



# Debtors (Scotland) Act 1987

## 1987 CHAPTER 18

### PART III

#### DILIGENCE AGAINST EARNINGS

##### *Supplementary provisions*

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

Paragraph 24 of Schedule 7 to the <sup>M1</sup>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**

**M1** 1985 c. 66.

#### **F1 68** .....

#### **Textual Amendments**

**F1** S. 68 repealed (1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\), ss. 3, 7\(2\), Sch.1](#) (subject as mentioned (6.3.1992) in [Local Government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

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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;
  - (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

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(iv) from the creditor that he has abandoned the arrestment.

## **F<sup>2</sup>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 poinding except where such service is by post.

### **Textual Amendments**

- F2** 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.

## **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 [<sup>F3</sup>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.

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- [<sup>F4</sup>(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.
- [<sup>F5</sup>(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 [<sup>F6</sup>maintenance assessment][<sup>F6</sup>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 <sup>M2</sup> Bankruptcy (Scotland) Act 1985.

#### Textual Amendments

- F3** 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](#).
- F4** 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](#).
- F5** 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](#).
- F6** 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

- M2** 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;

“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

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- (e) a document or settlement which by virtue of an Order in Council made under section 13 of the <sup>M3</sup>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 <sup>M4</sup>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 [<sup>F7</sup>, 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) [<sup>F8</sup>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;

“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

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- 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 <sup>M5</sup>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 <sup>M6</sup>Army Act 1955 or section 203 of the <sup>M7</sup>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 [<sup>F9</sup>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);
- (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 <sup>M8</sup>Social Security Pensions Act 1975;
- (g) a redundancy payment within the meaning of [<sup>F10</sup>the Employment Rights Act 1996].
- (4) In subsection (3)(c) above—
- (a) “seaman” has the same meaning as in [<sup>F11</sup>section 313 of the Merchant Shipping Act 1995];
- (b) “fishing boat” [<sup>F12</sup>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—

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- (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

- F7** 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](#).
- F8** 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](#).
- F9** Words in s. 73(3) inserted (1.1.1999) by S.I. 1998/3086, [reg. 6\(2\)](#)
- F10** 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)
- F11** 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))
- F12** 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

- M3** 1982 c. 27  
**M4** 1975 c. 14  
**M5** 1892 c. 17.  
**M6** 1955 c. 18.  
**M7** 1955 c. 19.  
**M8** 1975 c. 60.

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