



# Debt Arrangement and Attachment (Scotland) Act 2002

2002 asp 17

## [<sup>F1</sup>PART 1A

### INTERIM ATTACHMENT

#### [<sup>F1</sup>Interim attachment: effects

#### Textual Amendments

- F1** Pt. 1A inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 173, 227(3) (with s. 223); [S.S.I. 2008/115](#), art. 3(1)(c) (with arts. 4-6, 10, 15) (as amended: (23.2.2009) by [S.S.I. 2009/67](#), art. 7; (31.1.2011) by [S.S.I. 2011/31](#), art. 5(a); and (4.10.2014) by [S.S.I. 2014/173](#), arts. 1(2), 3)

#### **9J Unlawful acts after interim attachment**

Section 21 (except subsections (3) and (15)) below applies to an interim attachment as it applies to an attachment with the following modifications—

- (a) in subsections (10) and (11), the references to the sheriff shall be construed as references to the court; and
- (b) in subsection (12), the references to sections 51 and 54(1) below shall be of no effect.

#### **9K Articles belonging to or owned in common by a third party**

(1) Where—

- (a) a third party claims to own an article attached by interim attachment; and
- (b) the court, on the application of the third party, makes an order stating that it is satisfied that the claim is valid,

the interim attachment of that article shall cease to have effect.

(2) Where—

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*Status: Point in time view as at 01/04/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Debt Arrangement and Attachment (Scotland) Act 2002, Cross Heading: Interim attachment: effects. (See end of Document for details)*

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- (a) a third party claims to own an article attached by interim attachment in common with the debtor;
  - (b) the court, on the application of the third party, makes an order stating that it is satisfied—
    - (i) that the claim is valid; and
    - (ii) that the continued attachment of the article would be unduly harsh to the third party,
 the interim attachment of that article shall cease to have effect.
- (3) Subsection (2) of section 34 below applies where a third party makes an application for the purposes of subsection (1)(b) above as it applies where a third party makes an application for the purposes of subsection (1)(b)(ii) of that section.
- (4) Where the attachment of an article ceases, by virtue of an order under subsection (1) or (2) above, to have effect, the officer may attach other articles which are owned by the debtor and kept at the place at which the original interim attachment was executed.

## **9L Duration of interim attachment**

- (1) An interim attachment shall, unless recalled, have effect only until—
- (a) subject to subsections (2), (4) and (7) below, where—
    - (i) the creditor obtains a final interlocutor for payment of all or part of a principal sum concluded for in the action on the dependence of which warrant for interim attachment was granted;
    - (ii) the creditor obtains a final interlocutor in the creditor's favour in respect of another remedy concluded for in that action; or
    - (iii) the final interlocutor is of absolvitor or dismissal and the court grants decree under and for the purposes of section 9Q(1)(b) below,
 the expiry of the period of 6 months after the action is disposed of;
  - (b) where—
    - (i) the final interlocutor is of absolvitor or dismissal; and
    - (ii) no decree under and for the purposes of section 9Q(1)(b) below is granted,
 the granting of that interlocutor; or
  - (c) the creditor consents, by virtue of subsection (3) below, to the interim attachment ceasing to have effect in relation to every article attached.
- (2) An interim attachment shall have effect in relation to a specific article only until the article is attached by the creditor in execution of any such final interlocutor or decree as is mentioned in subsection (1)(a) above.
- (3) The creditor may at any time consent in writing to the interim attachment ceasing to have effect in relation to a specific article attached; and the attachment shall cease to have effect when that consent is notified to the court.
- (4) The court may, on an application by the creditor, extend the period mentioned in subsection (1)(a) above but only if—
- (a) the application is made before the expiry of the period mentioned in that subsection; and
  - (b) the court is satisfied that exceptional circumstances make it reasonable to grant the application.

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- (5) An application under subsection (4) above shall—
- (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
  - (b) be intimated by the creditor to—
    - (i) the debtor; and
    - (ii) any other person having an interest.
- (6) The court shall order the creditor to intimate any decision under subsection (4) above disposing of the application under that subsection to—
- (a) the debtor; and
  - (b) any other person appearing to the court to have an interest.
- (7) Where such an application is made but not disposed of before the date on which the interim attachment would, but for this subsection, cease to have effect, the interim attachment shall continue to have effect until the application is disposed of.
- (8) In calculating the period mentioned in subsection (1)(a) above, any period during which—
- (a) a time to pay direction under section 1(1) of the Debtors (Scotland) Act 1987 (c. 18); or
  - (b) an order under—
    - (i) section 6(3) of that Act (interim order sisting diligence); or
    - (ii) section 9(4) of that Act (diligence sisted if not recalled on making of time to pay order),
- is in effect shall be disregarded.
- (9) For the purposes of subsection (1) above—
- (a) a final interlocutor is obtained when an interlocutor—
    - (i) cannot be recalled or altered; and
    - (ii) is not subject to review; and
  - (b) an action is disposed of on the date on which the final interlocutor mentioned in paragraph (a) of that subsection is obtained unless, on a later date, the creditor obtains a final interlocutor for expenses in the action, in which case it is disposed of on that later date.]

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