



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1940

1940 CHAPTER 42 3 and 4 Geo 6

<sup>x1</sup>**1 Amendment of the law as to enforcement of decrees ad factum praestandum.**

- (1) No person shall be apprehended or imprisoned on account of his failure to comply with a decree ad factum praestandum except in accordance with the following provisions—
- (i) On an application by the person in right of such a decree (hereinafter referred to as the applicant) to the court by which the decree was granted, the court may, if it is satisfied that the person against whom such decree was granted (hereinafter referred to as the respondent) is wilfully refusing to comply with the decree, grant warrant for his imprisonment for any period not exceeding six months;
  - (ii) Where the court is satisfied that a person undergoing imprisonment in pursuance of a warrant granted under this section has complied, or is no longer wilfully refusing to comply, with the decree, the court shall, notwithstanding any period specified in the warrant, order the immediate liberation of such person, and it shall be the duty of the applicant, as soon as he is satisfied that the decree has been complied with, forthwith to inform the clerk of the court of such compliance;
  - (iii) Imprisonment under a warrant granted under this subsection shall not operate to extinguish the obligation imposed by the decree on which the application proceeds;
  - (iv) The person on whose application a warrant for imprisonment has been granted under this subsection shall not be liable to aliment, or to contribute to the aliment of, the respondent while in prison.
- (2) On any application in pursuance of the foregoing subsection, the court may, in lieu of granting warrant for imprisonment, recall the decree on which the application proceeds and make an order for the payment by the respondent to the applicant of a specified sum or make such other order as appears to the court to be just and equitable in the circumstances, including, in the case where the decree on which the application proceeds is a decree for delivery of corporeal moveables, a warrant to officers of court to search any premises in the occupation of the respondent or of such other person as

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may be named in the warrant, and to take possession of, and deliver to the applicant, any such moveables which may be found in such premises.

(3) Any warrant granted under the last foregoing subsection shall be deemed to include authority to open shut and lockfast places for the purpose of carrying the warrant into lawful execution.

(4) ..... F1

**Editorial Information**

**X1** The text of s. 1 was taken from S.I.F. Group 45:2 (Enforcement: Scotland), s. 3 from S.I.F. Group 122:3 (Tort and Delict: General), s. 4 from S.I.F. Group 36:3 (Courts, Scotland: Sheriff Courts), ss. 5, 6, 11(1)(2) from SIF Group 116:2 (Succession: Confirmation, Scotland) and provisions omitted from SIF have been dealt with as referred to in other commentary.

**Textual Amendments**

**F1** S. 1(4) repealed by [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\)](#), s. 46(2), **Sch. 2 Pt. II**

**Changes to legislation:**

There are currently no known outstanding effects for the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940, Section 1.