EXECUTIVE NOTE

THE DILIGENCE (SCOTLAND) AMENDMENT REGULATIONS 2009
SSI/2009/396

This instrument is made in exercise of powers contained in sections 155(4), 159 and 159A(3) of the Titles to Land Consolidation (Scotland) Act 1868 and sections 148(3)(b) and 224(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007. It is subject to negative resolution procedure.

Policy Objectives

These Regulations make minor amendments to the inhibition forms prescribed by the Diligence (Scotland) Regulations 2009. The objective of the amendments is to provide clarity for those using the forms.

Those Regulations came into force on 22nd April 2009 to support commencement of Parts 5 and 10 of the Bankruptcy and Diligence etc. (Scotland) Act 2007. Part 5 introduced changes to enforcement procedures relating to inhibition (attaching or freezing dealings with land).

The 2009 Regulations prescribed various forms to be used in these processes. Since the 2009 Regulations were introduced, detailed feedback from stakeholders, primarily Registers of Scotland and some sheriff officers, has suggested that various amendments would improve the use of the inhibition forms in practice.

The changes include providing that certain forms submitted to the Keeper of the Registers are required to be certified true copies. Messengers-at-arms and sheriff officers are to be able to sign a Notice of Inhibition as well as solicitors. A solicitor is required to sign notice and discharge of Summons for breach of inhibition, in line with current practice. Schedule (RR.) of the 1868 Act is also prescribed as the form of Notice of Summons to be used under section 159 of the 2007 Act for purposes other than inhibition. This makes clear it continues to have effect in line with the fact its repeal was restricted by S.S.I. 2009/67. The remedy for breach of inhibition will in time be replaced by land attachment under Part 4 of the Act.

Consultation

The amendments to the inhibition forms in this instrument have been developed through consultation with stakeholders, primarily Registers of Scotland, the Society of Messengers at Arms and Sheriff Officers and the members of the Implementation Business Users Group.

Financial Effect

The making of these regulations is not expected to have a financial effect on the Scottish Government or on businesses.

The Regulations are not expected to have a financial effect on stakeholders therefore a Regulatory Impact Assessment has not been carried out.

Accountant in Bankruptcy
November 2009