



Debtors (Scotland) Act 1987

1987 CHAPTER 18

PART I

EXTENSION OF TIME TO PAY DEBTS

Time to pay directions on granting decree

1 Time to pay directions.

- (1) Subject to subsections (3) to (5) below and to section 14 of this Act, the court, on granting decree for payment of any principal sum of money may, on an application by the debtor, direct that any sum decerned for in the decree (including any interest claimed in pursuance of subsections (6) and (7) below) or any expenses in relation to which the decree contains a finding as to liability or both such sum and such expenses shall be paid—
 - (a) by such instalments, commencing at such time after the date of intimation by the creditor to the debtor of an extract of the decree containing the direction, payable at such intervals; or
 - (b) as a lump sum at the end of such period following intimation as mentioned in paragraph (a) above,as the court may specify in the direction.
- (2) A direction under subsection (1) above shall be known as a “time to pay direction”.
- (3) Where a court grants a decree which contains a finding as to liability for expenses but does not at the same time make a time to pay direction, then (whether or not the decree also decerns for payment of the expenses), it shall not at any time thereafter be competent for the court to make a time to pay direction in relation to those expenses.
- (4) Where a court grants a decree which contains a finding as to liability for expenses and makes a time to pay direction in relation to those expenses but—
 - (a) does not decern for payment of the expenses; or
 - (b) decerns for payment of the expenses as taxed by the auditor of court but does not specify the amount of those expenses,

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in relation to so much of the time to pay direction as relates to the expenses, the reference in subsection (1) above to the date of intimation of an extract of the decree containing the direction shall be treated as a reference to the date of intimation of an extract of a decree decerning for payment of the expenses, being an extract specifying their amount.

- (5) It shall not be competent for the court to make a time to pay direction—
- (a) where the sum of money (exclusive of any interest and expenses) decerned for exceeds £10,000 or such amount as may be prescribed in regulations made by the Lord Advocate;
 - (b) where the decree contains an award of a capital sum on divorce or on the granting of a declarator of nullity of marriage;
 - (c) in connection with a maintenance order;
 - [^{F1}(cc) in connection with a liability order within the meaning of the Child Support Act 1991;]
 - (d) in an action by or on behalf of the Inland Revenue for payment of any sum recoverable in respect of tax or as if it were tax;
 - [^{F2}(e) in an action by or on behalf of—
 - (i) a rating authority for payment of rates;
 - (ii) a regional or islands council for the payment of any community charge, community water charge, council tax or council water charge;
 - [a collecting authority (within the meaning of section 79 of the Local
 - ^{F3}(ia) Government etc. (Scotland) Act 1994) in respect of any charges payable to them by virtue of that section;]] or
 - [^{F4}(iib) a local authority (within the meaning of section 70 of the Water Industry (Scotland) Act 2002 (asp 3)) in respect of any charges payable to them by virtue of section 37 of that Act;]
 - (iii) a regional or islands council for payment of any amount payable as a civil penalty within the meaning of subsection (9) below.
 - (f) in an action for payment of—
 - (i) any duty due under the ^{M1}Betting and Gaming Duties Act 1981;
 - (ii) car tax due under the ^{M2}Car Tax Act 1983 ^{F5}. . .
 - (iii) value added tax due under the ^{M3}Value Added Tax Act 1983 or any sum recoverable as if it were value added tax. [^{F6}or
 - (iv) any amount by way of contributions, or by way of interest or penalty in respect of contributions, certified under section 118(1) of the ^{M4}Social Security Administration Act 1992 as liable to be paid to the [^{F7}Commissioners of Inland Revenue].]
- (6) Without prejudice to section 2(5) of this Act, interest payable under a decree containing a time to pay direction (other than interest awarded as a specific sum in the decree) shall not be recoverable by the creditor except in accordance with subsection (7) below.
- (7) A creditor who wishes to recover interest to which subsection (6) above applies shall serve a notice on the debtor, not later than the date prescribed by Act of Sederunt occurring—
- (a) in the case of a direction under subsection (1)(a) above, before the date when the last instalment of the debt concerned (other than such interest) is payable under the direction;

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- (b) in the case of a direction under subsection (1)(b) above, before the end of the period specified in the direction,
stating that he is claiming such interest and specifying the amount of the interest claimed.
- (8) Any sum paid by a debtor under a time to pay direction shall not be ascribed to interest claimed in pursuance of subsections (6) and (7) above until the debt concerned (other than such interest) has been discharged.

[^{F8}(9) In paragraph (e) of subsection (5) above—

“community charge” and “community water charge” have the meanings assigned to them in section 26 of the Abolition of Domestic Rates Etc. (Scotland) Act 1987 and the reference in that paragraph to payments of these charges includes reference to any amount payable under section 18(3) of that Act (payment of charges in respect of backdated period);

“council tax” and “council water charge” have the meanings assigned to them by section 99(1) of the Local Government Finance Act 1992; and

“civil penalty” means a penalty under section 17(10) or (11) of that Act of 1987 or under paragraph 2 of Schedule 3 to that Act of 1992.]

Textual Amendments

- F1** S. 1(5)(cc) inserted (5.4.1993) by [Child Support Act 1991 \(c. 48, SIF 20\)](#), s. 58(13), [Sch. 5 para. 8\(2\)](#) (with s. 9(2)); [S.I. 1992/2644](#), [art. 2](#).
- F2** S. 1(5)(e)(ee) substituted (1.4.1993) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 117(1), [Sch. 13 para. 53\(1\)](#); [S.I. 1993/575](#), [art. 2\(c\)](#).
- F3** S. 1(5)(e)(iia) inserted (1.4.1996) by [1994 c. 39](#), s. 180(1), [Sch. 13 para. 151\(2\)](#); [S.I. 1996/323](#), [art. 4\(c\)](#).
- F4** S. 1(5)(e)(iib) inserted (1.4.2002) by [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), s. 71(2), [Sch. 7 para. 17\(2\)](#) (with s. 67); [S.S.I. 2002/118](#), [art. 2\(3\)](#).
- F5** Word in s. 1(5)(f) ceased to have effect (6.4.1999) by virtue of [1998 c. 14](#), s. 86(1), [Sch. 7 para. 12\(a\)](#); [S.I. 1999/526](#), [art. 2\(3\)\(4\)\(b\)](#) and repealed (1.6.1999) by [1998 c. 14](#), s. 86(2), [Sch. 8](#); [S.I. 1999/1510](#), [art. 2\(f\)\(ii\)](#).
- F6** S. 1(5)(f)(iv) and the word “or” immediately preceding it inserted (6.4.1999) by [1998 c. 14](#), s. 86(1), [Sch. 7 para. 12\(b\)](#), [S.I. 1999/526](#), [art. 2\(3\)\(4\)](#).
- F7** Words in s. 1(5)(f)(iv) substituted (6.4.1999) by [1999 c. 2](#), s. 26(2), [Sch. 9 para. 1](#); [S.I. 1999/527](#), [art. 2\(c\)](#), [Sch. 3](#).
- F8** S. 1(9) inserted (1.4.1993) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 117(1), [Sch. 13 para. 53\(2\)](#); [S.I. 1993/575](#), [art. 2\(c\)](#).

Marginal Citations

- M1** 1981 c. 63.
M2 1983 c. 53.
M3 1983 c. 55.
M4 1992 c.5.

2 Effect of time to pay direction on diligence.

- (1) While a time to pay direction is in effect, it shall not be competent—
- to serve a charge for payment; or
 - to commence or execute any of the following diligences—

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- (i) an arrestment and action of furthcoming or sale;
 - [^{F9}(ii) an attachment;]
 - (iii) an earnings arrestment;
 - (iv) an adjudication for debt,
- to enforce payment of the debt concerned.
- (2) While a time to pay direction is in effect an arrestment used on the dependence of the action or in security of the debt concerned shall remain in effect—
- (a) if it has not been recalled; and
 - (b) to the extent that it has not been restricted under subsection (3) below,
- but, while the direction is in effect, it shall not be competent to commence an action of furthcoming or sale following on such an arrestment.
- (3) The court may, on making a time to pay direction, recall or restrict an arrestment of the kind described in subsection (2) above.
- (4) If an arrestment of the kind described in subsection (2) above is in effect, the court may order that the making of a time to pay direction and the recall or restriction of the arrestment shall be subject to the fulfilment by the debtor of such conditions within such period as the court thinks fit; and, where the court so orders, it shall postpone granting decree until such fulfilment or the end of that period, whichever is the earlier.
- (5) Where a time to pay direction is recalled or ceases to have effect, otherwise than—
- (a) under section 12(2)(a) of this Act; or
 - (b) by reason of the debt concerned being paid or otherwise extinguished,
- the debt in so far as it remains outstanding and interest thereon, whether or not awarded as a specific sum in the decree, shall, subject to any enactment or rule of law to the contrary, become enforceable by any diligence mentioned in subsection (1)(b) above.

Textual Amendments

- F9** S. 2(1)(b)(ii) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, [Sch. 3 Pt. 1 para. 17\(2\)](#) (with s. 63)

3 Variation and recall of time to pay direction and arrestment.

- (1) The court which granted a decree containing a time to pay direction may, on an application by the debtor or the creditor—
- (a) vary or recall the direction if it is satisfied that it is reasonable to do so; or
 - (b) if an arrestment in respect of the debt concerned is in effect, recall or restrict the arrestment.
- (2) If an arrestment in respect of the debt concerned is in effect, the court may order that any variation, recall or restriction under subsection (1) above shall be subject to the fulfilment by the debtor of such conditions as the court thinks fit.
- (3) The clerk of court or sheriff clerk shall as soon as is reasonably practicable intimate a variation under subsection (1) above to the debtor and to the creditor, and the variation shall come into effect on the date of such intimation.

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4 Lapse of time to pay direction.

- (1) If, on the day on which an instalment payable under a time to pay direction becomes due, there remains unpaid a sum, due under previous instalments, of not less than the aggregate of 2 instalments, the direction shall cease to have effect.
- (2) If at the end of the period of 3 weeks immediately following the day on which the last instalment payable under a time to pay direction becomes due, any part of the debt concerned remains outstanding, the direction shall cease to have effect.
- (3) If any sum payable under a time to pay direction under section 1(1)(b) of this Act remains unpaid 24 hours after the end of the period specified in the direction, the direction shall cease to have effect.
- (4) Where—
 - (a) a decree for payment of a principal sum of money contains a finding as to liability for expenses and decree for payment of the expenses is subsequently granted; and
 - (b) a time to pay direction is made in relation to both the principal sum and the expenses,if under subsections (1) to (3) above the direction ceases to have effect in relation to the sum payable under either of the decrees, the direction shall also cease to have effect in relation to the sum payable under the other decree.

Time to pay orders following charge or diligence

5 Time to pay orders.

- (1) Subject to section 14 of this Act, this section applies to a debt due under a decree or other document in respect of which —
 - (a) a charge for payment has been served on the debtor;
 - (b) an arrestment has been executed; or
 - (c) an action of adjudication for debt has been commenced.
- (2) Subject to subsections (4) and (5) below, the sheriff may, on an application by the debtor, make an order that a debt to which this section applies (including any interest claimed in pursuance of subsections (6) and (7) below) so far as outstanding, shall be paid—
 - (a) by such instalments, commencing at such time after the date of intimation in accordance with section 7(4) of this Act by the sheriff clerk to the debtor of the order under this subsection, payable at such intervals; or
 - (b) as a lump sum at the end of such period following intimation as mentioned in paragraph (a) above,as the sheriff may specify in the order.
- (3) An order under subsection (2) above shall be known as a “time to pay order”.
- (4) It shall not be competent for the sheriff to make a time to pay order—
 - (a) where the amount of the debt outstanding at the date of the making of the application under subsection (2) above (exclusive of any interest) exceeds £10,000 or such amount as may be prescribed in regulations made by the Lord Advocate;

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- (b) where, in relation to the debt, a time to pay direction or a time to pay order has previously been made (whether such direction or order is in effect or not);
 - (c) where, in relation to the debt, a summary warrant has been granted;
 - (d) in relation to a debt including any sum recoverable by or on behalf of the Inland Revenue in respect of tax or as if it were tax;
 - [^{F10}(e) in relation to a debt including any sum due to—
 - (i) a rating authority for payment of rates;
 - (ii) a regional or islands council for the payment of any community charge, community water charge, council tax or council water charge;
 - [a collecting authority (within the meaning of section 79 of the Local
 - ^{F11}(ia) Government etc. (Scotland) Act 1994) in respect of any charges payable to them by virtue of that section;]] or
 - [^{F12}(iib) a local authority (within the meaning of section 70 of the Water Industry (Scotland) Act 2002 (asp 3)) in respect of any charges payable to them by virtue of section 37 of that Act;]
 - (iii) a regional or islands council for payment of any amount payable as a civil penalty within the meaning of subsection (9) below.
 - (f) in relation to a debt including—
 - (i) any duty due under the ^{M5}Betting and Gaming Duties Act 1981;
 - (ii) car tax due under the ^{M6}Car Tax Act 1983; ^{F13} . . .
 - (iii) value added tax due under the ^{M7}Value Added Tax Act 1983 or any sum recoverable as if it were value added tax. [^{F14}or
 - (iv) any amount by way of contributions, or by way of interest or penalty in respect of contributions, certified under section 118(1) of the ^{M8}Social Security Administration Act 1992 as liable to be paid to the [^{F15}Commissioners of Inland Revenue]].
- (5) Where in respect of a debt to which this section applies—
- (a) there has been a pointing of articles belonging to the debtor and a warrant of sale has been granted in respect of them but has not been executed;
 - (b) moveable property of the debtor has been arrested and in respect of the arrested property—
 - (i) a decree in an action of furthcoming has been granted but has not been enforced; or
 - (ii) a warrant of sale has been granted but the warrant has not been executed; or
 - (c) a decree in an action of adjudication for debt has been granted and the creditor has, with the debtor's consent or acquiescence, entered into possession of any property adjudged by the decree or has obtained a decree of maills and duties, or a decree of removing or ejection, in relation to any such property,
- it shall not be competent for the sheriff to make a time to pay order in respect of that debt until the diligence has been completed or has otherwise ceased to have effect.
- (6) Without prejudice to section 9(12) of this Act, interest payable under a decree for payment of a debt in respect of which a time to pay order has been made (other than interest awarded as a specific sum in the decree) shall not be recoverable by the creditor except in accordance with subsection (7) below.

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- (7) A creditor who wishes to recover interest to which subsection (6) above applies shall serve a notice on the debtor not later than the date prescribed by Act of Sederunt occurring—
- (a) in the case of an order under subsection (2)(a) above, before the date when the last instalment of the debt (other than such interest) is payable under the order;
 - (b) in the case of an order under subsection (2)(b) above, before the end of the period specified in the order,
- stating that he is claiming such interest and specifying the amount of the interest claimed.
- (8) Any sum paid by a debtor under a time to pay order shall not be ascribed to interest claimed in pursuance of subsections (6) and (7) above until the debt concerned (other than such interest) has been discharged.

[^{F16}(9) In paragraph (e) of subsection (4) above—

“community charge” and “community water charge” have the meanings assigned to them in section 26 of the ^{M9}Abolition of Domestic Rates Etc. (Scotland) Act 1987 and the reference in that paragraph to payments of these charges includes reference to any amount payable under section 18(3) of that Act (payment of charges in respect of backdated period);

“council tax” and “council water charge” have the meanings assigned to them by section 99(1) of the Local Government Finance Act 1992; and

“civil penalty” means a penalty under section 17(10) or (11) of that Act of 1987 or under paragraph 2 of Schedule 3 to that Act of 1992.]

Textual Amendments

- F10** S. 5(4)(e) substituted (1.4.1993) for s. 5(4)(e)(ee) by [Local Government Act 1992 \(c. 14\), s. 117\(1\), Sch. 13 para. 54\(1\)](#); S.I. 1993/575, [art. 2\(c\)](#).
- F11** S. 5(4)(e)(iia) inserted (1.4.1996) by 1994 c. 39, s. 180(1), [Sch. 13 para. 151\(2\)](#); S.I. 1996/323, [art. 4\(c\)](#)
- F12** S. 5(4)(e)(iib) inserted (1.4.2002) by [Water Industry \(Scotland\) Act 2002 \(asp 3\), s. 71\(2\), Sch. 7 para. 17\(2\)](#) (with s. 67); S.S.I. 2002/118, [art. 2\(3\)](#)
- F13** Word in s. 5(4)(f) ceased to have effect (6.4.1999) by virtue of 1998 c. 14, s. 86(1), [Sch. 7 para. 12](#); S.I. 1999/526, [art. 2\(3\)\(4\)](#) and repealed (1.6.1999) by 1999 c. 14, s. 86(2), [Sch. 8](#); 1999/1510, art. 2(f)(ii)
- F14** Word 'or' and s. 5(4)(f)(iv) inserted (6.4.1999) by 1998 c. 14, s. 86(1), [Sch. 7 para. 12](#); S.I. 1999/526, [art. 2\(3\)\(4\)](#)
- F15** Words in s. 5(4)(f)(iv) substituted (6.4.1999) by 1999 c. 2, s. 26(1), [Sch. 9 para. 1](#); S.I. 1999/526, art. 2(c), [Sch. 3](#)
- F16** S. 5(9) inserted (1.4.1993) by [Local Government Act 1992 \(c. 14\), s. 117\(1\), Sch. 13 para. 54\(2m\)](#); S.I. 1993/575, [art. 2\(c\)](#).

Marginal Citations

- M5** 1981 c. 63.
M6 1983 c. 53.
M7 1983 c. 55.
M8 1992 c.5.
M9 1987 c. 47.

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6 Application for time to pay order.

- (1) An application for a time to pay order shall specify, to the best of the debtor's knowledge, the amount of the debt outstanding as at the date of the making of the application and shall include an offer to pay it—
 - (a) by specified instalments, payable at specified intervals; or
 - (b) as a lump sum at the end of a specified period.
- (2) The sheriff clerk's duty under section 96(2)(b) of this Act to assist the debtor in the completion of certain forms shall, in relation to a form of application for a time to pay order, consist of a duty to assist him in the completion of the form in accordance with proposals for payment made by the debtor.
- (3) On receipt of an application for a time to pay order, the sheriff shall, if the application is properly made and unless it appears to him that the making of a time to pay order would not be competent, make an interim order sisting diligence as provided for in section 8(1) of this Act.
- (4) The sheriff may, where the debtor is unable to furnish the necessary information, make an order requiring the creditor, within such period as may be specified therein, to furnish to the sheriff such particulars of the decree or other document under which the debt is payable as may be prescribed by Act of Sederunt.
- (5) If a creditor fails to comply with an order under subsection (4) above the sheriff may, after giving the creditor an opportunity to make representations, make an order recalling or extinguishing any existing diligence, and interdicting the creditor from executing diligence, for the recovery of the debt.
- (6) Where the sheriff makes an interim order under subsection (3) above, the sheriff clerk shall as soon as is reasonably practicable—
 - (a) serve a copy of the application for the time to pay order on the creditor informing him that he may object to the granting of the application within a period of 14 days after the date of service; and
 - (b) serve on the creditor a copy of the interim order and of any order under subsection (4) above.

7 Disposal of application.

- (1) If no objection is made in pursuance of section 6(6)(a) of this Act, the sheriff shall make a time to pay order in accordance with the application.
- (2) If such an objection is made, the sheriff shall not dispose of the application without first—
 - (a) giving the debtor an opportunity to make representations; and
 - (b) if agreement is not reached as to whether a time to pay order should be made or as to its terms, giving the parties an opportunity to be heard.
- (3) Where the sheriff refuses to make a time to pay order, he shall recall any interim order under section 6(3) of this Act.
- (4) The sheriff clerk shall as soon as is reasonably practicable—
 - (a) intimate the decision of the sheriff on an application for a time to pay order (including any recall of an interim order under subsection (3) above) to the debtor and the creditor; and

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- (b) if the sheriff has made a time to pay order, inform the creditor of the date when he intimated that fact to the debtor.

8 Effect of interim order on diligence.

- (1) While an interim order under section 6(3) of this Act is in effect it shall not be competent in respect of the debt—
 - [^{F17}(a) to auction any articles which have been attached;]
 - (b) to execute an earnings arrestment;
 - (c) where an arrestment of property belonging to the debtor (other than an arrestment of earnings in the hands of his employer) has been executed before or after the making of the interim order, to commence an action of furthcoming or sale, or to grant decree in any such action which has already been commenced, in pursuance of that arrestment;
 - (d) to commence an action of adjudication for debt or, if such an action has already been commenced, to take any steps other than the registration of a notice of litigiousity in connection with the action, the obtaining and extracting of a decree in the action, the registration of an abbreviate of adjudication and the completion of title to property adjudged by the decree.
- (2) An interim order under section 6(3) of this Act shall come into effect on intimation to the creditor under section 6(6)(b) of this Act and shall remain in effect until intimation of the sheriff's decision on the application for a time to pay order is made to the debtor and the creditor under section 7(4)(a) of this Act.
- (3) For the purposes of section 27 of this Act, the period during which such an interim order is in effect shall be disregarded in calculating the period during which a pouncing to which the interim order applies remains in effect.

Textual Amendments

F17 S. 8(1)(a) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, [Sch. 3 Pt. 1 para. 17\(3\)](#) (with s. 63)

9 Effect of time to pay order on diligence.

- (1) While a time to pay order is in effect, it shall not be competent—
 - (a) to serve a charge for payment; or
 - (b) to commence or execute any of the following diligences—
 - (i) an arrestment and action of furthcoming or sale;
 - [^{F18}(ii) an attachment;]
 - (iii) an earnings arrestment;
 - (iv) an adjudication for debt,
- (2) On making a time to pay order, the sheriff in respect of the debt—
 - (a) shall make an order recalling any existing earnings arrestment;
 - (b) where the debt is being enforced by a conjoined arrestment order, shall—
 - (i) if he, or another sheriff sitting in the same sheriff court, made the conjoined arrestment order, vary it so as to exclude the debt or, where

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- no other debt or maintenance is being enforced by the order, recall the order;
- (ii) if a sheriff sitting in another sheriff court made the conjoined arrestment order, require intimation of the time to pay order to be made to a sheriff sitting there who shall so vary or, as the case may be, recall the conjoined arrestment order;
- (c) where an action of adjudication for debt has been commenced, shall make an order prohibiting the taking of any steps other than the registration of a notice of litigiousity in connection with the action, the obtaining and extracting of a decree in the action, the registration of an abbreviate of adjudication and the completion of title to property adjudged by the decree;
- (d) may make an order recalling [^{F19}an attachment] ;
- (e) may make an order recalling or restricting any arrestment other than an arrestment of the debtor's earnings in the hands of his employer.
- (3) If [^{F20}an attachment] or such an arrestment as is mentioned in subsection (2)(e) above is in effect, the sheriff may order that the making of a time to pay order or the recall of [^{F21}the attachment] or the recall or restriction of the arrestment shall be subject to the fulfilment by the debtor of such conditions as the sheriff thinks fit.
- (4) Where the sheriff does not exercise the powers conferred on him by subsection (2)(d) or (e) above to recall a diligence, he shall order that no further steps shall be taken by the creditor in the diligence concerned other than, in the case of [^{F22}an attachment, making a report of attachment under section 17 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) or applying for an order under section 20(1) of that Act.]
- (5) Any order made under subsection (2) or (4) above shall specify the diligence in relation to which it is made.
- (6) The sheriff shall not make an order under subsection (2)(d) or (e) above without first giving the creditor an opportunity to make representations.
- (7) The sheriff clerk shall, at the same time as he makes intimation under section 7(4)(a) of this Act—
- (a) intimate any order under subsection (2) or (4) above to the debtor and the creditor and the order shall come into effect on such intimation being made to the creditor;
- (b) intimate any order under subsection (2)(a) or (b) above to the employer.
- (8) While an order under subsection (4) above is in effect it shall not be competent to grant—
- (a) a warrant (other than an order under section [^{F23}20(1) or 22(3) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)]) to sell articles which have been [^{F24}attached] ;
- (b) a decree of furthcoming or sale of arrested property.
- (9) For the purposes of section [^{F25}24 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)] , the period during which an order under subsection (4) above is in effect shall be disregarded in calculating the period during which [^{F26}an attachment] to which the order applies remains in effect.
- (10) Where, before the making of a time to pay order in respect of a debt, a charge to pay that debt has been served—

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- (a) if the period for payment specified in the charge has not expired, the charge shall lapse on the making of the order;
 - (b) if that period has expired, nothing in the time to pay order nor in any order under this section shall affect retrospectively the effect of the charge in the constitution of apparent insolvency within the meaning of section 7 of the ^{M10}Bankruptcy (Scotland) Act 1985.
- (11) If, when a time to pay order in relation to a debt is made, any diligence enforcing it is in effect which is not specified in an order under subsection (2) or (4) above, the diligence shall remain in effect unless and until it is recalled under section 10(4) of this Act.
- (12) Where a time to pay order is recalled or ceases to have effect, otherwise than—
- (a) under section 12(2)(a) of this Act; or
 - (b) by the debt payable under the order being paid or otherwise extinguished,
- the debt in so far as it remains outstanding (including interest thereon, whether or not awarded as a specific sum in the decree) shall, subject to any enactment or rule of law to the contrary, become enforceable by any diligence mentioned in subsection (1)(b) above; and, notwithstanding section [^{F27}25 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)] , in this subsection “diligence” includes, where the debt was, immediately before the time to pay order was made, being enforced by [^{F28}an attachment] in any premises, [^{F29}another attachment] in those premises.

Textual Amendments

- F18** S. 9(1)(b)(ii) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(4)(a)** (with s. 63)
- F19** Words in s. 9(2)(d) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(4)(b)** (with s. 63)
- F20** Words in s. 9(3) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, {Sch. 3 Pt. 1 para. 17(4)(c)(i)} (with s. 63)
- F21** Words in s. 9(3) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(4)(c)(ii)** (with s. 63)
- F22** Words in s. 9(4) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(4)(d)** (with s. 63)
- F23** Words in s. 9(8)(a) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, {Sch. 3 Pt. 1 para. 17(4)(e)(i)} (with s. 63)
- F24** Word in s. 9(8)(a) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(4)(e)(ii)** (with s. 63)
- F25** Words in s. 9(9) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(4)(f)(i)** (with s. 63)
- F26** Words in s. 9(9) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(4)(f)(ii)** (with s. 63)
- F27** Words in s. 9(12) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(4)(g)(i)** (with s. 63)
- F28** Words in s. 9(12) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(4)(g)(ii)** (with s. 63)
- F29** Words in s. 9(12) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(4)(g)(iii)** (with s. 63)

Marginal Citations

- M10** 1985 c. 66.

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10 Variation and recall of time to pay order and arrestment.

- (1) The sheriff may, on an application by the debtor or the creditor—
 - (a) vary or recall a time to pay order if he is satisfied that it is reasonable to do so; or
 - (b) if [^{F30}an attachment] or an arrestment in respect of the debt is in effect, recall [^{F31}the attachment] or recall or restrict the arrestment.
- (2) If [^{F32}an attachment] or an arrestment in respect of the debt is in effect, the sheriff may order that any variation, recall or restriction under subsection (1) above shall be subject to the fulfilment by the debtor of such conditions as the sheriff thinks fit.
- (3) The sheriff clerk shall as soon as is reasonably practicable intimate a variation under subsection (1) above to the debtor and to the creditor, and the variation shall come into effect on the date of such intimation.
- (4) Where, after a time to pay order has been made, it comes to the knowledge of the sheriff that the debt to which the order applies is being enforced by any of the diligences mentioned in section 9(1)(b) of this Act which was in effect when the time to pay order was made, the sheriff, after giving all interested parties an opportunity to be heard, may make—
 - (a) an order recalling the time to pay order; or
 - (b) any of the orders mentioned in subsection (2) or (4) of section 9 of this Act; and that section shall, subject to any necessary modifications, apply for the purposes of an order made under this paragraph as it applies for the purposes of an order made under either of those subsections.

Textual Amendments

- F30** Words in s. 10(1)(b) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, [Sch. 3 Pt. 1 para. 17\(5\)\(a\)\(i\)](#) (with s. 63)
- F31** Words in s. 10(1)(b) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, [Sch. 3 Pt. 1 para. 17\(5\)\(a\)\(ii\)](#) (with s. 63)
- F32** Words in s. 10(2) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, [Sch. 3 Pt. 1 para. 17\(5\)\(b\)](#) (with s. 63)

11 Lapse of time to pay order.

- (1) If, on the day on which an instalment payable under a time to pay order becomes due, there remains unpaid a sum, due under previous instalments, of not less than the aggregate of 2 instalments, the order shall cease to have effect.
- (2) If at the end of the period of 3 weeks immediately following the day on which the last instalment payable under a time to pay order becomes due, any part of the debt payable under the order remains outstanding, the order shall cease to have effect.
- (3) If any sum payable under a time to pay order under section 5(2)(b) of this Act remains unpaid 24 hours after the end of the period specified in the order, the order shall cease to have effect.

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Miscellaneous

12 Sequestration and insolvency.

- (1) While a time to pay direction or a time to pay order is in effect, the creditor shall not be entitled to found on the debt concerned in presenting, or in concurring in the presentation of, a petition for the sequestration of the debtor's estate.
- (2) A time to pay direction or a time to pay order shall cease to have effect—
 - (a) on the granting of an award of sequestration of the debtor's estate;
 - (b) on the granting by the debtor of a voluntary trust deed whereby his estate is conveyed to a trustee for the benefit of his creditors generally; or
 - (c) on the entering by the debtor into a composition contract with his creditors.

13 Saving of creditor's rights and remedies.

- (1) No right or remedy of a creditor to enforce his debt shall be affected by—
 - (a) a time to pay direction;
 - (b) a time to pay order; or
 - (c) an interim order under section 6(3) of this Act,except as expressly provided in this Part of this Act.
- (2) The recall—
 - (a) on the making of a time to pay direction or an order under section 3(1) of this Act, of an arrestment; or
 - (b) on the making of a time to pay order or an order under section 10(1) of this Act, of an arrestment or [F33an attachment] ,shall not prevent the creditor therein from being ranked by virtue of that arrestment or [F34attachment] pari passu under paragraph 24 of Schedule 7 to the ^{M11}Bankruptcy (Scotland) Act 1985 on the proceeds of any other arrestment or [F34attachment] .

Textual Amendments

F33 Words in s. 13(2)(b) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(6)(a)** (with s. 63)

F34 Word in s. 13(2) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(6)(b)** (with s. 63)

Marginal Citations

M11 1985 c. 66.

14 Circumstances where direction or order not competent or no longer effective.

- (1) It shall be competent to make a time to pay direction or a time to pay order only in relation to a debtor who is an individual and only if, and to the extent that, the debtor is liable for payment of the debt concerned in either or both of the following capacities—
 - (a) personally;
 - (b) as a tutor of an individual or as a judicial factor loco tutoris, curator bonis or judicial factor loco absentis on an individual's estate.

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- (2) A time to pay direction or a time to pay order shall cease to have effect on the death of the debtor or on the transmission of the obligation to pay the debt concerned during his lifetime to another person.
- (3) Where a time order for the payment by instalments of a sum owed under a regulated agreement or a security has been made under section 129(2)(a) of the ^{M12}Consumer Credit Act 1974 it shall not thereafter be competent to make a time to pay direction or a time to pay order in relation to that sum.

Marginal Citations

M12 1974 c. 39.

15 Interpretation of Part I.

- (1) In this Part of this Act—
 “adjudication for debt” does not include—
 (a) an adjudication on a debitum fundi; or
 (b) an adjudication under section 23 of the ^{M13}Conveyancing (Scotland) Act 1924 (adjudication to recover arrears of ground annual);
^{F35}
- (2) In sections 1 to 4 of this Act—
 “the court” means the Court of Session or the sheriff;
 “the debt concerned” means the sum or expenses in respect of which a time to pay direction is made.
- (3) In sections 5 to 14 of this Act—
 “debt” means the sum due by a debtor under a decree or other document (including any interest thereon and any expenses decerned for), and any expenses of diligence used to recover such sum which are chargeable against the debtor, but does not include—
 (a) any sum due under an order of court in criminal proceedings;
 (b) maintenance, whether due at the date of application for the time to pay order or not, or any capital sum awarded on divorce or on the granting of a declarator of nullity of marriage or any other sum due under a decree awarding maintenance or such a capital sum; or
 (c) any fine imposed—
 (i) for contempt of court;
 (ii) under any enactment, for professional misconduct; or
 (iii) for failure to implement an order under section 91 of the ^{M14}Court of Session Act 1868 (orders for specific performance of statutory duty);
 “decree or other document” means—
 (a) a decree of the Court of Session or the sheriff;
 (b) an extract of a document which is registered for execution in the Books of Council and Session or the sheriff court books;

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- (c) an order or determination which by virtue of any enactment is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff;
- (d) a civil judgment granted outside Scotland by a court, tribunal or arbiter which by virtue of any enactment or rule of law is enforceable in Scotland; and
- (e) a document or settlement which by virtue of an Order in Council made under section 13 of the ^{M15}Civil Jurisdiction and Judgments Act 1982 is enforceable in Scotland,

but does not include a maintenance order [^{F36}, a liability order within the meaning of the Child Support Act 1991] or a summary warrant; “sheriff”—

- (a) in relation to a debt constituted by decree granted by a sheriff, means that sheriff or another sheriff sitting in the same sheriff court;
- (b) in any other case, means the sheriff having jurisdiction—
 - (i) in the place where the debtor is domiciled;
 - (ii) if the debtor is not domiciled in Scotland, in a place in Scotland where he carries on business; or
 - (iii) if the debtor does not carry on business in Scotland, in a place where he has property which is not exempt from diligence;

and, for the purposes of sub-paragraphs (i) and (ii) above, the debtor’s domicile shall be determined in accordance with section 41 of the Civil Jurisdiction and Judgments Act 1982.

Textual Amendments

F35 S. 15(1): definition of “poinding” repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(7)** (with s. 63)

F36 Words in s. 15(3) inserted (5.4.1993) by [Child Support Act 1991 \(c. 48, SIF 20\)](#), s. 58(13), **Sch. 5 para. 8(3)** (with s. 9(2)); [S.I. 1992/2644](#), **art. 2**.

Marginal Citations

M13 1924 c. 27.

M14 1868 c. 100.

M15 1982 c. 27.

^{F37}PART II

POINDINGS AND WARRANT SALES

Textual Amendments

F37 Part II (ss. 16-45) repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), **s. 58(2)(a)** (with ss. 59, 63)

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PART III

DILIGENCE AGAINST EARNINGS

Introduction

46 New diligences against earnings.

- (1) The following diligences against earnings of a debtor in the hands of his employer shall replace the diligence of arrestment and action of furthcoming against such earnings—
 - (a) a diligence, to be known as an “earnings arrestment”, to enforce the payment of any ordinary debt which is due as at the date of execution of the diligence;
 - (b) a diligence, to be known as a “current maintenance arrestment”, to enforce the payment of current maintenance;
 - (c) an order, to be known as a “conjoined arrestment order”, to enforce the payment of two or more debts owed to different creditors against the same earnings.
- (2) Any rule of law whereby there is exempted from arrestment of earnings of a debtor in the hands of his employer a reasonable amount for the subsistence of the debtor and his dependants shall cease to have effect.

Earnings arrestments

47 General effect of earnings arrestment.

- (1) Subject to section 69 of this Act, an earnings arrestment shall have the effect of requiring the employer of a debtor, while the arrestment is in effect, to deduct a sum calculated in accordance with section 49 of this Act from the debtor’s net earnings on every pay-day and, as soon as is reasonably practicable, to pay any sum so deducted to the creditor.
- (2) Subject to sections 59 (priority among arrestments), 62 (relationship of conjoined arrestment order with certain other arrestments) and 90 (provisions relating to charges for payment) of this Act, an earnings arrestment—
 - (a) shall come into effect on the date of its execution, being the date on which a schedule in the form prescribed by Act of Sederunt (to be known as an “earnings arrestment schedule”) is served on the employer; and
 - (b) shall remain in effect until the debt recoverable has been paid or otherwise extinguished, the debtor has ceased to be employed by the employer, or the arrestment has been recalled or abandoned by the creditor or has for any other reason ceased to have effect.

48 Debt recoverable by earnings arrestment.

- (1) Subject to subsections (2) and (3) below, the debt recoverable by an earnings arrestment shall consist of the following sums, in so far as outstanding—
 - (a) any ordinary debt and any expenses due under the decree or other document on which the earnings arrestment proceeds;
 - (b) any interest on those sums which has accrued at the date of execution of the earnings arrestment; and

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- (c) the expenses incurred in executing the earnings arrestment and the charge which preceded it.
- (2) In relation to arrears of maintenance, the ordinary debt referred to in subsection (1)(a) above shall be the amount of those arrears less any sum which the debtor is entitled to deduct from that amount under any enactment in respect of income tax.
- (3) Any sum mentioned in subsection (1) above shall be included in the debt recoverable only if, and to the extent that, it is specified in the earnings arrestment schedule.
- (4) It shall be competent for a creditor to enforce payment of more than one debt payable to him by the same debtor by means of a single earnings arrestment, whether the arrestment is executed in pursuance of the same warrant or of 2 or more different warrants authorising diligence.

49 Deductions from net earnings to be made by employer.

- (1) The sum to be deducted under section 47 of this Act on any pay-day shall be—
 - (a) where the debtor's earnings are payable weekly, the sum specified in column 2 of Table A in Schedule 2 to this Act opposite the band in column 1 of that Table within which his net earnings payable on that pay-day fall;
 - (b) where his earnings are payable monthly, the sum specified in column 2 of Table B in that Schedule opposite the band in column 1 of that Table within which his net earnings payable on that pay-day fall;
 - (c) where his earnings are payable at regular intervals of a whole number of weeks or months, the sum arrived at by—
 - (i) calculating what would be his weekly or monthly net earnings by dividing the net earnings payable to him on the pay-day by that whole number (of weeks or months, as the case may be);
 - (ii) ascertaining the sum specified in column 2 of Table A (if the whole number is of weeks) or of Table B (if the whole number is of months) in Schedule 2 to this Act opposite the band in column 1 of that Table within which the notional net earnings calculated under subparagraph (i) above fall; and
 - (iii) multiplying that sum by the whole number (of weeks or months, as the case may be).
- (2) Where the debtor's earnings are payable at regular intervals other than at intervals to which subsection (1) above applies, the sum to be deducted on any pay-day under section 47 of this Act shall be arrived at by—
 - (a) calculating what would be his daily net earnings by dividing the net earnings payable to him on the pay-day by the number of days in the interval;
 - (b) ascertaining the sum specified in column 2 of Table C in Schedule 2 to this Act opposite the band in column 1 of that Table within which the notional net earnings calculated under paragraph (a) above fall; and
 - (c) multiplying that sum by the number of days in the interval.
- (3) Where the debtor's earnings are payable at irregular intervals, the sum to be deducted on any pay-day under section 47 of this Act shall be arrived at by—
 - (a) calculating what would be his daily net earnings by dividing the net earnings payable to him on the pay-day—
 - (i) by the number of days since earnings were last paid to him; or

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- (ii) if the earnings are the first earnings to be paid to him by the employer, by the number of days since he commenced his employment with the employer;
 - (b) taking the sum specified in column 2 of Table C in Schedule 2 to this Act opposite the band in column 1 of that Table within which the notional net earnings calculated under paragraph (a) above fall; and
 - (c) multiplying that sum by the number of days mentioned in paragraph (a) above.
- (4) Where on the same pay-day there are paid to the debtor both earnings payable at regular intervals and earnings which are not payable at regular intervals, for the purpose of arriving at the sum to be deducted on that pay-day under section 47 of this Act, all those earnings shall be aggregated and treated as earnings payable at the regular interval.
- (5) Where earnings payable to a debtor at regular intervals are paid to him on one pay-day and earnings which are not payable at regular intervals are paid to him on a different pay-day, the sum to be deducted on each of those pay-days under section 47 of this Act in respect of those earnings which are not paid at regular intervals shall be 20 per cent. of the net earnings paid to him on that pay-day.
- (6) Where earnings are paid to a debtor by 2 or more series of payments at regular intervals—
- (a) if the intervals are of different lengths—
 - (i) for the purpose of arriving at the sum to be deducted under section 47 of this Act, whichever of subsections (1) and (2) above is appropriate shall apply to the series with the shortest interval; and
 - (ii) in relation to the earnings paid in any other series, the said sum shall be 20 per cent. of the net earnings;
 - (b) if the intervals are of the same length and payments in more than one series are payable on the same day—
 - (i) the payments in those series shall be aggregated and whichever of subsections (1) and (2) above is appropriate shall apply to the aggregate; and
 - (ii) paragraph (a)(ii) above shall apply to every other series;
 - (c) if the intervals are of the same length and no 2 payments are payable on the same day paragraph (a)(i) above shall apply to such series as the employer may choose, and paragraph (a)(ii) above shall apply to every other series.
- (7) The Lord Advocate may, by regulations, vary—
- (a) Tables A, B and C of Schedule 2 to this Act;
 - (b) the percentage specified in subsections (5) and (6)(a)(ii) above,
- and such regulations may make different provision for different cases.
- (8) Subject to section 69(1) and (2) of this Act, regulations under subsection (7) above shall not apply in relation to an existing earnings arrestment unless and until the creditor or the debtor intimates the making of the regulations to the employer in the form prescribed by Act of Sederunt.

50 Review of earnings arrestment.

- (1) If the sheriff is satisfied that an earnings arrestment is invalid or has ceased to have effect he shall, on an application by the debtor or the person on whom the earnings

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- arrestment schedule was served, make an order declaring that to be the case, and may make such consequential order as appears to him to be necessary in the circumstances; and the sheriff clerk shall intimate any order under this subsection to the debtor, the creditor and the person on whom the earnings arrestment schedule was served.
- (2) An order under subsection (1) above declaring that an arrestment is invalid or has ceased to have effect shall not be subject to appeal.
 - (3) The sheriff, on an application by the debtor, the creditor or the employer, may make an order determining any dispute as to the operation of an earnings arrestment.
 - (4) Without prejudice to section 57(5) of this Act, the sheriff, when making an order under subsection (3) above, may order—
 - (a) the reimbursement of any payment made in the operation of the arrestment which ought not to have been made; or
 - (b) the payment of any sum which ought to have been paid in the operation of the arrestment but which has not been paid.
 - (5) An order under subsection (4) above shall require the person against whom it is made to pay interest on the sum to be paid by him under the order at the specified rate from such date as the sheriff shall specify in the order.

Current maintenance arrestments

51 General effect of current maintenance arrestment.

- (1) Subject to sections 58(2) and 69 of this Act, a current maintenance arrestment shall have the effect of requiring the employer of the debtor while the arrestment is in effect to deduct a sum calculated in accordance with section 53 of this Act from the debtor's net earnings on every pay-day and as soon as is reasonably practicable to pay any sum so deducted to the creditor.
- (2) Subject to sections 59 and 62 of this Act, a current maintenance arrestment—
 - (a) shall come into effect on the date of its execution, being the date on which a schedule in the form prescribed by Act of Sederunt (to be known as a “current maintenance arrestment schedule”) is served on the employer of the debtor; and
 - (b) shall remain in effect until the debtor has ceased to be employed by the employer concerned, or the arrestment has been recalled or abandoned by the creditor or has ceased to have effect under section 55(8) of this Act or for any other reason.
- (3) The expenses incurred in executing a current maintenance arrestment shall be recoverable from the debtor as an ordinary debt.
- (4) Subject to section 52(2)(b) of this Act, a current maintenance arrestment schedule shall specify the maintenance payable by the debtor expressed as a daily rate.
- (5) For the purposes of subsection (4) above the daily rate shall be arrived at—
 - (a) where the maintenance is paid monthly, by multiplying the monthly rate by 12 and dividing it by 365;
 - (b) where it is paid quarterly, by multiplying the quarterly rate by 4 and dividing it by 365.

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- (6) No interest shall accrue on any arrears of the maintenance which arise while a current maintenance arrestment is in effect.

52 Enforcement of 2 or more obligations to pay maintenance.

- (1) This section applies where one or more maintenance orders are in effect which provide for the payment by the same debtor to the same person (whether for his own benefit or for another person's) of maintenance in respect of more than one individual.
- (2) Where this section applies—
- (a) all or any of the obligations to pay maintenance may be enforced by a single current maintenance arrestment against the same earnings; and
 - (b) in that case, the current maintenance arrestment schedule shall specify one daily rate of maintenance, being the aggregate of the daily rates calculated in accordance with section 51(5) of this Act.

53 Deductions from net earnings to be made by employer.

- (1) The sum to be deducted from a debtor's net earnings on a pay-day under section 51 of this Act shall be whichever is the lesser of the amounts mentioned in paragraphs (a) and (b) of subsection (2) below, less any sum which the debtor is entitled to deduct under any enactment in respect of income tax.
- (2) The amounts referred to in subsection (1) above are—
- (a) subject to subsections (3) and (5) below, a sum arrived at by multiplying the daily rate of maintenance (as specified in the current maintenance arrestment schedule) by the number of days—
 - (i) since the last pay-day when a deduction was made in respect of the arrestment; or
 - (ii) if there was no such pay-day, since the date of execution of the arrestment; or
 - (b) any net earnings in so far as they exceed the sum of [^{F39}£10] per day for the number of days mentioned in paragraph (a) above.
- (3) The sum specified in subsection (2)(b) above may be varied by regulations made by the Lord Advocate and such regulations may make different provision for different cases.
- (4) Subject to section 69(1) and (2) of this Act, regulations under subsection (3) above shall not apply to an existing current maintenance arrestment unless and until the creditor or the debtor intimates the making of the regulations to the employer in the form prescribed by Act of Sederunt.
- (5) An employer operating a current maintenance arrestment shall be entitled, but shall not be required, to apply a change in the small maintenance payments limits before the creditor or the debtor intimates the change to the employer in the form prescribed by Act of Sederunt.
- (6) For the purposes of subsection (5) above, the small maintenance payment limits are the rates mentioned in section [^{F40}351(2)] of the ^{M17}Income and Corporation Taxes Act [^{F40}1988].

Status: Point in time view as at 03/03/2003.

Changes to legislation: Debtors (Scotland) Act 1987 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F39 Words in s. 53(2)(b) substituted (3.12.2001) by S.S.I. 2001/408, **reg. 2**

F40 Figure substituted by **Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844, Sch. 29**

Marginal Citations

M17 1988 c. 1

54 Current maintenance arrestment to be preceded by default.

- (1) Subject to subsections (2) and (3) below, a current maintenance arrestment schedule may be served in pursuance of a maintenance order which is subsisting at the date of such service only if—
- (a) the creditor has intimated to the debtor in the manner prescribed by Act of Sederunt—
 - (i) in the case of an order mentioned in paragraph (a) or (b) of the definition of “maintenance order” in section 106 of this Act, the making of the order;
 - (ii) in the case of an order mentioned in paragraph (c), (e), (f), (g) or (h) thereof, the registration mentioned in the paragraph concerned;
 - (iii) in the case of an order mentioned in paragraph (d) thereof, the confirmation of the order mentioned in that paragraph;
 - (b) at least 4 weeks have elapsed since the date of intimation under paragraph (a) above; and
 - (c) except where section 56 of this Act applies, at the time when it is proposed to serve the schedule, a sum not less than [^{F41}one instalment] of maintenance remains unpaid.
- (2) Subsection (1) above shall not apply where—
- (a) the maintenance order is one that has been registered in Scotland as mentioned in paragraph (c), (e), (f) or (g) of the said definition; and
 - (b) a certificate of arrears (within the meaning of section 21 of the ^{M18}Maintenance Orders (Reciprocal Enforcement) Act 1972) was produced to the court in Scotland which registered the order to the effect that at the time at which the certificate was issued the debtor was in arrears in his payment of instalments under the order.
- (3) Where a current maintenance arrestment which was validly executed has ceased to have effect otherwise than by virtue of its recall under section 55(2) of this Act, the creditor may within 3 months after the date when the arrestment ceased to have effect execute another current maintenance arrestment without complying with subsection (1) above.

Textual Amendments

F41 Words in s. 54(1)(c) substituted (5.4.1993) by **Child Support Act 1991 (c. 48, SIF 20), s. 58(13), Sch. 5 para. 8(4)** (with s. 9(2)); S.I. 1992/2644, **art.2**.

Marginal Citations

M18 1972 c.18

Status: Point in time view as at 03/03/2003.

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55 Review and termination of current maintenance arrestment.

- (1) If the sheriff is satisfied, on an application by the debtor or the person on whom the current maintenance arrestment schedule was served, that a current maintenance arrestment is invalid or has ceased to have effect, he shall make an order declaring that to be the case, and may make such consequential order as appears to him to be necessary in the circumstances.
- (2) If the sheriff is satisfied, on an application by the debtor, that the debtor is unlikely to default again in paying maintenance, he may make an order recalling a current maintenance arrestment.
- (3) The sheriff clerk shall intimate any order made under subsection (1) or (2) above to the debtor, the creditor and the person on whom the current maintenance arrestment schedule was served.
- (4) An order under subsection (1) above declaring that an arrestment is invalid or has ceased to have effect or under subsection (2) above shall not be subject to appeal.
- (5) The sheriff, on an application by the debtor, the creditor or the employer, may make an order determining any dispute as to the operation of a current maintenance arrestment.
- (6) Without prejudice to section 57(5) of this Act, the sheriff, when making an order under subsection (5) above, may order—
 - (a) the reimbursement of any payment made in the operation of the arrestment which ought not to have been made;
 - (b) the payment of any sum which ought to have been paid in the operation of the arrestment but which has not been paid.
- (7) An order under subsection (6) above shall require the person against whom it is made to pay interest on the sum to be paid by him under the order at the specified rate, and such interest shall be payable as from such date as the sheriff shall specify in the order.
- (8) A current maintenance arrestment shall cease to have effect—
 - (a) on the coming into effect of an order or decree which varies, supersedes or recalls a maintenance order which is being enforced by the arrestment;
 - (b) on an obligation to pay maintenance under a maintenance order being so enforced ceasing or ceasing to be enforceable in Scotland.
- (9) In the case of an order mentioned in paragraph (c), (e), (f) or (g) of the definition of “maintenance order” in section 106 of this Act, the reference in subsection (8)(a) above to the coming into effect of an order or decree shall be construed as a reference to the registration of the order in Scotland.

56 Effect of new maintenance order on current maintenance arrestment.

- (1) Where a maintenance order (referred to in this section as “the earlier order”) which is being enforced by a current maintenance arrestment is varied or superseded by an order or decree granted by a court in Scotland (referred to in this section as “the later order”), the later order may include a condition that it shall not come into effect until the earlier of—
 - (a) the expiry of such period specified in the later order as the court considers necessary to allow notice to be given to the employer that the earlier order has been varied or superseded; or

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- (b) the service of a new current maintenance arrestment schedule in pursuance of the later order.
- (2) Subsection (1) above shall not apply where the earlier order includes an order for the payment of aliment for the benefit of a spouse and the later order includes an order for the payment of a periodical allowance on divorce or on the granting of a declarator of nullity of marriage for the benefit of that spouse.

General

57 Failure to comply with arrestment, manner of payment and creditor's duty when arrestment ceases to have effect.

- (1) Subject to section 69(4) of this Act, where an employer fails to comply with an earnings arrestment or a current maintenance arrestment—
- (a) he shall be liable to pay to the creditor any sum which he would have paid to him under section 47(1) or 51(1) of this Act if he had so complied; and
 - (b) he shall not be entitled to recover any sum which he has paid to the debtor in contravention of the arrestment.
- (2) Subject to subsection (3) below, a creditor shall not be entitled to refuse to accept payment under section 47(1) or 51(1) of this Act which is tendered by cheque or by such other method as may be prescribed by Act of Sederunt.
- (3) If a cheque tendered in payment under section 47(1) or 51(1) of this Act is dishonoured or for any other reason the method of payment used by the employer is ineffectual, the creditor may insist that the payment concerned and any future payment under that provision shall be tendered in cash.
- (4) Where—
- (a) the debt recoverable under an earnings arrestment is paid or otherwise extinguished;
 - (b) a current maintenance arrestment ceases to have effect under section 55(8) above; or
 - (c) the debt being enforced by an earnings arrestment ceases to be enforceable by diligence,
- the creditor shall, as soon as is reasonably practicable, intimate that fact to the employer.
- (5) Where an event mentioned in subsection (4) above occurs, any sum paid by an employer—
- (a) under an earnings arrestment, in excess of the debt recoverable; or
 - (b) under a current maintenance arrestment, in excess of the sum to be deducted under section 51(1) of this Act,
- shall be recoverable by the debtor from the creditor with interest on that sum at the specified rate.
- (6) Without prejudice to subsection (5) above, where a creditor has failed to comply with subsection (4) above the sheriff, on an application by the debtor, may make an order requiring the creditor to pay to the debtor an amount not exceeding twice the amount recoverable by the debtor under the said subsection (5).

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58 Simultaneous operation of earnings and current maintenance arrestment.

- (1) Subject to subsection (2) below, one earnings arrestment and one current maintenance arrestment may be in effect simultaneously against earnings payable to the same debtor by the same employer.
- (2) If on any pay-day the net earnings of the debtor are less than the total of the sums required to be paid under sections 47(1) and 51(1) of this Act, the employer shall—
 - (a) first operate the earnings arrestment; and
 - (b) secondly operate the current maintenance arrestment against the balance of the net earnings in accordance with section 53(1) of this Act.

59 Priority among arrestments.

- (1) While an earnings arrestment is in effect, any other earnings arrestment against the earnings of the same debtor payable by the same employer shall not be competent.
- (2) While a current maintenance arrestment is in effect, any other current maintenance arrestment against the earnings of the same debtor payable by the same employer shall not be competent.
- (3) Where an employer receives on the same day 2 or more earnings arrestment schedules or 2 or more current maintenance arrestment schedules relating to earnings payable by him to the same debtor—
 - (a) if the employer receives the schedules at different times and he is aware of the respective times of receipt, only the earnings arrestment or, as the case may be, the current maintenance arrestment to which the first schedule he received relates shall have effect;
 - (b) in any other case, only such one of the earnings arrestments or, as the case may be, current maintenance arrestments as he shall choose shall have effect.
- (4) Where a creditor (referred to in this section as “the second creditor”) serves on an employer an earnings arrestment schedule or, as the case may be, a current maintenance arrestment schedule and, by virtue of this section, the arrestment to which that schedule relates does not come into effect, the employer shall as soon as is reasonably practicable give the following information to the second creditor regarding any other earnings arrestment or current maintenance arrestment in effect against the earnings of the same debtor payable by the same employer—
 - (a) the name and address of the creditor;
 - (b) the date and place of execution; and
 - (c) the debt recoverable specified in the earnings arrestment schedule or, as the case may be, the daily rate of maintenance specified in the current maintenance arrestment schedule.
- (5) If the employer fails without reasonable excuse to give information to the second creditor under subsection (4) above, the sheriff, on an application by the second creditor, may order the employer to give the required information to the second creditor.

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Conjoined arrestment orders

60 Conjoined arrestment orders: general provision.

- (1) This section applies where at the date of an application under subsection (2) below—
 - (a) there is in effect against the earnings of a debtor in the hands of a single employer an earnings arrestment or a current maintenance arrestment or (under section 58 of this Act) both; and
 - (b) a creditor, who may be a creditor already enforcing a debt by an arrestment mentioned above, (referred to in this section as “a qualified creditor”) would be entitled, but for section 59(1) or (2) of this Act, to enforce his debt by executing an earnings arrestment or a current maintenance arrestment.
- (2) Subject to subsection (4) below, where this section applies the sheriff, on an application made by a qualified creditor, shall make a conjoined arrestment order.
- (3) A conjoined arrestment order shall—
 - (a) recall any arrestment mentioned in subsection (1)(a) above so that it shall cease to have effect on the coming into effect of the order; and
 - (b) require the employer concerned, while the order is in effect, to deduct a sum calculated in accordance with section 63 of this Act from the debtor’s net earnings on any pay-day and to pay it as soon as is reasonably practicable to the sheriff clerk.
- (4) It shall not be competent to make a conjoined arrestment order—
 - (a) where all the debts concerned are maintenance payable by the same debtor to the same person (whether for his own benefit or for another person’s) so that, if the existing current maintenance arrestment were abandoned, they could all be enforced under section 52(2)(a) of this Act; or
 - (b) where there are only 2 debts, one an ordinary debt and one maintenance, so that they could be enforced under section 58(1) of this Act (one earnings arrestment and one current maintenance arrestment); or
 - (c) where the same person is the creditor or person to whom any maintenance is payable (as described in paragraph (a) above) in relation to all the debts sought to be enforced by the order.
- (5) A conjoined arrestment order—
 - (a) shall come into effect 7 days after a copy of it has been served on the employer under subsection (7) below; and
 - (b) shall remain in effect until a copy of an order recalling the conjoined arrestment order has been served on the employer under section 66(7) of this Act or the debtor ceases to be employed by him.
- (6) A conjoined arrestment order shall be in the form prescribed by Act of Sederunt, and—
 - (a) where an ordinary debt is to be enforced, the order shall specify the amount recoverable in respect of the debt under the order; and
 - (b) where current maintenance is to be enforced, the order shall specify the maintenance expressed as a daily rate or, as the case may be, as an aggregate of the daily rates; and subsection (5) of section 51 of this Act shall apply for the purposes of this paragraph as it applies for the purposes of subsection (4) of that section.

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- (7) The sheriff clerk shall as soon as is reasonably practicable serve a copy of the conjoined arrestment order on the employer and the debtor, and on the creditor in every arrestment mentioned in subsection (1)(a) above.
- (8) A decision of the sheriff making a conjoined arrestment order shall not be subject to appeal.
- (9) Subject to section 69(4) of this Act, where an employer fails to comply with a conjoined arrestment order—
 - (a) the employer shall be liable to pay to the sheriff clerk any sum which he would have paid if he had so complied;
 - (b) the employer shall not be entitled to recover any sum which he has paid to the debtor in contravention of the order; and
 - (c) the sheriff, on an application by the sheriff clerk, may grant warrant for diligence against the employer for recovery of the sums which appear to the sheriff to be due.

61 Amount recoverable under conjoined arrestment order.

- (1) Subject to subsection (2) below, the amount recoverable under any conjoined arrestment order in respect of an ordinary debt shall consist of the following sums, in so far as outstanding—
 - (a) any sum (including expenses) due under the decree or other document on which the creditor founds or, as the case may be, under section 51(3) of this Act;
 - (b) any interest on that sum which had accrued at the date of execution of the arrestment or, where no arrestment was executed, at the date of the making of the conjoined arrestment order; and
 - (c) where an earnings arrestment has been executed, the expenses of executing it and the charge which preceded it.
- (2) Any sum mentioned in subsection (1) above shall be recoverable only if and to the extent that—
 - (a) it was specified in an earnings arrestment schedule in respect of an arrestment which is recalled under subsection (3)(a) of section 60 of this Act; or
 - (b) it is specified in the application under subsection (2) of that section.
- (3) Where an obligation to pay maintenance is enforced by a conjoined arrestment order, no interest shall accrue on any arrears of maintenance which arise while the order is in effect.
- (4) Subject to subsection (5) below, a creditor who makes an application under section 60(2) of this Act shall be entitled to recover as an ordinary debt under any conjoined arrestment order which is made his expenses in connection with the application to the extent that they are specified in the application.
- (5) There shall not be recoverable under subsection (4) above any expenses incurred in serving an earnings arrestment schedule or a current maintenance arrestment schedule on the employer after the date of the application.

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62 Relationship of conjoined arrestment order with earnings and current maintenance arrestments.

- (1) While a conjoined arrestment order is in effect, it shall not be competent to execute any earnings arrestment or current maintenance arrestment or for the sheriff to grant any other conjoined arrestment order against the earnings of the same debtor payable by the same employer.
- (2) If, while a conjoined arrestment order is in effect, a creditor whose debt is not being enforced by it serves an earnings arrestment schedule or a current maintenance arrestment schedule, against earnings payable to the debtor, on the employer, the employer shall as soon as is reasonably practicable inform that creditor which court made the order.
- (3) If, after an application is made under section 60(2) of this Act for a conjoined arrestment order and before any such order comes into effect, an earnings arrestment or a current maintenance arrestment against earnings payable by the employer to the debtor comes into effect under section 58(1) of this Act—
 - (a) the arrestment shall cease to have effect when the conjoined arrestment order comes into effect; and
 - (b) the employer shall, as soon as is reasonably practicable after the service of a copy of the conjoined arrestment order on him under section 60(7) of this Act, inform the creditor on whose behalf the arrestment was executed which court made the order.
- (4) If an employer fails without reasonable excuse to give information to a creditor under subsection (2) or (3) above, the sheriff, on an application by the creditor, may order the employer to give the required information to the creditor.
- (5) Where a conjoined arrestment order is in effect, the sheriff, on an application made by a creditor whose debt is not being enforced by the order and who, but for the order, would be entitled to enforce his debt by an earnings arrestment or a current maintenance arrestment, shall make an order varying the conjoined arrestment order so that the creditor's debt is included among the debts enforced by the conjoined arrestment order; and section 61(1), (2), (4) and (5) of this Act shall apply in relation to an application under this subsection as it applies in relation to an application under section 60 of this Act.
- (6) The sheriff clerk shall as soon as is reasonably practicable serve a copy of an order under subsection (5) above on the debtor, the employer and the other creditors whose debts are being enforced by the conjoined arrestment order.
- (7) Subject to section 69(2) of this Act, an order under subsection (5) above shall come into effect 7 days after a copy of it has been served on the employer under subsection (6) above.
- (8) Section 60(6) of this Act shall apply to a conjoined arrestment order as varied under subsection (5) above as it applies to a conjoined arrestment order mentioned in that section.
- (9) A decision of the sheriff under subsection (5) above shall not be subject to appeal.

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63 Sum payable by employer under conjoined arrestment order.

- (1) Subject to section 69(3) of this Act, this section shall have effect for the purpose of determining the sum to be deducted on a pay-day and paid to the sheriff clerk under a conjoined arrestment order.
- (2) Where all the debts are ordinary debts, the said sum shall be the sum which the employer would pay under section 47(1) of this Act if the debts were one debt being enforced on the pay-day by an earnings arrestment.
- (3) Where all the debts are current maintenance, the sum shall be whichever is the lesser of the amounts mentioned in paragraphs (a) and (b) of subsection (4) below, less any sum which the debtor is entitled to deduct under any enactment in respect of income tax.
- (4) The amounts referred to in subsection (3) above are—
 - (a) the aggregate of the sums arrived at by multiplying each of the daily rates of maintenance (as specified in the conjoined arrestment order) by the number of days—
 - (i) since the last pay-day when a deduction from earnings was made by the employer under section 51(1) or 60(3)(b) of this Act in respect of the maintenance obligation; or
 - (ii) if there was no such previous pay-day, since the date when the conjoined arrestment order or any order under section 62(5) of this Act varying it came into effect; or
 - (b) any net earnings in so far as they exceed the sum of [F42£10] per day for the number of days mentioned in paragraph (a) above.
- (5) Where one or more of the debts are ordinary debts, and one or more are current maintenance, the sum shall be the aggregate of the following—
 - (a) the sum which the employer would pay under section 47(1) of this Act if the ordinary debt was being enforced on the pay-day by an earnings arrestment (where there is more than one ordinary debt, treating the aggregate amount of them as if it were one debt); and
 - (b) in relation to the debts which are current maintenance, the sum which would be payable under subsection (3) above if all the debts were current maintenance and so much of the debtor's net earnings as are left after deduction of the sum provided for in paragraph (a) above were his whole net earnings.
- (6) The sum specified in subsection (4)(b) above may be varied by regulations made by the Lord Advocate and such regulations may make different provision for different cases.
- (7) The sheriff clerk shall intimate to the employer operating a conjoined arrestment order, in the form prescribed by Act of Sederunt, the making of regulations under section 49(7) of this Act or subsection (6) above; and, subject to section 69(1) and (2) of this Act, such regulations shall not apply to the conjoined arrestment order until such intimation.
- (8) An employer operating a conjoined arrestment order in relation to current maintenance shall be entitled, but shall not be required, to apply a change in the small maintenance payments limits before the sheriff clerk intimates the change to the employer in the form prescribed by Act of Sederunt.
- (9) For the purposes of subsection (8) above, the small maintenance payment limits are the rates mentioned in section [F43351(2)] of the ^{M19}Income and Corporation Taxes Act [F431988].

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- (10) Subject to subsection (11) below, the sheriff clerk shall not be entitled to refuse to accept payment by the employer under section 60(3)(b) of this Act which is tendered by cheque or by such other method as may be prescribed by Act of Sederunt.
- (11) If a cheque tendered in payment under section 60(3)(b) of this Act is dishonoured or for any other reason the method of payment used is ineffectual, the sheriff clerk may insist that the payment for which the cheque was tendered and any future payment by the employer under the conjoined arrestment order shall be tendered in cash.

Textual Amendments

F42 Words in s. 63(4)(b) substituted (3.12.2001) by S.S.I. 2001/408, reg. 2

F43 Figure substituted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844, Sch. 29

Marginal Citations

M19 1988 c. 1

64 Disbursement by sheriff clerk of sums received from employer.

Sums paid to the sheriff clerk under section 60(3)(b) of this Act shall be disbursed by him to the creditors whose debts are being enforced by the conjoined arrestment order in accordance with Schedule 3 to this Act.

65 Operation of conjoined arrestment order.

- (1) The sheriff may make an order determining any dispute as to the operation of a conjoined arrestment order, on an application by—
- the debtor;
 - a creditor whose debt is being enforced by the order;
 - the employer; or
 - the sheriff clerk.
- (2) Without prejudice to subsection (6) below, the sheriff, when making an order under subsection (1) above, may order—
- the reimbursement of any payment made in the operation of the conjoined arrestment order which ought not to have been made; or
 - the payment of any sum which ought to have been paid in the operation of the conjoined arrestment order but which has not been paid.
- (3) An order under subsection (2) above shall require the person against whom it is made to pay interest on the sum to be paid by him under the order at the specified rate from such date as the sheriff shall specify in the order.
- (4) Where an ordinary debt is being enforced by a conjoined arrestment order, the creditor shall, as soon as is reasonably practicable after the debt recoverable has been paid or otherwise extinguished, or the debt has ceased to be enforceable by diligence, intimate that fact to the sheriff clerk.
- (5) Where current maintenance is being enforced by a conjoined arrestment order, the creditor shall, as soon as is reasonably practicable after any obligation to pay such maintenance has ceased or has ceased to be enforceable by diligence, intimate that fact to the sheriff clerk.

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- (6) Any sum received by a creditor under a conjoined arrestment order in respect of—
- (a) an ordinary debt, after the debt has been paid or otherwise extinguished or has ceased to be enforceable by diligence; or
 - (b) current maintenance after the obligation to pay such maintenance has ceased or has ceased to be enforceable by diligence;
- shall be recoverable by the sheriff clerk from the creditor with interest on that sum at the specified rate.
- (7) Without prejudice to subsection (6) above, where the creditor has failed to comply with subsection (4) or (5) above the sheriff may, on an application by the debtor, make an order requiring the creditor to pay to the debtor an amount not exceeding twice the amount recoverable by the sheriff clerk under subsection (6) above.
- (8) Any amount recovered from a creditor by the sheriff clerk under subsection (6) above shall be disbursed by him to the creditors whose debts are being enforced by the conjoined arrestment order in accordance with Schedule 3 to this Act or, if there are no such creditors, shall be paid to the debtor.

66 Recall and variation of conjoined arrestment order.

- (1) The sheriff shall make an order recalling a conjoined arrestment order—
- (a) on an application by any of the persons mentioned in subsection (2) below, if he is satisfied—
 - (i) that the conjoined arrestment order is invalid;
 - (ii) that all the ordinary debts being enforced by the order have been paid or otherwise extinguished or have ceased to be enforceable by diligence and that all the obligations to pay current maintenance being so enforced have ceased or have ceased to be enforceable by diligence; or
 - (iii) that the debtor's estate has been sequestrated; or
 - (b) on an application for recall of the order by all the creditors whose debts are being enforced by the order.
- (2) The persons referred to in subsection (1)(a) above are—
- (a) the debtor;
 - (b) any creditor whose debt is being enforced by the order;
 - (c) the person on whom a copy of the order or an order varying the order was served under section 60(7) or 62(6) of this Act;
 - (d) the sheriff clerk;
 - (e) if the debtor's estate has been sequestrated, the interim trustee appointed under section 13 of the ^{M20}Bankruptcy (Scotland) Act 1985 or the permanent trustee in the sequestration.
- (3) Where the sheriff recalls a conjoined arrestment order under subsection (1) above, he may make such consequential order as appears to him to be necessary in the circumstances.
- (4) Where—
- (a) any ordinary debt being enforced by a conjoined arrestment order is paid or otherwise extinguished or ceases to be enforceable by diligence; or
 - (b) current maintenance is being so enforced and—

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- (i) an order or decree comes into effect which varies, supersedes or recalls the maintenance order which is being enforced; or
- (ii) the obligation to pay maintenance has ceased or has ceased to be enforceable in Scotland,

the sheriff, on an application by the debtor, any creditor whose debt is being enforced by the conjoined arrestment order, the employer or the sheriff clerk, may make an order varying the conjoined arrestment order appropriately.

- (5) In the case of an order mentioned in paragraph (c), (e), (f) or (g) of the definition of “maintenance order” in section 106 of this Act, the reference in subsection (4)(b)(i) above to the coming into effect of an order shall be construed as a reference to the registration of the order in Scotland.
- (6) The sheriff may vary a conjoined arrestment order to give effect to a request by a creditor whose debt is being enforced by the order that it should cease to be so enforced.
- (7) The sheriff clerk shall as soon as is reasonably practicable serve a copy of any order under subsection (1), (3), (4) or (6) above on the debtor, the employer (or, where he is not the employer, the person mentioned in subsection (2)(c) above), any creditor whose debt is being enforced by the conjoined arrestment order and, if the conjoined arrestment order has been recalled on the ground of the sequestration of the debtor’s estate, the interim trustee or the permanent trustee in the sequestration, if known to the sheriff clerk.
- (8) Subject to section 103(6) of this Act, an order under subsection (3) above shall not come into effect until a copy of the order has been served on the employer under subsection (7) above.
- (9) An order under subsection (1) above shall not come into effect until a copy of the order has been served on the employer under subsection (7) above and shall not be subject to appeal.
- (10) An order under subsection (4) or (6) above shall come into effect 7 days after a copy of the order has been served on the employer under subsection (7) above.

Marginal Citations

M20 1985 c. 66.

Supplementary provisions

67 Equalisation of diligences not to apply.

Paragraph 24 of Schedule 7 to the ^{M21}Bankruptcy (Scotland) Act 1985 (equalisation of arrestments and poindings used within 60 days before, and 4 months after, apparent insolvency) shall not apply in relation to an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order.

Marginal Citations

M21 1985 c. 66.

Status: Point in time view as at 03/03/2003.

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F44 68

Textual Amendments

F44 S. 68 repealed (1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\), ss. 3, 7\(2\), Sch.1](#) (subject as mentioned (6.3.1992) in [Local Government Finance Act 1992 \(c. 14\), s. 118\(5\)\(7\)](#)).

69 Restriction on liability of employer in operating diligence against earnings.

- (1) An employer operating an earnings arrestment or a current maintenance arrestment or a conjoined arrestment order shall be entitled to apply regulations made under section 49(7), 53(3) or 63(6) of this Act before receiving intimation under section 49(8), 53(4) or 63(7) of this Act of the making of the regulations.
- (2) Where a pay-day occurs within a period of 7 days after the date of—
 - (a) service on the employer of an earnings arrestment schedule or a current maintenance arrestment schedule or a copy of a conjoined arrestment order or of a variation thereof; or
 - (b) intimation under section 49(8), 53(4) or 63(7) of this Act to the employer of the making of regulations,
 the employer shall be entitled, but shall not be required, on that day to operate the arrestment or order or, as the case may be, to give effect to the regulations.
- (3) Where, in accordance with subsection (2) above, the employer on a pay-day (referred to below as “the previous pay-day”)—
 - (a) does not operate an earnings arrestment, current maintenance arrestment or conjoined arrestment order; or
 - (b) does not give effect to regulations,
 he shall not include in any sum deducted from the net earnings of the debtor on a subsequent pay-day under the arrestment or order any sum in respect of the debtor’s net earnings on the previous pay-day.
- (4) No claim may be made by—
 - (a) the debtor or the creditor against the employer in respect of any deduction which has, or ought to have, been made by the employer from the debtor’s net earnings, or any payment which has been, or ought to have been, made by him, under an earnings arrestment or a current maintenance arrestment; or
 - (b) the debtor, the sheriff clerk or any creditor against the employer in respect of any such deduction or payment which has been, or ought to have been, made under a conjoined arrestment order,
 more than one year after the date when the deduction or payment has, or ought to have, been made.
- (5) The employer shall not be liable to the debtor for any deduction made by him from the debtor’s net earnings—
 - (a) under an earnings arrestment unless and until he receives intimation—
 - (i) from the creditor under section 57(4) of this Act that the debt recoverable has been paid or otherwise extinguished or has ceased to be enforceable by diligence;

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- (ii) from the sheriff clerk under section 9(7)(b) or 50(1) of this Act that an order has been made recalling the arrestment or, as the case may be, declaring that it is invalid or has ceased to have effect;
 - (iii) that the debtor's estate has been sequestrated; or
 - (iv) from the creditor that he has abandoned the arrestment;
- (b) under a current maintenance arrestment unless and until he receives intimation—
- (i) from the creditor under section 57(4) of this Act that the arrestment has ceased to have effect;
 - (ii) from the sheriff clerk under section 55(3) of this Act that an order has been made recalling the arrestment or declaring that the arrestment is invalid or has ceased to have effect;
 - (iii) that the debtor's estate has been sequestrated; or
 - (iv) from the creditor that he has abandoned the arrestment.

F45 70 Execution and intimation of copies.

- (1) When an officer of court serves an earnings arrestment schedule or a current maintenance arrestment schedule on the employer of the debtor he shall, if reasonably practicable, intimate a copy of the schedule to the debtor.
- (2) Failure to intimate a copy of the schedule to the debtor shall not by itself render the arrestment invalid.
- (3) Service of any such schedule shall be by registered or recorded delivery letter or, if such a letter cannot be delivered, by any other competent mode of service.
- (4) The certificate of execution of an earnings arrestment or a current maintenance arrestment shall be signed by the officer of court who effected the service.
- (5) Section 17(1) of this Act shall apply to the service of an earnings arrestment schedule, a current maintenance arrestment schedule or a conjoined arrestment order as it applies to the execution of a pouncing except where such service is by post.

Textual Amendments

F45 S. 70: by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(8)** (with s. 63), it is provided (30.12.2002) that: "In section 70(1)(b) (which stipulates the dates on which an earnings arrestment schedule, current maintenance arrestment schedule or conjoined arrestment order may not be served), for "17(1) of this Act" there is substituted "12(1) of the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#)"."

71 Employer's fee for operating diligence against earnings.

On any occasion on which an employer makes a payment to a creditor under an earnings arrestment or a current maintenance arrestment or to the sheriff clerk under a conjoined arrestment order, he may charge the debtor a fee of 50 pence or such other sum as may be prescribed in regulations made by the Lord Advocate which shall be deductible from the amount of the debtor's net earnings after any deduction has been made from them under section 47, 51 or 60 of this Act.

Status: Point in time view as at 03/03/2003.

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72 Effect of sequestration on diligence against earnings.

- (1) This section shall have effect where a debtor’s estate is sequestrated.
- (2) Any existing earnings arrestment, current maintenance arrestment or, subject to subsection(3) below, conjoined arrestment order [^{F46}or deduction from earnings order under the Child Support Act 1991] shall cease to have effect on the date of sequestration.
- (3) Any sum paid by the employer to the sheriff clerk under a conjoined arrestment order on a pay-day occurring before the date of sequestration shall be disbursed by the sheriff clerk under section 64 of this Act notwithstanding that the date of disbursement is after the date of sequestration.
- [^{F47}(3A) Any sum deducted by the employer under such a deduction from earnings order made before the date of sequestration shall be paid to the Secretary of State, notwithstanding that the date of payment will be after the date of sequestration.]
- (4) The execution of an earnings arrestment or the making of a conjoined arrestment order shall not be competent after the date of sequestration to enforce a debt in respect of which the creditor is entitled to make a claim in the sequestration.
- [^{F48}(4A) A deduction from earnings order under the said Act shall not be competent after the date of sequestration to secure the payment of any amount due by the debtor under a [^{F49}maintenance assessment][^{F49}maintenance calculation] within the meaning of that Act in respect of which a claim could be made in the sequestration.]
- (5) In this section “date of sequestration” has the same meaning as in section 12(4) of the ^{M22} Bankruptcy (Scotland) Act 1985.

Textual Amendments

- F46** Words in s. 72(2) inserted (5.4.1993) by Child Support Act 1991 (c. 48, SIF 20), s. 58(13), **Sch. 5 para. 8(5)(a)** (with s. 9(2)); S.I. 1992/2644, **art. 2.**
- F47** S. 72(3A) inserted (5.4.1993) by Child Support Act 1991 (c. 48, SIF 20), s. 58(13), **Sch. 5 para. 8(5)(b)** (with s. 9(2)); S.I. 1992/2644, **art. 2.**
- F48** S. 72(4A) inserted (5.4.1993) by Child Support Act 1991 (c. 48, SIF 20), s. 58(13), **Sch. 5 para. 8(5)(c)** (with s. 9(2)); S.I. 1992/2644, **art.2.**
- F49** Words in s. 72(4A) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 7(2)** (with s. 83(6)); S.I. 2003/192, **art. 3, Sch.**

Marginal Citations

M22 1985 c.66

73 Interpretation of Part III.

- (1) In this Part of this Act—
 - “creditor”, in relation to maintenance, means the payee specified in the maintenance order or orders or anyone deriving title from the payee;
 - “current maintenance” means maintenance being deducted from earnings in accordance with section 53(1) or 63(3) or (5) of this Act;
 - “debt recoverable” has the meaning given in section 48(1) of this Act;

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“decree or other document” means —

- (a) a decree of the Court of Session or the sheriff or a document registered for execution in the Books of Council and Session or the sheriff court books;
- (b) a summary warrant, a warrant for the civil diligence or a bill protested for non-payment by a notary public;
- (c) an order or determination which by virtue of any enactment is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff;
- (d) a civil judgment granted outside Scotland by a court, tribunal or arbiter which by virtue of any enactment or rule of law is enforceable in Scotland; or
- (e) a document or settlement which by virtue of an Order in Council made under section 13 of the ^{M23}Civil Jurisdiction and Judgements Act 1982 is enforceable in Scotland,

on which, or on an extract of which, an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order is founded;

“earnings” has the meaning given in subsection (2) below;

“employer” means any person who pays earnings to a debtor under a contract of service or apprenticeship, but—

- (a) in relation to any sum payable as a pension within the meaning of subsection (2)(c) below, means the person paying that sum; and
- (b) where the employee is an officer of the Crown, means, subject to subsection (5) below, the chief officer in Scotland of the department or other body concerned,

and “employee”, “employed” and “employment” shall be construed accordingly; “net earnings” means the earnings which remain payable to the debtor after the employer has deducted any sum which he is required to deduct in respect of—

- (a) income tax;
- (b) primary class 1 contributions under Part I of the ^{M24}Social Security Act 1975;
- (c) amounts deductible under any enactment, or in pursuance of a request in writing by the debtor, for the purposes of a superannuation scheme ^{F50}, namely any enactment, rules, deed or other instrument providing for the payment of annuities or lump sums—
 - (i) to the persons with respect to whom the instrument has effect on their retirement at a specified age or on becoming incapacitated at some earlier age, or
 - (ii) to the personal representatives or the widows, relatives or dependants of such persons on their death or otherwise,

whether with or without any further or other benefit;]

- (d) ^{F51}any amount deductible by virtue of a deduction from earnings order which, in terms of regulations made under section 32(4)(c) of the Child Support Act 1991, is to have priority over diligences against earnings.]

“ordinary debt” means any debt (including a fine or any sum due under an order of court in criminal proceedings in respect of which a warrant for civil diligence has been issued, arrears of maintenance and the expenses of current maintenance arrestments) other than current maintenance;

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“pay-day” means a day on which the employer of a debtor pays earnings to the debtor;

“sheriff”, in relation to an application—

- (a) under section 50(1) or (3), 55(1), (2) or (5) or 57(6) of this Act, means the sheriff having jurisdiction—
 - (i) over the place where the earnings arrestment or the current maintenance arrestment to which the application relates was executed; or
 - (ii) if that place is unknown to the applicant, over an established place of business of the debtor’s employer;
- (b) under section 59(5) or 62(4), means the sheriff having jurisdiction over the place where a creditor serves an earnings arrestment or a current maintenance arrestment schedule in relation to an arrestment which is not competent by reason of section 59 or 62 of this Act;
- (c) under section 60(2), means the sheriff having jurisdiction over the place where the existing earnings arrestment or current maintenance arrestment or either such arrestment was executed;
- (d) under section 60(9)(c), 62(5), 65 or 66 means the sheriff who made the conjoined arrestment order;

“specified rate”, in relation to interest—

- (a) included in a decree, order or extract, means the rate specified in such decree, order or extract (or deemed to be so specified by virtue of section 9 of the ^{M25}Sheriff Courts (Scotland) Extracts Act 1892);
- (b) not included in a decree, order or extract, means the rate for the time being specified by virtue of that section.

(2) Subject to subsection (3) below, in this Part of this Act “earnings” means any sums payable to the debtor—

- (a) as wages or salary;
- (b) as fees, bonuses, commission or other emoluments payable under a contract of service or apprenticeship;
- (c) as a pension, including a pension declared to be alimentary, an annuity in respect of past services, (whether or not the services were rendered to the person paying the annuity), and any periodical payments of compensation for the loss, abolition, relinquishment, or diminution in earnings of any office or employment; or
- (d) as statutory sick pay.

(3) The following shall not be treated as earnings—

- (a) a pension or allowance payable in respect of disablement or disability;
- (b) any sum the assignation of which is precluded by section 203 of the ^{M26}Army Act 1955 or section 203 of the ^{M27}Air Force Act 1955, or any like sum payable to a member of the naval forces of the Crown, or to a member of any women’s service administered by the Defence Council [^{F52}unless it is a sum consisting of pay or allowance payable by his employer to him as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996)];
- (c) in relation to the enforcement by an earnings arrestment of a debt other than maintenance, the wages of a seaman (other than a member of the crew of a fishing boat);

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- (d) any occupational pension payable under any enactment which precludes the assignment of the pension or exempts it from diligence;
 - (e) a pension, allowance or benefit payable under any enactment relating to social security;
 - (f) a guaranteed minimum pension within the meaning of the ^{M28}Social Security Pensions Act 1975;
 - (g) a redundancy payment within the meaning of [^{F53}the Employment Rights Act 1996].
- (4) In subsection (3)(c) above—
- (a) “seaman” has the same meaning as in [^{F54}section 313 of the Merchant Shipping Act 1995];
 - (b) “fishing boat” [^{F55}means any ship which is for the time being employed in sea fishing or in the sea fishing service, and includes any ship which is both—
 - (i) engaged in whale fisheries off the coast of Scotland; and
 - (ii) registered under the Merchant Shipping Act 1995]
- (5) Any question arising as to who is the chief officer in Scotland of a department or body referred to in paragraph (b) of the definition of “employer” in subsection (1) above shall be referred to and determined by the Minister for the Civil Service, and a document purporting to set out a determination of the Minister and signed by an official of the Minister shall be sufficient evidence of that determination.

Textual Amendments

- F50** Words in s. 73(1) (definition of “net earnings”, para. (c)) substituted (5.4.1993) by [Child Support Act 1991 \(c. 48, SIF 20\)](#), s. 58(13), [Sch. 5 para. 8\(6\)\(a\)](#) (with s. 9(2)); S.I. 1992/2644, [art. 2](#).
- F51** In s. 73(1) (definition of “net earnings”), para. (d) added (5.4.1993) by [Child Support Act 1991 \(c. 48, SIF 20\)](#), s. 58(13), [Sch. 5 para. 8\(6\)\(b\)](#) (with s. 9(2)); S.I. 1992/2644, [art. 2](#).
- F52** Words in s. 73(3) inserted (1.1.1999) by S.I. 1998/3086, [reg. 6\(2\)](#)
- F53** Words in s. 73(3)(g) substituted (22.8.1996) by [1996 c. 18](#), ss. 240, 243, [Sch. 1 para. 31](#) (with ss. 191-195, 202)
- F54** Words in s. 73(4)(a) substituted (1.1.1996) by [1995 c. 21](#), ss. 314(2), 316(2), [Sch. 13 para. 79\(a\)](#) (with s. 312(1))
- F55** S. 73(4)(b)(i)(ii) and the words immediately preceding it substituted (1.1.1996) by [1995 c. 21](#), ss. 314(2), 316(2), [Sch. 13 para. 79\(b\)](#) (with s. 312(1))

Marginal Citations

- M23** 1982 c. 27
M24 1975 c. 14
M25 1892 c. 17.
M26 1955 c. 18.
M27 1955 c. 19.
M28 1975 c. 60.

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PART IV

RECOVERY OF RATES AND TAXES ETC.

74 Recovery of rates and taxes etc.

- (1) The enactments mentioned in Schedule 4 to this Act shall have effect subject to the amendments specified therein.
- (2) ^{F56}
- (3) No person shall be imprisoned for failure to pay rates or any tax.
- (4) Section 248 of the ^{M29}Local Government (Scotland) Act 1947 (priority of claims for rates over other claims) is hereby repealed.
- (5) The following provisions of the ^{M30}Exchequer Court (Scotland) Act 1856 are hereby repealed—
 - (a) in section 28 (extracts of exchequer decrees), the words from “except that” to the end;
 - (b) sections 29 to 34 (special modes of diligence for the enforcement of Crown debts);
 - (c) section 36 (effects of deceased Crown debtor may be attached by arrestment or poinding);
 - (d) section 42 (preference of Crown over other creditors).

Textual Amendments

F56 S. 74(2) repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. **58(2)(b)** (with ss. 59, 63)

Marginal Citations

M29 1947 c. 43.
M30 1856 c. 56.

PART V

MESSENGERS-AT-ARMS AND SHERIFF OFFICERS

75 Regulation of organisation, training, conduct and procedure.

- (1) The Court of Session may, by Act of Sederunt, in respect of officers of court—
 - (a) regulate their organisation;
 - (b) regulate their training and the qualifications required to obtain a commission as messenger-at-arms or sheriff officer;
 - (c) regulate their conduct in exercising their official functions;
 - (d) regulate the scope of their official functions;
 - (e) make provision prohibiting the undertaking by them of activities other than their official functions (referred to in this Part of this Act as “extra-official

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- activities”) which appear to the Court to be incompatible with their official functions;
- (f) make provision permitting the undertaking by them for remuneration of other extra-official activities, not appearing to the Court to be incompatible as aforesaid, and the Act of Sederunt may attach conditions to any such permission;
 - (g) prescribe the procedure in respect of applications for a commission as messenger-at-arms under section 77 of this Act or as sheriff officer;
 - (h) prescribe the procedure in disciplinary proceedings against them under section 79 of this Act, and provide for the remit of any such proceedings from the Court of Session to a sheriff principal, from one sheriff principal to another sheriff principal and from a sheriff principal to the Court of Session;
 - (j) make provision for the keeping of accounts by them and the auditing of those accounts;
 - (k) make provision for the keeping of records by them and the inspection of those records;
 - (l) make provision in respect of the finding of caution by them;
 - (m) make such other provision as may appear to the Court to be necessary or proper.
- (2) No extra-official activity (not being an activity prohibited or regulated by an Act of Sederunt made under subsection (1)(e) or (f) above) may be undertaken by an officer of court for remuneration unless the officer of court obtains the permission of the sheriff principal from whom he holds a commission to his undertaking the activity, but the sheriff principal shall not withhold such permission unless it appears to him that the undertaking by the officer of court of the activity would be incompatible with the officer of court’s official functions.
- (3) The sheriff principal may attach conditions to any permission granted by him under subsection (2) above.

76 **Advisory Council.**

- (1) There shall be a body, (to be known as “the Advisory Council on Messengers-at-Arms and Sheriff Officers” and in this section referred to as “the Advisory Council”) whose duties shall be to advise the Court of Session on the making of Acts of Sederunt under section 75 of this Act and generally to keep under review all matters relating to officers of court.
- (2) The Advisory Council shall consist of—
- (a) the following persons appointed by the Lord President of the Court of Session—
 - (i) a judge of the Court of Session who shall act as chairman;
 - (ii) 2 sheriffs principal;
 - (iii) 2 officers of court; and
 - (iv) 2 solicitors;
 - (b) one person appointed by the Lord Advocate; and
 - (c) the Lord Lyon King of Arms.
- (3) The secretary of the Advisory Council shall be appointed by the Secretary of State.

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- (4) Subject to subsections (5) and (6) below, the members of the Advisory Council appointed under paragraphs (a) and (b) of subsection (2) above shall hold office for 3 years and be eligible for reappointment.
- (5) Subsection (4) above applies to members of the Advisory Council appointed under paragraph (a) of subsection (2) above only so long as they respectively retain the offices or, as the case may be, qualification specified in that paragraph.
- (6) If the Lord President or, as the case may be, the Lord Advocate is satisfied that a person appointed by him under subsection (2) above has ceased to be a fit and proper person to hold the appointment, he may terminate that person's appointment.
- (7) Where a member of the Advisory Council appointed under subsection (2)(a) or (b) above ceases to be a member (whether by resignation or otherwise) prior to the expiry of 3 years after the date of his appointment or reappointment, the vacancy shall be filled by appointment of another person holding the same office or, as the case may be, possessing the same qualification.
- (8) Subject to subsection (6) above, any person appointed in pursuance of subsection (7) above to fill a vacancy shall remain a member of the Advisory Council only until the expiry of 3 years after the date of the appointment or reappointment of the member whom he succeeded, but shall be eligible for reappointment.
- (9) The Advisory Council shall have power to regulate the summoning of its meetings and the procedure at such meetings; and at any such meetings 3 members shall be a quorum.

77 Appointment of messenger-at-arms.

- (1) The Court of Session, on an application made under this section by a sheriff officer, may find the applicant suitable to be appointed as a messenger-at-arms and recommend such appointment to the Lord Lyon King of Arms; and, on receipt of such a recommendation, the Lord Lyon King of Arms may grant the applicant a commission as a messenger-at-arms.
- (2) A messenger-at-arms shall not be authorised by his commission as messenger-at-arms to execute a warrant granted by a sheriff or sheriff clerk.
- (3) A messenger-at-arms shall cease to be entitled to hold a commission as messenger-at-arms if he no longer holds a commission as a sheriff officer.
- (4) Any rule of law and any other enactment regulating the appointment of messengers-at-arms shall cease to have effect.

78 Inspection of work.

- (1) The sheriff principal—
 - (a) may from time to time in relation to any sheriff officer who holds a commission from him, and
 - (b) shall, if directed to do so by the Court of Session in relation to any sheriff officer who is a messenger-at-arms,
 appoint such a person as he thinks fit to inspect the work or particular aspects of the work of that officer.

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- (2) A person appointed under subsection (1) above may, and if the Court of Session directs the sheriff principal so to require shall, be required by the sheriff principal to make enquiry as to extra-official activities undertaken for remuneration by the officer of court concerned.
- (3) A person appointed under subsection (1) above shall make a report of his inspection and of any enquiry under subsection (2) above to the sheriff principal and, if the report is concerned with the work or extra-official activities of any messenger-at-arms, shall send a copy thereof to the Court of Session.
- (4) A person appointed under subsection (1) above shall be entitled—
 - (a) to a fee, unless he is employed full-time in the civil service of the Crown; and
 - (b) to payment of his outlays incurred,in connection with an inspection, enquiry and report under this section.

79 Investigation of alleged misconduct.

- (1) This section applies where—
 - (a) a report under section 78(3) of this Act discloses that any officer of court may have been guilty of misconduct;
 - (b) a report by a sheriff or a complaint by any other person is made—
 - (i) to the Court of Session alleging misconduct by a messenger-at-arms;
 - (ii) to the sheriff principal from whom a sheriff officer holds a commission alleging misconduct by the officer; or
 - (c) any judge of the Court of Session, or a sheriff principal, has reason to believe that an officer of court may have been guilty of misconduct.
- (2) Where this section applies, a judge nominated by the Lord President of the Court of Session, or the sheriff principal, after giving the officer of court an opportunity to admit or deny the misconduct or to give an explanation of the matter, may appoint a solicitor to investigate the matter unless the officer of court—
 - (a) admits the misconduct in writing, or
 - (b) gives a satisfactory explanation of the matter.
- (3) Where the solicitor after carrying out an investigation in pursuance of subsection (2) above is of the opinion—
 - (a) that there is a probable case of misconduct and that there is evidence sufficient to justify proceedings, disciplinary proceedings shall be brought at his instance against the officer of court before the relevant court;
 - (b) that there is not a probable case of misconduct or that there is insufficient evidence to justify proceedings, he shall report that fact to the relevant court.
- (4) The solicitor shall be entitled to a fee, and to payment of his outlays incurred, in connection with an investigation, and any disciplinary proceedings brought by him, under this section.
- (5) The relevant court may award expenses in any disciplinary proceedings brought under this section in favour of or against either party to the proceedings; and for the purposes of this subsection and section 45 of the ^{M31}Crown Proceedings Act 1947 the party bringing the proceedings shall be deemed to be the Lord Advocate.
- (6) Where expenses are awarded under subsection (5) above in favour of—

Status: Point in time view as at 03/03/2003.

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- (a) the officer of court, the expenses shall be recoverable by him from the Lord Advocate;
 - (b) the Lord Advocate, the expenses shall be recoverable from the officer of court by the Lord Advocate.
- (7) If the person appointed under section 78(1) of this Act is a solicitor, that person may be appointed as solicitor under subsection (2) above.
- (8) In this section “the relevant court” means whichever of the Court of Session or the sheriff principal made the appointment under subsection (2) above.
- (9) In this section and section 80 of this Act “misconduct” includes conduct tending to bring the office of messenger-at-arms or sheriff officer into disrepute.

Marginal Citations

M31 1947 c. 44.

80 Courts’ powers in relation to offences or misconduct.

- (1) Where the Court of Session becomes aware that a messenger-at-arms has been convicted by a court of any offence, it may make an order finding that the messenger-at-arms should be suspended from practice for such period as may be specified in the order, or deprived of office.
- (2) Where the sheriff principal from whom a sheriff officer holds a commission becomes aware that the sheriff officer has been convicted by a court of any offence, the sheriff principal may make an order suspending the sheriff officer from practice for such period as may be specified in the order, or depriving him of office, in that sheriffdom.
- (3) Subsections (1) and (2) above are without prejudice to section 4(3)(b) of the ^{M32}Rehabilitation of Offenders Act 1974; and in those subsections “offence” means any offence of which the officer of court has been convicted before or after he was granted a commission as an officer of court, other than any offence disclosed in his application for such a commission.
- (4) Where—
- (a) a messenger-at-arms admits in writing that he is guilty of misconduct; or
 - (b) the Court of Session at the end of disciplinary proceedings under section 79(3) (a) of this Act is satisfied that a messenger-at-arms is guilty of misconduct,
- the Court of Session may make one or more of the orders specified in subsection (5) below.
- (5) The orders referred to in subsection (4) above are—
- (a) an order finding that the messenger-at-arms should be suspended from practice for such period as may be specified in the order, or deprived of office;
 - (b) an order imposing a fine on the messenger-at-arms not exceeding £2,500 or such sum as may be prescribed in regulations made by the Lord Advocate;
 - (c) an order censuring the messenger-at-arms;
 - (d) if the misconduct consists of, or includes, the charging of excessive fees or outlays, an order decerning for repayment by the messenger-at-arms of the fees or outlays, to the extent that they were excessive, to the person who paid them.

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- (6) Where—
- (a) a sheriff officer admits in writing that he is guilty of misconduct; or
 - (b) the sheriff principal at the end of disciplinary proceedings under section 79(3) (a) of this Act is satisfied that a sheriff officer is guilty of misconduct,
- the sheriff principal may make one or more of the orders specified in subsection (7) below.
- (7) The orders referred to in subsection (6) above are—
- (a) an order suspending the sheriff officer from practice for such period as may be specified in the order, or depriving him of office, in that sheriffdom;
 - (b) an order in relation to the sheriff officer of a kind mentioned in subsection (5) (b), (c) or (d) above.
- (8) Where an officer of court fails to comply with an order under this section imposing a fine on him, the Court of Session or, as the case may be, the sheriff principal may make an order—
- (a) decerning for payment of the fine, and an extract of any such order shall contain a warrant in the form prescribed by Act of Sederunt which shall have the same effect as an extract of a decree for payment of money pronounced by the Court of Session; or
 - (b) of the kind specified in subsection (5)(a) or, as the case may be, (7)(a) above.
- (9) Any fine imposed under this section shall be recoverable by the Lord Advocate.

Marginal Citations
M32 1974 c. 53.

81 Provisions supplementary to section 80.

- (1) The Court of Session shall cause intimation to be made of any order of the Court of Session under section 80(1), (4) or (8)(b) of this Act to—
- (a) every sheriff principal from whom the messenger-at-arms holds a commission as a sheriff officer;
 - (b) the Lord Lyon King of Arms.
- (2) The sheriff principal shall cause intimation to be made of any order made by him under section 80(2), (6) or (8)(b) of this Act—
- (a) to every other sheriff principal from whom the sheriff officer holds a commission as a sheriff officer; and
 - (b) if the sheriff officer is a messenger-at-arms, to the Court of Session and the Lord Lyon King of Arms.
- (3) On intimation under this section of an order under section 80(1), (2) or (8)(b) of this Act or of an order under subsection (4) or (6) of that section specified respectively in subsection (5)(a) or (7)(a) thereof—
- (a) to a sheriff principal, he shall make an order suspending the sheriff officer concerned from practice until the expiry of the period for which he has been suspended by the order so intimated, or (as the case may be) depriving him of office, in the sheriffdom;
 - (b) to the Lord Lyon King of Arms, he shall—

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- (i) in the case of an order intimated under subsection (1) above, suspend the messenger-at-arms concerned from practice for the period specified in the order or (as the case may be) deprive him of office; or
 - (ii) in the case of an order intimated under subsection (2) above, suspend the messenger-at-arms from practice until the expiry of the period for which he has been suspended by the order so intimated or (as the case may be) deprive him of office.
- (4) It shall not be competent for the Lord Lyon King of Arms to discipline a messenger-at-arms or suspend him from practice or deprive him of office except in accordance with subsection (3)(b) above.

82 Appeals from decisions under sections 79(5) and 80.

An appeal to the Inner House of the Court of Session may be made against any decision of a Lord Ordinary or a sheriff principal under section 79(5) or section 80(1), (2), (4) or (6) of this Act, but the decision of the Inner House on any such appeal shall be final.

83 Service of charge and execution of diligence or warrant void where officer of court has interest.

- (1) The service of a charge for payment or the execution of diligence, or of a warrant in any proceedings, by an officer of court shall be void if the subject matter of the charge, diligence or proceedings—
- (a) is one in which the officer of court has an interest as an individual; or
 - (b) consists of or includes a debt in respect of which any of the circumstances mentioned in subsection (2) below apply.
- (2) The circumstances referred to in subsection (1)(b) above are where the debt is due to—
- (a) a company or firm, and the officer of court—
 - (i) is a director or partner of that company or firm or holds by himself, or along with a business associate or with a member of his family, a controlling interest therein; or
 - (ii) has a pecuniary interest in that company or firm and the principal business of the company or firm is the purchase of debts for enforcement;
 - (b) a business associate of the officer of court, or to a member of the officer of court's family;
 - (c) a company or firm, and a business associate of the officer of court or a member of the officer of court's family—
 - (i) is a director or partner of that company or firm or holds a controlling interest therein; or
 - (ii) has a pecuniary interest in that company or firm and the principal business of the company or firm is the purchase of debts for enforcement.
- (3) Any reference in subsection (2) above to—
- (a) a business associate of an officer of court shall be construed as a reference to a co-director, partner, employer, employee, agent or principal of the officer of court;

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- (b) a member of an officer of court's family shall be construed as a reference to the wife or husband, a parent or child, a grandparent or grandchild, or a brother or sister of the officer of court (whether of the full blood or the half-blood or by affinity);
 - (c) a controlling interest in a company shall be construed in accordance with paragraph 13(7) of Schedule 4 to the ^{M33}Finance Act 1975.
- (4) In subsection (3)(a) above "principal" does not include a principal in a contract for the service of a charge or the execution of diligence or of a warrant in relation to the debt concerned.

Marginal Citations

M33 1975 c. 7.

84 Collection of statistics from officers of court.

- (1) The Lord Advocate may require any officer of court to provide information, in such form and at such times as he may specify, regarding the officer of court's official functions.
- (2) Subject to subsection (3) below, the Lord Advocate may publish, in such form as he thinks fit, information provided under subsection (1) above.
- (3) Information published under subsection (2) above shall not be in a form which identifies or enables the identification of officers of court or persons against whom diligence has been executed.

85 Measure of damages payable by officer of court for negligence or other fault.

There shall cease to have effect any rule of law whereby, if an officer of court has been found liable to a creditor for negligent delay or failure to execute diligence, or for other fault in the execution of diligence, the damages payable by the officer of court are determined solely by reference to the amount of the debt.

86 Official identity card.

- (1) An official identity card shall be issued to every officer of court by or on behalf of the person from whom he holds his commission.
- (2) When carrying out his official functions an officer of court shall exhibit his identity card on being requested to do so.

PART VI

WARRANTS FOR DILIGENCE AND CHARGES FOR PAYMENT

87 Effect of warrants for diligence in extract decrees and other documents.

- (1) Every extract of a decree for the payment of money, or among other things for the payment of money, which is pronounced by—

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- (a) the Court of Session;
- (b) the High Court of Justiciary; or
- (c) the Court of Teinds,

shall contain a warrant in the form prescribed by Act of Sederunt or, as the case may be, by Act of Adjournal.

- (2) The warrant referred to in subsection (1) above shall have the effect of authorising—
- (a) in relation to an ordinary debt, the charging of the debtor to pay to the creditor within the period specified in the charge the sum specified in the extract and any interest accrued on the sum and, in the event of failure to make such payment within that period, the execution of an earnings arrestment and the [F57 attachment] of articles belonging to the debtor and, if necessary for the purpose of executing the [F57 attachment] , the opening of shut and lockfast places;
 - (b) in relation to an ordinary debt, an arrestment other than an arrestment of the debtor’s earnings in the hands of his employer; and
 - (c) if the decree consists of or includes a maintenance order, a current maintenance arrestment in accordance with Part III of this Act.
- (3) In section 7(1) of the ^{M34}Sheriff Courts (Scotland) Extracts Act 1892 (import of the warrant for execution), for the words from “it shall” to the end there shall be substituted the following words—

“the said warrant shall have the effect of authorising—

- (a) in relation to an ordinary debt within the meaning of the Debtors (Scotland) Act 1987, the charging of the debtor to pay to the creditor within the period specified in the charge the sum specified in the extract and any interest accrued on the sum and, in the event of failure to make such payment within that period, the execution of an earnings arrestment and the poiding of articles belonging to the debtor and, if necessary for the purpose of executing the poiding, the opening of shut and lockfast places;
- (b) in relation to an ordinary debt within the meaning of the Debtors (Scotland) Act 1987, an arrestment other than an arrestment of the debtor’s earnings in the hands of his employer; and
- (c) if the decree consists of or includes a maintenance order within the meaning of the Debtors (Scotland) Act 1987, a current maintenance arrestment in accordance with Part III of that Act.”.

- (4) For section 3 of the ^{M35}Writs Execution (Scotland) Act 1877 there shall be substituted the following section—

“3 Power to execute diligence by virtue of warrant.

The warrant inserted in an extract of a document registered in the Books of Council and Session or in sheriff court books which contains an obligation to pay a sum of money shall have the effect of authorising—

- (a) in relation to an ordinary debt within the meaning of the Debtors (Scotland) Act 1987, the charging of the debtor to pay to the creditor within the period specified in the charge the sum specified in the extract and any interest accrued on the sum and, in the event of failure to make such payment within that period, the execution of an earnings

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- arrestment and the pouncing of articles belonging to the debtor and, if necessary for the purpose of executing the pouncing, the opening of shut and lockfast places;
- (b) in relation to an ordinary debt within the meaning of the Debtors (Scotland) Act 1987, an arrestment other than an arrestment of the debtor's earnings in the hands of his employer; and
 - (c) if the document is a maintenance order within the meaning of the Debtors (Scotland) Act 1987, a current maintenance arrestment in accordance with Part III of that Act.”
- (5) An extract of a decree in an action of pouncing of the ground shall contain a warrant in the form prescribed by Act of Sederunt which shall have the effect of authorising a pouncing of the ground.

Textual Amendments

F57 Word in s. 87(2)(a) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(9)** (with s. 63)

Marginal Citations

M34 1892 c. 17.

M35 1877 c. 40.

88 Warrants for diligence: special cases.

- (1) This section applies where a creditor has acquired by assignation intimated to the debtor, confirmation as executor, or otherwise a right to—
- (a) a decree;
 - (b) an obligation contained in a document an extract of which, after the document has been registered in the Books of Council and Session or in sheriff court books, may be obtained containing warrant for execution;
 - (c) an order or determination which by virtue of any enactment is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by a sheriff,
- either directly or through a third party from a person in whose favour the decree, order or determination was granted or who was the creditor in the obligation contained in the document.
- (2) Where this section applies, the creditor who has acquired a right as mentioned in subsection (1) above may apply to the appropriate clerk for a warrant having the effect of authorising the execution at the instance of that creditor of any diligence authorised by an extract of the decree or document or by the order or determination, as the case may be.
- (3) The applicant under subsection (2) above shall submit to the appropriate clerk—
- (a) an extract of the decree or of the document registered as mentioned in subsection (1)(b) above or a certified copy of the order or determination; and
 - (b) the assignation (along with evidence of its intimation to the debtor), confirmation as executor or other document establishing the applicant's right.
- (4) The appropriate clerk shall grant the warrant applied for under subsection (2) above if he is satisfied that the applicant's right is established.

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(5) Where—

- (a) a charge has already been served in pursuance of the decree, order, determination or registered document; and
- (b) the applicant under subsection (2) above submits with his application the certificate of execution of the charge in addition to the documents mentioned in subsection (3) above,

a warrant granted under subsection (4) above shall authorise the execution at the instance of the applicant of diligence in pursuance of that charge.

(6) For the purposes of this section, “the appropriate clerk” shall be—

- (a) in the case of a decree granted by the Court of Session or a document registered (whether before or after such acquisition) in the Books of Council and Session, a clerk of court of the Court of Session;
- (b) in the case of a decree granted by the High Court of Justiciary, a clerk of Justiciary;
- (c) in the case of a decree granted by a sheriff or a document registered (whether before or after such acquisition) in the books of a sheriff court, the sheriff clerk of that sheriff court;
- (d) in the case of such an order or determination as is mentioned in subsection (1) (c) above, any sheriff clerk.

89 Abolition of letters of horning, horning and poinding, poinding, and caption.

The granting of letters of horning, letters of horning and poinding, letters of poinding and letters of caption shall cease to be competent.

90 Provisions relating to charges for payment.

- (1) Subject to subsection (2) below, the execution of [^{F58}an attachment] or an earnings arrestment shall not be competent unless a charge for payment has been served on the debtor and the period for payment specified in the charge has expired without payment being made.
- (2) Subsection (1) above shall not apply to [^{F58}an attachment] or an earnings arrestment executed in pursuance of a summary warrant.
- (3) The period for payment specified in any charge for payment served in pursuance of a warrant for execution shall be 14 days if the person on whom it is served is within the United Kingdom and 28 days if he is outside the United Kingdom or his whereabouts are unknown.
- (4) Any such charge shall be in the form prescribed by Act of Sederunt or Act of Adjournal.
- (5) Subject to subsection (6) below, where any such charge has been served, it shall not be competent to execute [^{F59}an attachment] or an earnings arrestment by virtue of that charge more than 2 years after the date of such service.
- (6) A creditor may reconstitute his right to execute [^{F59}an attachment] or an earnings arrestment by the service of a further charge for payment.
- (7) No expenses incurred in the service of a further charge for payment within the period of 2 years after service of the first charge shall be chargeable against the debtor.

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- (8) Registration of certificates of execution of charges for payment in a register of hornings shall cease to be competent.

Textual Amendments

- F58** Words in s. 90 substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002](#) (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(10)** (with s. 63)
- F59** Words in s. 90 substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002](#) (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(10)** (with s. 63)

91 Enforcement of certain warrants and precepts of sheriff anywhere in Scotland.

- (1) The following may be executed anywhere in Scotland—
- (a) a warrant for execution contained in an extract of a decree granted by a sheriff;
 - (b) a warrant for execution inserted in an extract of a document registered in sheriff court books;
 - (c) a summary warrant;
 - (d) a warrant of a sheriff for arrestment on the dependence of an action or in security;
 - (e) a precept (issued by a sheriff clerk) of arrestment in security of a liquid debt the term of payment of which has not arrived.
- (2) A warrant or precept mentioned in subsection (1) above may be executed by a sheriff officer of—
- (a) the court which granted it; or
 - (b) the sheriff court district in which it is to be executed.

PART VII

MISCELLANEOUS AND GENERAL

92 General provision relating to liability for expenses in court proceedings.

- (1) Subject to subsection (2) below, a debtor shall not be liable to a creditor, nor a creditor to a debtor, for any expenses incurred by the other party in connection with an application, any objections to an application, or a hearing, under any provision of this Act.
- (2) If—
- (a) an application under any provision of this Act is frivolous;
 - (b) such an application is opposed on frivolous grounds; or
 - (c) a party requires a hearing under any provision of this Act to be held on frivolous grounds,
- the sheriff may award a sum of expenses, not exceeding £25 or such amount as may be prescribed in regulations made by the Lord Advocate, against the party acting frivolously in favour of the other party.
- (3) Subsections (1) and (2) above do not apply to—

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- (a) expenses of pouncing and sale for which provision is made in Schedule 1 to this Act or paragraphs 25 to 34 of Schedule 5 to this Act; or
- (b) expenses incurred—
 - (i) under section 1 of this Act;
 - (ii) in connection with an appeal under any provision of this Act; or
 - (iii) by or against a person other than the debtor or a creditor in connection with an application under any provision of this Act.

93 Recovery from debtor of expenses of certain diligences.

(1) Subject to subsections (3) and (5) below, any expenses chargeable against the debtor which are incurred in—

- (a) ^{F60}
- (b) the service of an earnings arrestment schedule (including the service of the charge preceding it);
- (c) an application for, or for inclusion in, a conjoined arrestment order under section 60(2) or 62(5) of this Act,

shall be recoverable from the debtor by the diligence concerned but not by any other legal process, and any such expenses which have not been recovered by the time the diligence is completed or otherwise ceases to have effect shall cease to be chargeable against the debtor.

(2) Subject to subsection (5) below, any expenses chargeable against the debtor which are incurred in the service of a schedule of arrestment and in an action of furthcoming or sale shall be recoverable from the debtor out of the arrested property; and the court shall grant a decree in the action of furthcoming for payment of the balance of any expenses not so recovered.

(3) ^{F61}

(4) Subsection (5) below applies where any diligence mentioned in subsection (1) or (2) above is—

- (a) recalled under section 9(2)(a), (d) or (e) of this Act in relation to a time to pay order;
- (b) in effect immediately before the date of sequestration (within the meaning of the ^{M36}Bankruptcy (Scotland) Act 1985) of the debtor's estate;
- (c) in effect immediately before the presentation of a petition for an administration order under Part II of the ^{M37}Insolvency Act 1986;
- (d) in effect against property of the debtor immediately before a floating charge attaches to all or part of that property under section 53(7) or 54(6) of that Act;
- (e) in effect immediately before the commencement of the winding up, under Part IV or V of that Act, of the debtor;
- (f) rendered unenforceable by virtue of the creditor entering into a composition contract or acceding to a trust deed for creditors or by virtue of the subsistence of a protected trust deed within the meaning of Schedule 5 to the ^{M38}Bankruptcy (Scotland) Act 1985; or
- (g) recalled by a conjoined arrestment order.

(5) Where this subsection applies—

- (a) the expenses of the diligence which were chargeable against the debtor shall remain so chargeable; and

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- (b) if the debtor's obligation to pay the expenses is not discharged under or by virtue of the time to pay order, sequestration, administration order, receivership, winding up, composition contract, trust deed for creditors or conjoined arrestment order, those expenses shall be recoverable by further diligence in pursuance of the warrant which authorised the original diligence.
- (6) The expenses incurred in the execution of a current maintenance arrestment shall be recoverable by any diligence other than a current maintenance arrestment, and shall be so recoverable in pursuance of the warrant which authorised the current maintenance arrestment.

Textual Amendments

- F60** S. 93(1)(a) repealed (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(11)(a)** (with s. 63)
- F61** S. 93(3) repealed (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(11)(b)** (with s. 63)

Marginal Citations

- M36** 1985 c. 66.
- M37** 1986 c. 45.
- M38** 1985 c. 66.

94 Ascription of sums recovered by diligence or while diligence is in effect.

- (1) This section applies to any sums recovered by any of the following diligences—
- (a) ^{F62}
 - (b) an earnings arrestment;
 - (c) an arrestment and action of furthcoming or sale; or
 - (d) a conjoined arrestment order in so far as it enforces an ordinary debt,
- or paid to account of the sums recoverable by the diligence while the diligence is in effect.
- (2) A sum to which this section applies shall be ascribed to the following in the order in which they are mentioned—
- (a) the expenses already incurred in respect of—
 - (i) the diligence;
 - (ii) any previous diligence the expenses of which are chargeable against and recoverable from the debtor under section 93(5) of this Act;
 - (iii) the execution of a current maintenance arrestment;
 - (b) any interest, due under the decree or other document on which the diligence proceeds, which has accrued at the date of execution of the ^{F63} . . . earnings arrestment or arrestment, or in the case of an ordinary debt included in a conjoined arrestment order which has accrued at the date of application under section 60(2) or 62(5) of this Act;
 - (c) any sum (including any expenses) due under the decree or other document, other than any expenses or interest mentioned in paragraphs (a) and (b) above.

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Textual Amendments

- F62** S. 94(1)(a) repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, [Sch. 3 Pt. 1 para. 17\(12\)\(a\)](#) (with s. 63)
- F63** Word in s. 94(2)(b) repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, [Sch. 3 Pt. 1 para. 17\(12\)\(b\)](#) (with s. 63)

95 Certain diligences terminated by payment or tender of full amount owing.

(1) Any of the following diligences—

- (a) ^{F64}
- (b) an earnings arrestment;
- (c) an arrestment and action of furthcoming or sale,

shall cease to have effect if the full amount recoverable thereby is paid to the creditor, an officer of court, or any other person who has authority to receive payment on behalf of the creditor, or is tendered to any of those persons and the tender is not accepted within a reasonable time.

(2) Any rule of law whereby any diligence mentioned in subsection (1) above ceases to have effect on payment or tender of the sum due under the decree or other document is hereby abolished.

Textual Amendments

- F64** S. 95(1)(a) repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, [Sch. 3 Pt. 1 para. 17\(13\)](#) (with s. 63)

96 Provisions to assist debtor in proceedings under Act.

(1) No fees shall be payable by a debtor in connection with—

- (a) any application by him;
- (b) objections by him to an application by any other person; or
- (c) a hearing held,

under any provision of this Act, to any officer of any office or department connected with the Court of Session or the sheriff court the expenses of which are paid wholly or partly out of the Consolidated Fund or out of money provided by Parliament.

(2) The sheriff clerk shall, if requested by the debtor—

- (a) provide him with information as to the procedures available to him under this Act; and
- (b) without prejudice to subsection (2) of section 6 of this Act, assist him in the completion of any form required in connection with any proceedings under this Act,

but the sheriff clerk shall not be liable for any error or omission by him in performing the duties imposed on him by this subsection or that subsection.

97

In relation to any proceedings before the sheriff under any provision of this Act, the power conferred on the Court of Session by section 32 of the ^{M39}Sheriff Courts

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(Scotland) Act 1971 (power of Court of Session to regulate civil procedure in sheriff court) shall extend to the making of rules permitting a party to such proceedings, in such circumstances as may be specified in the rules, to be represented by a person who is neither an advocate nor a solicitor.

Marginal Citations

M39 1971 c. 58.

98

At the end of Part II of Schedule 2 to the ^{M40}Legal Aid (Scotland) Act 1986 (proceedings for which civil legal aid shall not be available) there shall be added the following paragraphs—

“4 Subject to paragraph 5 below, civil legal aid shall not be available in relation to proceedings at first instance under the Debtors (Scotland) Act 1987, other than proceedings in connection with an application under section 1(1) or 3(1) of that Act to a Lord Ordinary or to the sheriff in an ordinary cause.

5 Nothing in paragraph 4 above shall preclude any third party to proceedings under the Debtors (Scotland) Act 1987 from obtaining legal aid in connection with those proceedings.”.

Marginal Citations

M40 1986 c. 47.

99

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F65

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Textual Amendments

F65 S. 99 repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, [Sch. 3 Pt. 1 para. 17\(14\)](#) (with s. 63)

100

(1) An obligation ad factum praestandum which is contained in a document registered in the Books of Council and Session or in sheriff court books shall not by virtue of that registration be enforceable by imprisonment.

(2) A charge for the purpose of enforcing an obligation ad factum praestandum which is contained in an extract of a decree or of a document registered as aforesaid shall not be competent.

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101

It shall not be competent for a creditor to bring an action of adjudication for debt (other than an action under section 23(5) of the ^{M41}Conveyancing (Scotland) Act 1924) to enforce a debt payable under a liquid document of debt unless—

- (a) the debt has been constituted by decree; or
- (b) the debt is a debitum fundi; or
- (c) the document of debt or, if the document is a bill of exchange or a promissory note, a protest of the bill or note, has been registered for execution in the Books of Council and Session or in sheriff court books.

Marginal Citations

M41 1924 c. 27.

102 Procedure in diligence proceeding on extract of registered document etc.

- (1) The Court of Session may by Act of Sederunt—
 - (a) regulate and prescribe the procedure and practice in; and
 - (b) prescribe the form of any document to be used in, or for the purposes of, diligence of a kind specified in subsection (2) below.
- (2) The diligences referred to in subsection (1) above are diligences proceeding—
 - (a) on an extract of a document which has been registered for execution in the Books of Council and Session or in sheriff court books; or
 - (b) on an order or a determination which by virtue of any enactment is to be treated as if it were so registered.

103 Appeals.

- (1) Subject to subsection (9) below and sections ^{F66}. . . , 50(2), 55(4), 60(8), 62(9) and 66(9) of this Act ^{F66}. . . , an appeal may be made against any decision of the sheriff under this Act but only on a question of law and with the leave of the sheriff; and section 38 of the ^{M42}Sheriff Courts (Scotland) Act 1971 (appeal in summary causes) shall not apply to any appeal or any further appeal taken under this Act.
- (2) Any appeal against a decision of the sheriff under subsection (1) above must be made within a period of 14 days from the date when leave to appeal against the decision was granted.
- (3) An appeal may be made against any decision of the Lord Ordinary on an application under section 1(1) or 3(1) of this Act but only on a question of law and with the leave of the Lord Ordinary.
- (4) Subject to subsections (6) and (7) below, any decision of the sheriff or of the Lord Ordinary under this Act shall take effect as soon as it is made and shall remain in effect unless and until it is reversed on appeal and either—
 - (a) the period allowed for further appeal has expired without an appeal being made; or
 - (b) if such a further appeal has been made, the matter has been finally determined in favour of the reversal of the sheriff's or Lord Ordinary's decision.

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- (5) No decision reversing a decision of the sheriff or Lord Ordinary under this Act shall have retrospective effect.
- (6) A decision or order of the sheriff under any provision of this Act mentioned in subsection (7) below shall not take effect—
- (a) until the period for leave to appeal specified in rules of court has expired without an application for leave having been made;
 - (b) where an application for leave to appeal is made, until leave has been refused or the application has been abandoned;
 - (c) where leave to appeal has been granted, until the period for an appeal has expired without an appeal being made; or
 - (d) where an appeal against the decision is made, until the matter has been finally determined or the appeal has been abandoned.
- (7) The provisions of this Act referred to in subsection (6) above are—
- (a) F67
 - (b) F67
 - (c) F67
 - (d) F68
 - (e) F68
 - (f) F68
 - (g) F69
 - (h) F69
 - (j) F69
 - (k) section 50(1) except in so far as it relates to orders declaring that an arrestment is invalid or has ceased to have effect;
 - (l) section 50(4);
 - (m) section 55(1) except in so far as it relates to orders declaring that an arrestment is invalid or has ceased to have effect;
 - (n) section 55(6);
 - (o) section 65(2);
 - (p) section 66(3);
 - (q) F70
- (8) A court to which an appeal under this Act or a further appeal is made may—
- (a) before it disposes of the appeal, make such interim order; and
 - (b) on determining the appeal, make such supplementary order, as it thinks necessary or reasonable in the circumstances.
- (9) This section does not apply to any decision of a court under Part V of this Act.

Textual Amendments

- F66** Words in [s. 103\(1\)](#) repealed (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp17), s. 61, {Sch. 3 Pt. 1 para. 17(15)(a)} (with s. 63)
- F67** [S. 103\(7\)\(a\)-\(j\)](#) repealed (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp17), s. 61, {Sch. 3 Pt. 1 para. 17(15)(b)} (with s. 63)
- F68** [S. 103\(7\)\(a\)-\(j\)](#) repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, [Sch. 3 Pt. 1 para 17\(15\)\(b\)](#) (with s. 63)

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F69 S. 103(7)(a)-(j) repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(15)(b)** (with s. 63)

F70 S. 103(7)(q) repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(5)(b)** (with s. 63)

Marginal Citations
M42 1971 c. 58.

104 Regulations.

- (1) Regulations under this Act shall be made by statutory instrument and shall, ^{F71} . . . , be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) ^{F72}

Textual Amendments

F71 Words in s. 104(1) repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt 1 para. 17(16)(a)** (with s. 63)

F72 S. 104(2) repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(16)(b)** (with s. 63)

105 Application to Crown.

Without prejudice to the Crown ^{M43}Proceedings Act 1947, this Act shall bind the Crown acting in its capacity as a creditor or employer.

Marginal Citations
M43 1947 c. 44.

106 Interpretation.

In this Act—

- “current maintenance” has the meaning given to it in section 73(1) of this Act;
- “earnings” has the meaning given to it in section 73(2) of this Act;
- “employer” has the meaning given to it in section 73(1) of this Act;
- ^{F73}
- “maintenance” means periodical sums payable under a maintenance order;
- “maintenance order” means—

- (a) an order granted by a court in Scotland for payment of a periodical allowance on divorce or on the granting of a declarator of nullity of marriage, or for alimony;
- (b) an order under section 43 or 44 of the ^{M44}National Assistance Act 1948, section 23 or 24 of the ^{M45}Ministry of Social Security Act 1966, section 80 or 81 of the ^{M46}Social Work (Scotland) Act 1968, section 11(3) of the ^{M47}Guardianship Act 1973, section 18 or 19 of the ^{M48}Supplementary

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- Benefits Act 1976, section 50 or 51 of the ^{M49}Child Care Act 1980 or section 24 or 25 of the ^{M50}Social Security Act 1986;
- (c) an order of a court in England and Wales or Northern Ireland registered in Scotland under Part II of the ^{M51}Maintenance Orders Act 1950;
 - (d) a provisional order of a reciprocating country which is confirmed by a court in Scotland under Part I of the ^{M52}Maintenance Orders (Reciprocal Enforcement) Act 1972;
 - (e) an order of a reciprocating country which is registered in Scotland under that Part of that Act;
 - (f) an order registered in Scotland under Part II, or under an Order in Council made in pursuance of Part III, of that Act;
 - (g) an order registered in Scotland under section 5 of the ^{M53}Civil Jurisdiction and Judgments Act 1982; ^{F74} . . .
 - (h) an alimentary bond or agreement (including a document providing for the maintenance of one party to a marriage by the other after the marriage has been dissolved or annulled)—
 - (i) registered for execution in the Books of Council and Session or sheriff court books; or
 - (ii) registered in Scotland under an Order in Council made under section 13 of the Civil Jurisdiction and Judgments Act 1982;
- [^{F75}or
- (j) a [^{F76}maintenance assessment][^{F76}maintenance calculation] within the meaning of the Child Support Act 1991.]
- “net earnings” has the meaning given to it in section 73(1) of this Act;
“officer of court” means a messenger-at-arms or a sheriff officer;
“ordinary debt” has the meaning given to it in section 73(1) of this Act;
[^{F77}“summary warrant” means a summary warrant granted under or, as the case may be, by virtue of—
- (a) paragraph 7 of Schedule 2 to the Abolition of Domestic Rates Etc. (Scotland) Act 1987;
 - (b) paragraph 2 of Schedule 8 to the ^{M54}Local Government Finance Act 1992;
 - (c) paragraph 2 of Schedule 10 to the Local Government etc. (Scotland) Act 1994; or
 - (cc) ^{F78}section 121B of the Social Security Administration Act 1992;]
 - (cca) [^{F79}paragraph 2 of schedule 4 to the Water Industry (Scotland) Act 2002 (asp 3);]
 - (d) any of the enactments mentioned in Schedule 4 to this Act;
- ^{F80}
.....

Textual Amendments

- F73** S. 106 (definition of levying authority) repealed (1.4.1993) by [Local Government Finance Act 1992 \(c. 14\), s. 117, Sch. 13 para. 55\(a\), Sch. 14; S.I. 1993/575, art. 2\(c\)](#).
- F74** Word in s. 106 omitted (5.4.1993) by virtue of [Child Support Act 1991 \(c. 48, SIF 20\), s. 58\(13\), Sch. 5 para. 8\(7\)\(a\)](#) (with s. 9(2)); [S.I. 1992/2644, art. 2](#).
- F75** In s. 106, word and para. (j) in the definition of "maintenance order" inserted (5.4.1993) by [Child Support Act 1991 \(c. 48, SIF 20\), s. 58\(13\), Sch. 5 para. 8\(7\)\(b\)](#) (with s. 9(2)); [S.I. 1992/2644, art. 2](#).
- F76** Words in s. 106 substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\), s. 86\(1\)\(a\)\(2\), Sch. 3 para. 7\(3\)](#) (with s. 83(6)); [S.I. 2003/192, art. 3, Sch.](#)

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- F77** Definition of “summary warrant” in s. 106 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 151(3)**; S.I. 1996/323, **art. 4(1)(c)**
- F78** Para. (cc) in definition of “summary warrant” in s. 106 inserted (6.4.1999) by 1998 c. 14, s. 86(1), **Sch. 7 para. 13**, S.I. 1999/526, art. 2(3)(4)
- F79** S. 106: in definition of “summary warrant” para. (cca) inserted (1.4.2002) by **Water Industry (Scotland) Act 2002 (asp 3)**, s. 71(2), **Sch. 7 para. 17(3)** (with s. 67); S.S.I. 2002/118, **art. 2(3)**
- F80** S. 106: definition of “warrant of sale” repealed (30.12.2002) by **Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)**, s. 61, **Sch. 3 Pt. 1 para. 17(17)**

Marginal Citations

- M44** 1948 c. 29.
M45 1966 c. 20.
M46 1968 c. 49.
M47 1973 c. 29.
M48 1976 c. 71.
M49 1980 c. 5.
M50 1986 c. 50.
M51 1950 c. 37.
M52 1972 c. 18.
M53 1982 c. 27.
M54 1992 c. 14.

107 Financial provisions.

- (1) Any sums recovered by the Lord Advocate under section 79(6)(b) or 80(9) of this Act shall be paid by him into the Consolidated Fund.
- (2) There shall be paid out of money provided by Parliament—
 - (a) any fees or outlays payable under section 78(4) or 79(4) of this Act;
 - (b) any expenses payable by the Lord Advocate under section 79(6)(a) of this Act; and
 - (c) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

108 Minor and consequential amendments, transitional provisions and repeals.

- (1) The amendments specified in Schedule 6 to this Act, being minor amendments or amendments consequential on the provisions of this Act, shall have effect.
- (2) The transitional provisions contained in Schedule 7 to this Act shall have effect.
- (3) The enactments mentioned in columns 1 and 2 of Schedule 8 to this Act are repealed to the extent specified in column 3 thereof.

109 Short title, commencement and extent.

- (1) This Act may be cited as the Debtors (Scotland) Act 1987.
- (2) This Act (except this section) shall come into force on such day as the Lord Advocate may by order made by statutory instrument appoint, and different days may be so appointed for different purposes and for different provisions.
- (3) This Act extends to Scotland only.

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Subordinate Legislation Made

P1 Power of appointment conferred by s. 109(2) fully exercised: [S.I. 1987/1838](#), 1988/1818

Status:

Point in time view as at 03/03/2003.

Changes to legislation:

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