

Stirling Park LLP

Bankruptcy & Diligence Etc. (Scotland) Act - An update

Kevin Dillon – Head of Operations



Events

- Since 2007 Accountant in Bankruptcy has had policy responsibility for implementation
- April 2008 – Commencement Order No 3
 - *Part 1 Bankruptcy*
 - *Part 6 Changes to Arrestment on the Dependence*
 - *Part 7 Interim Attachment*
 - *Part 9 Changes to Earnings Arrestment*
 - *Part 10 & 12 Charge for Payment of Money under Summary Warrant*



Events

- April 2009 – Commencement Order No 4
 - *Part 5 – Inhibition*
 - *Part 10 – Arrestment in Execution*
 - *Protected Minimum Balance*
 - *Restricted Amounts*
 - *Automatic Release*
 - *Advice on Sums Attached*



Inhibition

- Letters of Inhibition have been abolished
- Extended into Sheriff Court – Only available on a decree
- Warrant (decree) includes authority to inhibit – same as attachment
- Debt Advice Pack requires to be served
- Changes to when Inhibition becomes effective
 - *Notice of Inhibition – Effective from Date of Service*
 - *Without Notice – Effective from Registration of Certificate of Execution*



Arrestment

- Charge For Payment Required Under Summary Warrant
- Prescribed Form For Arrestment
- Debt Advice Pack Required – Within 48hrs of Service
- Restriction On Funds Attached – Lesser of:
 - *The Amount Held By The Arrestee To The Debtor*
 - *The Aggregate of:*
 - *Principal Sum*
 - *Expenses Of Arrestment*
 - *Interest (If Appropriate)*
 - *Judicial Expenses (If Appropriate)*



Arrestment

- Minimum Protected Balance – Individuals Only
 - *Protected Amount Equivalent To Earnings Arrestment Tables - £370*
- Duty Of Disclosure – Notify Creditor And Debtor (Agreement reached in relation to Sheriff Officers acting on behalf of Local Authorities)
 - *Nature And Value Of The Funds Attached*
- Penalty For Failure To Disclose – On Application By The Creditor
- Automatic Release Of Funds – Unless Objection Lodged
 - *14 Weeks From Service Of Arrestment*
 - *Objections Must Be Lodged Within 4 Weeks*
- Prescribed Form For Mandate



Still to Come – Work in Progress

- Actions of Removing – Changes to the Ejection Procedure
- Money Attachment – Available on Summary Warrant (Late 2009)
- Land Attachment – Not Available on Summary Warrant (Late 2009/Early 2010)
- Residual Attachment – Concept of Universal Attachment
- Information Disclosure Orders – 2010??



Still to Come – Money Attachment

- Money Includes Cash (Banknotes, Coins, Foreign Currency), Promissory Notes (Other than Banknotes), **Cheques?**, **Other Negotiable Instruments?**
- Charge For Payment Required
- Debt Advice Pack Required – At Least 12 Weeks Prior
- Competent Only Between 8.00am And 8.00pm – Unless Prior Approval From Sheriff
- Not Competent On Sunday, or Public Holiday



Still to Come – Land Attachment

- Similar to Charging Orders in England and Wales
- 2 Stage Process
- Stage 1 – Creates Security
- Stage 2 – Warrant Sale
- Concerns and Issues from Stakeholders
 - Homelessness
 - Unsecured Debt – Secured Debt
 - Unscrupulous Creditors
- Potential Consultation and Separate Bill



Still to Come – Work in Progress

- LILA Review
- Consolidation of Bankruptcy Legislation
 - *1985, 1993 and 2007 Acts*
- DAS Review – Regulations in July 2009 have been revoked. Scottish Executive carrying out their own review Summer 09



LILA Update

	08/09	Total 07/08	Variance 07/08	Forecast 09/10
Bankruptcy Awards	14,600	6,158	134%	+20%
LILA	11,714	Nil		
Apparent Insolvency	7633	6,158		

Source – Scottish Insolvency Statistics – Accountant in Bankruptcy

- +20% increase expected in 2009/10 – potentially more
- AiB is trustee in all LILA applications – limited administration
- Majority of LILA cases have debts between £10,000 and £30,000
- AiB conducting further LILA/Personal Bankruptcy review – report due in Summer 09



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