
Changes to legislation: Bankruptcy and Diligence etc. (Scotland) Act 2007, Cross Heading: The Debtors (Scotland) Act 1987 (c. 18) is up to date with all changes known to be in force on or before 19 January 2019. 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)

SCHEDULE 5 MINOR AND CONSEQUENTIAL AMENDMENTS

The Debtors (Scotland) Act 1987 (c. 18)

- 16 (1) The 1987 Act is amended as follows.
- (2) In section 2 (effect of time to pay direction on diligence)—
- (a) in subsection (1)(b), after sub-paragraph (iv) insert—
 - “(v) a money attachment;
 - (vi) a land attachment;
 - (vii) a residual attachment.”;
 - (b) in subsection (2), at beginning insert “ Subject to subsection (2A) below, ”;
 - (c) after that subsection insert—
 - “(2A) Where the arrestment which remains in effect as mentioned in subsection (2) above is an arrestment such as is mentioned in subsection (1) of section 73J of this Act, while the time to pay direction is in effect—
 - (a) it shall not be competent to release funds under subsection (2) of that section; and
 - (b) the period during which the direction is in effect shall be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.
 - (2B) While a time to pay direction is in effect an interim attachment shall remain in effect—
 - (a) if it has not been recalled; or
 - (b) to the extent that it has not been restricted under subsection (3) below.”;
 - (d) in subsection (3), after “restrict” insert “ an interim attachment or ”;
 - (e) in subsection (4)—
 - (i) after “If” insert “ an interim attachment or ”; and
 - (ii) after “restriction of the” insert “ interim attachment or ”; and
 - (f) after subsection (5) insert—
 - “(5A) Where—
 - (a) a time to pay direction is recalled or ceases to have effect as mentioned in subsection (5) above; and
 - (b) an arrestment such as is mentioned in section 73J(1) of this Act is in effect,the clerk of court or sheriff clerk shall intimate the fact of that recall or cessation to the arrestee.”.
- (3) In section 3 (variation and recall of time to pay direction and arrestment)—
- (a) in subsection (1)(a), after “reasonable” insert “ in all the circumstances ”;
 - (b) in subsection (1)(b)—
 - (i) after “if” insert “ an interim attachment or ”;
 - (ii) after “restrict the” insert “ interim attachment or ”; and
 - (c) in subsection (2), after “If” insert “ an interim attachment or ”.

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- (4) In section 5 (time to pay orders)—
- (a) in subsection (5), for paragraph (a) substitute—
 - “(a) articles belonging to the debtor have been attached and notice of an auction given under section 27(4) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) but no auction has yet taken place;
 - (aa) money owned by the debtor has been attached and removed;”;
 - (b) for paragraph (c) and the word “or” immediately preceding it substitute—
 - “(c) land owned by the debtor has been attached and an order under section 97(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (in this Part, the “2007 Act”) granting warrant for sale of the land has been made but that warrant has not yet been executed; or
 - (d) property owned by the debtor has been attached by residual attachment and a satisfaction order under section 136(2) of the 2007 Act has been made but not yet executed;”;
 - (c) after subsection (5) insert—
 - “(5A) Where, in respect of a debt to which this section applies, an arrestment such as is mentioned in subsection (1) of section 73J of this Act has been executed, the sheriff may make a time to pay order in respect of that debt only if less than 8 weeks of the period mentioned in subsection (3) of that section have expired.”.
- (5) In section 6 (application for time to pay order), in subsection (6), leave out paragraph (b) and the word “and” immediately preceding it and insert—
- “(b) serve on—
 - (i) the creditor; and
 - (ii) where an arrestment such as is mentioned in section 73J(1) of this Act is in effect, the arrestee,
 a copy of the interim order; and
 - (c) serve on the creditor a copy of any order under subsection (4) above.”.
- (6) In section 7 (disposal of application for time to pay order), in subsection (4)(a), for “and the creditor” substitute “, the creditor and, where an arrestment such as is mentioned in section 73J(1) of this Act is in effect, the arrestee ”.
- (7) In section 8 (effect of interim order on diligence)—
- (a) in subsection (1)—
 - (i) before paragraph (a) insert—
 - “(za) to attach in execution of the decree any articles which have been attached by interim attachment;”;
 - (ii) in paragraph (a), for “auction any articles which have been attached” substitute “give, in relation to any articles which have been attached, notice of an auction under section 27(4) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) ”;
 - (iii) after paragraph (a) insert—
 - “(aa) to execute a money attachment;”;

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- (iv) in paragraph (c), at the beginning insert “ subject to subsection (1A) below, ”; and
- (v) for paragraph (d) substitute—
 - “(d) subject to subsection (1B) below, to register, under section 83(1)(c) of the 2007 Act, a notice of land attachment;
 - (e) subject to subsection (1C) below, to apply, under section 130(1) of the 2007 Act, for a residual attachment order.”; and
- (b) after subsection (1) insert—
 - “(1A) Where the arrestment mentioned in subsection (1)(c) above is an arrestment such as is mentioned in subsection (1) of section 73J of this Act, while the interim order is in effect—
 - (a) it shall not be competent to release funds under subsection (2) of that section; and
 - (b) the period during which the order is in effect shall be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.
 - (1B) Where, before the interim order is made—
 - (a) a notice of land attachment is registered, it shall not be competent to take any steps other than—
 - (i) serving, under subsection (5) of section 83 of the 2007 Act, a copy of that notice; and
 - (ii) registering, under subsection (6) of that section, a certificate of service; or
 - (b) a land attachment is created, it shall not be competent to make, under section 97(2) of the 2007 Act, an order granting a warrant for sale of the attached land.
 - (1C) Where, before the interim order is made, a residual attachment order has been made, it shall not be competent—
 - (a) to take any steps other than serving, under section 133(1) of the 2007 Act, a schedule of residual attachment; or
 - (b) to make, under section 136(2) of the 2007 Act, a satisfaction order.”.
- (8) In section 9 (effect of time to pay order on diligence)—
 - (a) in subsection (1)(b), after sub-paragraph (iv) insert—
 - “(v) a money attachment;
 - (vi) a land attachment;
 - (vii) a residual attachment.”;
 - (b) in subsection (2), for paragraph (c) substitute—
 - “(c) 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

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- (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;”;
- (c) after subsection (2) insert—
 - “(2A) While a time to pay order is in effect, it shall not be competent in respect of the debt—
 - (a) to make, under section 97(2) of the 2007 Act, an order granting warrant for sale of attached land; or
 - (b) to make, under section 136(2) of the 2007 Act, a satisfaction order.”;
- (d) in subsection (3)—
 - (i) after “If” insert “ an interim attachment, ” and
 - (ii) for “or the recall of” substitute “, the recall of the interim attachment or ”;
- (e) in subsection (4)—
 - (i) at the beginning insert “ Subject to subsection (4A) below, ”; and
 - (ii) for “(2)(d) or (e)” substitute “ (2)(cb), (d) or (e) ”;
- (f) after subsection (4) insert—
 - “(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.”;
- (g) in subsection (6), for “(2)(d) or (e)” substitute “ (2)(cb), (d) or (e) ”;
- (h) in subsection (7), after paragraph (b) insert “; and
 - (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.”; and
- (i) in subsection (8)—
 - (i) for paragraph (a) substitute—
 - “(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);”; and
 - (ii) in paragraph (b), at the beginning insert “ to grant ”.

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- (9) In section 10 (variation and recall of time to pay order and arrestment)—
- (a) in subsection (1)(a), after “reasonable” insert “ in all the circumstances ”;
 - (b) in subsection (1)(b), after “if” insert “ an interim attachment, ”; and
 - (c) in subsection (2), after “If” insert “ an interim attachment, ”.
- (10) In section 13 (saving of creditor's rights and remedies), in the full-out words to subsection (2), for “pounding”, in any place where it occurs, substitute “ attachment ”.
- (11) In section 87(2)(a) (warrant in extract decree to authorise diligence)—
- (a) after “arrestment” insert “ , a land attachment, a residual attachment, a money attachment ”; and
 - (b) after “executing the” insert “ land attachment, residual attachment, money attachment or ”.
- (12) In section 104 (regulations), after “Regulations” insert “ and orders ”.
- (13) In section 105 (application to Crown)—
- (a) the existing words become subsection (1);
 - (b) after “1947” insert “ and subject to subsection (2) below ”; and
 - (c) at the end insert—
“ (2) Section 70B of this Act does not affect Her Majesty in Her private capacity as an employer. ”
- (14) In section 106 (interpretation)—
- (a) after the definition of “current maintenance”, insert—
“ “debt advice and information package” has the meaning given to it in section 47(4) of this Act; ”;
 - (b) after the definition of “employer”, insert—
“ “enactment” includes an Act of the Scottish Parliament and any enactment comprised in subordinate legislation under such an Act; ”;
 - and
 - ^{F1}(c)

Annotations:

Amendments (Textual)

^{F1} Sch. 5 para. 16(14)(c) 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. 16 not in force at Royal Assent see s. 227; Sch. 5 para. 16(2)(d)(e)(3)(7)(a)(i)(8)(d)(e)(ii)(g)(i)(9)(10)(12)(13)(14)(a)(b) in force and Sch. 5 para. 16(1)(2)(c)(4)(a)(8)(b) in force for certain purposes at 1.4.2008 by [S.S.I. 2008/115](#), [art. 3\(2\)](#), [Sch. 1](#) (subject to [art. 3\(3\)](#) and with [arts. 4-6, 10](#)); Sch. 5 para. 16(1) in force for certain purposes and Sch. 5 para. 16(2)(c)(f)(4)(c)(5)(6)(7)(a)(ii)(iv)(b)(8)(e)(i)(f)(h) in force at 22.4.2009 by [S.S.I. 2009/67](#), [art. 3\(2\)\(3\)](#), [Sch. 1 para. 4](#) (with transitional modifications and savings in [arts. 4-6](#)); Sch. 5 para. 16(1)(2)(a)(4)(8)(a)(11)(a)(b) in force for certain purposes and Sch. 5 para. 16(7)(a)(iii) in force at 23.11.2009 by [S.S.I. 2009/369](#), [art. 3\(2\)\(3\)](#), [Sch. 1 para. 10](#) (with transitional modifications in [art. 4](#))

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2018/1125 reg. 8](#)