



Debt Arrangement and Attachment (Scotland) Act 2002

2002 asp 17

PART 2

ATTACHMENT

General and miscellaneous provisions

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 [F19(2)(d) or (10)(b)] (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 [F2appointment 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 to all or part of that property under section 53(7) (attachment

Status: Point in time view as at 22/04/2009. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Debt Arrangement and Attachment (Scotland) Act 2002, Section 40. (See end of Document for details)

- 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, [^{F3}appointment], receivership, winding up, composition contract or trust deed for creditors, those expenses are recoverable by further attachment.

Textual Amendments

- F1** Words in s. 40(3)(a) substituted (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), [Sch. 5 para. 30\(11\)\(a\)\(i\)](#) (with s. 223); 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))
- F2** Words in s. 40(3)(c) substituted (31.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), [Sch. 5 para. 30\(11\)\(a\)\(ii\)](#) (with s. 223); S.S.I. 2007/82, art. 4(e)(ii)
- F3** Word in s. 40(4)(b) substituted (31.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), [Sch. 5 para. 30\(11\)\(b\)](#) (with s. 223); S.S.I. 2007/82, art. 4(e)(ii)

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There are currently no known outstanding effects for the Debt Arrangement and Attachment (Scotland) Act 2002, Section 40.