



# Debtors (Scotland) Act 1987

## 1987 CHAPTER 18

### PART III

#### DILIGENCE AGAINST EARNINGS

##### *Conjoined arrestment orders*

#### **60 Conjoined arrestment orders: general provision**

- (1) This section applies where at the date of an application under subsection (2) below—
  - (a) there is in effect against the earnings of a debtor in the hands of a single employer an earnings arrestment or a current maintenance arrestment or (under section 58 of this Act) both; and
  - (b) a creditor, who may be a creditor already enforcing a debt by an arrestment mentioned above, (referred to in this section as "a qualified creditor") would be entitled, but for section 59(1) or (2) of this Act, to enforce his debt by executing an earnings arrestment or a current maintenance arrestment.
- (2) Subject to subsection (4) below, where this section applies the sheriff, on an application made by a qualified creditor, shall make a conjoined arrestment order.
- (3) A conjoined arrestment order shall—
  - (a) recall any arrestment mentioned in subsection (1)(a) above so that it shall cease to have effect on the coming into effect of the order; and
  - (b) require the employer concerned, while the order is in effect, to deduct a sum calculated in accordance with section 63 of this Act from the debtor's net earnings on any pay-day and to pay it as soon as is reasonably practicable to the sheriff clerk.
- (4) It shall not be competent to make a conjoined arrestment order—
  - (a) where all the debts concerned are maintenance payable by the same debtor to the same person (whether for his own benefit or for another person's) so that, if the existing current maintenance arrestment were abandoned, they could all be enforced under section 52(2)(a) of this Act; or

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- (b) where there are only 2 debts, one an ordinary debt and one maintenance, so that they could be enforced under section 58(1) of this Act (one earnings arrestment and one current maintenance arrestment); or
  - (c) where the same person is the creditor or person to whom any maintenance is payable (as described in paragraph (a) above) in relation to all the debts sought to be enforced by the order.
- (5) A conjoined arrestment order—
- (a) shall come into effect 7 days after a copy of it has been served on the employer under subsection (7) below; and
  - (b) shall remain in effect until a copy of an order recalling the conjoined arrestment order has been served on the employer under section 66(7) of this Act or the debtor ceases to be employed by him.
- (6) A conjoined arrestment order shall be in the form prescribed by Act of Sederunt, and—
- (a) where an ordinary debt is to be enforced, the order shall specify the amount recoverable in respect of the debt under the order; and
  - (b) where current maintenance is to be enforced, the order shall specify the maintenance expressed as a daily rate or, as the case may be, as an aggregate of the daily rates; and subsection (5) of section 51 of this Act shall apply for the purposes of this paragraph as it applies for the purposes of subsection (4) of that section.
- (7) The sheriff clerk shall as soon as is reasonably practicable serve a copy of the conjoined arrestment order on the employer and the debtor, and on the creditor in every arrestment mentioned in subsection (1)(a) above.
- (8) A decision of the sheriff making a conjoined arrestment order shall not be subject to appeal.
- (9) Subject to section 69(4) of this Act, where an employer fails to comply with a conjoined arrestment order—
- (a) the employer shall be liable to pay to the sheriff clerk any sum which he would have paid if he had so complied;
  - (b) the employer shall not be entitled to recover any sum which he has paid to the debtor in contravention of the order; and
  - (c) the sheriff, on an application by the sheriff clerk, may grant warrant for diligence against the employer for recovery of the sums which appear to the sheriff to be due.

## **61 Amount recoverable under conjoined arrestment order**

- (1) Subject to subsection (2) below, the amount recoverable under any conjoined arrestment order in respect of an ordinary debt shall consist of the following sums, in so far as outstanding—
- (a) any sum (including expenses) due under the decree or other document on which the creditor founds or, as the case may be, under section 51(3) of this Act;
  - (b) any interest on that sum which had accrued at the date of execution of the arrestment or, where no arrestment was executed, at the date of the making of the conjoined arrestment order; and

- (c) where an earnings arrestment has been executed, the expenses of executing it and the charge which preceded it.
- (2) Any sum mentioned in subsection (1) above shall be recoverable only if and to the extent that—
  - (a) it was specified in an earnings arrestment schedule in respect of an arrestment which is recalled under subsection (3)(a) of section 60 of this Act; or
  - (b) it is specified in the application under subsection (2) of that section.
- (3) Where an obligation to pay maintenance is enforced by a conjoined arrestment order, no interest shall accrue on any arrears of maintenance which arise while the order is in effect.
- (4) Subject to subsection (5) below, a creditor who makes an application under section 60(2) of this Act shall be entitled to recover as an ordinary debt under any conjoined arrestment order which is made his expenses in connection with the application to the extent that they are specified in the application.
- (5) There shall not be recoverable under subsection (4) above any expenses incurred in serving an earnings arrestment schedule or a current maintenance arrestment schedule on the employer after the date of the application.

## **62 Relationship of conjoined arrestment order with earnings and current maintenance arrestments**

- (1) While a conjoined arrestment order is in effect, it shall not be competent to execute any earnings arrestment or current maintenance arrestment or for the sheriff to grant any other conjoined arrestment order against the earnings of the same debtor payable by the same employer.
- (2) If, while a conjoined arrestment order is in effect, a creditor whose debt is not being enforced by it serves an earnings arrestment schedule or a current maintenance arrestment schedule, against earnings payable to the debtor, on the employer, the employer shall as soon as is reasonably practicable inform that creditor which court made the order.
- (3) If, after an application is made under section 60(2) of this Act for a conjoined arrestment order and before any such order comes into effect, an earnings arrestment or a current maintenance arrestment against earnings payable by the employer to the debtor comes into effect under section 58(1) of this Act—
  - (a) the arrestment shall cease to have effect when the conjoined arrestment order comes into effect; and
  - (b) the employer shall, as soon as is reasonably practicable after the service of a copy of the conjoined arrestment order on him under section 60(7) of this Act, inform the creditor on whose behalf the arrestment was executed which court made the order.
- (4) If an employer fails without reasonable excuse to give information to a creditor under subsection (2) or (3) above, the sheriff, on an application by the creditor, may order the employer to give the required information to the creditor.
- (5) Where a conjoined arrestment order is in effect, the sheriff, on an application made by a creditor whose debt is not being enforced by the order and who, but for the order, would be entitled to enforce his debt by an earnings arrestment or a current maintenance

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arrestment, shall make an order varying the conjoined arrestment order so that the creditor's debt is included among the debts enforced by the conjoined arrestment order; and section 61(1), (2), (4) and (5) of this Act shall apply in relation to an application under this subsection as it applies in relation to an application under section 60 of this Act.

- (6) The sheriff clerk shall as soon as is reasonably practicable serve a copy of an order under subsection (5) above on the debtor, the employer and the other creditors whose debts are being enforced by the conjoined arrestment order.
- (7) Subject to section 69(2) of this Act, an order under subsection (5) above shall come into effect 7 days after a copy of it has been served on the employer under subsection (6) above.
- (8) Section 60(6) of this Act shall apply to a conjoined arrestment order as varied under subsection (5) above as it applies to a conjoined arrestment order mentioned in that section.
- (9) A decision of the sheriff under subsection (5) above shall not be subject to appeal.

### **63 Sum payable by employer under conjoined arrestment order**

- (1) Subject to section 69(3) of this Act, this section shall have effect for the purpose of determining the sum to be deducted on a pay-day and paid to the sheriff clerk under a conjoined arrestment order.
- (2) Where all the debts are ordinary debts, the said sum shall be the sum which the employer would pay under section 47(1) of this Act if the debts were one debt being enforced on the pay-day by an earnings arrestment.
- (3) Where all the debts are current maintenance, the sum shall be whichever is the lesser of the amounts mentioned in paragraphs (a) and (b) of subsection (4) below, less any sum which the debtor is entitled to deduct under any enactment in respect of income tax.
- (4) The amounts referred to in subsection (3) above are—
  - (a) the aggregate of the sums arrived at by multiplying each of the daily rates of maintenance (as specified in the conjoined arrestment order) by the number of days—
    - (i) since the last pay-day when a deduction from earnings was made by the employer under section 51(1) or 60(3)(b) of this Act in respect of the maintenance obligation; or
    - (ii) if there was no such previous pay-day, since the date when the conjoined arrestment order or any order under section 62(5) of this Act varying it came into effect; or
  - (b) any net earnings in so far as they exceed the sum of £5 per day for the number of days mentioned in paragraph (a) above.
- (5) Where one or more of the debts are ordinary debts, and one or more are current maintenance, the sum shall be the aggregate of the following—
  - (a) the sum which the employer would pay under section 47(1) of this Act if the ordinary debt was being enforced on the pay-day by an earnings arrestment (where there is more than one ordinary debt, treating the aggregate amount of them as if it were one debt); and

- (b) in relation to the debts which are current maintenance, the sum which would be payable under subsection (3) above if all the debts were current maintenance and so much of the debtor's net earnings as are left after deduction of the sum provided for in paragraph (a) above were his whole net earnings.
- (6) The sum specified in subsection (4)(b) above may be varied by regulations made by the Lord Advocate and such regulations may make different provision for different cases.
- (7) The sheriff clerk shall intimate to the employer operating a conjoined arrestment order, in the form prescribed by Act of Sederunt, the making of regulations under section 49(7) of this Act or subsection (6) above; and, subject to section 69(1) and (2) of this Act, such regulations shall not apply to the conjoined arrestment order until such intimation.
- (8) An employer operating a conjoined arrestment order in relation to current maintenance shall be entitled, but shall not be required, to apply a change in the small maintenance payments limits before the sheriff clerk intimates the change to the employer in the form prescribed by Act of Sederunt.
- (9) For the purposes of subsection (8) above, the small maintenance payment limits are the rates mentioned in section 65(1 A) of the Income and Corporation Taxes Act 1970.
- (10) Subject to subsection (11) below, the sheriff clerk shall not be entitled to refuse to accept payment by the employer under section 60(3)(b) of this Act which is tendered by cheque or by such other method as may be prescribed by Act of Sederunt.
- (11) If a cheque tendered in payment under section 60(3)(b) of this Act is dishonoured or for any other reason the method of payment used is ineffectual, the sheriff clerk may insist that the payment for which the cheque was tendered and any future payment by the employer under the conjoined arrestment order shall be tendered in cash.

#### **64 Disbursement by sheriff clerk of sums received from employer**

Sums paid to the sheriff clerk under section 60(3)(b) of this Act shall be disbursed by him to the creditors whose debts are being enforced by the conjoined arrestment order in accordance with Schedule 3 to this Act.

#### **65 Operation of conjoined arrestment order**

- (1) The sheriff may make an order determining any dispute as to the operation of a conjoined arrestment order, on an application by—
  - (a) the debtor;
  - (b) a creditor whose debt is being enforced by the order;
  - (c) the employer; or
  - (d) the sheriff clerk.
- (2) Without prejudice to subsection (6) below, the sheriff, when making an order under subsection (1) above, may order—
  - (a) the reimbursement of any payment made in the operation of the conjoined arrestment order which ought not to have been made; or
  - (b) the payment of any sum which ought to have been paid in the operation of the conjoined arrestment order but which has not been paid.

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- (3) An order under subsection (2) above shall require the person against whom it is made to pay interest on the sum to be paid by him under the order at the specified rate from such date as the sheriff shall specify in the order.
- (4) Where an ordinary debt is being enforced by a conjoined arrestment order, the creditor shall, as soon as is reasonably practicable after the debt recoverable has been paid or otherwise extinguished, or the debt has ceased to be enforceable by diligence, intimate that fact to the sheriff clerk.
- (5) Where current maintenance is being enforced by a conjoined arrestment order, the creditor shall, as soon as is reasonably practicable after any obligation to pay such maintenance has ceased or has ceased to be enforceable by diligence, intimate that fact to the sheriff clerk.
- (6) Any sum received by a creditor under a conjoined arrestment order in respect of—
  - (a) an ordinary debt, after the debt has been paid or otherwise extinguished or has ceased to be enforceable by diligence; or
  - (b) current maintenance after the obligation to pay such maintenance has ceased or has ceased to be enforceable by diligence;
 shall be recoverable by the sheriff clerk from the creditor with interest on that sum at the specified rate.
- (7) Without prejudice to subsection (6) above, where the creditor has failed to comply with subsection (4) or (5) above the sheriff may, on an application by the debtor, make an order requiring the creditor to pay to the debtor an amount not exceeding twice the amount recoverable by the sheriff clerk under subsection (6) above.
- (8) Any amount recovered from a creditor by the sheriff clerk under subsection (6) above shall be disbursed by him to the creditors whose debts are being enforced by the conjoined arrestment order in accordance with Schedule 3 to this Act or, if there are no such creditors, shall be paid to the debtor.

## **66 Recall and variation of conjoined arrestment order**

- (1) The sheriff shall make an order recalling a conjoined arrestment order—
  - (a) on an application by any of the persons mentioned in subsection (2) below, if he is satisfied—
    - (i) that the conjoined arrestment order is invalid;
    - (ii) that all the ordinary debts being enforced by the order have been paid or otherwise extinguished or have ceased to be enforceable by diligence and that all the obligations to pay current maintenance being so enforced have ceased or have ceased to be enforceable by diligence; or
    - (iii) that the debtor's estate has been sequestrated; or
  - (b) on an application for recall of the order by all the creditors whose debts are being enforced by the order.
- (2) The persons referred to in subsection (1)(a) above are—
  - (a) the debtor;
  - (b) any creditor whose debt is being enforced by the order;
  - (c) the person on whom a copy of the order or an order varying the order was served under section 60(7) or 62(6) of this Act;

- (d) the sheriff clerk;
  - (e) if the debtor's estate has been sequestrated, the interim trustee appointed under section 13 of the Bankruptcy (Scotland) Act 1985 or the permanent trustee in the sequestration.
- (3) Where the sheriff recalls a conjoined arrestment order under subsection (1) above, he may make such consequential order as appears to him to be necessary in the circumstances.
- (4) Where—
- (a) any ordinary debt being enforced by a conjoined arrestment order is paid or otherwise extinguished or ceases to be enforceable by diligence; or
  - (b) current maintenance is being so enforced and—
    - (i) an order or decree comes into effect which varies, supersedes or recalls the maintenance order which is being enforced; or
    - (ii) the obligation to pay maintenance has ceased or has ceased to be enforceable in Scotland,
- the sheriff, on an application by the debtor, any creditor whose debt is being enforced by the conjoined arrestment order, the employer or the sheriff clerk, may make an order varying the conjoined arrestment order appropriately.
- (5) In the case of an order mentioned in paragraph (c), (e), (f) or (g) of the definition of "maintenance order" in section 106 of this Act, the reference in subsection (4)(b)(i) above to the coming into effect of an order shall be construed as a reference to the registration of the order in Scotland.
- (6) The sheriff may vary a conjoined arrestment order to give effect to a request by a creditor whose debt is being enforced by the order that it should cease to be so enforced.
- (7) The sheriff clerk shall as soon as is reasonably practicable serve a copy of any order under subsection (1), (3), (4) or (6) above on the debtor, the employer (or, where he is not the employer, the person mentioned in subsection (2)(c) above), any creditor whose debt is being enforced by the conjoined arrestment order and, if the conjoined arrestment order has been recalled on the ground of the sequestration of the debtor's estate, the interim trustee or the permanent trustee in the sequestration, if known to the sheriff clerk.
- (8) Subject to section 103(6) of this Act, an order under subsection (3) above shall not come into effect until a copy of the order has been served on the employer under subsection (7) above.
- (9) An order under subsection (1) above shall not come into effect until a copy of the order has been served on the employer under subsection (7) above and shall not be subject to appeal.
- (10) An order under subsection (4) or (6) above shall come into effect 7 days after a copy of the order has been served on the employer under subsection (7) above.