



Debtors (Scotland) Act 1987

1987 CHAPTER 18

^{F1}^{F1}PART 1A

DILIGENCE ON THE DEPENDENCE

^{F1}*Recall etc. of diligence on the dependence.*

Textual Amendments

- F1** Pt. 1A inserted (1.4.2008 except for the insertion of s. 15H(4), 22.4.2009 in so far as not already in force) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 169, 227(3)** (with s. 223); [S.S.I. 2008/115](#), art. 3(1)(b)(i) (with arts. 4-6, 10, 15) (as amended: (23.2.2009) by [S.S.I. 2009/67](#), art. 7; (31.1.2011) by [S.S.I. 2011/31](#), art. 5(a); and (4.10.2014) by [S.S.I. 2014/173](#), arts. 1(2), 3); [S.S.I. 2009/67](#), art. 3(1)(c) (with arts. 4-6) (as amended (31.1.2011) by [S.S.I. 2011/31](#), art. 5(b))

15K Recall or restriction of diligence on dependence

- (1) This section applies where warrant is granted for diligence on the dependence.
- (2) The debtor and any person having an interest may apply to the court for an order—
 - (a) recalling the warrant;
 - (b) restricting the warrant;
 - (c) if an arrestment or inhibition has been executed in pursuance of the warrant—
 - (i) recalling; or
 - (ii) restricting,that arrestment or inhibition;
 - (d) determining any question relating to the validity, effect or operation of the warrant; or
 - (e) ancillary to any order mentioned in paragraphs (a) to (d) above.
- (3) An application under subsection (2) above shall—
 - (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt; and

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- (b) be intimated to—
 - (i) the creditor; and
 - (ii) any other person having an interest.
- (4) At the hearing on the application under subsection (2) above, the court shall not make any order without first giving—
 - (a) any person to whom intimation of the application was made; and
 - (b) any other person the court is satisfied has an interest, an opportunity to be heard.
- (5) Where the court is satisfied that the warrant is invalid it—
 - (a) shall make an order—
 - (i) recalling the warrant; and
 - (ii) if an arrestment or inhibition has been executed in pursuance of the warrant, recalling that arrestment or inhibition; and
 - (b) may make an order ancillary to any order mentioned in paragraph (a) above.
- (6) Where the court is satisfied that an arrestment or inhibition executed in pursuance of the warrant is incompetent, it—
 - (a) shall make an order recalling that arrestment or inhibition; and
 - (b) may make an order ancillary to any such order.
- (7) Subject to subsection (8) below, where the court is satisfied that the warrant is valid but that—
 - (a) an arrestment or inhibition executed in pursuance of it is irregular or ineffective; or
 - (b) it is reasonable in all the circumstances, including the effect granting warrant may have had on any person having an interest, to do so,the court may make any order such as is mentioned in subsection (2) above.
- (8) If no longer satisfied as to the matters mentioned in subsection (9) below, the court—
 - (a) shall make an order such as is mentioned in subsection (5)(a) above; and
 - (b) may make an order such as is mentioned in subsection (5)(b) above.
- (9) The matters referred to in subsection (8) above are—
 - (a) that the creditor has a prima facie case on the merits of the action;
 - (b) that there is a real and substantial risk enforcement of any decree in the action in favour of the creditor would be defeated or prejudiced by reason of—
 - (i) the debtor being insolvent or verging on insolvency; or
 - (ii) the likelihood of the debtor removing, disposing of, burdening, concealing or otherwise dealing with all or some of the debtor's assets; and
 - (c) that it is reasonable in all the circumstances, including the effect granting warrant may have had on any person having an interest, for the warrant or, as the case may be, any arrestment or inhibition executed in pursuance of it to continue to have effect.
- (10) The onus shall be on the creditor to satisfy the court that no order under subsection (5), (6), (7) or (8) above should be made.
- (11) In granting an application under subsection (2) above, the court may impose such conditions (if any) as it thinks fit.

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- (12) Without prejudice to the generality of subsection (11) above, the court may impose conditions which require the debtor—
- (a) to consign into court such sum; or
 - (b) to find such caution or to give such other security,
- as the court thinks fit.
- (13) Where the court makes an order under this section, the court shall order the debtor to intimate that order to—
- (a) the creditor; and
 - (b) any other person appearing to the court to have an interest.
- (14) This section applies irrespective of whether warrant for diligence on the dependence is obtained, or executed, before this section comes into force.

15L Variation of orders and variation or recall of conditions

- (1) Where—
- (a) an order restricting warrant for diligence on the dependence is made under section 15K(7); or
 - (b) a condition is imposed by virtue of—
 - (i) section 15F(6); or
 - (ii) section 15K(11),
- of this Act, the debtor may apply to the court for variation of the order or, as the case may be, variation or removal of the condition.
- (2) An application under subsection (1) above shall—
- (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
 - (b) be intimated to—
 - (i) the creditor; and
 - (ii) any other person having an interest.
- (3) At the hearing on the application under subsection (1) above, the court shall not make any order without first giving—
- (a) any person to whom intimation of the application was made; and
 - (b) any other person the court is satisfied has an interest,
- an opportunity to be heard.
- (4) On an application under subsection (1) above, the court may if it thinks fit—
- (a) vary the order; or
 - (b) vary or remove the condition.
- (5) Where the court makes an order varying the order or, as the case may be, varying or removing the condition, the court shall order the debtor to intimate that order to—
- (a) the creditor; and
 - (b) any other person appearing to the court to have an interest.]

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2018/1125 reg. 8](#) (This amendment not applied to [legislation.gov.uk](#). S.I. 2018/1125, reg. 8 omitted (31.12.2020) by virtue of Private International Law (Implementation of Agreements) Act 2020 (c. 24), s. 4(3), Sch. 5 para. 4(4))

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 8(1)(d)(e) substituted for s. 8(1)(d) by [2007 asp 3 Sch. 5 para. 16\(7\)\(a\)\(v\)](#)