



Debt Arrangement and Attachment (Scotland) Act 2002

2002 asp 17

[^{F1}PART 1A

INTERIM ATTACHMENT

[^{F1}Application for interim attachment

Textual Amendments

- F1** Pt. 1A inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 173, 227(3) (with s. 223); [S.S.I. 2008/115](#), art. 3(1)(c) (with arts. 4-6, 10, 15) (as amended: (23.2.2009) by [S.S.I. 2009/67](#), art. 7; (31.1.2011) by [S.S.I. 2011/31](#), art. 5(a); and (4.10.2014) by [S.S.I. 2014/173](#), arts. 1(2), 3)

9C Application for warrant for interim attachment

- (1) A creditor may, at any time during which an action is in dependence, apply to the court for warrant for interim attachment.
- (2) An application under subsection (1) above shall—
 - (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt;
 - (b) subject to subsection (3) below, be intimated to and provide details of—
 - (i) the debtor; and
 - (ii) any other person having an interest;
 - (c) state whether the creditor is seeking the grant, under section 9D(1) below, of warrant for interim attachment in advance of a hearing on the application under section 9E below; and
 - (d) contain such other information as the Scottish Ministers may by regulations prescribe.

Changes to legislation: There are currently no known outstanding effects for the Debt Arrangement and Attachment (Scotland) Act 2002, Cross Heading: Application for interim attachment. (See end of Document for details)

- (3) An application under subsection (1) above need not be intimated where the creditor is seeking the grant, under section 9D(1) below, of warrant in advance of a hearing on the application under section 9E below.
- (4) The court, on receiving an application under subsection (1) above, shall—
 - (a) subject to section 9D below, fix a date for a hearing on the application under section 9E below; and
 - (b) order the creditor to intimate that date to—
 - (i) the debtor; and
 - (ii) any other person appearing to the court to have an interest.

9D Grant of warrant without a hearing

- (1) The court may, if satisfied as to the matters mentioned in subsection (2) below, make an order granting warrant for interim attachment without a hearing on the application under section 9E below.
- (2) The matters referred to in subsection (1) above are—
 - (a) that the creditor has a prima facie case on the merits of the action;
 - (b) that there is a real and substantial risk enforcement of any decree in the action in favour of the creditor would be defeated or prejudiced by reason of—
 - (i) the debtor being insolvent or verging on insolvency; or
 - (ii) the likelihood of the debtor removing, disposing of, burdening, concealing or otherwise dealing with all or some of the debtor's assets, were warrant for interim attachment not granted in advance of such a hearing; and
 - (c) that it is reasonable in all the circumstances, including the effect granting warrant may have on any person having an interest, to do so.
- (3) The onus shall be on the creditor to satisfy the court that the order granting warrant should be made.
- (4) Where the court makes an order granting warrant for interim attachment without a hearing on the application under section 9E below, the court shall—
 - (a) fix a date for a hearing under section 9M below; and
 - (b) order the creditor to intimate that date to—
 - (i) the debtor; and
 - (ii) any other person appearing to the court to have an interest.
- (5) Where a hearing is fixed under subsection (4)(a) above, section 9M (except subsection (11)) below shall apply as if an application had been made to the court for an order under that section.
- (6) Where the court refuses to make an order granting warrant without a hearing under section 9E below and the creditor insists in the application, the court shall—
 - (a) fix a date for such a hearing on the application; and
 - (b) order the creditor to intimate that date to—
 - (i) the debtor; and
 - (ii) any other person appearing to the court to have an interest.

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9E Hearing on application

- (1) At the hearing on an application for warrant for interim attachment, the court shall not make any order without first giving—
 - (a) any person to whom intimation of the date of the hearing was made; and
 - (b) any other person appearing to the court to have an interest, an opportunity to be heard.
- (2) The court may, if satisfied as to the matters mentioned in subsection (3) below, make an order granting warrant for interim attachment.
- (3) The matters referred to in subsection (2) above are—
 - (a) that the creditor has a prima facie case on the merits of the action;
 - (b) that there is a real and substantial risk enforcement of any decree in the action in favour of the creditor would be defeated or prejudiced by reason of—
 - (i) the debtor being insolvent or verging on insolvency; or
 - (ii) the likelihood of the debtor removing, disposing of, burdening, concealing or otherwise dealing with all or some of the debtor's assets, were warrant for interim attachment not granted; and
 - (c) that it is reasonable in all the circumstances, including the effect granting warrant may have on any person having an interest, to do so.
- (4) The onus shall be on the creditor to satisfy the court that the order granting warrant should be made.
- (5) Where the court makes an order granting or, as the case may be, refusing warrant for interim attachment, the court shall order the creditor to intimate that order to—
 - (a) the debtor; and
 - (b) any other person appearing to the court to have an interest.
- (6) Where the court makes an order refusing warrant for interim attachment, the court may impose such conditions (if any) as it thinks fit.
- (7) Without prejudice to the generality of subsection (6) above, those conditions may require the debtor—
 - (a) to consign into court such sum; or
 - (b) to find caution or to give such other security,as the court thinks fit.]

Changes to legislation:

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