



Debt Arrangement and Attachment (Scotland) Act 2002

2002 asp 17

[^{F1}PART 1A

INTERIM ATTACHMENT

[^{F1}General and miscellaneous provisions

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)

9P Expenses of interim attachment

- (1) Subject to subsection (3)(a) below, a creditor shall be entitled to the expenses incurred—
- in obtaining warrant for interim attachment; and
 - where an interim attachment is executed in pursuance of the warrant, in so executing that attachment.
- (2) Subject to subsection (3)(b) below, a debtor shall be entitled, where—
- warrant for interim attachment is granted; and
 - the court is satisfied that the creditor was acting unreasonably in applying for it,
- to the expenses incurred in opposing that warrant.
- (3) The court may modify or refuse—
- such expenses as are mentioned in subsection (1) above if it is satisfied that—
 - the creditor was acting unreasonably in applying for the warrant; or

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- (ii) such modification or refusal is reasonable in all the circumstances and having regard to the outcome of the action; and
 - (b) such expenses as are mentioned in subsection (2) above if it is satisfied as to the matter mentioned in paragraph (a)(ii) above.
- (4) Subject to subsections (1) to (3) above, the court may make such findings as it thinks fit in relation to such expenses as are mentioned in subsections (1) and (2) above.
- (5) Expenses incurred as mentioned in subsections (1) and (2) above in obtaining or, as the case may be, opposing an application for warrant shall be expenses of process.

9Q Recovery of expenses of interim attachment

- (1) Subject to subsection (4) below, any expenses chargeable against the debtor which are incurred in executing an interim attachment shall be recoverable only by attachment—
- (a) in execution of a decree granted by virtue of—
 - (i) the conclusion for payment in the action on the dependence of which the warrant for interim attachment was granted; or
 - (ii) another conclusion in the creditor's favour in that action; or
 - (b) where the final interlocutor in the action is of absolvitor or dismissal, in execution of a decree granted under and for the purposes of this subsection.
- (2) Where any such expenses cease to be recoverable in pursuance of subsection (1) above, they cease to be chargeable against the debtor.
- (3) Subsection (4) below applies where interim attachment is—
- (a) recalled under section 2(3), 3(1)(b), 9(2)(cb) or 10(1)(b) of the 1987 Act in relation to a time to pay direction or order;
 - (b) in effect immediately before the date of sequestration (within the meaning of the Bankruptcy (Scotland) Act [F²2016]) of the debtor's estate;
 - (c) in effect immediately before the appointment of an administrator under Part II of the Insolvency Act 1986 (c. 45);
 - (d) in effect against property of the debtor immediately before a floating charge attaches all or part of that property under section 53(7) (attachment on appointment of receiver by holder of charge) or 54(6) (attachment on appointment of receiver by court) of the 1986 Act;
 - (e) in effect immediately before the commencement of the winding up, under Part IV or V of the 1986 Act, of the debtor; or
 - (f) rendered unenforceable by virtue of the creditor entering into a composition contract or acceding to a trust deed for creditors or by virtue of the subsistence of a protected trust deed within the meaning of Schedule [F³4 of the 2016] Act.
- (4) Where this subsection applies—
- (a) the expenses of the interim attachment which were chargeable against the debtor remain so chargeable; and
 - (b) if the debtor's obligation to pay the expenses is not discharged under or by virtue of the time to pay direction or order, sequestration, appointment, receivership, winding up, composition contract or trust deed for creditors, those expenses are recoverable in pursuance of subsection (1) above.

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Textual Amendments

- F2** Word in s. 9Q(3)(b) substituted (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), **sch. 8 para. 18(2)(a)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2
- F3** Words in s. 9Q(3)(f) substituted (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), **sch. 8 para. 18(2)(b)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2

9R Ascription of sums recovered while interim attachment is in effect

- (1) This section applies where—
- (a) any amounts are—
 - (i) secured by an interim attachment; and
 - (ii) while the attachment is in effect, paid to account of the amounts recoverable from the debtor; and
 - (b) that interim attachment ceases to have effect.
- (2) Such amounts shall be ascribed to the following in the order in which they are mentioned—
- (a) the expenses incurred in—
 - (i) obtaining warrant for; and
 - (ii) executing,
 the interim attachment;
 - (b) any interest which has accrued, in relation to a sum due under a decree granted by virtue of the conclusion in relation to which warrant for interim attachment was granted, as at the date of execution;
 - (c) any sum due under that decree together with such interest as has accrued after that date.
- (3) Where an interim attachment is followed by an attachment in execution of a decree granted by virtue of the conclusion in relation to which the warrant for the interim attachment was granted, section 41 below shall apply to amounts to which this section applies as it applies to amounts to which that section applies.

9S Ranking of interim attachment

For the purposes of any enactment or rule of law as to ranking or preference—

- (a) where—
 - (i) an interim attachment has been executed; and
 - (ii) the creditor has, without undue delay, obtained an interlocutor for payment of all or part of the sum concluded for,
 that interim attachment shall be treated as if it were an attachment by virtue of section 10 below of the property attached, executed when the interim attachment was executed; and
- (b) where an interim attachment has ceased to have effect in relation to any article by virtue of section 9L(2) above, the attachment of the article in question shall be taken to have been executed when the interim attachment was executed.]

Changes to legislation:

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