor to sign notice and discharge of Summons (regulation 2(7) and (8)).

They make clear that Schedule (RR.) to the Titles to Land Consolidation Act 1868 is the form of Notice of Summons save for breach of an inhibition (regulation 2(4)).

They make other minor amendments and corrections in relation to the forms.

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