



# Debt Arrangement and Attachment (Scotland) Act 2002

2002 asp 17

## PART 2

### ATTACHMENT

#### *Attachment*

#### 10 Attachment

- (1) There shall be a form of diligence over corporeal moveable property for recovery of money owed; it is to be known as attachment.
- (2) Attachment is exigible only in execution of a decree or document of debt and only upon property owned (whether alone or in common) by the debtor.
- (3) Attachment is competent only where—
  - [<sup>F1</sup>(a) the debtor has been charged to pay the debt;
  - (b) the period for payment specified in the charge has expired without payment being made; and
  - (c) where the debtor is an individual, the creditor has, no earlier than 12 weeks before taking any steps to execute the attachment, provided the debtor with a debt advice and information package.]

<sup>F2</sup>(4) .....

(5) In this section—

“debt advice and information package” means a document or bundle of documents containing such information (including information regarding the availability of money advice within the debtor’s locality), and in such form, as the Scottish Ministers may determine;

“decree” means—

- (a) a decree of the Court of Session, of the High Court of Justiciary or of the sheriff;
- (b) a decree of the Court of Teinds;

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- (c) a summary warrant;
- (d) a civil judgment granted outside Scotland by a court, tribunal or arbiter which by virtue of any enactment or rule of law is enforceable in Scotland;
- (e) 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 the sheriff;
- (f) a warrant granted, in criminal proceedings, for enforcement by civil diligence;
- (g) an order under section 114 of the Companies Clauses Consolidation (Scotland) Act 1845 (c.17);
- (h) a determination under section 46 of the Harbours, Docks and Piers Clauses Act 1847 (c.27); or
- (i) a liability order within the meaning of section 33(2) of the Child Support Act 1991 (c.48),

being a decree, warrant, judgment, order or determination which, or an extract of which, authorises attachment; and

“document of debt” means—

- (a) a document registered for execution in the Books of Council and Session or the sheriff court books; or
- (b) a document or settlement which by virtue of an Order in Council made under section 13 of the Civil Jurisdiction and Judgments Act 1982 (c.27) is enforceable in Scotland,

being a document, bill or settlement which, or an extract of which, authorises attachment.

- (6) The Scottish Ministers may by order modify the definitions of “decree” and “document of debt” in subsection (5) above so as to—
  - (a) add or remove types of decree or document to or, as the case may be, from those referred to in that provision; or
  - (b) vary any of the descriptions of the types of decree or document there referred to.
- (7) In this Act, references to attaching are references to the execution of attachment.

#### Textual Amendments

- F1** S. 10(3)(a)-(c) substituted for s. 10(3)(a) (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), **Sch. 5 para. 30(2)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), Sch. 1 (with arts. 4-61015) (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)
- F2** S. 10(4) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 209(1), 227(3)** (with s. 223); S.S.I. 2008/115, art. 3(1)(g) (with arts. 4-61015) (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)

## 11 Articles exempt from attachment

- (1) It is not competent to attach—

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- (a) any implements, tools of trade, books or other equipment reasonably required for the use of the debtor in the practice of the debtor's profession, trade or business and not exceeding in aggregate value £1,000 or such amount as may be prescribed in regulations made by the Scottish Ministers;
  - (b) any vehicle, the use of which is so reasonably required by the debtor, not exceeding in value £1,000 or such amount as may be prescribed in regulations made by the Scottish Ministers;
  - (c) a mobile home which is the debtor's only or principal residence;
  - (d) any tools or other equipment reasonably required for the purpose of keeping in good order and condition any garden or yard adjacent to, or associated with, a dwellinghouse in which the debtor resides.
- (2) The Scottish Ministers may by regulations modify subsection (1) above so as to—
- (a) add or remove types of articles to or, as the case may be, from those referred to in that provision; or
  - (b) vary any of the descriptions of the types of articles there referred to.

## **12 Times when attachment is not competent**

- (1) It is not competent to execute an attachment on—
- (a) a Sunday;
  - (b) a day which is a public holiday in the area in which the attachment is to be executed; or
  - (c) such other day as may be prescribed by Act of Sederunt.
- (2) The execution of an attachment shall not—
- (a) begin before 8 a.m. or after 8 p.m.; or
  - (b) be continued after 8 p.m.,
- unless the officer has obtained prior authority from the sheriff for such commencement or continuation.

## **13 Presumption of ownership**

- (1) An officer may, when executing an attachment, proceed on the assumption that the debtor owns, solely or in common with a third party, any article which is in the possession of the debtor.
- (2) The officer shall, before attaching any article, make enquiries of any person who is present at the place at which the article is situated as to the ownership of the article (and in particular shall enquire as to whether there is any person who owns the article in common with the debtor).
- (3) The officer may not proceed on the assumption mentioned in subsection (1) above where the officer knows or ought to know that the contrary is the case.
- (4) The officer is not precluded from relying on that assumption by reason only of one or both of the following circumstances—
- (a) that the article belongs to a class which is commonly held under a hire, hire-purchase or conditional sale agreement or on some other limited title of possession;
  - (b) that an assertion has been made that the article is not owned by the debtor.

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### [<sup>F3</sup>13A Schedule of attachment

- (1) The officer must, immediately after executing an attachment, complete a schedule such as is mentioned in subsection (2) below (in this section, the “attachment schedule”).
- (2) An attachment schedule—
  - (a) must be in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
  - (b) must specify—
    - (i) the articles attached; and
    - (ii) their value, so far as ascertainable.
- (3) The officer must—
  - (a) give a copy of the attachment schedule to the debtor; or
  - (b) where it is not practicable to do so—
    - (i) give a copy of the schedule to a person present at the place where the attachment was executed; or
    - (ii) where there is no such person, leave a copy of it at that place.
- (4) An attachment is executed on the day on which the officer complies with subsection (3) above.]

#### Textual Amendments

**F3** S. 13A inserted (1.4.2008 for specified purposes, 22.4.2009 in so far as not already in force) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **Sch. 5 para. 30(4)** (with s. 223); S.S.I. 2008/115, art. 3(4), Sch. 3 (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); S.S.I. 2009/67, art. 3(2)(3), Sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))

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