

**Changes to legislation:** There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, Cross Heading: The Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17). (See end of Document for details)

## SCHEDULE 5 MINOR AND CONSEQUENTIAL AMENDMENTS

### *The Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)*

- 30 (1) The 2002 Act is amended as follows.
- (2) In section 10(3) (competence of attachment), for paragraphs (a) and (b) substitute—
- “(a) the debtor has been charged to pay the debt;
  - (b) the period for payment specified in the charge has expired without payment being made; and
  - (c) where the debtor is an individual, the creditor has, no earlier than 12 weeks before taking any steps to execute the attachment, provided the debtor with a debt advice and information package.”
- (3) In section 11 (articles exempt from attachment)—
- (a) in subsection (1), after paragraph (d) insert—  
“(e) any money.”; and
  - (b) after subsection (2) insert—  
“(3) In subsection (1)(e) above, “money” has the same meaning as in section 175 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).”
- (4) After section 13 insert—

### **“13A Schedule of attachment**

- (1) The officer must, immediately after executing an attachment, complete a schedule such as is mentioned in subsection (2) below (in this section, the “attachment schedule”).
- (2) An attachment schedule—
  - (a) must be in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
  - (b) must specify—
    - (i) the articles attached; and
    - (ii) their value, so far as ascertainable.
- (3) The officer must—
  - (a) give a copy of the attachment schedule to the debtor; or
  - (b) where it is not practicable to do so—
    - (i) give a copy of the schedule to a person present at the place where the attachment was executed; or
    - (ii) where there is no such person, leave a copy of it at that place.
- (4) An attachment is executed on the day on which the officer complies with subsection (3) above.”
- (5) In section 14 (procedure for attachment of articles kept outwith dwellinghouses), for “19” substitute “ 19A ”.
- (6) In section 15, the title to that section becomes “ Valuation ”.

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- (7) In section 28(1)(b) (restriction on alteration of arrangements for auctions), for “19” substitute “ 19A ”.
- (8) In section 32 (report of auction)—
- (a) in subsection (2)(a), after sub-paragraph (iii) insert—
- “(iiiia) any sums paid by the debtor to account of the sum recoverable;”;
- <sup>F1</sup>(b) .....
- (9) In section 33 (audit of report of auction)—
- (a) in subsection (7), for the words from “providing” to the end substitute—
- “(a) giving—
- (i) the debtor;
- (ii) the creditor; and
- (iii) any third party who claims ownership (whether alone or in common with the debtor) of any attached article,
- an opportunity to make representations; or
- (b) holding a hearing.”;
- (b) in subsection (8), for “debtor” substitute “ persons mentioned in subsection (7)(a) above. ”.
- (10) In section 34 (articles belonging to third parties), in subsection (1)(b)(ii), for “so satisfied” substitute “ satisfied that the claim is valid ”.
- (11) In section 40 (recovery from debtor of expenses of attachment)—
- (a) in subsection (3)—
- (i) in paragraph (a), for “9(2)(a), (d) or (e)” substitute “ 9(2)(d) or (10)(b) ”; and
- (ii) in paragraph (c), for “presentation of a petition for an administration order” substitute “ appointment of an administrator ”; and
- (b) in subsection (4)(b), for “administration order” substitute “ appointment ”.
- (12) In section 41(2)(a) (ascription of sums recovered by attachment), after sub-paragraph (i) insert—
- “(ia) any previous interim attachment the expenses of which are chargeable against and recoverable from the debtor under section 9Q(1)(a) of this Act;”.
- <sup>F2</sup>(13) .....
- (14) In section 60(2) (application of the Act to sequestration for rent and arrestment) for the words “such a” substitute “ the landlord's ”.
- (15) In schedule 1, in paragraph 1, before “2” insert “ 1A, ”.

#### Textual Amendments

- F1** Sch. 5 para. 30(8)(b) repealed (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 Pt. 2](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

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- F2** Sch. 5 para. 30(13) repealed (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 Pt. 2](#); [S.S.I. 2011/30](#), art. 3(1)(3), Sch. 1

#### Commencement Information

- I1** Sch. 5 para. 30 not in force at Royal Assent see s. 227; Sch. 5 para. 30(1)(5)-(8)(a)(15) in force for certain purposes and Sch. 5 para. 30(10)(11)(a)(ii)(b) in force at 31.3.2007 by [S.S.I. 2007/82](#), [art. 4\(e\)](#); Sch. 5 para. 30(2)(12)(14) in force and Sch. 5 para. 30(1)(4) in force for certain purposes at 1.4.2008 by [S.S.I. 2008/115](#), [art. 3\(2\)](#){(4)}, Schs. 1, 3 (subject to art. 3(3) and with arts. 4-6, 10); Sch. 5 para. 30(1) in force for certain further purposes and Sch. 5 para. 30(4)(9)(11)(a)(i) in force at 22.4.2009 by [S.S.I. 2009/67](#), [art. 3\(2\)\(3\)](#), [Sch. 1 para. 8](#) (with transitional modifications and savings in [arts. 4-6](#)); Sch. 5 para. 30(1) in force for certain purposes and Sch. 5 para. 30(3) in force at 23.11.2009 by [S.S.I. 2009/369](#), [art. 3\(2\)\(3\)](#), [Sch. 1 para. 17](#) (with transitional modifications in [art. 4](#))

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