



# 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—
  - (a) subject to subsection (4) below, the debtor has been charged to pay, within such period as is specified in the charge, the sum specified in the decree or document of debt, together with any interest accrued on the sum; and
  - (b) the creditor has, before taking any steps to execute an attachment, provided the debtor with a debt advice and information package.
- (4) An attachment in pursuance of a summary warrant may be proceeded with in the absence of a charge to pay.
- (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;

- (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.

## 11 Articles exempt from attachment

- (1) It is not competent to attach—
  - (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.

*Attachment of articles kept outwith dwellinghouses etc.*

## **14 Procedure for attachment of articles kept outwith dwellinghouses etc.**

- Sections 15 to 19 below apply only in relation to the attachment of articles which are—
- (a) kept outwith a dwellinghouse; or
  - (b) mobile homes which are not the only or principal residence of the debtor.

**15 Power of entry and valuation**

- (1) An officer may open shut and lockfast places for the purposes of executing an attachment.
- (2) When executing an attachment the officer shall, subject to subsection (3) below, value the articles being attached at the price which they are likely to fetch if sold on the open market.
- (3) Where the officer considers that an 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 (2) above.

**16 Attachment of mobile homes**

- (1) Where a mobile home which is the only or principal residence of a person other than the debtor has been attached—
  - (a) the officer shall give notice to that other person of that fact; and
  - (b) the sheriff may, on an application by the debtor or that other person, order that the attachment of the mobile home is to cease to have effect.
- (2) The sheriff—
  - (a) shall consider any application for an order under subsection (1) above which is made before the date which is 14 days after the date on which the mobile home is attached; and
  - (b) may, on cause shown, consider any such application which is made at any time after that date but before the date on which the attached mobile home is auctioned.

**17 Report of attachment**

- (1) The officer shall, within 14 days of the execution of an attachment (or such longer period as the sheriff on cause shown may allow on application by the officer), make to the sheriff a report of the attachment.
- (2) A report made under subsection (1) above shall—
  - (a) be in the form prescribed by Act of Sederunt; and
  - (b) be signed by the officer.
- (3) Such a report shall specify—
  - (a) whether any person, in response to enquires made under section 13(2) above, asserted that any attached article is not owned by the debtor (or is owned in common by the debtor and a third party);
  - (b) whether any attached article has been redeemed under section 18(1) below.
- (4) Such a report need not be made in respect of any article or vehicle which has been sold in pursuance of an order made under section 20(1)(b) or, as the case may be, 22(3) below.
- (5) The sheriff may refuse to receive such a report on the ground that it has not been made and signed in accordance with subsections (1) and (2) above.
- (6) If the sheriff so refuses—

- (a) the attachment to which the report relates is to cease to have effect; and
- (b) the sheriff clerk shall intimate the refusal to—
  - (i) the debtor; and
  - (ii) if another person is in possession of the attached articles, that person.

## **18 Redemption**

- (1) Subject to any order made under section 20(1)(b) below, the debtor is entitled, within 14 days of the date on which an article is attached, to redeem that article.
- (2) The amount for which such an article may be redeemed is the value fixed under subsection (2) or (3) of section 15 above.
- (3) The officer shall, on receiving payment from the debtor for the redemption of an attached article, grant a receipt in the form prescribed by Act of Sederunt to the debtor.
- (4) The attachment of the article is, on the grant of such a receipt, to cease to have effect.
- (5) Where an article is redeemed after the officer has made a report under section 17(1) above in respect of the attachment, the officer shall report the redemption as soon as is reasonably practicable to the sheriff.

## **19 Removal and auction of attached articles**

- (1) The officer who attached articles may, after the report of attachment has been received by the sheriff—
  - (a) make arrangements for the auction of the attached articles; and
  - (b) on the date specified in the notice given under section 27(4) below, remove the attached articles from the place at which they are kept.
- (2) The officer may open shut and lockfast places for the purpose of so removing the attached articles.
- (3) The officer may not remove 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 officer may remove to the place at which the auction is to be held such attached articles as, if sold at their values fixed under subsection (2) or, as the case may be, (3) of section 15 above, would realise in aggregate the sum recoverable at the time of the auction.
- (5) The remaining attached articles will cease to be subject to attachment.
- (6) An attached article shall not, subject to any order made under section 20(1)(b) or 22(3) below, be auctioned before the date which is 7 days after the date on which the article is removed by the officer from the place at which it was attached.

*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.

## **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.
- (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 Invalidation 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.
- (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.

### *Auction of attached articles*

## **27 Notice of public auction**

- (1) The auction of attached articles shall, subject to subsections (2) and (3) below, be by public auction held in an auction room.
- (2) If it is impractical to hold the auction of an attached article in an auction room the auction may be held at such other place (other than the debtor's dwellinghouse) as the officer considers appropriate.
- (3) The auction of other articles which have been attached together with an article which is to be auctioned at a place other than an auction room may, if the officer considers it appropriate (having had regard, in particular, to the expenses which are likely to be incurred in connection with the auction), also be held at that other place.

- (4) The officer authorised to arrange the auction shall give notice to the debtor and to any other person in possession of the attached articles of—
  - (a) the date on which the auction is to be held;
  - (b) the location of the auction room or, as the case may be, the other place at which the auction is to be held; and
  - (c) where sections 15 to 19 above apply in relation to the attached articles, the date arranged for the removal of those attached articles from the place at which they are kept.
- (5) The officer shall advertise the auction by public notice.

## **28 Alteration of arrangements for removal or auction**

- (1) Subject to subsection (2) below and without prejudice to section 29(4) below, the creditor or the officer is not, after notice has been given under section 27(4) above to the debtor, entitled to arrange—
  - (a) a new date for the auction; or
  - (b) where sections 15 to 19 above apply in relation to the attached articles, a new date for the removal of those articles from the place where they are kept.
- (2) Where, for any reason for which neither the creditor nor the officer is responsible, it is not possible—
  - (a) for the auction to be held on the date specified in the notice given under section 27(4) above; or
  - (b) for the attached articles to be removed from the place where they are kept on the date so specified,the creditor may instruct the officer to arrange a new date for the auction or, as the case may be, a new date for the removal and the officer shall intimate the new date to the debtor and to any other person in possession of the attached articles.
- (3) A new date arranged under subsection (2) above shall not in any case be fewer than 7 days after the date of intimation under that subsection.

## **29 Cancellation of auctions**

- (1) The officer may, for the purposes of enabling the sum recoverable to be paid in accordance with an agreement between the creditor and the debtor, cancel arrangements for an auction of attached articles.
- (2) The officer may not cancel the arrangements for such an auction on more than two occasions.
- (3) Where an auction has been cancelled the officer shall—
  - (a) make to the sheriff a report of the agreement reached; and
  - (b) arrange for the return of any attached articles which have been removed for auction to the place from which they were removed.
- (4) The sheriff, if satisfied on an application by the creditor that the debtor is in breach of any agreement which has been reported under subsection (3) above, may by order provide—
  - (a) if the arrangements for the auction of the attached articles can still be implemented in accordance with the provisions of this Part and Part 3 of

this Act, that the officer may resume making arrangements for the auction in accordance with those provisions;

- (b) if for any reason for which neither the creditor nor the officer is responsible arrangements for the auction cannot be implemented in accordance with those provisions, that the provisions of this Part and Part 3 of this Act which prevent such implementation are not to apply for the purposes of the attachment and auction of those articles.
- (5) The sheriff shall not make an order under subsection (4) above without first giving the debtor—
- (a) an opportunity to make representations; and
  - (b) if the debtor so wishes, an opportunity to be heard.

### **30 Auction**

- (1) The officer shall attend the auction and maintain a record of the attached articles which are sold.
- (2) Such a record shall specify the amount for which each attached article is sold.
- (3) The officer shall be accompanied at the auction by another person who shall witness the proceedings.
- (4) Any attached article exposed for sale in the auction may be purchased by—
  - (a) any creditor, including the creditor on whose behalf the article was attached;
  - (b) a third party who owns the attached article in common with the debtor.

### **31 Disposal of proceeds of auction**

- (1) The officer shall, subject to section 37 (effect of sequestration on diligence) of the Bankruptcy (Scotland) Act 1985 (c. 66), dispose of the proceeds of the auction by—
  - (a) retaining such amount as necessary to meet the fees and outlays of the officer;
  - (b) paying to the creditor the remainder of the proceeds of auction so far as necessary to meet the sum recoverable; and
  - (c) paying to the debtor any surplus remaining.
- (2) Where the sum recoverable is not realised by the proceeds of auction and any article remains unsold after being exposed for auction—
  - (a) ownership of the article shall, without prejudice to the rights of any third party, pass to the creditor; and
  - (b) the value of that article shall be credited against the sum recoverable.
- (3) Where the value of unsold articles exceeds the amount of the sum recoverable which remains outstanding, subsection (2) above shall operate only in relation to such of those articles which have, in aggregate, the value which is nearest to the amount which remains outstanding.
- (4) The references in subsections (2)(b) and (3) above to the value of an article are references to the value of the article as fixed under subsection (2) or (3) of section 15 above or, as the case may be, section 51 or 54(1) below.

- (5) Where the creditor does not uplift an article within 3 working days after the day on which the auction is held the ownership of the article shall revert to the person who owned the article before the operation of subsection (2)(a) above.
- (6) For the purposes of this section—
- “proceeds of auction” include any amount—
- (a) consigned in court in pursuance of an order made under section 21(11), 20(1)(b), 22(3) or 50(5) of this Act;
  - (b) received by the officer in respect of a transfer, under section 35(2) below, of the debtor’s interest in any article owned in common by the debtor and a third party,
- but do not include any amount which the officer is required to pay to the debtor in pursuance of an order under section 22(3) above; and
- “working day” means a day which is not—
- (a) a Saturday;
  - (b) a Sunday;
  - (c) New Year’s Day;
  - (d) 2nd January;
  - (e) Good Friday;
  - (f) Easter Monday;
  - (g) Christmas Day;
  - (h) Boxing Day; or
  - (i) any other day which is a public holiday in the area in which the auction is held.

## **32 Report of auction**

- (1) The officer who arranged the auction shall, within the period of 14 days after the date on which the auction is held, make to the sheriff a report in the form prescribed by Act of Sederunt (a “report of auction”).
- (2) A report of auction shall—
- (a) specify—
    - (i) any attached articles which have been sold;
    - (ii) the amount for which they have been sold;
    - (iii) any attached articles which remain unsold;
    - (iv) any chargeable expenses;
    - (v) any surplus paid to the debtor; and
    - (vi) any balance due by or to the debtor;
  - (b) refer to any article in respect of which—
    - (i) an attachment has, under section 34(1) below or in pursuance of an order made under section 35(3) below, ceased to have effect;
    - (ii) the debtor’s interest has, under section 35(2) below, transferred to a third party;
  - (c) contain a declaration by the officer that all the information contained within it is, to the best of the officer’s knowledge, true; and
  - (d) be signed by the officer and the witness who attended the auction.
- (3) If the officer—

- (a) without reasonable excuse makes a report of auction after the expiry of the period mentioned in subsection (1) above; or
- (b) wilfully refuses to make, or delays making, a report of auction after the expiry of that period,

the sheriff may make an order providing that the officer is liable for the chargeable expenses, either in whole or in part.

- (4) An order made under subsection (3) above does not prejudice the right of the sheriff to report the matter to the Court of Session or the sheriff principal under section 79(1)(b) (investigation of alleged misconduct by a messenger-at-arms or sheriff officer) of the Debtors (Scotland) Act 1987 (c. 18).

### **33      Audit of report of auction**

- (1) The sheriff shall remit the report of auction to the auditor of court who shall—
  - (a) tax the chargeable expenses;
  - (b) certify the balance due by or to the debtor following the auction; and
  - (c) make a report to the sheriff.
- (2) The auditor of court shall not alter the report of auction without first providing all interested persons an opportunity to make representations.
- (3) The auditor of court shall not charge a fee in respect of the report made under subsection (1)(c) above.
- (4) On receipt of a report made under subsection (1)(c) above the sheriff shall make an order—
  - (a) declaring the balance due by or to the debtor, as certified by the auditor of court;
  - (b) declaring such a balance after making modifications to the balance so certified; or
  - (c) where the sheriff is satisfied that there has been a substantial irregularity in the execution of the attachment (other than the timing of the report of auction), declaring the attachment and auction to be void.
- (5) An order made under subsection (4)(c) above may make such consequential provision as the sheriff thinks fit.
- (6) An order made under subsection (4)(c) above shall not affect the title of a person to any article acquired by that person at the auction, or subsequently, in good faith.
- (7) The sheriff may not make an order under subsection (4)(b) or (c) above without first providing all interested persons an opportunity to be heard.
- (8) The sheriff clerk shall intimate the sheriff's order under subsection (4) above to the debtor.

### *General and miscellaneous provisions*

### **34      Articles belonging to a third party**

- (1) Where at any time before an attached article is auctioned—
  - (a) a third party claims to own the article; and

- (b) either—
  - (i) the officer is satisfied that the claim is valid and neither the debtor nor any other person in possession of the article disputes the claim; or
  - (ii) the sheriff, on an application by the third party, makes an order stating that the sheriff is so satisfied,the attachment of that article is to cease to have effect.
- (2) The making of an application to the sheriff for the purposes of subsection (1)(b)(ii) above does not preclude the third party making the application from taking any other proceedings for the recovery of an article which is owned by the third party.
- (3) Where the attachment of an article ceases, under subsection (1) above, to have effect, the officer may attach other articles which are owned by the debtor and kept at the place at which the original attachment was executed.

### **35 Articles in common ownership**

- (1) Articles which are owned in common by a debtor and a third party may be attached and disposed of in satisfaction of the debts of the debtor.
- (2) Where at any time before an attached article is auctioned—
  - (a) a third party claims to own the article in common with the debtor;
  - (b) either—
    - (i) the officer is satisfied that the claim is valid; or
    - (ii) the sheriff, on an application by the third party, makes an order stating that the sheriff is so satisfied; and
  - (c) the third party pays to the officer a sum equal to the value of the debtor's interest in the article,the debtor's interest in the article shall transfer to the third party.
- (3) Where the sheriff is satisfied—
  - (a) that an article which has been removed from the place at which it was attached is owned in common by the debtor and a third party; and
  - (b) that the auction of the article would be unduly harsh to the third party in the circumstances,the sheriff may, on an application by the third party before the attached article is auctioned, order that the attachment of that article is to cease to have effect.
- (4) Where—
  - (a) the debtor's interest in an article owned in common by the debtor and a third party is, under subsection (2) above, transferred to the third party; or
  - (b) the attachment of an article which is so owned ceases, in pursuance of an order made under subsection (3) above, to have effect,the officer may attach other articles which are owned by the debtor and kept at the place at which the original attachment was executed.

### **36 Procedure where articles in common ownership are sold at auction**

- (1) This subsection applies where—
  - (a) a third party claimed, before an attached article was auctioned, to own the article in common with the debtor;

- (b) the debtor's interest in the article has not transferred to the third party under section 35(2) above;
  - (c) the attachment of the article has not, by virtue of an order made under section 35(3) above, ceased to have effect;
  - (d) the third party's interest in the article has, following the auction of the article, been transferred to another person; and
  - (e) either—
    - (i) the third party's claim is, after that transfer of interest, admitted by the creditor and the debtor; or
    - (ii) where the third party's claim is not so admitted, the sheriff, on an application by the third party after that transfer of interest, is satisfied that the claim is valid.
- (2) Where subsection (1) above applies, the creditor shall—
- (a) where the article has been sold at the auction, pay to the third party the fraction of the proceeds of the sale of the article which corresponded to the third party's interest in the article; or
  - (b) where the ownership of the article has passed to the creditor under section 31(2)(a) above, pay to the third party the fraction of the value of the article which corresponded to the third party's interest in the article.
- (3) The reference in subsection (2)(b) above to the value of an article is a reference to the value of the article as fixed under subsection (2) or (3) of section 15 above or, as the case may be, section 51 or 54(1) below.

### **37 Attachment terminated by payment or tender of full amount owing**

An attachment is to cease to have effect if the sum recoverable is—

- (a) paid to the creditor, the officer or any other person who has authority to receive payment on behalf of the creditor; or
- (b) tendered to any of those persons and the tender is not accepted within a reasonable time.

### **38 Assistance to debtor**

The sheriff clerk shall, if requested by the debtor—

- (a) provide the debtor with information as to the procedures available to him under any provision of this Part or Part 3 of this Act; and
- (b) assist the debtor in the completion of any form required in connection with any proceedings under any provision of this Part or Part 3 of this Act,

but the sheriff clerk shall not be liable for any error or omission by him in performing the duties imposed on him by this section.

### **39 Expenses chargeable in relation to attachment etc.**

- (1) Schedule 1 to this Act has effect for the purposes of determining the liability, as between the creditor and the debtor, for expenses incurred in serving a charge and in the process of attachment and auction.
- (2) The Scottish Ministers may by order modify that schedule so as to—

- (a) add or remove types of expenses to or, as the case may be, from those referred to in that schedule; or
- (b) vary any of the descriptions of the types of expenses there referred to.

#### **40 Recovery from debtor of expenses of attachment**

- (1) Subject to subsections (2) and (4) below, any expenses chargeable against the debtor which are incurred in an attachment (including the service of the charge preceding it and the auction following it) are recoverable from the debtor by the attachment concerned but not by any other legal process, and any such expenses which have not been recovered by the time the attachment and auction is completed will cease to be chargeable against the debtor.
- (2) The sheriff shall grant decree for payment of—
  - (a) any expenses awarded by the sheriff against the debtor in favour of the creditor under paragraph 4 or 7 of schedule 1 to this Act; or
  - (b) any additional sum of expenses awarded by the sheriff against the debtor in favour of the creditor under paragraph 5 of that schedule.
- (3) Subsection (4) below applies where an attachment is—
  - (a) recalled under section 9(2)(a), (d) or (e) (effect of time to pay order on diligence) of the Debtors (Scotland) Act 1987 (c. 18) in relation to a time to pay order;
  - (b) in effect immediately before the date of sequestration (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) of the debtor's estate;
  - (c) in effect immediately before the presentation of a petition for an administration order under Part II of the Insolvency Act 1986 (c. 45);
  - (d) in effect against property of the debtor immediately before a floating charge attaches to 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 that Act of 1986;
  - (e) in effect immediately before the commencement of the winding up, under Part IV or V of that Act of 1986, 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 5 to the Bankruptcy (Scotland) Act 1985 (c. 66).
- (4) Where this subsection applies—
  - (a) the expenses of the 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 order, sequestration, administration order, receivership, winding up, composition contract or trust deed for creditors, those expenses are recoverable by further attachment.

#### **41 Description of sums recovered by attachment or while attachment is in effect**

- (1) This section applies to any amounts recovered by an attachment or paid to account of the amounts recoverable by the attachment while the attachment is in effect.

- (2) An amount to which this section applies shall be ascribed to the following in the order in which they are mentioned—
- (a) the expenses already incurred in respect of—
    - (i) the attachment;
    - (ii) any previous diligence the expenses of which are chargeable against and recoverable from the debtor under section 40(4) above or section 93(5) of the Debtors (Scotland) Act 1987 (c. 18);
  - (b) any interest, due under the decree or other document of debt on which the attachment proceeds, which has accrued at the date of execution of the attachment;
  - (c) any sum (including any expenses) due under the decree or other document of debt, other than any expenses or interest mentioned in paragraphs (a) and (b) above.

#### **42 Restriction on fees payable by debtor**

No fees shall be payable by a debtor in connection with—

- (a) any application by the debtor;
- (b) objections by the debtor to an application by any other person; or
- (c) a hearing held,

under any provision of this Part or Part 3 of this Act, to any officer of any office or department connected with the Court of Session or the sheriff court the expenses of which are paid wholly or partly out of the Scottish Consolidated Fund.

#### **43 Power to provide for lay representation**

In section 32(1) (power of Court of Session to regulate civil procedure in sheriff court) of the Sheriff Courts (Scotland) Act 1971 (c. 58), after paragraph (k) there is inserted—

- “(l) permitting a party to proceedings which relate to an attachment to be represented, in such circumstances as may be specified in the act of sederunt, by a person who is neither an advocate nor a solicitor.”.

#### **44 Legal aid**

Part II of Schedule 2 (proceedings for which civil legal aid is not available) to the Legal Aid (Scotland) Act 1986 (c. 47) is amended as follows—

- (a) in paragraph 4—
  - (i) after “1987” there is inserted “or Part 2 or 3 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)”; and
  - (ii) after “Act”, where it second occurs, there is inserted “of 1987”; and
- (b) in paragraph 5, after “1987” there is inserted “or Part 2 or 3 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)”.

#### **45 Interpretation of this Part and Parts 3 and 4**

In this Part and in Parts 3 and 4 of this Act—

“chargeable expenses” means expenses chargeable against the debtor in accordance with this Part of this Act;

“dwellinghouse” does not include—

(a) a garage, even although it forms part of the structure or building which consists of or includes the dwellinghouse; or

(b) other structures or buildings used in connection with the dwellinghouse, but does include a mobile home or other place used as a dwelling;

“exceptional attachment order” has the meaning given by section 47(1) below;

“mobile home” means a caravan, houseboat or other moveable structure used as a dwelling;

“non-essential assets” has the meaning given by schedule 2 to this Act;

“officer” means the officer of court appointed by a creditor for the purposes of executing an attachment and arranging for the removal and auction of the articles attached;

“sum recoverable” means the debt in respect of which the attachment is executed together with any interest thereon and any chargeable expenses; and

“summary warrant” means a summary warrant granted under, or by virtue of, any enactment.