

Scottish Law Commission

.....News Release.....News Release.....News Release.....

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

NOT FOR PUBLICATION OR BROADCAST

BEFORE 0001 HOURS THURSDAY 17 MAY 2001

REPORT ON DILIGENCE

Major reforms of the law of diligence are recommended in a report published today by the Scottish Law Commission. Diligence is the term used for the legal procedures creditors may use to enforce payment of debts due under court decrees.

The report recommends:

- The abolition of adjudication for debt which functions as a diligence against land and as a residual diligence used against moveable property.
- The introduction of a new diligence called land attachment to replace adjudication as a diligence against land.
- The introduction of a new diligence called an attachment order to replace adjudication as a residual diligence against moveable property.
- If goods are to be attachable for debt, then money in the possession of debtors on their business premises should also be attachable.
- The retention of inhibition subject to reforms to clarify and simplify the law.

RECOMMENDED REFORMS

Adjudication for debt

The report recommends the abolition of this diligence which operates against the debtor's land and also as a residual diligence ie against any other property for which there is no existing diligence. The law of adjudication has remained largely unchanged since 1672 and much of it is uncertain and obscure. Adjudication is cumbersome and expensive for creditors to use and fails to protect the interests of debtors.

Land Attachment

Land attachment would replace adjudication for debt as a diligence against land. The new diligence would consist of two stages. First, the registration in the Land Register or Sasine Register of a notice of land attachment which would effectively secure the unpaid debt over the debtor's land. Secondly, an application to the court for authority to sell the land. A six month delay between registration of the notice of land attachment and application for sale is recommended. Application for sale would not be granted where the debt owing was less than £1,500 or where the proceeds of sale would be unlikely to reduce the debt by £500 or 10%. The report does not recommend whether a debtor's dwellinghouse could be sold. Two alternatives are presented. Dwellinghouses could be included at the sale stage of the diligence with extra measures of debtor protection, or they could be exempted from sale.

Attachment Orders

Adjudication as a residual diligence would be replaced by a new diligence called an attachment order which would cover property such as patents, licences and timeshares. A residual diligence gives effect to the principle that all the debtor's assets should be subject to enforcement unless exempted to protect the debtor from undue hardship. The creditor would have to apply to the court for an attachment order, and following service of a schedule of attachment on the debtor, apply to the court for an order to satisfy the debt out of the attached property. The types of satisfaction order that may be granted include sale, transfer, income transfer, lease or licence.

Money Attachment

Cash, cheques and other negotiable instruments in the debtor's possession are thought not to be liable to any current diligence. The report recommends that if goods and other corporeal moveable property in the debtor's possession are to be attachable for debt then it should also be possible to attach money. Officers of court would not be permitted to attach money situated in a dwellinghouse or the residential part of a building or to search individuals or their handbags and wallets for money. A money attachment would be incompetent where the value of the money attached did not exceed the likely total expenses of the diligence plus the lesser of £50 or 10% of the debt.

Inhibition

Inhibition is a diligence that prohibits debtors from incurring future debts or disposing of their land. The report recommends that inhibition should be retained subject to various

reforms. Inhibition should no longer confer a preference on the inhibitor in respect of future debts incurred by the debtor, but inhibitors should continue to be able to reduce future voluntary deeds granted by the debtor. A number of other measures are recommended to protect third party purchasers or lenders who transact with a debtor who unknown to them is inhibited.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Honourable Lord Gill. The other Commissioners are currently Mr Patrick S Hodge QC, Professor Gerard Maher, Professor Kenneth G C Reid and Professor Joseph M Thomson.
2. Further information can be obtained by contacting Dr David Nichols, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, e-mail: david.nichols@scotlawcom.gov.uk)
3. The report may be viewed on our website at www.scotlawcom.gov.uk or purchased from The Stationery Office Bookshops.