

Inhibition (Scotland)

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[1991/48](#) *Section 38(1)(c) Child Support Act 1991*

[2007/3](#) *Part 5 of the Bankruptcy and Diligence etc. (Scotland) Act 2007*

What is an inhibition?

An inhibition is a diligence which prohibits a debtor (the non-resident parent) from dealing with their heritable property after the inhibition takes effect.

"Heritable property" means land and other immoveable property (houses, commercial premises etc.) owned by the debtor. Inhibition affects all heritable property owned by the debtor, unless it is limited by the court "on the dependence". See the section on Inhibition on the Dependence for further details.

Inhibition is a personal diligence against the debtor. While it is in place, it prevents the debtor from selling, transferring or otherwise disposing of their property. It also prohibits the debtor from securing any new loans, credit or mortgages. Unlike England and Wales it is against the debtor not against the property.

After five years, the inhibition ceases to have effect but it can be renewed.

IMPORTANT NOTE: any heritable asset that the non-resident parent acquires **after** the date that the inhibition is registered will not be affected by it. If the non-resident parent acquires new heritable assets after this date, an additional inhibition will be required.

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[1991/48](#) *Section 38(1)(c) Child Support Act 1991*

[2007/3](#) *part 5 of the Bankruptcy and Diligence etc. (Scotland) Act 2007*

[1987/18 Section 15A of the Debtors \(Scotland\) Act 1987](#)

What is Inhibition on the Dependence?

If the CMG does not yet have a liability order, an inhibition on the dependence prohibits the debtor from disposing of or otherwise dealing with heritable property pending the outcome of that liability order application.

The court may limit the effect of an inhibition on the dependence to specified property.

For an inhibition on the dependence to be considered, recent reliable information must be held indicating that:

- the non-resident parent is about to dispose of property/land; or
- the non-resident parent will be unable to satisfy the debt due on the liability order application unless the inhibition on the dependence is granted. For example: by relocating to an area outside the jurisdiction of the CMG.

Inhibition on the dependence automatically continues as an inhibition in execution once a decree (liability order) in the original action is granted. In the event that the original action is dismissed, the inhibition on the dependence will also fall.

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When to Instruct an Inhibition in Execution

You should issue an instruction of inhibition in execution to sheriff officers if:

- it is identified that the non-resident parent has heritable property; and
- a liability order has been granted;
- where it is considered that the effect of an inhibition may limit the non-resident parent's access to credit or loans and encourage compliance.

Note: Part 5 of the Bankruptcy & Diligence etc. (Scotland) Act 2007, which commenced on 22 April 2009, made provision for many aspects of inhibition previously dealt with by common law. Extract decrees (liability order) now automatically carry the warrant to inhibit. Inhibitions in execution actions can therefore be taken by sheriff officers on instruction from caseworkers. There is no requirement for solicitors to issue these instructions.

Sheriff Officer Action - Inhibition

Note: a charge for payment is not required before an inhibition is executed. An inhibition can be executed concurrently with any other appropriate diligence actions.

Sheriff officers will:

- receive instruction to execute an inhibition;
- serve the schedule of inhibition and Debt Advice Information Pack on the non-resident parent;
- complete a Certification of execution and send this and the Notice of Inhibition (if a Notice of Inhibition is required) to Registers of Scotland to be registered on the Register of Inhibitions and Adjudications, on the day of receipt; and
- await confirmation of registration.

Once the relevant schedule of inhibition has been served upon the non-resident parent and the documents registered in the Register of Inhibitions and Adjudications, sheriff officers will return the certificate of service and registration documents to you.

Effective Date of Inhibition

Generally, the inhibition takes effect from the day it is registered in the Register of Inhibitions and Adjudications following service of the schedule of inhibition in accordance with section 155 of the Titles to Land Consolidation (Scotland) Act 1868.

The exception to this is where a prior 'Notice of Inhibition' has been registered. In these cases, the effect of the inhibition is backdated to the date the schedule of inhibition was served as long as the following circumstances apply:

- the notice of inhibition is registered in the Register of Inhibitions;
- the schedule of inhibition is served on the debtor after that notice is registered; and
- the inhibition is registered in the Register of Inhibitions and Adjudications before the expiry of the period of 21 days beginning with the day on which the notice is registered.

Property Transferred Before Inhibition Registered

There is a risk that the non-resident parent may have been able to transfer property between the date that the Notice of inhibition is executed and the date that Registers of Scotland receive the documents to confirm that the Notice of inhibition has been executed. In these circumstances it may be appropriate to consider action for reduction.

Renew an Inhibition

After five years, an inhibition ceases to have effect. If an existing inhibition has been put in place on behalf of the CMG and the non-resident parent has not paid the liability order arrears the inhibition should be renewed before the date of expiry by instructing sheriff officers.

Note: the inhibition can continually be reviewed as necessary, however only the expenses for the initial inhibition are allowed to be reclaimed from the non-resident parent.

Discharge Inhibition

The inhibition may be discharged after payment of

- the principal debt;
- the expenses incurred in executing the inhibition;
- the expenses incurred for discharging the inhibition.

If payment of the debt is to be made on the sale of the non-resident parent's heritable property, the inhibition will need to be discharged before payment has been received. However, in these circumstances, the Discharge of Inhibition mandate must be signed by the non-resident parent's solicitor. This means the CMG's position is safeguarded as, if payment is not made, the CMG would have the right to pursue the non-resident parent's solicitor for the money.

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When to consider Inhibition on the Dependence

An inhibition on the dependence should be considered if we have not yet obtained a liability order, but there is evidence that:

- the non-resident parent may become insolvent; or
- the non-resident parent may remove, dispose of, burden, conceal or otherwise deal with all or some of their assets.

The motion for warrant to inhibition on the dependence must be prepared and lodged in the sheriff court by solicitors

The sheriff may decide to limit the warrant to a specified property by virtue of Section 15J (b) of the Debtors (Scotland) Act 1987. However, once a liability order has been obtained any inhibition in execution is not limited to that property.

Note: if the inhibition on the dependence is limited to specific property then the extract liability order decree and form of Notice of Decree following limited inhibition on the dependence must be registered in the Register of Inhibitions and Adjudications in order to widen the effect to cover all heritable property. This action will be undertaken by contracted solicitors and the widening effect will come into force from the beginning of the date of registration of the exact decree and the Notice in the Register. Note that the relevant legislation and form of Notice is contained in The Bankruptcy and Diligence etc. (Scotland) Act 2007 (Inhibition) Order 2009

Inhibition on the Dependence Granted

When the inhibition on the dependence is granted, the schedule of inhibition will be served on the non-resident parent but the liability order process still needs to be completed. See Liability Order (Scotland).

Liability Order Granted

Once the liability order is granted the inhibition on the dependence becomes an inhibition in execution automatically, i.e. no further work by the case manager is needed on the inhibition.

Note: in the event that the liability order is refused, any diligence on the dependence will also fall.

If the inhibition on the dependence was limited, additional work is required by the contracted solicitor as detailed in When to consider inhibition on the Dependence.

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