

DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002

EXPLANATORY NOTES

THE ACT

Part 3 – Attachment of Articles Kept in Dwellinghouses: Special Procedure

Section 47 – Exceptional attachment order

94. [Section 47](#) provides for the granting of an order of court authorising the attachment of non-essential assets, on an exceptional basis, within dwellinghouses. Attachment of articles in dwellinghouses will be competent only where the court is satisfied that exceptional circumstances exist.
95. [Section 47\(2\)](#) provides that, where it is considered that exceptional circumstances exist justifying the granting of an order, assets which are not essential may be auctioned. The procedure for auction will follow that in Part 2.
96. [Section 47\(3\)](#) requires that, when considering whether to make an exceptional attachment order, the sheriff must take account of specified factors. This ensures that an appropriate assessment of individual circumstances is made.
97. [Section 47\(4\)](#) specifies the factors to be taken into account by the court. These include whether money advice has been given to the debtor, whether there is any agreement for settlement of the debt and whether there has been any previous time to pay arrangement. The court must also have regard to the nature of the debt, particularly where it relates to any trade, business or unpaid tax. To assist the court, the debtor will have the opportunity to make a voluntary declaration about his financial circumstances, his ability to pay and any non-essential assets held (and, where they are held, their aggregate value).
98. In taking account of whether the debtor has received money advice the sheriff may, where appropriate, make that opportunity available, if necessary by intervention of a domestic visit for the purposes of providing money advice.