



# Debtors (Scotland) Act 1987

## 1987 CHAPTER 18

### 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.

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- (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
  - (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

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- 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
    - (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—

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- (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 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.
- (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 payday 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

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- (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 £5 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 65(1A) of the Income and Corporation Taxes Act 1970.

#### **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 the aggregate of 3 instalments 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 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.

## **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—

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- (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
  - (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).

## **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.

*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.

- (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.

## **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.

### **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 £5 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 65(1 A) of the Income and Corporation Taxes Act 1970.

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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.

#### **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—
- (a) the debtor;
  - (b) a creditor whose debt is being enforced by the order;
  - (c) the employer; or
  - (d) the sheriff clerk.
- (2) Without prejudice to subsection (6) below, the sheriff, when making an order under subsection (1) above, may order—
- (a) the reimbursement of any payment made in the operation of the conjoined arrestment order 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 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.
- (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 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—
    - (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.

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- (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.

#### *Supplementary provisions*

#### **67 Equalisation of diligences not to apply**

Paragraph 24 of Schedule 7 to the 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.

#### **68 Diversion of arrested earnings to Secretary of State**

After section 25 of the Social Security Act 1986 there shall be inserted the following section—

##### **“25A Diversion of arrested earnings to Secretary of State.**

- (1) Where in Scotland a creditor who is enforcing a maintenance order or an alimentary bond or agreement by a current maintenance arrestment or a conjoined arrestment order is in receipt of income support, the creditor may in writing authorise the Secretary of State to receive any sums payable under the arrestment or order until the creditor ceases to be in receipt of income support or in writing withdraws the authorisation, whichever occurs first.
- (2) On intimation by the Secretary of State—
  - (a) to the employer operating the current maintenance arrestment; or



(b) to the sheriff clerk operating the conjoined arrestment order;  
of an authorisation under subsection (1) above, the employer or sheriff clerk shall, until notified by the Secretary of State that the authorisation has ceased to have effect, pay to the Secretary of State any sums which would otherwise be payable under the arrestment or order to the creditor.”.

## **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;
    - (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;

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- (iii) that the debtor's estate has been sequestered; 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 sequestered; or
  - (iv) from the creditor that he has abandoned the arrestment.

## **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.

## **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.

## **72 Effect of sequestration on diligence against earnings**

- (1) This section shall have effect where a debtor's estate is sequestered.
- (2) Any existing earnings arrestment, current maintenance arrestment or, subject to subsection (3) below, conjoined arrestment order 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.

- (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.
- (5) In this section "date of sequestration" has the same meaning as in section 12(4) of the Bankruptcy (Scotland) Act 1985.

### **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;

"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 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 Civil Jurisdiction and Judgments 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 Social Security Act 1975;

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(c) amounts deductible under any enactment, or in pursuance of a request in writing by the debtor, for the purposes of a superannuation scheme within the meaning of the Wages Councils Act 1979;

"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;

"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 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 assignment of which is precluded by section 203 of the Army Act 1955 or section 203 of the Air Force Act 1955, or any like sum payable to

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- a member of the naval forces of the Crown, or to a member of any women's service administered by the Defence Council;
  - (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);
  - (d) any occupational pension payable under any enactment which precludes the assignation 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 Social Security Pensions Act 1975;
  - (g) a redundancy payment within the meaning of section 81(1) of the Employment Protection (Consolidation) Act 1978.
- (4) In subsection (3)(c) above—
- (a) "seaman" has the same meaning as in section 742 of the Merchant Shipping Act 1894;
  - (b) "fishing boat" has the meaning given to it in section 370 of that Act as modified by section 744 thereof.
- (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.