

SCHEDULE 1

RULES FOR APPLICATIONS IN THE SHERIFF COURT UNDER THE DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002

CHAPTER 2

ATTACHMENT: GENERAL PROVISIONS

Applying for an extension of hours of attachment

7.—(1) An application by an officer of court under section 12(2) to extend the hours of attachment shall be made by minute, which may be endorsed on the decree or document of debt (or extract decree or document of debt) upon which the attachment has proceeded.

(2) The minute shall specify—

- (a) the extension sought; and
- (b) the reason for the extension.

(3) The minute does not need to be intimated to any party and the sheriff may grant or refuse it without a hearing.

(4) The terms of the sheriff's decision shall be endorsed on the decree or document of debt (or extract decree or document of debt), and may be authenticated by the sheriff clerk.

Procedure for executing attachment

8.—(1) When executing an attachment the officer of court shall be accompanied by another person who shall witness the whole proceedings.

(2) Before attaching any article the officer of court shall—

(a) show to every person present—

- (i) the decree or document of debt (or an extract of the decree or document) authorising the attachment; and
- (ii) where the decree or document of debt is not a summary warrant, the certificate of execution of the charge to which that decree or document of debt relates;

(b) demand payment of the sum recoverable from the debtor (or if the debtor is not present, any other person who appears to the officer to be authorised to act for the debtor); and

(c) make enquiries as to the ownership in common of that article (and in particular ownership in common of that article by the debtor and any other person).

(3) The officer of court shall prepare a schedule (the “attachment schedule”) in form 3.

(4) The officer of court and the witness shall sign the attachment schedule.

(5) The officer of court shall—

- (a) deliver a copy of the signed attachment schedule to any person then in possession of the articles or leave it at the premises occupied by that person;
- (b) if the person then in possession of the articles is not the debtor and it is reasonably practicable to do so, serve a copy of the signed attachment schedule by post on the debtor;
- (c) inform the debtor (if present) of the debtor's right to redeem attached articles under sections 18(1) or 56(1);
- (d) inform any person present who claims to own any attached article in common with the debtor of the right to—

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- (i) make a claim for the purposes of section 35(2)(a);
 - (ii) apply for an order under section 35(2)(b); and
 - (iii) pay the value of the debtor's interest in the attached article in terms of section 35(2)(c); and
- (e) where, after making enquiries of any person present, it appears that the article attached is a mobile home which is the only or principal residence of a person other than the debtor, inform the debtor and that person, by leaving in the mobile home a copy of the attachment schedule, of their right to apply for release of the mobile home from attachment under section 16(1).

Applying for the attachment to cease to have effect because value fixed is too low

9.—(1) An application by the debtor under section 23(2) for an order that the attachment cease to have effect because the value fixed is too low shall be in form 4.

(2) On the lodging of such an application the sheriff clerk shall—

- (a) fix a date for a hearing;
- (b) grant a warrant for intimation;
- (c) intimate the application and warrant to the applicant, the creditor and the officer of court who executed the attachment; and
- (d) complete a certificate of intimation.

(3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

Notice of theft after attachment

10.—(1) A notice by the debtor under section 21(7) that an attached article has been stolen shall be in form 5.

(2) Any notice shall be sent by the debtor to the sheriff clerk, the creditor, and the officer of court.

Applying for further attachment where articles removed, damaged, destroyed or stolen

11.—(1) The following applications shall be made in form 6:—

- (a) an application under section 21(2)(b) for authority to attach other articles where an article has been moved;
- (b) an application under section 21(10)(a) for authority to attach other articles where an article has been damaged, destroyed or stolen; and
- (c) an application under section 21(10)(b) for the revaluation of any damaged article.

(2) On the lodging of an application under paragraph (1) the sheriff clerk shall—

- (a) fix a date for a hearing;
- (b) grant a warrant for intimation;
- (c) intimate the application and warrant to the applicant, the debtor and (as appropriate) the creditor or the officer of court who executed the attachment; and
- (d) complete a certificate of intimation.

(3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

Applying for consignment where article damaged, destroyed, lost, stolen or disposed of

12.—(1) An application under section 21(11) for an order against a debtor or third party to consign a sum of money in relation to an article which has been damaged, destroyed, lost, stolen or disposed of for value shall be in form 7.

(2) On the lodging of such an application the sheriff clerk shall—

- (a) fix a date for a hearing;
- (b) grant a warrant for intimation;
- (c) intimate the application and warrant to the applicant, the officer of court who executed the attachment, the person in respect of whom an order for consignment is sought and (as appropriate) the debtor; and
- (d) complete a certificate of intimation.

(3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

Report of attachment

13.—(1) A report under section 17(1) by an officer of court of the execution of a attachment shall be in form 8.

(2) The sheriff clerk shall retain the report of attachment.

(3) An application by an officer of court under section 17(1) to extend the time for lodging the report shall be made by minute stating the reasons for seeking the extension, which may be endorsed on the decree or document of debt (or extract decree or document of debt) upon which the attachment has proceeded.

(4) The terms of the sheriff's decision on any application shall be endorsed on the decree or document of debt (or extract decree or document of debt), and may be authenticated by the sheriff clerk.

Receipt for redemption of an attached article

14. A receipt granted by an officer of court for payment for an attached article redeemed under section 18(1) shall be in form 9.

Applying for security of an attached article or sale of a perishable etc. article

15.—(1) An application for an order under section 20(1) for the security of an attached article, or for the sale of an article which is perishable or likely to deteriorate substantially and rapidly in condition or value, shall be in form 10.

(2) The sheriff shall on the lodging of such an application decide what further procedure is appropriate and may dispose of it without intimation to any party or without a hearing.

(3) Where the sheriff considers it appropriate, a date for a hearing shall be fixed.

(4) Where a hearing is fixed the sheriff clerk shall—

- (a) intimate the application and warrant for intimation to the applicant and (as appropriate) to the debtor, the creditor and the officer of court who executed the attachment; and
- (b) complete a certificate of intimation.

(5) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date of the hearing.

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Applying for release of vehicle or mobile home from attachment, or for sale of vehicle

16.—(1) The following applications shall be in form 11:—

- (a) an application by the debtor or a third party under section 16(1) for the attachment of a mobile home to cease to have effect;
- (b) an application by the debtor under section 22(1) for the attachment of a vehicle to cease to have effect because the auction of the vehicle would be unduly harsh; or
- (c) an application by the debtor under section 22(3) for the immediate sale of a vehicle because the auction of the vehicle would be unduly harsh.

(2) On the lodging of an application under paragraph (1) the sheriff clerk shall—

- (a) fix a date for a hearing;
- (b) grant a warrant for intimation;
- (c) intimate the application and the warrant to the creditor, the officer of court who executed the order, the debtor and (where appropriate) the third party; and
- (d) complete a certificate of intimation.

(3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

Applying for extension of duration of attachment

17.—(1) An application by a creditor or an officer of court under section 24(2) for an extension of the duration of an attachment shall be in form 12.

(2) On the lodging of such an application the sheriff clerk shall—

- (a) fix a date for a hearing;
- (b) grant a warrant for intimation;
- (c) intimate the application and warrant to the applicant, the debtor, and (as appropriate) the creditor or the officer of court who executed the attachment; and
- (d) complete a certificate of intimation.

(3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

(4) The sheriff clerk shall intimate the sheriff's decision on such an application to the debtor.

Invalidity and cessation of attachment

18.—(1) An application by a debtor for an order under section 26(1)(a) or (b) declaring the attachment to be invalid or to have ceased to have effect shall be in form 13.

(2) On the lodging of such an application the sheriff clerk shall—

- (a) fix a date for a hearing;
- (b) grant a warrant for intimation;
- (c) intimate the application and warrant to the applicant, the creditor, the officer of court who executed the attachment, and any other person having an interest; and
- (d) complete a certificate of intimation.

(3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

(4) The sheriff may declare an attachment to be invalid or to have ceased to have effect without an application having been made under paragraph (1).

(5) The sheriff clerk shall intimate any declaration under paragraph (4) to the debtor.

Notice of removal and auction of an attached article

19.—(1) An officer of court shall make the following notices in form 14:—

- (a) a notice under section 27(4) of the date and location of an auction, and the date of removal of an attached article from the place at which it is kept; and
- (b) a notice under section 53(2) of the date of removal of an attached article from the dwellinghouse at which it is kept.

(2) A notice under paragraph (1) shall be given to the debtor, and to any other person in possession of an article which is the subject of that notice, no later than 7 days before the proposed date of removal.

Agreement on payment, and cancellation or renewal of auction

20.—(1) A report by an officer of court to the sheriff under section 29(3)(a) of any agreement on payment between the creditor and the debtor that results in the cancellation of the arrangements for an auction of attached articles shall be in form 15.

(2) An application by a creditor for an order under section 29(4) that a debtor is in breach of any agreement on payment with the creditor shall be in form 16.

(3) On the lodging of an application under paragraphs (1) or (2) the sheriff clerk shall—

- (a) fix a date for a hearing;
- (b) grant a warrant for intimation;
- (c) intimate the application and warrant to the applicant, the debtor, the officer of court, and any other person having an interest; and
- (d) complete a certificate of intimation.

Report of auction

21.—(1) A report of auction under section 32(1) shall be in form 17.

(2) There shall be lodged with the report of auction—

- (a) the decree or document of debt upon which diligence proceeded (or an extract of the decree or document);
- (b) any executions or certificates of intimation and service;
- (c) copies of notices required by the 2002 Act; and
- (d) vouchers for relevant outlays.

(3) The sheriff clerk shall retain the report of auction.

Modification of sale balance or declaration that auction void

22.—(1) Where, after the receipt of the auditor of court's report made under section 33(1)(c), the sheriff considers—

- (a) that a balance due by or to the debtor should be modified; or
- (b) that the auction may be void,

the sheriff shall before making an order under section 33(4)(b) or (c) fix a date for a hearing.

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(2) The sheriff clerk shall intimate such a hearing to the creditor, the officer of court who prepared the report of auction, the debtor, and any such person having or having had an interest in or possession of the attached article as the sheriff may specify.

(3) Where the sheriff has made an order modifying a sale balance or declaring an auction to be void, the sheriff clerk shall intimate that order to those persons to whom intimation was made under paragraph (2).

Applications in relation to articles belonging to a third party or in common ownership

23.—(1) An application by a third party—

- (a) under section 34(1)(b)(ii) for an order that the sheriff is satisfied that the third party owns an attached article shall be in form 18;
- (b) under section 35(2)(b)(ii) for an order that the sheriff is satisfied that the third party owns an attached article in common with the debtor shall be in form 19; or
- (c) under section 35(3) for the attachment of an article owned in common to cease to have effect because the sale of the article would be unduly harsh shall be in form 20.

(2) On the lodging of an application under paragraph (1) the sheriff clerk shall—

- (a) fix a date for a hearing;
- (b) grant a warrant for intimation;
- (c) intimate the application and warrant to the applicant, the creditor, the debtor, the officer of court who executed the attachment, and any person having possession of the article; and
- (d) complete a certificate of intimation.

(3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

Third party claim after auction

24.—(1) An application by a third party under section 36(1)(e)(ii) for a finding after auction that a claim to an attached article is valid shall be in form 21.

(2) On the lodging of such an application the sheriff clerk shall—

- (a) fix a date for a hearing;
- (b) grant a warrant for intimation;
- (c) intimate the application and warrant to the applicant, the debtor, the creditor and (where appropriate) the officer of court who executed the attachment; and
- (d) complete a certificate of intimation.