



Debtors (Scotland) Act 1987

1987 CHAPTER 18

PART VI

WARRANTS FOR DILIGENCE AND CHARGES FOR PAYMENT

87 Effect of warrants for diligence in extract decrees and other documents

- (1) Every extract of a decree for the payment of money, or among other things for the payment of money, which is pronounced by—
 - (a) the Court of Session;
 - (b) the High Court of Justiciary; or
 - (c) the Court of Teinds,shall contain a warrant in the form prescribed by Act of Sederunt or, as the case may be, by Act of Adjournal.
- (2) The warrant referred to in subsection (1) above shall have the effect of authorising—
 - (a) in relation to an ordinary debt, the charging of the debtor to pay to the creditor within the period specified in the charge the sum specified in the extract and any interest accrued on the sum and, in the event of failure to make such payment within that period, the execution of an earnings arrestment and the poinding of articles belonging to the debtor and, if necessary for the purpose of executing the poinding, the opening of shut and lockfast places;
 - (b) in relation to an ordinary debt, an arrestment other than an arrestment of the debtor's earnings in the hands of his employer; and
 - (c) if the decree consists of or includes a maintenance order, a current maintenance arrestment in accordance with Part III of this Act.
- (3) In section 7(1) of the Sheriff Courts (Scotland) Extracts Act 1892 (import of the warrant for execution), for the words from "it shall" to the end there shall be substituted the following words—

“the said warrant shall have the effect of authorising—

 - (a) in relation to an ordinary debt within the meaning of the Debtors (Scotland) Act 1987, the charging of the debtor to pay to the creditor

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within the period specified in the charge the sum specified in the extract and any interest accrued on the sum and, in the event of failure to make such payment within that period, the execution of an earnings arrestment and the pouncing of articles belonging to the debtor and, if necessary for the purpose of executing the pouncing, the opening of shut and lockfast places;

- (b) in relation to an ordinary debt within the meaning of the Debtors (Scotland) Act 1987, an arrestment other than an arrestment of the debtor's earnings in the hands of his employer; and
- (c) if the decree consists of or includes a maintenance order within the meaning of the Debtors (Scotland) Act 1987, a current maintenance arrestment in accordance with Part III of that Act.”.

- (4) For section 3 of the Writs Execution (Scotland) Act 1877 there shall be substituted the following section—

“3 Power to execute diligence by virtue of warrant.

The warrant inserted in an extract of a document registered in the Books of Council and Session or in sheriff court books which contains an obligation to pay a sum of money shall have the effect of authorising—

- (a) in relation to an ordinary debt within the meaning of the Debtors (Scotland) Act 1987, the charging of the debtor to pay to the creditor within the period specified in the charge the sum specified in the extract and any interest accrued on the sum and, in the event of failure to make such payment within that period, the execution of an earnings arrestment and the pouncing of articles belonging to the debtor and, if necessary for the purpose of executing the pouncing, the opening of shut and lockfast places;
- (b) in relation to an ordinary debt within the meaning of the Debtors (Scotland) Act 1987, an arrestment other than an arrestment of the debtor's earnings in the hands of his employer; and
- (c) if the document is a maintenance order within the meaning of the Debtors (Scotland) Act 1987, a current maintenance arrestment in accordance with Part III of that Act.”.

- (5) An extract of a decree in an action of pouncing of the ground shall contain a warrant in the form prescribed by Act of Sederunt which shall have the effect of authorising a pouncing of the ground.

88 Warrants for diligence: special cases

- (1) This section applies where a creditor has acquired by assignation intimated to the debtor, confirmation as executor, or otherwise a right to—
- (a) a decree;
 - (b) an obligation contained in a document an extract of which, after the document has been registered in the Books of Council and Session or in sheriff court books, may be obtained containing warrant for execution;
 - (c) an order or determination which by virtue of any enactment is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by a sheriff,

either directly or through a third party from a person in whose favour the decree, order or determination was granted or who was the creditor in the obligation contained in the document.

- (2) Where this section applies, the creditor who has acquired a right as mentioned in subsection (1) above may apply to the appropriate clerk for a warrant having the effect of authorising the execution at the instance of that creditor of any diligence authorised by an extract of the decree or document or by the order or determination, as the case may be.
- (3) The applicant under subsection (2) above shall submit to the appropriate clerk—
 - (a) an extract of the decree or of the document registered as mentioned in subsection (1)(b) above or a certified copy of the order or determination; and
 - (b) the assignation (along with evidence of its intimation to the debtor), confirmation as executor or other document establishing the applicant's right.
- (4) The appropriate clerk shall grant the warrant applied for under subsection (2) above if he is satisfied that the applicant's right is established.
- (5) Where—
 - (a) a charge has already been served in pursuance of the decree, order, determination or registered document; and
 - (b) the applicant under subsection (2) above submits with his application the certificate of execution of the charge in addition to the documents mentioned in subsection (3) above,a warrant granted under subsection (4) above shall authorise the execution at the instance of the applicant of diligence in pursuance of that charge.
- (6) For the purposes of this section, "the appropriate clerk" shall be—
 - (a) in the case of a decree granted by the Court of Session or a document registered (whether before or after such acquisition) in the Books of Council and Session, a clerk of court of the Court of Session;
 - (b) in the case of a decree granted by the High Court of Justiciary, a clerk of Justiciary;
 - (c) in the case of a decree granted by a sheriff or a document registered (whether before or after such acquisition) in the books of a sheriff court, the sheriff clerk of that sheriff court;
 - (d) in the case of such an order or determination as is mentioned in subsection (1) (c) above, any sheriff clerk.

89 Abolition of letters of horning, horning and poinding, poinding, and caption

The granting of letters of horning, letters of horning and poinding, letters of poinding and letters of caption shall cease to be competent.

90 Provisions relating to charges for payment

- (1) Subject to subsection (2) below, the execution of a poinding or an earnings arrestment shall not be competent unless a charge for payment has been served on the debtor and the period for payment specified in the charge has expired without payment being made.

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- (2) Subsection (1) above shall not apply to a poinding or an earnings arrestment executed in pursuance of a summary warrant.
- (3) The period for payment specified in any charge for payment served in pursuance of a warrant for execution shall be 14 days if the person on whom it is served is within the United Kingdom and 28 days if he is outside the United Kingdom or his whereabouts are unknown.
- (4) Any such charge shall be in the form prescribed by Act of Sederunt or Act of Adjournal.
- (5) Subject to subsection (6) below, where any such charge has been served, it shall not be competent to execute a poinding or an earnings arrestment by virtue of that charge more than 2 years after the date of such service.
- (6) A creditor may reconstitute his right to execute a poinding or an earnings arrestment by the service of a further charge for payment.
- (7) No expenses incurred in the service of a further charge for payment within the period of 2 years after service of the first charge shall be chargeable against the debtor.
- (8) Registration of certificates of execution of charges for payment in a register of homings shall cease to be competent.

91 Enforcement of certain warrants and precepts of sheriff anywhere in Scotland

- (1) The following may be executed anywhere in Scotland—
 - (a) a warrant for execution contained in an extract of a decree granted by a sheriff;
 - (b) a warrant for execution inserted in an extract of a document registered in sheriff court books;
 - (c) a summary warrant;
 - (d) a warrant of a sheriff for arrestment on the dependence of an action or in security;
 - (e) a precept (issued by a sheriff clerk) of arrestment in security of a liquid debt the term of payment of which has not arrived.
- (2) A warrant or precept mentioned in subsection (1) above may be executed by a sheriff officer of—
 - (a) the court which granted it; or
 - (b) the sheriff court district in which it is to be executed.