

CHAPTER 44

TIME TO PAY DIRECTIONS

Application and interpretation of this Chapter

44.1.-(1) This Chapter applies to an action in which a person may apply under section 1(1) of the Debtors (Scotland) Act 1987(a) for a time to pay direction.

(2) In this Chapter-

"the Act of 1987" means the Debtors (Scotland) Act 1987;

"time to pay direction" means a direction made under section 1(1) of the Act of 1987.

Notice about time to pay directions

44.2.-(1) In an action in which a defender may apply to the court for a time to pay direction, the pursuer shall serve on that defender a notice in Form 44.2-A and an application in Form 44.2-B at the same time as he serves a copy of the summons, or pleadings, as amended by a minute of amendment calling him as a defender.

(2) Before serving a notice and an application under paragraph (1), the pursuer shall insert in Form 44.2-A the date by which Form 44.2-B must be returned to the court by the defender (being the date on which the period of notice expires) and shall complete Part A of Form 44.2-B.

Applications for time to pay directions where appearance not entered

44.3.-(1) Where a defender-

- (a) does not enter appearance in an action,
- (b) intends to apply to the court for a time to pay direction, and
- (c) where appropriate, seeks recall or restriction of an arrestment,

he shall complete and send the application in Form 44.2-B to the Deputy Principal Clerk before the date specified in Form 44.2-A.

(2) On receipt of an application for a time to pay direction, the Deputy Principal Clerk shall-

- (a) cause the application to be lodged in the process to which it relates; and
- (b) give written intimation to the pursuer that he has received the application.

(3) Where the pursuer does not object to the application by a defender for a time to pay direction or the recall or restriction of an arrestment, he may apply by motion for decree in absence stating that he does not object to the application.

(4) Where the pursuer objects to the application by a defender for a time to pay direction or the recall or restriction of an arrestment, he shall intimate-

- (a) the motion for decree in absence, and
- (b) the grounds of objection to the application by the defender,

in Form 44.3 to the defender not less than 7 days before the date on which the motion is enrolled.

(a) 1987 c.18.

(5) On enrolling a motion for decree in absence, the pursuer shall lodge in process a copy of Form 44.3 intimated to the defender.

(6) The defender need not appear at the hearing of the motion for decree in absence and may send to the Deputy Principal Clerk written representations in response to the grounds of objection of the pursuer.

(7) A motion for decree in absence to which paragraph (4) applies shall require the appearance of counsel or other person having a right of audience.

Applications for time to pay directions where appearance entered but defences not lodged

44.4.-(1) Where a defender-

- (a) after entering appearance does not lodge defences,
- (b) intends to apply to the court for a time to pay direction, and
- (c) where appropriate, seeks recall or restriction of an arrestment,

then, notwithstanding the date specified in Form 44.2-A as the date by which Form 44.2-B must be returned, he shall complete and send the application in Form 44.2-B to the court not later than the day on which defences would have had to be lodged in process.

(2) Paragraphs (2) to (7) of rule 44.3 (applications for time to pay directions where appearance not entered) shall apply to an application under this rule as they apply to an application under that rule.

Applications for time to pay directions where defences lodged

44.5. An application for a time to pay direction by-

- (a) a defender in an action in which defences have been lodged by that defender, or
- (b) any other party,

shall be made by motion.

Applications for variation or recall of time to pay directions or arrestments

44.6.-(1) An application under section 3(1) of the Act of 1987 (variation or recall of time to pay direction or recall or restriction of arrestment) shall be made by motion.

(2) The applicant shall-

- (a) in a motion under paragraph (1), state briefly the grounds on which the order is sought; and
- (b) give written intimation of the motion to the debtor or creditor, as the case may be, not less than 14 days before the date on which the motion is enrolled.

(3) On enrolling a motion under paragraph (1), the applicant shall lodge in process-

- (a) a copy of the letter of intimation;
- (b) the Post Office receipt or certificate of posting of that letter; and
- (c) any document he intends to rely on at the hearing of the motion.

Notice to debtor for payment of interest on decrees

44.7. Where a creditor seeks to recover interest (other than interest awarded as a specific sum) under a decree containing a time to pay direction, the notice to be served under section 1(7) of the Act of 1987 shall be served on the debtor by the creditor-

- (a) in the case of a decree containing a time to pay direction for payment by instalments, not less than 14 days before the date on which the last instalment is due to be paid; and
- (b) in the case of a decree which includes a time to pay direction for payment by deferred lump sum, not less than 14 days before the date on which the lump sum is due to be paid.