

ACT OF SEDERUNT (SMALL CLAIM RULES) 2002 NO. 133

CHAPTER 7 INTERIM DILIGENCE

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Interpretation

7. A1. In this Chapter–

“the 1987 Act” means the Debtors (Scotland) Act 1987; and

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002.

Application for interim diligence

7. A2. (1) The following shall be made by incidental application –

(a) an application under section 15D(1) of the 1987 Act for warrant for diligence by arrestment or inhibition on the dependence of an action or warrant for arrestment on the dependence of an admiralty action;

(b) an application under section 9C of the 2002 Act for warrant for interim attachment.

(2) Such an application must be accompanied by a statement in Form 9a.

(3) A certified copy of an interlocutor granting a motion under paragraph (1) shall be sufficient authority for the execution of the diligence concerned.

Effect of authority for inhibition on the dependence

7. A3. (1) Where a person has been granted authority for inhibition on the dependence of an action, a certified copy of the interlocutor granting the application may be registered with a certificate of execution in the Register of Inhibitions and Adjudications.

(2) A notice of a certified copy of an interlocutor granting authority for inhibition under rule 7.A2 may be registered in the Register of Inhibitions and Adjudications; and such registration is to have the same effect as registration of a notice of

inhibition under section 155(2) of the Titles to Land Consolidation (Scotland) Act 1868.

Recall etc of arrestment or inhibition

7. A4. – (1) An application by any person having an interest–

(a) to loose, restrict, vary or recall an arrestment or an interim attachment; or

(b) to recall, in whole or in part, or vary, an inhibition,

shall be made by incidental application.

(2) Paragraph (1) does not apply to an application made orally at a hearing under section 15K that has been fixed under Section 15E(4) of the Act of 1987.

Incidental applications in relation to interim diligence, etc

7. A5. An application under Part 1A of the 1987 Act or Part 1A of the 2002 Act other than mentioned above shall be made by incidental application.

Form of schedule of inhibition on the dependence

7. A6. (1) An inhibition on the dependence shall be served by serving the schedule of inhibition on the defender in Form 9b.

(2) A certificate of execution shall be lodged with the sheriff clerk in Form 9c.

Service of inhibition on the dependence where address of defender not known

7. A7. (1) Where the address of a defender is not known to the pursuer, an inhibition shall be deemed to have been served on the defender if the schedule of inhibition is left with or deposited at the office of the sheriff clerk of the sheriff court district where the defender's last known address is located.

(2) Where service of an inhibition on the dependence is executed under paragraph (1), a copy of the schedule of inhibition shall be sent by the sheriff officer by first class post to the defender's last known address.

Form of schedule of arrestment on the dependence

7. A8. (1) An arrestment on the dependence shall be served by serving the schedule of arrestment on the arrestee in Form 9b.

(2) A certificate of execution shall be lodged with the sheriff clerk in Form 9c.

Service of schedule of arrestment

7.1. If a schedule of arrestment has not been personally served on an arrestee, the arrestment shall have effect only if a copy of the schedule is also sent by registered post or the first class recorded delivery service to-

- (a) the last known place of residence of the arrestee; or
- (b) if such place of residence is not known, or if the arrestee is a firm or corporation, to the arrestee's principal place of business if known, or, if not known, to any known place of business of the arrestee,

and the sheriff officer must, on the certificate of execution, certify that this has been done and specify the address to which the copy of the schedule was sent.

Arrestment before service

7.2. (1) An arrestment to found jurisdiction used prior to service shall cease to have effect, unless the summons is served within 21 days from the date of execution of the arrestment.

(2) When such an arrestment as is referred to in paragraph (1) has been executed, the party using it must forthwith report the execution to the sheriff clerk.

Recall and restriction of arrestment

7.3. (1) The sheriff may order that an arrestment on the dependence of a claim or counterclaim shall cease to have effect if the party whose funds or property are arrested-

- (a) pays into court; or
- (b) finds caution to the satisfaction of the sheriff clerk in respect of the sum claimed together with the sum of £50 in respect of expenses.

(2) Without prejudice to paragraph (1), a party whose funds or property are arrested may at any time apply to the sheriff to exercise his powers to recall or restrict an arrestment on the dependence of a claim or counterclaim, with or without consignment or caution.

(3) An application made under paragraph (3) must be intimated by the applicant to the party who instructed the arrestment.

(4) On payment into court or the finding of caution to the satisfaction of the sheriff clerk in accordance with paragraph (1), or if the sheriff recalls or restricts an arrestment on the dependence of a claim in accordance with paragraph (2) and any condition imposed by the sheriff has been complied with, the sheriff clerk must-

- (a) issue to the party whose funds or property are arrested a certificate in Form 10 authorising the release of any sum or property arrested to the extent ordered by the sheriff; and
- (b) send a copy of the certificate to-
 - (i) the party who instructed the arrestment; and
 - (ii) the party who has possession of the funds or property that are arrested.