



Debtors (Scotland) Act 1987

1987 CHAPTER 18

[^{F1}PART 3A

ARRESTMENT AND ACTION OF FURTHCOMING

[^{F1}73R Hearing on application under section 73Q for release of property

- (1) At the hearing on an application under section 73Q(2) of this Act, the sheriff shall not make any order without first giving—
 - (a) the creditor;
 - (b) the arrestee; and
 - (c) any other person appearing to the court to have an interest, an opportunity to be heard.
- (2) Subject to subsection (3) below, if the sheriff is satisfied that the arrestment is unduly harsh—
 - (a) to the debtor; or
 - (b) where the debtor is an individual, to any person such as is mentioned in subsection (4) below,the sheriff shall make an order such as is mentioned in section 73Q(2) of this Act.
- (3) Before making an order under subsection (2) above the sheriff shall have regard to all the circumstances including, in a case where the debtor is an individual and funds are attached—
 - (a) the source of those funds; and
 - (b) where the source of those funds is or includes earnings, whether an earnings arrestment, current maintenance arrestment or conjoined arrestment order is in effect in relation to those earnings.
- (4) The persons referred to in subsection (2)(b) above are—
 - (a) a spouse of the debtor;
 - (b) a person living together with the debtor as husband and wife;
 - (c) a civil partner of the debtor;

Status: Point in time view as at 31/10/2009.

Changes to legislation: Debtors (Scotland) Act 1987, Section 73R is up to date with all changes known to be in force on or before 04 August 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)

- (d) a person living with the debtor in a relationship which has the characteristics of the relationship between a husband and wife except that the person and the debtor are of the same sex;
 - (e) a child of the debtor under the age of 16 years, including—
 - (i) a stepchild; and
 - (ii) any child brought up or treated by the debtor or any person mentioned in paragraph (b), (c) or (d) above as a child of the debtor or, as the case may be, that person.
- (5) Where the sheriff refuses to make an order under subsection (2) above, the sheriff may, in a case where funds are attached, make an order requiring a sum determined in the order to be released to the creditor—
- (a) in a case where the period mentioned in section 73J(3) of this Act has not expired, on the expiry of that period; or
 - (b) in any other case, as soon as reasonably practicable after the date on which the order is made.
- (6) Where the sheriff makes an order under this section, the sheriff shall order the debtor to intimate that order to the persons mentioned in subsection (1) above.
- (7) A person aggrieved by a decision of the sheriff under this section may, before the expiry of the period of 14 days beginning with the day on which the decision is made, appeal, on point of law only, to the sheriff principal, whose decision shall be final.]

Textual Amendments

F1 Pt. 3A inserted (1.4.2008 for the insertion of ss. 73A(5), 73B(2), 73C(2), 73E(3), 73F(6), 73G(2), 73H(1)(2), 73M(2)(a), 73Q(3)(a), 73S(1)(2) for specified purposes and for the insertion of s. 73A(2), 22.4.2009 otherwise except for the insertion of s. 73D) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 206**, 227(3) (with s. 223); S.S.I. 2008/115, art. 3(1)(e)(4), sch. 3 (with arts. 4-6, 10, 15) (as amended: (23.2.2009) by S.S.I. 2009/67, art. 7; (31.1.2011) by S.S.I. 2011/31, art. 5(a); and (4.10.2014) by S.S.I. 2014/173, arts. 1(2), 3); S.S.I. 2009/67, art. 3(1)(b) (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))

Status:

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