Debt Arrangement and Attachment (Scotland) Act 2002

2002 asp 17

PART 2

ATTACHMENT

Attachment: further procedure

20 Order for security of articles or sale of articles which are perishable etc.

(1) The sheriff may, on an application by the creditor, the officer or the debtor, at any time after articles have been attached make an order—

(a) for the security of any of the attached articles;

(b) in relation to any of the articles which are of a perishable nature or which are likely to deteriorate substantially and rapidly in condition or value, for the creditor or the officer to make arrangements for their immediate sale and for any proceeds of the sale to be consigned in court.

(2) An application for an order under subsection (1) above—

(a) by the creditor or the officer, shall be intimated by the creditor or, as the case may be, the officer to the debtor;

(b) by the debtor, shall be intimated to the creditor and the officer,

at the time when it is made.

(3) A decision of the sheriff to make an order under subsection (1)(b) above shall not be subject to appeal.

(4) Any sum consigned in court in pursuance of an order made under subsection (1)(b) above shall, where an attachment ceases to have effect before the auction of attached articles is held, be paid to the creditor to the extent necessary to meet the sum recoverable, any surplus thereof being paid to the debtor.

Status: *Point in time view as at 30/12/2002.*
Changes to legislation: *There are currently no known outstanding effects for the Debt Arrangement and Attachment (Scotland) Act 2002, Cross Heading: Attachment: further procedure. (See end of Document for details)*

21 Unlawful acts after attachment

(1) The debtor or person in possession of an attached article shall not move it from the place at which it was attached.

(2) If an article is so moved—
- (a) the debtor or, as the case may be, the person in possession of the attached articles is acting in breach of the attachment; and
- (b) the sheriff may, on an application by the creditor or by the officer, by order authorise the attachment of other articles which are owned by the debtor and kept at the place at which the original attachment was executed.

(3) Subsection (1) above does not apply in relation to any vehicle in respect of which an application for an order under subsection (1) or (3) of section 22 below has been made but not disposed of.

(4) The debtor shall not sell, make a gift of or otherwise relinquish ownership of any attached article.

(5) If an attached article is so sold, gifted or otherwise disposed of the debtor is acting in breach of the attachment.

(6) Any person who wilfully damages or destroys any article which that person knows has been attached is acting in breach of the attachment.

(7) Where an attached article is stolen, the debtor shall give notice to the creditor and the officer of that fact and of any related claim which the debtor makes, or intends to make, under a contract of insurance.

(8) Any debtor who fails to give notice as required by subsection (7) above is acting in breach of the attachment.

(9) Any act which is, under subsection (2), (5), (6) or (8) above, a breach of the attachment may be dealt with as a contempt of court.

(10) Where attached articles are damaged, destroyed or stolen the sheriff, on an application by the creditor or by the officer, may by order authorise—
- (a) the attachment of other articles which are owned by the debtor and kept at the place at which the original attachment was executed;
- (b) the revaluation of any damaged article in accordance with subsection (2) or (3) of section 15 above.

(11) Where the debtor or any third party who knows that an article is attached—
- (a) moves it from the place at which the attachment was executed, and it is—
  - (i) damaged, destroyed, lost or stolen; or
  - (ii) acquired from or through the debtor or, as the case may be, the third party by another person without knowledge of the attachment and for value; or
- (b) wilfully damages or destroys it,

the sheriff may order the debtor or, as the case may be, the third party to consign the sum set out in subsection (12) below in court.

(12) That sum is—
- (a) where the article has been damaged but not so damaged as to make it worthless, a sum equal to the difference between the value of the article fixed

under subsection (2) or (3) of section 15 above or, as the case may be, under section 51 or 54(1) below and the value of the article so damaged; or

(b) in any other case, a sum equal to the value of the article as fixed under subsection (2) or (3) of section 15 above or, as the case may be, under section 51 or 54(1) below.

(13) For the purposes of subsection (12)(a) above, the officer shall, subject to subsection (14) below, value a damaged article at the price which it is likely to fetch if sold in that condition on the open market.

(14) Where the officer considers that a damaged article is such that a valuation by a professional valuer or other suitably skilled person is appropriate, the officer shall arrange for such a valuation and a valuation so arranged shall proceed on the basis set out in subsection (13) above.

(15) Any sum consigned in court in pursuance of an order made under subsection (11) above shall, where the attachment of a damaged article ceases to have effect before it is auctioned, be paid to the creditor to the extent necessary to meet the sum recoverable, any surplus thereof being paid to the debtor.

22 Release of vehicle from attachment

(1) The sheriff may, on an application by the debtor and on being satisfied that the auction of any vehicle which has been attached would be unduly harsh in the circumstances, make an order—

(a) providing that the attachment of the vehicle is to cease to have effect; and

(b) where the vehicle has been removed by the officer from the place at which it was attached, requiring the officer to return the vehicle to that place.

(2) The sheriff may not make an order under subsection (1) above unless the value of the vehicle (as fixed under subsection (2) or (3) of section 15 above) does not exceed £1,000 or such other amount as may be prescribed in regulations made by the Scottish Ministers.

(3) Where the value (as fixed under subsection (2) or (3) of section 15 above) of an attached vehicle does exceed £1,000 or, as the case may be, such other prescribed amount the sheriff may, on an application by the debtor and on being satisfied that the auction of any vehicle which has been attached would be unduly harsh in the circumstances, make an order requiring the officer to—

(a) make arrangements for the immediate sale of the vehicle;

(b) pay to the debtor from any proceeds of such sale the sum of £1,000 (or such lesser amount as the sheriff may specify); and

(c) consign any surplus remaining in court.

(4) Where the amount realised on the sale of a vehicle in pursuance of an order has been made under subsection (3) above is less than the amount which the officer is required by that order to pay to the debtor, the order shall be deemed to have required the officer to pay the amount realised only.

(5) Where the officer is unable to sell the vehicle in pursuance of an order made under subsection (3) above within 14 days of the date on which the order was made, the attachment of that vehicle is to cease to have effect.

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(6) The sheriff may consider an application for an order under subsection (1) or (3) above only where it is made within 14 days of the date on which the vehicle is attached.

23 Appeals against valuation

(1) Where the sheriff is satisfied that the aggregate of the values of attached articles fixed under section 15(2) or (3) above or, as the case may be, section 51 or 54(1) below is substantially below the aggregate of the prices which they are likely to fetch if sold on the open market, the sheriff may, on or before the day which immediately precedes the day on which the articles are to be auctioned, order that the attachment is to cease to have effect.

(2) The sheriff may make an order under subsection (1) above on the application of the debtor or on the sheriff's own accord.

(3) The sheriff shall not make such an order without first giving the debtor and the creditor—
- (a) an opportunity to make representations; and
- (b) if either party wishes to be heard, an opportunity to be heard.

24 Duration of attachment

(1) An attachment shall, subject to subsections (6), (7) and (8) below, have effect only until—
- (a) the earlier of—
  - (i) the date which is six months after the date on which the article is attached; and
  - (ii) the date which is 28 days after the date on which the attached article is removed by the officer from the place at which it was attached; or
- (b) such other date as may be specified in an order made under subsection (2) or section 29(4)(b) below or in an exceptional attachment order.

(2) Where the sheriff is satisfied—
- (a) that, if the date on which an attachment is to cease to have effect were to be substituted with a later date, the debtor is likely to comply with an agreement between the creditor and the debtor for the payment of the sum recoverable by instalments or otherwise; or
- (b) that the auction of the attached articles cannot take place before the date on which the attachment is to cease to have effect due to circumstances for which the creditor cannot be held responsible and that the attachment ceasing to have effect on that date would prejudice the creditor,

the sheriff may, on an application by the creditor or by the officer, by order provide that the attachment is to remain in effect until such later date as the sheriff considers reasonable in the circumstances.

(3) Where the period for which an attachment is to have effect is extended by an order made under subsection (2) above, an application may be made for another order under that subsection so as to further extend that period.

(4) The sheriff may consider an application for an order under subsection (2) above only where it is made during the period in respect of which an extension is being sought.

(5) A decision of the sheriff on such an application shall be intimated to the debtor by the sheriff clerk.

(6) Where such an application is made but not disposed of before the date on which the attachment in respect of which it is made would, but for this subsection, cease to have effect, the attachment shall continue to have effect until the application is disposed of.

(7) Where such an application is—

(a) made on the ground referred to in paragraph (a) of subsection (2) above; and

(b) refused by the sheriff within 14 days of the date on which the attachment in respect of which it is made would, but for this subsection, cease to have effect,

the attachment shall continue to have effect until the date which is 14 days after the date of the refusal.

(8) Where—

(a) arrangements for an auction of attached articles are, under section 29(1) below, cancelled; and

(b) the agreement in respect of which the cancellation is made is breached by the debtor,

the period which begins with the date on which the report of agreement was made under section 29(3) below and which ends with the date on which the debtor breaches the agreement is to be disregarded in determining the date on which the attachment is, under subsection (1) above, to cease to have effect.

25 Second attachment at same place

(1) Subject to—

(a) section 9(12) (which provides that a debt which remains outstanding on the recall or cessation of a time to pay order may be enforced by certain diligences) of the Debtors (Scotland) Act 1987 (c.18);

(b) any order made under subsection (2)(b) or (10)(a) of section 21 above; and

(c) sections 34(3) and 35(4) below,

where articles are attached (or are purported to be attached) at any place, it is not competent to attach other articles kept at that place to enforce the same debt unless those other articles are brought to that place after the execution of the first attachment.

(2) It is not competent to attach any article in respect of which an attachment has—

(a) previously been executed in enforcement of the same debt; and

(b) ceased, by virtue of section 16, 18(4), 22(1), 34(1), 35(3), 55(2) or 56(4) of this Act, to have effect.

26 Invalidity and cessation of attachment

(1) Where, at any time before the auction of an article which has been or purports to have been attached, the sheriff is satisfied that—

(a) the attachment has ceased to have effect; or, as the case may be

(b) the purported attachment is invalid (by reason of the attachment being incompetent or otherwise),

the sheriff shall make an order declaring that to be the case and may make such consequential order as appears to the sheriff to be necessary in the circumstances.

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(2) An order under subsection (1) above may be made on an application by the debtor or on the sheriff's own initiative.

(3) Where such an order is made on the sheriff's own initiative, the sheriff clerk shall intimate the order to the debtor.

(4) The sheriff shall not make an order under subsection (1) above without first giving the debtor and the creditor—

(a) an opportunity to make representations; and

(b) if either party wishes to be heard, an opportunity to be heard.

(5) Where—

(a) an order is made under subsection (1) above; and

(b) the officer has removed the article from the place at which it was, or purported to be, attached,

the officer shall return the article to the place from which it was removed.

(6) The sheriff shall give reasons for a refusal to grant an order under subsection (1) above.

Status:
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