



# Debtors (Scotland) Act 1987

## 1987 CHAPTER 18

### PART I

#### EXTENSION OF TIME TO PAY DEBTS

##### *Time to pay orders following charge or diligence*

#### **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;
    - [<sup>F1</sup>(ii) an attachment;]
    - (iii) an earnings arrestment;
    - (iv) an adjudication for debt,
    - [<sup>F2</sup>(v) a money attachment;
    - (vi) a land attachment;
    - (vii) a residual attachment,]to enforce payment of the debt concerned.
- (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 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

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- made to a sheriff sitting there who shall so vary or, as the case may be, recall the conjoined arrestment order;
- (c) [<sup>F3</sup>where a notice of land attachment has been registered under section 83(1) (c) of the 2007 Act, shall make an order prohibiting the taking of any steps other than—
- (i) the serving, under subsection (5) of that section, of a copy of the notice; and
  - (ii) the registration, under subsection (6) of that section, of a certificate of service;
- (ca) where a residual attachment order has been made under section 132(2) of the 2007 Act, shall make an order prohibiting the taking of any steps other than the serving, under section 133(1) of the 2007 Act, of a schedule of residual attachment;
- (cb) may make an order recalling an interim attachment;]
- (d) may make an order recalling [<sup>F4</sup>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 [<sup>F5</sup>an interim attachment,][<sup>F6</sup>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[<sup>F7</sup>, the recall of the interim attachment or][<sup>F8</sup>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) [<sup>F9</sup>Subject to subsection (4A) below,] where the sheriff does not exercise the powers conferred on him by subsection [<sup>F10</sup>(2)(cb), (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 [<sup>F11</sup>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.]
- [<sup>F12</sup>(4A) Where, in relation to an arrestment such as is mentioned in subsection (1) of section 73J of this Act, the sheriff does not exercise the power conferred on him by subsection (2) (e) above to recall that arrestment, he shall make an order—
- (a) prohibiting, while the time to pay order is in effect, the release of funds under subsection (2) of section 73J of this Act; and
  - (b) providing that the period during which the time to pay order is in effect shall be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.]
- (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 [<sup>F13</sup>(2)(cb), (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[<sup>F14</sup>, and

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- (c) where any order under subsection (4A) above is made in relation to an arrestment such as is mentioned in section 73J(1) of this Act is in effect, intimate that order to the arrestee.]
- (8) While an order under subsection (4) above is in effect it shall not be competent <sup>F15</sup>...—
- [<sup>F16</sup>(a) to sell articles which have been attached (other than by virtue of section 20(1) or 22(3) of the Debt Arrangement and Attachment (Scotland) Act (asp 17);]
- (b) [<sup>F17</sup>to grant] a decree of furthcoming or sale of arrested property.
- (9) For the purposes of section [<sup>F18</sup>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 [<sup>F19</sup>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—
- (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 <sup>M1</sup>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 [<sup>F20</sup>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 [<sup>F21</sup>an attachment] in any premises, [<sup>F22</sup>another attachment] in those premises.

#### Textual Amendments

- F1** 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)
- F2** S. 9(1)(b)(v)-(vii) inserted (23.11.2009 for specified purposes) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), **sch. 5 para. 16(8)(a)** (with s. 223); S.S.I. 2009/369, art. 3(2)(3), sch. (with art. 4) (which transitional provisions in art. 4 are revoked (31.1.2011) by S.S.I. 2011/31, art. 5(c))
- F3** S. 9(2)(c)-(cb) substituted for s. 9(2)(c) (1.4.2008 for specified purposes) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), **sch. 5 para. 16(8)(b)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (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)
- F4** 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)

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- F5** Words in s. 9(3) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(d)(i)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (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)
- F6** 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)
- F7** Words in s. 9(3) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(d)(ii)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (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)
- F8** 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)
- F9** Words in s. 9(4) inserted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(e)(i)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F10** Words in s. 9(4) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(e)(ii)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (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)
- F11** 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)
- F12** S. 9(4A) inserted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(f)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F13** Words in s. 9(6) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(g)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (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)
- F14** S. 9(7)(c) and word inserted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(h)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F15** Words in s. 9(8) repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 2 (with arts. 4-6, 9, 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)
- F16** S. 9(8)(a) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(i)(i)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (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)
- F17** Words in s. 9(8)(b) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(i)(ii)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (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)
- F18** 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)
- F19** 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)
- F20** 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)
- F21** 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)
- F22** 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)

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**Marginal Citations**

**M1** 1985 c. 66.

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