



# Debt Arrangement and Attachment (Scotland) Act 2002

2002 asp 17

## [<sup>F1</sup>PART 1A

### INTERIM ATTACHMENT

#### *[<sup>F1</sup> Recall etc. of interim attachment*

#### 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**)

#### **9M Recall or restriction of interim attachment**

- (1) This section applies where warrant is granted for interim attachment.
- (2) The debtor and any person having an interest may apply to the court for an order—
  - (a) recalling the warrant;
  - (b) restricting the warrant;
  - (c) if an interim attachment has been executed in pursuance of the warrant—
    - (i) recalling; or
    - (ii) restricting,that attachment;
  - (d) determining any question relating to the validity, effect or operation of the warrant; or
  - (e) ancillary to any order mentioned in paragraphs (a) to (d) above.
- (3) An application under subsection (2) above shall—
  - (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
  - (b) be intimated to—

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**Changes to legislation:** There are currently no known outstanding effects for the Debt Arrangement and Attachment (Scotland) Act 2002, Cross Heading: Recall etc. of interim attachment . (See end of Document for details)

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- (i) the creditor; and
  - (ii) any other person having an interest.
- (4) At the hearing on the application under subsection (2) above, the court shall not make any order without first giving—
  - (a) any person to whom intimation of the application was made; and
  - (b) any other person the court is satisfied has an interest, an opportunity to be heard.
- (5) Where the court is satisfied that the warrant is invalid it—
  - (a) shall make an order—
    - (i) recalling the warrant; and
    - (ii) if interim attachment has been executed in pursuance of the warrant, recalling that interim attachment; and
  - (b) may make an order ancillary to any order mentioned in paragraph (a) above.
- (6) Where the court is satisfied that an interim attachment executed in pursuance of the warrant is incompetent, it—
  - (a) shall make an order recalling the interim attachment; and
  - (b) may make an order ancillary to any such order.
- (7) Subject to subsection (8) below, where the court is satisfied that the warrant is valid but that—
  - (a) an interim attachment executed in pursuance of it is irregular or ineffective; or
  - (b) it is reasonable in all the circumstances, including the effect granting warrant may have had on any person having an interest, to do so,
 the court may, subject to subsection (11) below, make any order such as is mentioned in subsection (2) above.
- (8) If no longer satisfied as to the matters mentioned in subsection (9) below, the court—
  - (a) shall make an order such as is mentioned in subsection (5)(a) above; and
  - (b) may make an order such as is mentioned in subsection (5)(b) above.
- (9) The matters referred to in subsection (8) above are—
  - (a) that the creditor has a prima facie case on the merits of the action;
  - (b) that there is a real and substantial risk enforcement of any decree in the action in favour of the creditor would be defeated or prejudiced by reason of—
    - (i) the debtor being insolvent or verging on insolvency; or
    - (ii) the likelihood of the debtor removing, disposing of, burdening, concealing or otherwise dealing with all or some of the debtor's assets; and
  - (c) that it is reasonable in all the circumstances, including the effect granting warrant may have had on any person having an interest, for the warrant or, as the case may be, any interim attachment executed in pursuance of it to continue to have effect.
- (10) The onus shall be on the creditor to satisfy the court that no order under subsection (5), (6), (7) or (8) above should be made.
- (11) Where—
  - (a) by virtue of section 9L(1)(a) above, the interim attachment continues to have effect after the creditor obtains a final interlocutor for payment; and

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- (b) the period of six months mentioned in that paragraph has not expired, the court shall not make an order under subsection (7) above.
- (12) In granting an application under subsection (2) above, the court may impose such conditions (if any) as it thinks fit.
- (13) Without prejudice to the generality of subsection (12) above, those conditions may require the debtor—
  - (a) to consign into court such sum; or
  - (b) to find such caution or to give such other security, as the court thinks fit.
- (14) Where the court makes an order under this section, the court shall order the debtor to intimate that order to—
  - (a) the creditor; and
  - (b) any other person appearing to the court to have an interest.

## **9N Variation of orders and variation or recall of conditions**

- (1) Where—
  - (a) an order restricting warrant for interim attachment is made under section 9M(7) above; or
  - (b) a condition is imposed under—
    - (i) section 9E(6) above; or
    - (ii) section 9M(12) above,the debtor may apply to the court for variation of the order or, as the case may be, variation or removal of the condition.
- (2) An application under subsection (1) above shall—
  - (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
  - (b) be intimated to—
    - (i) the creditor; and
    - (ii) any other person having an interest.
- (3) At the hearing on the application under subsection (1) above, the court shall not make any order without first giving—
  - (a) any person to whom intimation of the application was made; and
  - (b) any other person the court is satisfied has an interest, an opportunity to be heard.
- (4) On an application under subsection (1) above, the court may if it thinks fit—
  - (a) vary the order; or
  - (b) vary or remove the condition.
- (5) Where the court makes an order varying the order or, as the case may be, varying or removing the condition, the court shall order the debtor to intimate that order to—
  - (a) the creditor; and
  - (b) any other person appearing to the court to have an interest.]

**Changes to legislation:**

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