

Bankruptcy and Diligence Act 2007

Commencement Order – 01/04/2008

Bankruptcy and Diligence etc. (Scotland) Act 2008 (Commencement no.3, Transitional and Savings) Order 2008

The following provisions are coming into force on 01 April 2008.

Part	Section	Subject	Details	Transitional requirements
12	209	Time to Pay Direction	Now competent for a Time to Pay Direction to be granted in an action for recovery of Non-Domestic Rates, Council Tax and Water Charges	Does not apply to actions raised prior to 01/04/2008
12	209	Time to pay orders	Now competent for a Time to Pay Orders to be granted in an action or where a Summary Warrant has been granted for recovery of Non-Domestic Rates, Council Tax and Water Charges or where a Summary	Does not apply to actions raised or Summary Warrants granted prior to 01/04/2008
12	209	Charge – Summary Warrant	Charge required prior to an Attachment or Earnings Arrestment under Summary Warrant	Applies from 15/04/2008
12	210	TTPD/TTPO	Statutory test to be applied in considering application for TTPD/TTPO. Overall Sheriff must consider whether it is reasonable in the circumstances but then must consider a) Nature and reasons of debt b) Action by creditor to assist debtor c) Debtor's financial position d) Reasonableness of debtor's offer e) Reasonableness of creditors refusal to accept offer	Does not apply to actions raised or Summary Warrants granted prior to 01/04/2008
9	199	Simultaneous EA/CAO	Previously where an earnings arrestment and current maintenance arrestment operated simultaneously the earnings arrestment was applied first and the current maintenance arrestment applied to the balance. A formula has now been provided.	
9	200	Holiday Pay	New s49A added to 1987 Act to define deductions made from holiday pay. First the deduction is calculated on the amount that would normally have been paid excluding any holiday pay. The holiday pay is divided by the number of weeks/months as appropriate, the relevant deduction established from the table and then multiplied by the total number of	

			weeks/months in the holiday pay.	
9	201	Earnings Arrestments – Debt Advice and Information Package	The creditor must provide a Debt Advice and Information Package to the debtor within 12 weeks of any earnings arrestment. AMA will arrange to provide a DAIP at the same time as service of a charge.	Requirement comes into force 12 weeks after 01/04/2008
9	202	Intimation of Earnings Arrestment	Sheriff officer must take all reasonably practicable steps to intimate a copy of an earnings arrestment schedule to the debtor. Previously intimation was made if reasonably practicable.	
9	202	Intimation of Earnings Arrestment	Employer now obliged to intimate a copy of an earnings arrestment to their employee and also notify them of a) The date the first deduction will be made b) What amount will be deducted	
9	203	Employers Duty to Provide Information	Employer has to intimate to creditor (or the Sheriff Clerk in a CAO) on receipt of an earnings arrestment schedule a) How the debtor is paid (e.g. weekly/monthly) b) The date of the next pay day when the deduction will be made. c) The amount to be deducted	
9	203	Employers Duty to Provide Information	Unless the debt has been paid the same information must be supplied to the creditor by 6 April each year. Application can be made to the court where the employer fails to disclose this information.	
9	203	Employers Duty to Provide Information	New s70A(5) of the 1987 Act requires an employer to disclose the new employer of any employee leaving their employment. Application can be made to the court where the employer fails to disclose this information. Any order would be for the information to be disclosed and for payment of twice the sum that would have been deducted on the next pay day.	
9	203	Creditors duty to Provide Information	Creditor has to intimate to the employer (or Sheriff Clerk in a CAO) by each 6 April while earnings arrestment still in force a) The sum outstanding b) Amounts and dates of any payments.	
9	203	Debtors duty to Provide Information	New section 70D of the 1987 Act requiring debtors to notify creditors of the name and address of any new employer. (No sanction available if debtor fails to provide this information)	
6	169	Diligence on the Dependence	New Section 15A of the 1987 Act. Warrant to Arrest on the Dependence can now be granted in the Court of Session and Sheriff Court. Detailed rules awaited for Inhibiting on a Sheriff Court warrant. Warrant may also	

			be granted in a Court of Session Petition. Action must contain a conclusion or crave for payment of money excluding expenses.	
6	169	Diligence on the Dependence - Application	Warrant for diligence on the dependence granted on an application in a form to be specified by Act of Sederunt. Awaiting details of that Act of Sederunt.	
6	169	Diligence on the Dependence – Warrant without hearing	Warrant may be granted without hearing where a) Creditor has a prima facie case on the merits b) Real risk of prejudice if debtor insolvent or verging on insolvency or there is a risk they may dispose of assets c) It is reasonable in all the circumstances	
6	169	Diligence on the Dependence – Hearing	Notwithstanding grant of warrant without a hearing. A hearing will be fixed. All parties must be heard. Onus on creditor to justify continuation of diligence on grounds stated above.	
6	169	Arrestment on the Dependence –Sum Attached	Diligence on the dependence ceases to have effect if summons not served within 21 days unless cause shown why service could not be effected	
6	169	Arrestment on the Dependence –Sum Attached	Statutory formula for calculating amount arrested. a) Sum sued for b) 20% of that sum c) a sum equal to one years interest d) any other sum specified by Ministers (anticipate a further Act of Sederunt to specify a sum for potential court costs.)	
6	169	Diligence on the Dependence –Sum Attached	Statutory procedure set out for recall or restriction of arrestment	
6	173	Interim Attachment	New diligence of Interim Attachment. Application in prescribed form and await detailed regulations. Grant of warrant and recall procedures etc. as per diligence on the dependence.	
6	173	Interim Attachment – Exempt Items	Excluded items are a) Any item in a dwellinghouse b) Any article excluded from attachment c) A mobile home d) Perishable items e) Where the debtor trades any stock or materials for manufacture.	
11	199-205	Misc.	Abolition of Maills and Duties and Sequestration for Rent.	

