



# Debtors (Scotland) Act 1987

## 1987 CHAPTER 18

### PART III

#### DILIGENCE AGAINST EARNINGS

##### *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,

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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

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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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