



Debt Arrangement and Attachment (Scotland) Act 2002

2002 asp 17

PART 3

ATTACHMENT OF ARTICLES KEPT IN DWELLINGHOUSES: SPECIAL PROCEDURE

47 **Exceptional attachment order**

- (1) The sheriff may, on an application by the creditor and on being satisfied that there are exceptional circumstances, order that an attachment of non-essential assets of the debtor's kept in any dwellinghouse specified in the application may take place; such an order shall be called an "exceptional attachment order".
- (2) An exceptional attachment order shall—
 - (a) authorise the attachment, removal and auction of non-essential assets of the debtor's which are, at the time when an attachment is executed in pursuance of the order, kept in any dwellinghouse specified in the application for the order;
 - (b) specify a period during which the order is to be executed; and
 - (c) empower the officer to open shut and lockfast places for the purpose of executing the order.
- (3) In considering whether to make such an order the sheriff shall have regard to the matters set out in subsection (4) below.
- (4) Those matters are—
 - (a) the nature of the debt (and, in particular, whether the debt incurred relates to any tax or duty or to any trade or business carried on by the debtor);
 - (b) whether the debtor resides in the dwellinghouse specified in the application;
 - (c) whether the debtor carries on a trade or business in that dwellinghouse;
 - (d) whether money advice has been given to the debtor;
 - (e) whether any direction made under section 1 (time to pay directions) of the Debtors (Scotland) Act 1987 (c. 18), or order made under section 5 (time to pay orders) of that Act, in respect of the debt, or any other debt, has lapsed under section 4 (lapse of time to pay directions) or, as the case may be, section 11 (lapse of time to pay orders), of that Act of 1987;

Status: This is the original version (as it was originally enacted).

- (f) any agreement between the debtor and creditor for the settlement of the debt; and
 - (g) any declaration or representation made, or document lodged, by or on behalf of the debtor which relates to—
 - (i) the existence of any non-essential assets owned by the debtor;
 - (ii) where they exist, their value; or
 - (iii) the debtor's financial circumstances.
- (5) Before deciding whether to make an exceptional attachment order, the sheriff may make—
- (a) an order for a visit to the debtor by a person specified in the order for the purposes of giving money advice to the debtor; or
 - (b) such other order as the sheriff thinks fit.
- (6) The Scottish Ministers may by order modify subsection (4) above so as to—
- (a) add or remove matters to or, as the case may be, from those referred to in that subsection; or
 - (b) vary any of the descriptions of the matters there referred to.