



# Debt Arrangement and Attachment (Scotland) Act 2002

2002 asp 17

VALID FROM 30/12/2002

## PART 3 **S**

### ATTACHMENT OF ARTICLES KEPT IN DWELLINGHOUSES: SPECIAL PROCEDURE

#### 46 **Restriction on attachment of articles kept in dwellinghouses** **S**

Articles kept in a dwellinghouse may be attached but only—

- (a) in pursuance of an exceptional attachment order; and
- (b) otherwise in accordance with this Part of this Act.

#### 47 **Exceptional attachment order** **S**

- (1) The sheriff may, on an application by the creditor and on being satisfied that there are exceptional circumstances, order that an attachment of non-essential assets of the debtor's kept in any dwellinghouse specified in the application may take place; such an order shall be called an "exceptional attachment order".
- (2) An exceptional attachment order shall—
  - (a) authorise the attachment, removal and auction of non-essential assets of the debtor's which are, at the time when an attachment is executed in pursuance of the order, kept in any dwellinghouse specified in the application for the order;
  - (b) specify a period during which the order is to be executed; and
  - (c) empower the officer to open shut and lockfast places for the purpose of executing the order.
- (3) In considering whether to make such an order the sheriff shall have regard to the matters set out in subsection (4) below.
- (4) Those matters are—

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- (a) the nature of the debt (and, in particular, whether the debt incurred relates to any tax or duty or to any trade or business carried on by the debtor);
  - (b) whether the debtor resides in the dwellinghouse specified in the application;
  - (c) whether the debtor carries on a trade or business in that dwellinghouse;
  - (d) whether money advice has been given to the debtor;
  - (e) whether any direction made under section 1 (time to pay directions) of the Debtors (Scotland) Act 1987 (c.18), or order made under section 5 (time to pay orders) of that Act, in respect of the debt, or any other debt, has lapsed under section 4 (lapse of time to pay directions) or, as the case may be, section 11 (lapse of time to pay orders), of that Act of 1987;
  - (f) any agreement between the debtor and creditor for the settlement of the debt; and
  - (g) any declaration or representation made, or document lodged, by or on behalf of the debtor which relates to—
    - (i) the existence of any non-essential assets owned by the debtor;
    - (ii) where they exist, their value; or
    - (iii) the debtor’s financial circumstances.
- (5) Before deciding whether to make an exceptional attachment order, the sheriff may make—
- (a) an order for a visit to the debtor by a person specified in the order for the purposes of giving money advice to the debtor; or
  - (b) such other order as the sheriff thinks fit.
- (6) The Scottish Ministers may by order modify subsection (4) above so as to—
- (a) add or remove matters to or, as the case may be, from those referred to in that subsection; or
  - (b) vary any of the descriptions of the matters there referred to.

#### **48 Exceptional circumstances** S

- (1) The reference in section 47(1) above to the sheriff being satisfied that there are exceptional circumstances is to be regarded as a reference to the sheriff being satisfied—
- (a) that the creditor has taken reasonable steps to negotiate (or seek to negotiate) a settlement of the debt;
  - (b) that the creditor has executed, or so far as it is reasonable to do so has attempted to execute—
    - (i) an arrestment and action of furthcoming or sale; and
    - (ii) an earnings arrestment,
 in order to secure payment of the debt;
  - (c) that there is a reasonable prospect that the sum recovered from an auction of the debtor’s non-essential assets would be at least equal to the aggregate of the following—
    - (i) a reasonable estimate of any chargeable expenses; and
    - (ii) £100 or such other amount as may be specified by order made by the Scottish Ministers; and

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- (d) that, having had regard to the matters set out in section 47(4) above and any other matters which the sheriff considers appropriate, it would be reasonable in the circumstances to grant the exceptional attachment order.
- (2) For the purposes of subsection (1)(b) above, a creditor who has not proceeded with the diligences referred to in that subsection on the ground that so proceeding would be unlikely to recover the aggregate of—
- (a) a reasonable estimate of the expenses likely to be incurred by the creditor in exercising the diligences; and
  - (b) £100 or such other amount as may be specified by order made by the Scottish Ministers,
- is to be treated as having attempted to execute those diligences in so far as it is reasonable to do so.

#### **49 Power of entry** **S**

- (1) Notwithstanding the authorisation in an exceptional attachment order to open shut and lockfast places, the officer shall not enter a dwellinghouse to execute the order unless the officer—
- (a) at the intended time of entry, is satisfied as to the condition set out in subsection (2) below; or
  - (b) has, at least 4 days before the intended date of entry, served notice on the debtor setting out that intention and specifying that date.
- (2) That condition is that there appears to the officer to be a person present who—
- (a) is aged 16 years or over; and
  - (b) is not, because of the person's age, knowledge of English, mental illness, mental or physical disability or otherwise, unable to understand the consequences of the procedure being carried out.
- (3) Where the sheriff is satisfied that the requirement of service under subsection (1)(b) above is likely to prejudice the execution of the order the sheriff may, on an application by the officer, dispense with that requirement.
- (4) An application for a dispensation under subsection (3) above need not be intimated to the debtor.

#### **50 Unlawful acts before attachment** **S**

- (1) It shall be regarded as a breach of an exceptional attachment order—
- (a) for the debtor or any other person who knows that the order has been made to, without the consent of the sheriff, move any article which forms part of the debtor's non-essential assets from the dwellinghouse in which it is kept; or
  - (b) for the debtor, without the consent of the sheriff, to sell, make a gift of or otherwise relinquish ownership of any such article,
- before an attachment is executed in pursuance of the order.
- (2) Any person who—
- (a) knows that an exceptional attachment order has been made; and
  - (b) before an attachment is executed in pursuance of the order, wilfully damages or destroys any article which forms part of the debtor's non-essential assets,
- shall be regarded as acting in breach of the order.

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- (3) Where, at any time after an exceptional attachment order has been made, an article which forms part of the debtor's non-essential assets is stolen, the debtor shall give notice to the creditor, the officer and the sheriff who granted the order of that fact and of any related claim which the debtor makes, or intends to make, under a contract of insurance.
- (4) Any failure by the debtor to give notice as required by subsection (3) above is to be regarded as acting in breach of the order.
- (5) Where a debtor or any third party who knows that an exceptional attachment order has been made and that an article forms part of the debtor's non-essential assets—
  - (a) moves it from the dwellinghouse in which it is kept before an attachment is executed in pursuance of the order, and it is—
    - (i) damaged, destroyed, lost or stolen; or
    - (ii) acquired from or through the debtor or, as the case may be, the third party by another person without knowledge of order and for value; or
  - (b) wilfully damages or destroys it,
 the sheriff may order the debtor or, as the case may be, the third party to consign the sum set out in subsection (6) below in court.
- (6) That sum shall be—
  - (a) where the article has been damaged but not so damaged as to make it worthless, a sum equal to the difference between the value of the article before it was damaged and the value of the article so damaged; or
  - (b) where the damaged article is worthless, a sum equal to the value of the article before it was so damaged.
- (7) Any reference in subsection (6) above to the value of an article is a reference to the officer's best estimate of the amount which the article is or, as the case may be, was likely to realise on sale by auction.
- (8) Any sum consigned in court in pursuance of an order made under subsection (5) above shall, where that order ceases to have effect before an auction is held in execution of the order, be paid to the creditor to the extent necessary to meet the sum recoverable, any surplus thereof being paid to the debtor.

## **51 Valuation S**

When executing an attachment in pursuance of an exceptional attachment order the officer shall value the articles being attached at the price which they are likely to fetch if sold on the open market.

## **52 Articles with sentimental value S**

- (1) An officer may not, in executing an exceptional attachment order, attach any articles which the officer considers likely to be of sentimental value to the debtor.
- (2) Subsection (1) above applies only where the aggregate of the values of articles considered likely to be of that type (as fixed by the officer under section 51 above) does not exceed £150 or such other amount as may be prescribed in regulations made by the Scottish Ministers.

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### **53 Removal of articles attached in dwellinghouse S**

- (1) The officer shall, unless the officer considers it impractical to do so, immediately remove any article which is attached in execution of an exceptional attachment order from the dwellinghouse in which it is attached.
- (2) If an article is not immediately removed from the dwellinghouse in which it is attached, the officer shall give notice to the debtor and to any other person in possession of the article of the date arranged for the removal of the article from that dwellinghouse.
- (3) The officer may remove from the dwellinghouse only such attached articles as, if sold at their values fixed under section 51 above, would realise in aggregate the sum recoverable.

### **54 Professional valuation S**

- (1) The officer may, if the officer considers it appropriate, arrange for an attached article to be valued by a professional valuer or other suitably skilled person.
- (2) Any such valuer or other person shall value an attached article at the price which it is likely to fetch if sold on the open market.
- (3) If such a valuer or other person values an attached article at an amount other than the amount at which that article was valued by the officer when executing the attachment, the officer shall notify the debtor of the value arrived at by the valuer or other person.

### **55 Release of articles from attachment S**

- (1) An article attached in execution of an exceptional attachment order shall not, subject to any order made under section 20(1)(b) above, be auctioned before the date which is 7 days after the date on which the article was removed by the officer from the dwellinghouse in which it was attached.
- (2) The sheriff may, on an application by the debtor, make an order—
  - (a) providing that the attachment of an article attached in execution of an exceptional attachment order is to cease to have effect; and
  - (b) requiring the officer to return the article to the dwellinghouse at which it was attached.
- (3) Where the sheriff is satisfied that—
  - (a) the attachment of an article is not competent; or
  - (b) the auction of an attached article would be unduly harsh in the circumstances, the sheriff shall grant an order under subsection (2) above in respect of the article.
- (4) Where the sheriff is satisfied that—
  - (a) articles likely to be of sentimental value to the debtor were kept in a dwellinghouse when an exceptional attachment order was executed in the dwellinghouse;
  - (b) those articles are likely to realise, on sale by auction, an aggregate amount not exceeding £150 or such other amount as may be prescribed in regulations made under section 52(2) above; and
  - (c) an article of that type has been attached in execution of the exceptional attachment order,

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the sheriff shall grant an order under subsection (2) above in respect of the attached article.

- (5) The sheriff may consider an application for an order under subsection (2) above only where it is made during the period in which the article which is subject of the application may not, by virtue of subsection (1) above, be auctioned.

#### **56 Redemption S**

- (1) Subject to any order made under section 20(1)(b) above, the debtor is entitled, within 7 days of the date on which an article is attached, to redeem that article.
- (2) The amount for which such an article may be redeemed is the value fixed under section 51 or 54(1) above.
- (3) The officer shall, on receiving payment from the debtor for the redemption of an attached article, grant a receipt in the form prescribed by Act of Sederunt to the debtor.
- (4) The attachment of the article is, on the grant of such a receipt, to cease to have effect.

#### **57 Appeals S**

- (1) An appeal made against any decision of a sheriff made under or for the purposes of this Part or, where the appeal relates to the attachment of articles kept in a dwellinghouse, under or for the purposes of Part 2 of this Act may be made only—
- (a) to the sheriff principal;
  - (b) with the leave of the sheriff; and
  - (c) on a point of law.
- (2) The decision of the sheriff principal on such an appeal is final.

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