

2002 No. 560

COURT OF SESSION
SHERIFF COURTAct of Sederunt (Debt Arrangement and Attachment
(Scotland) Act 2002) 2002*Made**19th December 2002**Coming into force**30th December 2002*

The Lords of Council and Session, under and by virtue of the powers conferred by section 247(2) of the Local Government (Scotland) Act 1947(a), section 63(1) of the Taxes Management Act 1970(b), section 32 of the Sheriff Courts (Scotland) Act 1971(c), paragraph 3(3) of Schedule 1 to the Car Tax Act 1983(d), paragraph 7(2) of Schedule 2 to the Abolition of Domestic Rates Etc. (Scotland) Act 1987(e), section 5 of the Court of Session Act 1988(f), paragraph 2(2) of Schedule 8 to the Local Government Finance Act 1992(g), paragraph 2(2) of Schedule 10 to the Local Government etc. (Scotland) Act 1994(h), paragraph 13(2) of Schedule 5 to the Finance Act 1996(i), section 52 of the Finance Act 1997(j), and sections 12, 17, 18, 32, 56 and 64 of the Debt Arrangement and Attachment (Scotland) Act 2002(k) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

- (a) 1947 c.43; section 247 was substituted by the Debtors (Scotland) Act 1987 (c.18) (“the 1987 Act”), section 74(1) and Schedule 4, paragraph 1 and relevantly amended by the Abolition of Poindings and Warrant Sales Act 2001 (asp 1), (“the 2001 Act”) section 3 and the schedule, part 2, and by the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), (“the 2002 Act”), section 61 and schedule 3, Part 1, paragraph 22. See section 379 for the definition of “prescribed”.
- (b) 1970 c.9; section 63(1) was applied with modifications to employer’s liability for Schedule E income tax by S.I. 1973/334, to sub-contractor deductions in the construction industry by S.I. 1975/1960, to windfall tax by the Finance (No. 2) Act 1997 (c.58), section 53 and Schedule 2, paragraph 15, and to stamp duty penalties by S.I. 1999/2537; amended by the Finance Act 1989 (c.26), section 154, by the 2001 Act, section 3 and the schedule, Part 2, and by the 2002 Act, section 61 and schedule 3, Part 1, paragraph 11.
- (c) 1971 c.58; section 32 was relevantly amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13 and the 2002 Act, section 43, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c.48).
- (d) 1983 c.53; paragraph 3(3) was substituted by the 1987 Act, section 74(1) and Schedule 4, paragraph 3 and amended by the 2001 Act, section 3 and the schedule, Part 2, and the 2002 Act, section 61 and schedule 3, Part 1, paragraph 14.
- (e) 1987 c.47; paragraph 7 was repealed in part by the Local Government Finance Act 1992 (c.14), section 149 and Schedule 13, Part IV, and relevantly amended by the Local Government Finance Act 1992 (c.14), section 137 and Schedule 12, paragraph 36, and by the 2002 Act, section 61 and schedule 3, Part 1, paragraph 18. See section 29 for the definition of “prescribed”.
- (f) 1988 c.36; section 5 was relevantly amended by section 2(3) of the Civil Evidence Act 1988 (c.32) and paragraph 45 of Schedule 4 to the Children (Scotland) Act 1995 (c.36). See section 51 for the definition of “prescribed”.
- (g) 1992 c.14; paragraph 2(2) of Schedule 8 was relevantly amended by Local Government etc. (Scotland) Act 1994 (c.39), section 180(1) and Schedule 13, paragraph 176(18), and the 2002 Act, section 61 and schedule 3, Part 1, paragraph 22.
- (h) 1994 c.39; Schedule 10 confers power to make orders for recovery of diligence by virtue of that Schedule, which power is exercised in S.I. 1996/325; paragraph 2 of Schedule 10 was amended by the 2001 Act, section 3 and the schedule, Part 2, and by the 2002 Act, section 61 and Schedule 3, Part 1, paragraph 23.
- (i) 1996 c.8; paragraph 13 was prospectively repealed by the Finance Act 1997 (c.16), section 113 and Schedule 18, Part V(2).
- (j) 1997 c.16; section 52 was relevantly amended by the 2001 Act, section 3 and the schedule, Part 2, and by the 2002 Act, section 61 and schedule 3, Part 1, paragraph 26.
- (k) 2002 asp 17.

Citation, commencement and interpretation

1.—(1) This Act of Sederunt—

- (a) may be cited as the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002;
- (b) shall come into force on 30th December 2002; and
- (c) shall be inserted in the Books of Sederunt.

(2) In this Act of Sederunt, “the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002.

Rules for Applications in the Sheriff Court under the 2002 Act

2. Schedule 1 to this Act of Sederunt provides rules for applications in the sheriff court under the 2002 Act.

Summary warrants

3.—(1) Schedule 2 to this Act of Sederunt provides forms for summary warrants, and any reference in this article to a form means the form so specified in Schedule 2.

- (2) A summary warrant for recovery of any sum shall be in form A or B, as the case may be.

Minor and consequential amendments

4. Schedule 3 to this Act of Sederunt (which contains minor amendments and amendments consequential upon the provisions of the 2002 Act) shall have effect.

Revocation and savings

5. The Acts of Sederunt mentioned in column (1) of Schedule 4 to this Act of Sederunt are revoked to the extent specified in column (3) of that Schedule except—

- (a) in relation to a debt in respect of which a warrant sale has been completed before the date on which section 58 of the 2002 Act comes into force (“the commencement date”);
- (b) in relation to a debt in respect of which a poinding was executed before the commencement date if—
 - (i) the poinding was executed at a place other than a dwellinghouse; and
 - (ii) a warrant sale is completed in respect of the poinding on or before 31st March 2003; or
- (c) in relation to an application for sequestration for rent on which warrant was granted on or before the commencement date.

W DOUGLAS CULLEN
Lord President
I.P.D.

Edinburgh,
19th December 2002

SCHEDULE 1

RULES FOR APPLICATIONS IN THE SHERIFF COURT UNDER THE DEBT
ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002

ARRANGEMENT OF RULES

CHAPTER 1

GENERAL

1. Citation and interpretation
2. Dispensing power of sheriff
3. Lay representation
4. Conduct of hearings
5. Intimation
6. Electronic transmission of documents

CHAPTER 2

ATTACHMENT: GENERAL PROVISIONS

7. Applying for an extension of hours of attachment
8. Procedure for executing attachment
9. Applying for the attachment to cease to have effect because value fixed is too low
10. Notice of theft after attachment
11. Applying for further attachment or revaluation where article removed, damaged, destroyed or stolen
12. Applying for consignment where article damaged, destroyed, lost, stolen or disposed of
13. Report of attachment
14. Receipt for redemption of an attached article
15. Applying for security of an attached article or sale of a perishable etc. article
16. Applying for release of vehicle or mobile home from attachment, or for sale of vehicle
17. Applying for extension of duration of attachment
18. Invalidity and cessation of attachment
19. Notice of removal and auction of an attached article
20. Agreement on payment, and cancellation or renewal of auction
21. Report of auction
22. Modification of sale balance or declaration that auction void
23. Applications in relation to articles belonging to a third party or in common ownership
24. Third party claim after auction

CHAPTER 3

ATTACHMENT: ARTICLES KEPT WITHIN DWELLINGHOUSES

25. Applying for attachment of articles kept within a dwellinghouse
26. Making a declaration of financial circumstances
27. Appearance at the hearing by the creditor
28. Notice of making of exceptional attachment order
29. Money advice
30. Access to premises
31. Unlawful acts before attachment
32. Notice of theft before attachment
33. Applying for consignment where article damaged, destroyed, lost, stolen or disposed of
34. Applying for return of article removed where attachment not competent, sale unduly harsh, or article of sentimental value
35. Receipt for redemption of an attached article
36. Applying for leave to appeal

APPENDIX 1

FORMS

APPENDIX 2

GLOSSARY

CHAPTER 1

GENERAL

Citation and interpretation

1.—(1) These Rules may be cited as the Rules for Applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002(a).

(2) In these Rules—

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002;

“authorised lay representative” means a person to whom section 32(1) of the Solicitors (Scotland) Act 1980(b) (offence for unqualified persons to prepare certain documents) does not apply by virtue of section 32(2)(a) of that Act;

“decree” and “document of debt” have the meanings given to them in section 10(5) of the 2002 Act; and

“exceptional attachment order” has the meaning given to it by section 47(1) of the 2002 Act;

(3) Any reference in these Rules—

(a) to a section is to be construed as the section bearing that number in the 2002 Act;

(b) to a specified paragraph is to be construed as a reference to the paragraph so numbered or lettered in the provision in which that reference occurs; or

(c) to a numbered form means the form so numbered in Appendix 1 to these Rules, or a form of substantially the same effect with such variation as circumstances may require.

(4) The glossary in Appendix 2 to these Rules is a guide to the meaning of certain legal expressions, but is not to be taken as giving those expressions any meaning that they do not have in law generally.

Dispensing power of sheriff

2.—(1) The sheriff may relieve any party from the consequences of any failure to comply with the provisions of these Rules which is shown to be due to mistake, oversight or other excusable cause, on such conditions as the sheriff thinks fit.

(2) Where the sheriff so relieves a party the sheriff may make such order as the sheriff thinks fit to enable the application to proceed as if the failure to comply had not taken place.

Lay representation

3.—(1) A party to any proceedings before the sheriff under Parts 2 and 3 of the 2002 Act may be represented by an advocate, a solicitor or, subject to paragraph (3), an authorised lay representative.

(2) An authorised lay representative may in representing a party do everything for the preparation and conduct of any proceedings as may be done by that party.

(3) If the sheriff finds that an authorised lay representative is—

(a) not a suitable representative; or

(b) not duly authorised to represent a party,
that person shall cease to represent the party.

Conduct of hearings

4.—(1) Any hearing before the sheriff in an application under the 2002 Act shall be conducted as informally as the sheriff considers the circumstances permit.

(a) 2002 asp 17.

(b) 1980 c.46; section 32(1) was relevantly amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), section 56 and Schedule 1, Part I, paragraph 9, the Solicitors (Scotland) Act 1988 (c.42), section 6 and Schedule 1, paragraph 7, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 74 and Schedule 8, Part II, paragraph 29, and S.S.I. 2000/121.

- (2) The procedure to be adopted at a hearing shall be such as the sheriff considers—
 - (a) to be fair;
 - (b) best suited to the clarification and determination of the issues; and
 - (c) gives each party sufficient opportunity to put across the party's position.

Intimation

5.—(1) A warrant for intimation referred to in these Rules shall be in form 1.

(2) The sheriff may order intimation to such persons other than those to whom intimation is required under these Rules as the sheriff considers appropriate.

(3) Intimation shall be made by sheriff clerk or by officer of court.

(4) The sheriff clerk or officer of court on making intimation shall complete a certificate of intimation in form 2.

Electronic transmission of documents

6.—(1) Any document referred to in these Rules which requires to be—

- (a) lodged with the sheriff clerk;
- (b) intimated to a party; or
- (c) sent by the sheriff clerk,

may be in electronic or documentary form, and if in electronic form may be lodged, intimated or sent by e-mail or similar means.

(2) Paragraph (1), so far as it permits any document to be in electronic form, or if in electronic form to be lodged, intimated or sent by e-mail or similar means, does not apply to—

- (a) a certificate of intimation of service;
- (b) a citation;
- (c) a decree or extract decree of the court;
- (d) a report of an attachment;
- (e) a report of an auction; or
- (f) an attachment schedule.

(3) Where any document is lodged by e-mail or similar means the sheriff may require any principal document to be lodged.

(4) The time of lodgement, intimation or sending shall be the time when the document was sent or transmitted.

CHAPTER 2

ATTACHMENT: GENERAL PROVISIONS

Applying for an extension of hours of attachment

7.—(1) An application by an officer of court under section 12(2) to extend the hours of attachment shall be made by minute, which may be endorsed on the decree or document of debt (or extract decree or document of debt) upon which the attachment has proceeded.

- (2) The minute shall specify—
 - (a) the extension sought; and
 - (b) the reason for the extension.

(3) The minute does not need to be intimated to any party and the sheriff may grant or refuse it without a hearing.

(4) The terms of the sheriff's decision shall be endorsed on the decree or document of debt (or extract decree or document of debt), and may be authenticated by the sheriff clerk.

Procedure for executing attachment

8.—(1) When executing an attachment the officer of court shall be accompanied by another person who shall witness the whole proceedings.

- (2) Before attaching any article the officer of court shall—
 - (a) show to every person present—
 - (i) the decree or document of debt (or an extract of the decree or document) authorising the attachment; and
 - (ii) where the decree or document of debt is not a summary warrant, the certificate of execution of the charge to which that decree or document of debt relates;
 - (b) demand payment of the sum recoverable from the debtor (or if the debtor is not present, any other person who appears to the officer to be authorised to act for the debtor); and
 - (c) make enquiries as to the ownership in common of that article (and in particular ownership in common of that article by the debtor and any other person).
- (3) The officer of court shall prepare a schedule (the “attachment schedule”) in form 3.
- (4) The officer of court and the witness shall sign the attachment schedule.
- (5) The officer of court shall—
 - (a) deliver a copy of the signed attachment schedule to any person then in possession of the articles or leave it at the premises occupied by that person;
 - (b) if the person then in possession of the articles is not the debtor and it is reasonably practicable to do so, serve a copy of the signed attachment schedule by post on the debtor;
 - (c) inform the debtor (if present) of the debtor’s right to redeem attached articles under sections 18(1) or 56(1);
 - (d) inform any person present who claims to own any attached article in common with the debtor of the right to—
 - (i) make a claim for the purposes of section 35(2)(a);
 - (ii) apply for an order under section 35(2)(b); and
 - (iii) pay the value of the debtor’s interest in the attached article in terms of section 35(2)(c); and
 - (e) where, after making enquiries of any person present, it appears that the article attached is a mobile home which is the only or principal residence of a person other than the debtor, inform the debtor and that person, by leaving in the mobile home a copy of the attachment schedule, of their right to apply for release of the mobile home from attachment under section 16(1).

Applying for the attachment to cease to have effect because value fixed is too low

9.—(1) An application by the debtor under section 23(2) for an order that the attachment cease to have effect because the value fixed is too low shall be in form 4.

- (2) On the lodging of such an application the sheriff clerk shall—
 - (a) fix a date for a hearing;
 - (b) grant a warrant for intimation;
 - (c) intimate the application and warrant to the applicant, the creditor and the officer of court who executed the attachment; and
 - (d) complete a certificate of intimation.
- (3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

Notice of theft after attachment

10.—(1) A notice by the debtor under section 21(7) that an attached article has been stolen shall be in form 5.

- (2) Any notice shall be sent by the debtor to the sheriff clerk, the creditor, and the officer of court.

Applying for further attachment where articles removed, damaged, destroyed or stolen

11.—(1) The following applications shall be made in form 6:–

- (a) an application under section 21(2)(b) for authority to attach other articles where an article has been moved;
- (b) an application under section 21(10)(a) for authority to attach other articles where an article has been damaged, destroyed or stolen; and
- (c) an application under section 21(10)(b) for the revaluation of any damaged article.

(2) On the lodging of an application under paragraph (1) the sheriff clerk shall–

- (a) fix a date for a hearing;
- (b) grant a warrant for intimation;
- (c) intimate the application and warrant to the applicant, the debtor and (as appropriate) the creditor or the officer of court who executed the attachment; and
- (d) complete a certificate of intimation.

(3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

Applying for consignation where article damaged, destroyed, lost, stolen or disposed of

12.—(1) An application under section 21(11) for an order against a debtor or third party to consign a sum of money in relation to an article which has been damaged, destroyed, lost, stolen or disposed of for value shall be in form 7.

(2) On the lodging of such an application the sheriff clerk shall–

- (a) fix a date for a hearing;
- (b) grant a warrant for intimation;
- (c) intimate the application and warrant to the applicant, the officer of court who executed the attachment, the person in respect of whom an order for consignation is sought and (as appropriate) the debtor; and
- (d) complete a certificate of intimation.

(3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

Report of attachment

13.—(1) A report under section 17(1) by an officer of court of the execution of a attachment shall be in form 8.

(2) The sheriff clerk shall retain the report of attachment.

(3) An application by an officer of court under section 17(1) to extend the time for lodging the report shall be made by minute stating the reasons for seeking the extension, which may be endorsed on the decree or document of debt (or extract decree or document of debt) upon which the attachment has proceeded.

(4) The terms of the sheriff's decision on any application shall be endorsed on the decree or document of debt (or extract decree or document of debt), and may be authenticated by the sheriff clerk.

Receipt for redemption of an attached article

14. A receipt granted by an officer of court for payment for an attached article redeemed under section 18(1) shall be in form 9.

Applying for security of an attached article or sale of a perishable etc. article

15.—(1) An application for an order under section 20(1) for the security of an attached article, or for the sale of an article which is perishable or likely to deteriorate substantially and rapidly in condition or value, shall be in form 10.

(2) The sheriff shall on the lodging of such an application decide what further procedure is appropriate and may dispose of it without intimation to any party or without a hearing.

- (3) Where the sheriff considers it appropriate, a date for a hearing shall be fixed.
- (4) Where a hearing is fixed the sheriff clerk shall—
 - (a) intimate the application and warrant for intimation to the applicant and (as appropriate) to the debtor, the creditor and the officer of court who executed the attachment; and
 - (b) complete a certificate of intimation.
- (5) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date of the hearing.

Applying for release of vehicle or mobile home from attachment, or for sale of vehicle

- 16.—**(1) The following applications shall be in form 11:—
- (a) an application by the debtor or a third party under section 16(1) for the attachment of a mobile home to cease to have effect;
 - (b) an application by the debtor under section 22(1) for the attachment of a vehicle to cease to have effect because the auction of the vehicle would be unduly harsh; or
 - (c) an application by the debtor under section 22(3) for the immediate sale of a vehicle because the auction of the vehicle would be unduly harsh.
- (2) On the lodging of an application under paragraph (1) the sheriff clerk shall—
- (a) fix a date for a hearing;
 - (b) grant a warrant for intimation;
 - (c) intimate the application and the warrant to the creditor, the officer of court who executed the order, the debtor and (where appropriate) the third party; and
 - (d) complete a certificate of intimation.
- (3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

Applying for extension of duration of attachment

- 17.—**(1) An application by a creditor or an officer of court under section 24(2) for an extension of the duration of an attachment shall be in form 12.
- (2) On the lodging of such an application the sheriff clerk shall—
- (a) fix a date for a hearing;
 - (b) grant a warrant for intimation;
 - (c) intimate the application and warrant to the applicant, the debtor, and (as appropriate) the creditor or the officer of court who executed the attachment; and
 - (d) complete a certificate of intimation.
- (3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.
- (4) The sheriff clerk shall intimate the sheriff's decision on such an application to the debtor.

Invalidity and cessation of attachment

- 18.—**(1) An application by a debtor for an order under section 26(1)(a) or (b) declaring the attachment to be invalid or to have ceased to have effect shall be in form 13.
- (2) On the lodging of such an application the sheriff clerk shall—
- (a) fix a date for a hearing;
 - (b) grant a warrant for intimation;
 - (c) intimate the application and warrant to the applicant, the creditor, the officer of court who executed the attachment, and any other person having an interest; and
 - (d) complete a certificate of intimation.
- (3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.
- (4) The sheriff may declare an attachment to be invalid or to have ceased to have effect without an application having been made under paragraph (1).

- (5) The sheriff clerk shall intimate any declaration under paragraph (4) to the debtor.

Notice of removal and auction of an attached article

19.—(1) An officer of court shall make the following notices in form 14:–

- (a) a notice under section 27(4) of the date and location of an auction, and the date of removal of an attached article from the place at which it is kept; and
- (b) a notice under section 53(2) of the date of removal of an attached article from the dwellinghouse at which it is kept.

(2) A notice under paragraph (1) shall be given to the debtor, and to any other person in possession of an article which is the subject of that notice, no later than 7 days before the proposed date of removal.

Agreement on payment, and cancellation or renewal of auction

20.—(1) A report by an officer of court to the sheriff under section 29(3)(a) of any agreement on payment between the creditor and the debtor that results in the cancellation of the arrangements for an auction of attached articles shall be in form 15.

(2) An application by a creditor for an order under section 29(4) that a debtor is in breach of any agreement on payment with the creditor shall be in form 16.

(3) On the lodging of an application under paragraphs (1) or (2) the sheriff clerk shall–

- (a) fix a date for a hearing;
- (b) grant a warrant for intimation;
- (c) intimate the application and warrant to the applicant, the debtor, the officer of court, and any other person having an interest; and
- (d) complete a certificate of intimation.

Report of auction

21.—(1) A report of auction under section 32(1) shall be in form 17.

(2) There shall be lodged with the report of auction–

- (a) the decree or document of debt upon which diligence proceeded (or an extract of the decree or document);
- (b) any executions or certificates of intimation and service;
- (c) copies of notices required by the 2002 Act; and
- (d) vouchers for relevant outlays.

(3) The sheriff clerk shall retain the report of auction.

Modification of sale balance or declaration that auction void

22.—(1) Where, after the receipt of the auditor of court's report made under section 33(1)(c), the sheriff considers–

- (a) that a balance due by or to the debtor should be modified; or
- (b) that the auction may be void,

the sheriff shall before making an order under section 33(4)(b) or (c) fix a date for a hearing.

(2) The sheriff clerk shall intimate such a hearing to the creditor, the officer of court who prepared the report of auction, the debtor, and any such person having or having had an interest in or possession of the attached article as the sheriff may specify.

(3) Where the sheriff has made an order modifying a sale balance or declaring an auction to be void, the sheriff clerk shall intimate that order to those persons to whom intimation was made under paragraph (2).

Applications in relation to articles belonging to a third party or in common ownership

23.—(1) An application by a third party–

- (a) under section 34(1)(b)(ii) for an order that the sheriff is satisfied that the third party owns an attached article shall be in form 18;

- (b) under section 35(2)(b)(ii) for an order that the sheriff is satisfied that the third party owns an attached article in common with the debtor shall be in form 19; or
 - (c) under section 35(3) for the attachment of an article owned in common to cease to have effect because the sale of the article would be unduly harsh shall be in form 20.
- (2) On the lodging of an application under paragraph (1) the sheriff clerk shall—
- (a) fix a date for a hearing;
 - (b) grant a warrant for intimation;
 - (c) intimate the application and warrant to the applicant, the creditor, the debtor, the officer of court who executed the attachment, and any person having possession of the article; and
 - (d) complete a certificate of intimation.
- (3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

Third party claim after auction

24.—(1) An application by a third party under section 36(1)(e)(ii) for a finding after auction that a claim to an attached article is valid shall be in form 21.

- (2) On the lodging of such an application the sheriff clerk shall—
- (a) fix a date for a hearing;
 - (b) grant a warrant for intimation;
 - (c) intimate the application and warrant to the applicant, the debtor, the creditor and (where appropriate) the officer of court who executed the attachment; and
 - (d) complete a certificate of intimation.

CHAPTER 3

ATTACHMENT: ARTICLES KEPT WITHIN DWELLINGHOUSES

Applying for attachment of articles kept within a dwellinghouse

25.—(1) An application by a creditor under section 47(1) for an exceptional attachment order shall be in form 22.

- (2) On such an application being lodged the sheriff clerk shall—
- (a) fix a date for a hearing;
 - (b) grant a warrant for intimation;
 - (c) intimate the application and warrant to the debtor, together with—
 - (i) a form of service in form 23; and
 - (ii) a copy of form 24 (declaration of financial circumstances); and
 - (d) complete a certificate of intimation.

(3) The date fixed for the hearing of the application shall be no earlier than a date that is 21 days after the date when the hearing was fixed.

Making a declaration of financial circumstances

26.—(1) A debtor who wishes to make a declaration of financial circumstances for the purpose of section 47(4)(g) shall complete form 24 and lodge it with the sheriff clerk no later than ten days before the date on which the hearing is to take place.

- (2) The sheriff clerk shall send a copy of any declaration to the creditor.

Appearance at the hearing by the creditor

27.—(1) A creditor who applies for an exceptional attachment order shall appear or be represented at the hearing of the application.

(2) Where the creditor does not appear and is not represented at the hearing, the sheriff may dismiss the application.

Notice of making of exceptional attachment order

- 28.** The sheriff clerk on the making of an exceptional attachment order shall—
- (a) intimate the order to the debtor by notice in form 25;
 - (b) attach a copy of the order to the notice; and
 - (c) complete a certificate of intimation.

Money advice

29—(1) A report of a visit to give money advice under section 47(5) shall be in form 26.

(2) Any report shall be lodged with the sheriff clerk by the money adviser no later than 3 days before the date fixed for the hearing of the application to which the report relates.

(3) The sheriff clerk shall send a copy of the report to the debtor and the creditor before the date fixed for the hearing of the application to which the report relates.

Access to premises

30.—(1) An application by an officer of the court under section 49(3) to dispense with service of a notice of entry shall be made by motion in the process of the application for the exceptional attachment order.

(2) The motion shall specify the reason why notice might prejudice the execution of the attachment.

(3) The motion does not need to be intimated to any party and the sheriff may grant or refuse it without a hearing.

Unlawful acts before attachment

31.—(1) The following applications shall be in form 27:—

- (a) an application by a debtor or a third party under section 50(1)(a) for consent to move any article which forms part of the assets to which an exceptional attachment order relates from the dwellinghouse in which it is kept; or
- (b) an application by the debtor under section 50(1)(b) for consent to sell, make a gift of, or otherwise relinquish ownership of any such article.

(2) On the lodging of an application under paragraph (1) the sheriff clerk shall—

- (a) fix a date for a hearing;
- (b) grant a warrant for intimation;
- (c) intimate the application and the warrant to the applicant, the creditor and (as appropriate) the debtor; and
- (d) complete a certificate of intimation.

Notice of theft before attachment

32.—(1) A notice by the debtor under section 50(3) that an attached article has been stolen shall be in form 5.

(2) Any notice shall be sent by the debtor to the sheriff who granted the exceptional attachment order, the creditor, and (if appropriate) the officer of court.

Applying for consignation where article damaged, destroyed, lost, stolen or disposed of

33.—(1) An application under section 50(5) for an order against a debtor or third party to consign a sum of money in relation to an article which has been damaged, destroyed, lost, stolen or disposed of for value shall be in form 7.

- (2) On the lodging of such an application the sheriff clerk shall—
- (a) fix a date for a hearing;

- (b) grant a warrant for intimation;
- (c) intimate the application and warrant to the applicant, the officer of court who executed the attachment, the person in respect of whom an order for consignment is sought and (as appropriate) the debtor or creditor; and
- (d) complete a certificate of intimation.

(3) The officer of court who executed the attachment shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

Applying for return of article removed where attachment not competent, sale unduly harsh, or article of sentimental value

34.—(1) An application by a debtor under section 55(2) for an order that an attachment shall cease to have effect, and to require the officer of court to return an article to the dwellinghouse from which it was removed, shall be in form 28.

- (2) On the lodging of such an application the sheriff clerk shall—
- (a) fix a date for a hearing;
 - (b) grant a warrant for intimation;
 - (c) intimate the application and the warrant to the applicant, the creditor, and the officer of court who executed the order; and
 - (d) complete a certificate of intimation.

(3) The officer of court who executed the order shall lodge with the sheriff clerk a copy of the attachment schedule before the date fixed for the hearing.

Receipt for redemption of an attached article

35. A receipt granted by an officer of court for payment for an attached article redeemed under section 56(1) shall be in form 9.

Applying for leave to appeal

36.—(1) An application for leave to appeal against a decision of the sheriff under section 57 of the 2002 Act shall—

- (a) be made in writing to the sheriff clerk within 14 days of the making of the decision; and
- (b) specify the question of law upon which the appeal is to proceed.

(2) The sheriff may consider such an application without hearing parties unless it appears to him to be necessary to hold a hearing, and if so the sheriff clerk shall intimate the date, place and time of the hearing to the parties.

APPENDIX 1**FORMS**

List of Forms

<i>Form No</i>	<i>Description</i>	<i>Rule No</i>
1	Warrant for intimation	5(1)
2	Certificate of intimation	5(4)
3	Attachment schedule	8(3)
4	Application for attachment to cease to have effect because the value fixed is too low	9(1)
5	Notice of theft of attached articles	10(1) & 32(1)
6	Application for further attachment in same place and/or revaluation when articles moved, stolen, damaged or destroyed	11(1)
7	Application for consignment where articles have been damaged, destroyed, lost, stolen or disposed of	12(1) & 33(1)
8	Report of attachment	13(1)
9	Receipt for redemption of attached articles	14 & 35
10	Application for security of attached articles or sale of articles that are perishable or likely to deteriorate	15(1)
11	Application for (1) release of vehicle or mobile home from attachment (2) immediate sale of a vehicle	16(1)
12	Application for extension of duration of an attachment	17(1)
13	Application for an order declaring the attachment invalid or has ceased to have effect	18(1)
14	Notice of removal of attached articles and public auction	19(1)
15	Report of agreement resulting in cancellation of auction	20(1)
16	Application for an order for a new auction	20(2)
17	Report of auction	21(1)
18	Application in relation to articles belonging to a third party	23(1)(a)
19	Application in relation to articles belonging to a third party in common with the debtor	23(1)(b)
20	Application for attachment to cease as sale would be unduly harsh	23(1)(c)
21	Application in relation to articles belonging to a third party in common with the debtor that have been sold at auction	24(1)
22	Application for exceptional attachment order	25(1)
23	Form of service	25(2)(c)(i)
24	Declaration by debtor of financial circumstances	25(2)(c)(ii) & 26(1)
25	Notice of exceptional attachment order	28
26	Report of visit to give money advice	29(1)
27	Application for consent to move any article, to sell, make a gift or otherwise relinquish ownership	31(1)
28	Application for return of articles (1) removed where attachment not competent (2) where auction unduly harsh or (3) of sentimental value	34(1)

Rule 5(1)

Form 1

Debt of Arrangement and Attachment (Scotland) Act 2002

Court Ref. No.

Warrant for Intimation

(Place and date)

The Sheriff grants warrant to intimate a copy of the application and this warrant to the applicant, to the other person(s) stated in the application as having an interest (*specify*), Officer of Court referred to in the application and to (*insert any other person the sheriff considers appropriate*).

Fixes as a hearing (*date*) at (*time*) **within the Sheriff Court House** (*address of court*)

1. **Requires the applicant to appear to be represented at the hearing to show why the application should be granted;**
2. **Requires the other persons to whom intimation is given to appear or be represented at the hearing if they intend to oppose the application or make representations about it; and**
3. **Directs the Officer of Court to send a copy of the attachment schedule/exceptional attachment schedule to the Sheriff clerk before the date of the hearing.**

Sheriff Clerk/Depute

To (*name of person receiving intimation*)

This application and warrant is intimated to you.

Sheriff Clerk/Depute

Date

Please note

To the applicant

If you fail to appear or be represented at the hearing fixed your application may be dismissed

To the other persons to whom intimation is given

If you fail to appear or be represented at the hearing fixed the application may be dealt with in your absence

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Rule 5(4)

Form 2

Debt Arrangement and Attachment (Scotland) Act 2002

Court Ref No

Certificate of intimation

(Place, date) This application was intimated by me
Sheriff Clerk/Depute by posting to

on a copy of the application (together with a copy of
Form(s)) in a first class recorded delivery/registered letter addressed as follows—

Sheriff Clerk Depute

(Attach receipt for letter)

Note

Where intimation made by Officer of Court, form to be adapted as appropriate.

Rule 8(3)

Form 3

Debt Arrangement and Attachment (Scotland) Act 2002

Sheriff Court.....

ATTACHMENT SCHEDULE

To *(name and address of debtor, person in possession of attached articles or any person who claims to own attached articles)*

On _____ a decree was granted in the Sheriff Court _____ /Court of Session in an action by _____

CREDITOR

against _____

DEBTOR

in which the Debtor(s) were ordered to pay to the Creditor(s)
(specify amounts)
*(*or give details of other document upon which the attachment proceeded)*

*On _____ a charge for payment of these sums (under deduction of £ _____ paid to account since the date of decree) was served on the said *(name of debtor)*
(delete where attachment proceeded on summary warrant)

OR

On _____ an exceptional attachment order was made on application by _____

CREDITOR

against _____

DEBTOR

I, *(name and address)*, Officer of Court on the instruction of the said *(name of creditor)* attach at *(address)* the articles belonging to the debtor specified in the list attached.

The sum now due by the debtor is

Principal sum	£	
Interest	£	
Expenses	£	
Less paid to account	£	_____
Charge fee	£	
Attachment fee	£	
Other outlays <i>(specify)</i>	£	_____

(Further interest may accrue if the debt is not immediately)

If this sum is not paid arrangements will be made for the auction of the attached article(s).

Payment should be made to (name and address)

*I have removed the attached article(s).

*You may move the attached article(s) to another location only if the creditor or the officer of court has consented in writing to this or the sheriff has authorised their removal.

You (the debtor) have the right to redeem an attached article within *7/14 days on payment to me of the value fixed and referred to in this schedule.

*You (insert name of person present claiming to own article in common with debtor) have the right to apply to the sheriff for an order that an attached article is owned in common, and if an order is made the debtor's interest will be transferred to you on payment to me of a sum equal to the value of debtor's interest in that article.

*You (insert name of person other than the debtor where mobile home is their principal residence) have the right to apply to the sheriff within 14 days of the attachment for an order that the attachment of the mobile home is to cease to have effect.

*I did not attach the following articles on the basis that-

- (a) they were of sentimental value to the debtor; and
- (b) were likely to realise, on sale by auction, an aggregate amount not exceeding £150 (list articles and value).

* delete as appropriate

This attachment is carried out by me today (*date*) and is witnessed by (*name and address*)

I deliver/leave this attachment schedule to/for you (name) today at (address)

(*signature*)
Witness
(designation)

(*signature*)
Officer of court
(designation)

PLEASE NOTE

1. Any unauthorised removal of the attached articles or any wilful damage or destruction of them by the debtor or persons who know the articles have been attached shall be a breach of attachment and may be dealt with as a contempt of court.
2. The theft of any attached article should be notified to the creditor and to me together with details of any claim on insurance. Failure to do so is also a breach of the attachment and may be dealt with as a contempt of court. A form is available for this purpose and may be obtained from the sheriff clerk or any citizens advice bureau or local advice centre.

LIST SPECIFYING ATTACHED ARTICLE(S)

ARTICLES ATTACHED

VALUE FIXED

Witness

Officer of court

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Rule 9(1)

Form 4

Debt Arrangement and Attachment (Scotland) Act 2002, section 23(2)

Sheriff Court, (name)

**APPLICATION FOR
THE ATTACHMENT
TO CEASE TO HAVE
EFFECT BECAUSE
THE VALUE FIXED
IS TOO LOW**

	...../20....
	(Court Ref No)
(1)	APPLICANT

A

The Applicant is the Debtor

(1) Insert name and address

B

**Other persons having an interest
The Creditor (1)**

Officer of Court who executed the attachment (1)

(2) Insert name

C

Decree was granted in an action by the Creditor(s) (2)

**in the Court of Session/Sheriff Court at
on 20 against the Debtor(s) (2)**

(or give details of other document or summary warrant on which the attachment proceeded)

D

An attachment was executed on

**give details of the article(s) and valuation by Officer of Court*

E

The * article(s) attached was/were the following:--

The(se) article(s) should be released from attachment as the value of the article(s) fixed by the officer of court is too low for the following reasons:--

This application is made under Section 23(2) of the Debt Arrangement and Attachment (Scotland) Act 2002

The Applicant asks the court:--

- 1 To fix a Hearing**
- 2 To order the Sheriff Clerk to intimate this application and the date of the hearing to the Applicant, the Creditor and the Officer of Court who executed the attachment**
- 3 To order attachment of the article(s) to cease to have effect because the (aggregate of) the value(s) of the attached article(s) is substantially below the (aggregate of) the price(s) which it is/they are likely to fetch if sold on the open market.**
- 4 To award expenses (if competent)**

(Date)

**IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL
ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR**

Rules 10(1) and 32(1)

Form 5

Debt Arrangement and Attachment (Scotland) Act 2002, sections 21(7) and 50(3)

**NOTICE OF
THEFT OF
ATTACHED
ARTICLES**

...../20....

(Court Ref No)

*Insert name and
address of Creditor*

*Insert name and
address*

(2) Insert name

(3) Insert address

*Please note the
details requested can
be found on the
attachment Schedule*

An attachment was carried out by (2)

**Officer of Court on the instructions of the Creditor
on 20 at (3)**

The article(s) noted below were stolen on *(insert date)*

- * **The article(s) was/were insured and I intend to make a claim**
- * **The article(s) was/were not insured**
- * **The insurance company is *(specify name and address)***
- * **Insurance Claim Reference Number *(please specify)***
- * **The theft was reported to the police on *(specify date)* and the report reference number is *(please specify)***

Date

Debtor

Copies of this notice to be sent by the Debtor to the Creditor, Officer of Court, and the Sheriff/Sheriff Clerk (delete as appropriate)

**IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL
ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR**

Rule 11(1)

Form 6

Debt Arrangement and Attachment (Scotland) Act 2002, sections 21(2)(b), 10(a), and 10(b)

Sheriff Court, (name)

APPLICATION FOR FURTHER ATTACHMENT IN SAME PLACE AND/OR REVALUATION WHEN ARTICLES MOVED, STOLEN DAMAGED OR DESTROYED

	...../20....
	(Court Ref No)
(1)	APPLICANT

(1) Insert name and address

A

The Applicant is
* The Creditor
* An Officer of Court on behalf of the Creditor

B

Other persons having an interest
The Debtor (1)
Third Party (1)

(2) Insert name

C

Decree was granted in an action by the Creditor(s) (2)
In the Court of Session/Sheriff Court at
on 20 against the Debtor(s) (2)
(or give details of other document or summary warrant on which the attachment proceeded)

(3) Insert address

D

An attachment was executed by (2)
Officer of Court on the instructions of the Creditor
on 20 at (3)

Add reasons for making these statements and specify damage and give details of the alleged reduction in value of the damaged articles

E

Among the articles attached were the following:-
* The(se) articles were moved from the premises at (3) in breach of the attachment and authority should be given for attachment of other articles belonging to the debtor at the same premises.
* The(se) articles were damaged, destroyed or stolen and authority should be given for attachment of other articles belonging to the Debtor and/or the revaluation of damaged articles.

This application is made under Section *21(2)(b)/21(10) of the Debt Arrangement and Attachment (Scotland) Act 2002

The Applicant asks the Court:-

- To fix a Hearing
- To order the Sheriff Clerk to intimate this application and the date of the hearing to the Applicant, the Debtor and the Officer of Court who carried out the attachment (if not the applicant)
- To Authorise the attachment of other goods belonging to the Debtor at the premises in which the original attachment took place/*To Authorise the revaluation of the damaged articles
- To award expenses (if competent).

*delete as appropriate

(Date)

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Form 7

Debt Arrangement and Attachment (Scotland) Act 2002, sections 21(11) and 50(5)

Sheriff Court, (name)

APPLICATION FOR
CONSIGNATION
WHERE ARTICLES
HAVE BEEN
DAMAGED,
DESTROYED, LOST,
STOLEN OR
DISPOSED OF

	...../20....
	(Court Ref No)
(1)	APPLICANT

** give details of creditor
if Applicant is Officer
of court*

A

<p>The Applicant is * The Creditor/An Officer of Court on behalf of the Creditor</p>
--

*(1) Insert name and
address*

B

<p>Other persons having an interest The Debtor (1)</p> <p>The person in respect of whom an order for consignment is sought (1)</p>
--

(2) Insert name

C

<p>Decree was granted in an action by the Creditor(s) (2)</p> <p>in the Court of Session/Sheriff Court at on 20 against the Debtor(s) (2)</p> <p><i>(or give details of other document or summary warrant on which the attachment proceeded)</i></p>
--

(3) Insert address

D

<p>* An attachment was executed on (date) by (1) Officer of Court at (3).</p> <p>* An exceptional attachment order was granted on 20 , and executed on (date) by (2) Officer of Court at (3).</p>

** delete as appropriate*

E

<p>Among the articles attached was/were the following which was/were valued at £ and which the said (2) knew had been attached.</p> <p>* The article(s) having been removed from the premises in breach of attachment has/have been *damaged/*destroyed/*lost/*passed onto another without knowledge of the attachment and for value.</p> <p>* The said damaged article(s) is/are now valued at £</p>

*Give details as far as
known of circumstances
in which the article(s)
was/were damaged,
lost, stolen or
disposed of*

This application is made under Section 21(11)/50(5) of the Debt Arrangement
and Attachment (Scotland) Act 2002
The Application asks the court:-
1 To fix a Hearing
2 To order the Sheriff Clerk to intimate this application and the date of the
hearing to the Applicant, to those persons stated above as having an interest
and the Officer of Court who carried out the attachment.
3 To order the said (2)..... to consign £.... in court being:
(i) the difference between the value of the article fixed on attachment and
the value of the article as damaged
or
(ii) the value fixed on attachment, and/or the value of the article(s).
4 To award expenses (if competent).
(Date)

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE
CENTRE/SHERIFF CLERK OR SOLICITOR

Rule 13(1)

Form 8

Debt Arrangement and Attachment (Scotland) Act 2002, section 17(1)
Sheriff Court (place).....

REPORT OF ATTACHMENT

Date of execution of attachment.....

On _____ a decree was granted in the Sheriff Court _____ /Court of Session in an
action by _____

(Name and address) _____ **CREDITOR**

against

(Name and address) _____ **DEBTOR**

in which the Debtor(s) were ordered to pay to the Pursuer(s)
(specify amounts)

(*or give details of other document or order upon which the attachment proceeded)

*On (date) _____ a charge for payment of these sums (under deduction of £ _____ paid to
account since the date of decree) was served on the debtor)
(delete where attachment proceeded on summary warrant)

The sum now due by the debtor is

Principal sum	£
Interest	£
Expenses	£
Less paid to account	£ _____

Charge fee	£
Attachment fee	£
Other outlays (specify)	£ _____

I (name and address) _____ Officer of Court
attended at (address) _____ along with the

witness (name and address) _____ on the instructions of
the creditor(s) (name and address);

showed the warrant to attach *(delete if appropriate) (with certificate of execution of charge) to
every person present and demanded payment of the sum due from the debtor/a person who in the
debtor's absence appeared to be authorised to act for him/her.

The sum due not being paid, and having made enquiry of those present as to the ownership of the
articles I proposed to attach, and in particular whether there were any persons who owned any of
the articles in common with the debtor. I attached the articles belong to the said
(name of debtor) specified in the list attached at the valuation shown.

I advised the person(s) present (if appropriate) of their rights to redeem attached articles or to
apply for the attachment to cease to have effect in terms of section 16, 18, 22, 23, 34, 35, 55 or 56)
of The Debt Arrangement and Attachment Act 2002.

*The following articles were not attached by me on the basis that–

- (a) they were of sentimental value to the debtor; and
- (b) were likely to realise, on sale by auction, an aggregate amount not exceeding £150.

List of articles and value

I warned those present that any unauthorised removal of the attached article(s) or any wilful damage or destruction of them by the debtor or person(s) who knew the article(s) had been attached would be a breach of attachment and could be dealt with as a contempt of court.

ARTICLES ATTACHED

VALUE FIXED

I *delivered/left an attachment schedule signed by myself and the witness to the attachment to/for (name of debtor/person in possession of the articles)

at _____ on the

day of

*and served a copy of it by first class post on the said debtor(s).

(*signature*)
Witness
(designation)

(*signature*)
Officer of court
(designation)

Notes

1. Any assertion made before the submission of this report to the Sheriff, that any attached article does not belong to the debtor(s) must be noted in this report.
2. Any redemption of attached articles by the debtor before the submission of the report to the sheriff must be noted in this report.
3. Where the report relates to a further or second attachment to enforce the same debt the officer of court must specify in the report the circumstances justifying the further or second attachment.

*delete as appropriate

Rules 14 and 35

Form 9

Debt Arrangement and Attachment (Scotland) Act 2002, sections 18(1) and 56(1)

RECEIPT FOR REDEMPTION OF ATTACHED ARTICLES

In respect of the attachment carried out on _____ at the instance of (name and address
of creditor)

against _____ (name and address of debtor)

Received the sum of £ _____ in redemption of the following article(s);

(Specify)

Date..... Officer of Court.....

Note: Copy to be retained for purpose of report to Court

Rule 15(1)

Form 10

Debt Arrangement and Attachment (Scotland) Act 2002, section 20(1)

Sheriff Court, (name)

APPLICATION FOR
SECURITY OF
ATTACHED
ARTICLES THAT
OR SALE OF ARTICLES
THAT ARE
PERISHABLE OR ARE
LIKELY TO
DETERIORATE

A

	...../20....
	(Court Ref No)
(1)	APPLICANT

The Applicant is * The Creditor/An Officer of Court on behalf of the Creditor/ the Debtor

(1) Insert name and address

B

Other persons having an interest The Debtor (1) The Creditor (1) Officer of Court (1) who executed the attachment
--

(2) Insert name

C

Decree was granted in an action by the Creditor(s) (2) in the Court of Session/Sheriff Court at on 20 against the Debtor(s) (2) (or give details of other document or summary warrant on which the attachment proceeded)

(3) Insert address

D

An attachment was executed by (2) Officer of Court on the instructions of the Creditor on 20 at (3)

* delete.
**give reasons why such an order should be made and proposed security arrangements

E

Among the articles attached were the following:- * It is necessary that an order be made for the security of the attached article(s)** * The(se) article(s) are of a perishable nature or are likely to deteriorate substantially and rapidly in condition or value***
--

***give reasons for making application

F

I have intimated this application to debtor/creditor/officer of court who executed the attachment*
--

This application is made under Section 20(1) of the Debt Arrangement and Attachment (Scotland) Act 2002

The Applicant asks the court:-

- 1 * To order such intimation (if any) and further procedure as the court considers appropriate
- 2 * To make such order as thought appropriate for the security of the attached article(s) referred to
- 3 * To make an order for the immediate sale of the article(s) referred to
- 4 * If the article(s) is/are sold, to order consignment of the proceeds in court until the diligence is completed or otherwise ceases to have effect
- 5 To award expenses (if competent)

(Date)

*delete

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Rule 16(1)

Form 11

Debt Arrangement and Attachment (Scotland) Act 2002, sections 16(1) and 22(1) and (3)
 Sheriff Court, (name)

APPLICATION FOR (1) RELEASE OF VEHICLE OR MOBILE HOME FROM ATTACHMENT (2) IMMEDIATE SALE OF A VEHICLE		...../20.... (Court Ref No)
	(1)	APPLICANT
	A	The Applicant is * The Debtor * A person whose only or principal residence is an attached mobile home
(1) Insert name and address	B	Other persons having an interest * The Debtor (1) *The Creditor (1) * Officer of court who carried out attachment (1)
(2) Insert name	C	Decree was granted in an action by the Creditor(s) (2) in the Court of Session/Sheriff Court at on 20 against the Debtor(s) (2) (or give details of other document or summary warrant on which the attachment proceeded)
(3) Insert address	D	An attachment was carried out by (2) Officer of Court on the instructions of the Creditor on 20 at (3)
*delete **state reasons why sale would be unduly harsh	E	Among the articles attached was a mobile home (state whether caravan, houseboat or other moveable structure)/*vehicle The vehicle was valued on attachment at £ . * This is the only or principal residence of the applicant * Sale of the vehicle would be unduly harsh**

This application is made under Section 16(1)/22(1)(3) of the Debt Arrangement and Attachment (Scotland) Act 2002
 The Applicant asks the court:-
 1 To fix a Hearing
 2 To order the Sheriff Clerk to intimate this application and the date of the hearing to the Applicant, and to those persons stated above as having an interest
 *3 To order that attachment of the vehicle shall cease to have effect
 *4 To order that attachment of the mobile home is to cease to have effect
 *5 To order the officer of court(2) to arrange the immediate sale of the vehicle, and to pay the sum of (insert amount) to the debtor from the proceeds of sale and to consign any surplus with the sheriff clerk
 6 To award expenses (if competent)
 (Date)

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Rule 18(1)

Form 13

Debt Arrangement and Attachment (Scotland) Act 2002, section 26(1)(a) and (b)
Sheriff Court, (name)

APPLICATION FOR AN ORDER DECLARING THE ATTACHMENT INVALID OR HAS CEASED TO HAVE EFFECT		...../20....
		(Court Ref No)
	(1)	APPLICANT

A	The Applicant is the Debtor
---	-----------------------------

(1) Insert name and Address	B	Other persons having an interest The Creditor (1) Officer of Court (1)
-----------------------------	---	--

(2) Insert name	C	Decree was granted in an action by the Creditor(s) (2) in the Court of Session/Sheriff Court at on 20 against the Debtor(s) (2) (or give details of other document or summary warrant on which the attachment proceeded)
-----------------	---	---

(3) Insert address	D	An attachment was executed by (2) Officer of Court on the instructions of the Creditor on 20 at (3)
--------------------	---	---

*delete as appropriate	E	The following article(s) was/were attached:- * the attachment has ceased to have effect ** * the purported attachment is invalid **
------------------------	---	---

**Give reasons for application

This application is made under Section 26(1)(a)(b) of the Debt Arrangement and Attached (Scotland) Act 2002
The Applicant asks the court:-
1 To fix a Hearing
2 To order the Sheriff Clerk to intimate this application and the date of the hearing to the Applicant, the Creditor and the Officer of Court who carried out the attachment
3 To make an order declaring that the attachment is invalid or has ceased to have effect
*4 To order to the Officer of Court (2) to return the article(s) to the place from which it was/they were removed
5 To award expenses (if competent)
(Date)

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL
ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Rules 19(1)

Form 14

Debt Arrangement and Attachment (Scotland) Act 2002, sections 27(4) and 53(2)

**NOTICE OF
REMOVAL OF
ATTACHED
ARTICLES AND
PUBLIC ATTENTION**

...../20....

(Court Ref No)

*Insert name and
address of Creditor*

*Insert name and
address of Debtor/
other person in
possession of
attached articles*

(2) Insert name

An attachment was carried out by (2)

(3) Insert address

Officer of Court on the instructions of the Creditor
on 20 at (3)

Please note the attached article(s) (specify where appropriate) will be removed from your premises on , [at am/pm]. You should arrange for access to your premises at that time. The Officer of Court may, if access is denied, open shut and lockfast places for the purpose of removing the article(s).

A public auction of the attached article(s) will be held on (date) at (insert place of auction).

Date

Designation of Officer of Court

**IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL
ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR**

Rule 20(2)

Form 16

Debt Arrangement and Attachment (Scotland) Act 2002, section 29(4)

Sheriff Court, (name)

**APPLICATION FOR
AN ORDER
FOR A NEW
AUCTION**

	...../20....
	(Court Ref No)
(1)	APPLICANT

A **The Applicant is the Creditor**

(1) Insert name and address

B **Other persons having an interest**
The Debtor (1)

Officer of Court (1)

(2) Insert name

C **Decree was granted in an action by the Creditor(s) (2)**

in the Court of Session/Sheriff Court at
on 20 against the Debtor(s) (2)

(or give details of other document or summary warrant on which the attachment proceeded)

(3) Insert address

D **An attachment was carried out by (2)**

Officer of Court on the instructions of the Creditor
on 20 at (3)

State nature of the breach

E **The auction due to take place at (3) on (insert date)**
was cancelled for the purposes of enabling the sum recoverable to be paid in accordance with an agreement between the Creditor and Debtor

A report of the agreement was reported to the Sheriff on

The Debtor has failed to carry out the agreed terms and is now in breach of the agreement because

This application is made under Section 29(4) of the Debt Arrangement and Attachment (Scotland) Act 2002

The Applicant asks the court:-

- 1 To fix a Hearing**
 - 2 To order the Sheriff Clerk to intimate this application and the date of the hearing to the Applicant, the Debtor and the Officer of Court who carried out the attachment**
 - *3 To order that the Debtor is in breach of the agreement made on (insert date) and to authorise the Officer of Court to resume arrangements for the auction of the attached article(s)**
 - *4 To order that as the auction cannot be implemented in accordance with the provisions of the Act, that those provisions which prevent such implementation are not to apply for the purposes of the attachment and auction of the article(s)**
 - 5 To award expenses (if competent)**
- (Date)*

**delete as appropriate*

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Form 17

Debt Arrangement and Attachment (Scotland) Act 2002, section 32(1)
Sheriff Court, (name)

REPORT OF AUCTION

Details of parties and prior steps in diligence

- 1 **The Creditor** :(*name and address*)
- 2 **The Debtor** :(*name and address*)
- 3 **The person who had possession of the attached articles, if not the debtor** :(*name and address*)
- 4 **Date of decree etc or document of debt** :
- 5 **List Prior steps of diligence** :
- :
- :
- :
- :
- :

Extract decree and other documents on which the diligence proceeded to be produced.

Details of auction arrangements

- 6 **Date of auction** :
- 7 **Location of auction** :
- 8 **Officer of court who made arrangements** :(*name and address*)
- 9 **Person who conducted auction** :(*name and address*)
- 10 **Person who witnessed sale (if applicable)** :(*name and address*)
- 11 **Notices given by officer of court in respect of auction (*copies to be produced*)**
- Disposal of attached articles and auction proceeds*
- LIST-**
- 12 **Articles sold and amount for which sold**
- 13 **Articles unsold**
- 14 **Articles whose ownership passed to creditor**
- 15 **Articles whose ownership reverted to debtor**
- 16 **Articles otherwise disposed of (*specify*)**
- (Specify) each item under 12-16 and amount debtor was credited with*
- 17 **Articles released/redeemed from attachment and value fixed at attachment with explanation of circumstances**
- DETAIL**
- 18 **Disposal of auction proceeds including any surplus paid to debtor**
- 19 **Any monies consigned in court**

STATEMENT OF DEBT AND EXPENSES

Sums due by debtor

1 Sums in decree etc

Principal

Expenses

-

Interest

-

-

-

2 Diligence expenses

Outlays to be produced

Charge Attachment

3 Auction expenses

Paid to account

Proceeds of auction (12-17)

Consignation on/by

Balance due to/by debtor

This report is made by me (specify name and address) to the Sheriff at (place) on (date)

Signed

Officer of Court

.....

Witness

(Place, date) The Sheriff Remits this Report to the Auditor of Court.

Sheriff Clerk/Depute

Debt Arrangement and Attachment (Scotland) Act 2002, section 34(1)(b)(ii)

Sheriff Court, (name)

APPLICATION IN RELATION TO ARTICLES BELONGING TO A THIRD PARTY		...../20....
		(Court Ref No)
	(1)	APPLICANT

<i>*delete</i>	A	The Applicant is a person claiming ownership of attached article(s)
----------------	---	---

(1) <i>Insert name and address</i>	B	Other persons having an interest The Creditor (1) The Debtor (1) * Any person (other than the Debtor) having possession of the attached article(s) for which release is sought (1)
------------------------------------	---	---

(2) <i>Insert name</i>	C	Decree was granted in an action by the Creditor(s) (2) in the Court of Session/Sheriff Court at on 20 against the Debtor(s) (2) <i>(or give details of other document or summary warrant on which the attachment proceeded)</i>
------------------------	---	--

(3) <i>Insert address</i>	D	An attachment was carried out by (2) Officer of Court on the instructions of the Creditor on 20 at (3)
---------------------------	---	--

(specify details of where and when an auction is to be held if this has been fixed) (give details of ownership)	E	Among the articles attached was/were the following:- Auction of the attached article(s) has not yet taken place The article(s) belong to the applicant and the attachment should cease to have effect
--	---	---

This application is made under Section 34(1)(b)(ii) of the Debt Arrangement and Attachment (Scotland) Act 2002

The Applicant asks the court:-

- 1 To fix a Hearing
- 2 To order the Sheriff Clerk to intimate this application and the date of the hearing to the Applicant to those persons stated above as having an interest and the Officer of Court who carried out the attachment order
- 3 To find that the applicant owns the article(s) and the article(s) should be released from attachment
- 4 To award of expenses (if competent)

(Date)

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Rule 23(1)(b)

Form 19

Debt Arrangement and Attachment (Scotland) Act 2002, section 35(2)(b)(ii)

Sheriff Court, (name)

**APPLICATION IN
RELATION TO
ARTICLES
BELONGING TO A
THIRD PARTY IN
COMMON WITH
THE DEBTOR**

	...../20....
	(Court Ref No)
(1)	APPLICANT

	A	The Applicant is a person claiming common ownership of attached article(s)
(1) <i>Insert name and address</i>	B	Other persons having an interest The Creditor (1) The Debtor (1) * Any person (other than the Debtor) having possession of the attached article(s) for which release is sought (1)
(2) <i>Insert name</i>	C	Decree was granted in an action by the Creditor(s) (2) in the Court of Session/Sheriff Court at on 20 against the Debtor(s) (2) <i>(or give details of other document or summary warrant on which the attachment proceeded)</i>
(3) <i>Insert address</i>	D	An attachment was carried out by (2) Officer of Court on the instructions of the Creditor on 20 at (3)
<i>(specify details of where and when an auction is to be held if this has been fixed)</i> <i>(give details of ownership including extent)</i> <i>(give details of value of the Article(s) and sum proposed)</i>	E	Among the articles attached was/were the following:- Auction of the attached article(s) has not yet taken place* The applicant owns the article(s) in common with the Debtor The applicant *has given/gives an undertaking to pay a sum equal to the value of the debtor's interest in the article

- *delete as appropriate*
- The Applicant asks the court:-**
- 1 To fix a Hearing
 - 2 To order the Sheriff Clerk to intimate this application and the date of the hearing to the Applicant, to those persons stated above as having an interest, and the Officer of Court who carried out the attachment
 - 3 To find that the applicant has common ownership of the article(s)
 - 4 To order that the said article(s) be released from attachment and transferred to the Applicant on payment of a sum equal to the debtor's interest
 - 5 To award expenses (if competent)
- (Date)

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Debt Arrangement and Attachment (Scotland) Act 2002, section 35(3)

Sheriff Court, (name)

**APPLICATION FOR
ATTACHMENT TO
CEASE AS SALE
WOULD BE UNDULY
HARSH**

...../20....
(Court Ref No)
(1) APPLICANT

<p>A</p> <p>(1) <i>Insert name and address</i></p> <p>(2) <i>Insert name</i></p> <p>(3) <i>Insert address</i></p> <p><i>(specify details of where and when an auction is to be held if this has been fixed)</i></p> <p><i>(give details of ownership including extent)</i></p> <p><i>(give reasons for claim that auction would be unduly harsh)</i></p>	<p>A</p> <p>The Applicant is a person claiming common ownership of attached article(s)</p> <p>B</p> <p>Other persons having an interest The Creditor (1) The Debtor (1) * Any person (other than the Debtor) having possession of the attached article(s) for which release is sought (1)</p> <p>C</p> <p>Decree was granted in an action by the Creditor(s) (2) in the Court of Session/Sheriff Court at on 20 against the Debtor(s) (2) <i>(or give details of other document or summary warrant on which the attachment proceeded)</i></p> <p>D</p> <p>An attachment was carried out by (2) Officer of Court on the instructions of the Creditor on 20 at (3)</p> <p>E</p> <p>Among the articles attached and removed from the place of attachment was/were the following:-</p> <p>Auction of the attached article(s) has not yet taken place</p> <p>The Applicant owns the article(s) in common with the Debtor</p> <p>The auction of the article(s) specified would be unduly harsh to the applicant in the circumstances</p>
---	--

This application is made under Section 35(3) of the Debt Arrangement and Attachment (Scotland) Act 2002

The Applicant asks the court:-

1. To fix a Hearing
2. To order the Sheriff Clerk to intimate this application and the date of the hearing to the Applicant, to those persons stated above as having an interest, and the Officer of Court who carried out the attachment
3. To find that the applicant has common ownership in the article(s)
4. To find that auction of the article(s) would be unduly harsh to the applicant and order that the article(s) be released from attachment
5. To award expenses (if competent)

(Date)

**delete as appropriate*

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Debt Arrangement and Attachment (Scotland) Act 2002, section 36(1)(e)(ii)

Sheriff Court, (name)

APPLICATION IN RELATION TO ARTICLES BELONGING TO A THIRD PARTY IN COMMON WITH THE DEBTOR THAT HAVE BEEN SOLD AT AUCTION		...../20.... (Court Ref No)
	(1)	APPLICANT
	A	The Applicant is a Person claiming common ownership of attached article(s)
(1) Insert name and address	B	Other persons having an interest The Creditor (1) * The Debtor (1) * Any person (other than the Debtor) having possession of the attached article(s) for which release is sought (1)
(2) Insert name	C	Decree was granted in an action by the Creditor(s) (2) in the Court of Session/Sheriff Court at on 20 against the Debtor(s) (2) (or give details of other document or summary warrant on which the attachment proceeded)
(3) Insert address	D	An attachment was carried out by (2) Officer of Court on the instructions of the Creditor on 20 at (3)
(give details of claim)	E	Among the articles attached was/were the following:- Auction of the attached article(s) took place on at when the article was/were sold for £ or transferred to the creditor for that sum The Applicant claimed ownership of the article(s) in common with the Debtor prior to the auction (state extent to which ownership claimed) The Applicant's interest in the article has following the auction of the article been transferred to another person

*delete as appropriate

This application is made under Section 36(1)(e)(ii) of the Debt Arrangement and Attachment (Scotland) Act 2002

The Applicant asks the court:-

- 1 To fix a Hearing
- 2 To order the Sheriff Clerk to intimate this application and the date of the hearing to the Applicant, to those persons stated above as having an interest, and the Officer of Court who carried out the attachment
- 3 To find that the applicant has common ownership in the article(s)
- 4 To make an order that the Creditor pay to the Applicant the fraction of the proceeds of the sale/value of the article(s) which corresponds to the Applicant's interest in the article(s)
- 5 To award expenses (if competent)

(Date)

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Rule 25(1)

Form 22

Debt Arrangement and Attachment (Scotland) Act 2002, section 47(1)

Sheriff Court, (name)

**APPLICATION FOR
EXCEPTIONAL
ATTACHMENT
ORDER**

	...../20....
	<i>(Court Ref No)</i>
(1)	APPLICANT

A **The Applicant is the Creditor**

(1) Insert name and address

B **Other persons having an interest
The Debtor (1)**

(2) Insert name

Give details of the nature of the debt particularly whether it relates to tax, duty or any trade or business carried on by the Debtor and produce an extract

C **Decree was granted in an action by the Creditor(s) (2)**

in the Court of Session/Sheriff Court at
on 20 against the Debtor(s) (2)

(or give details of other document or summary warrant)

(3) Insert address

D **Address of dwelling-house where exceptional attachment order
Is to be executed (3)**

The debtor does/*not reside at dwelling-house

**The debtor does/*not carry on a trade or business in this
dwelling-house**

(give details) **The creditor has taken steps to negotiate (or seek to negotiate) a
settlement of the debt***

(give details) **The creditor has taken steps to execute (or attempt to execute) an
arrestment and action of furthcoming or sale, and an earnings
arrestment in order to secure payment of the debt**

*(*delete as appropriate and give details if necessary)* **A Time to Pay Direction/Time to Pay Order was made/not made
in respect of this *debt/another debt. If made it has lapsed/
is still in force**

*(*delete as appropriate and give details if necessary)* ***The Debtor has been provided with a debt advice and
information package**

**There is a reasonable prospect that the sum recovered from auction
of non-essential assets of the debtor kept in the dwellinghouse would
be at least equal to the aggregate of chargeable expenses and £100**

*(include details of any other matters that you wish the sheriff to take
into account)*

This application is made under Section 47(1) of the Debt Arrangement and Attachment (Scotland) Act 2002

The Applicant asks the court:-

- 1 To fix a Hearing**
- 2 To order the Sheriff Clerk to intimate this application and the date of the hearing to the Creditor and Debtor**
- 3 To serve the debtor with a copy of form *(insert number)***
- 4* To order the debtor to receive a visit for the purpose of money advice**
- 5 To make an exceptional attachment order authorising within *(specify time)* the attachment, removal and auction of non-essential assets of the debtor which are, at the time when an attachment is executed, kept in the dwellinghouse specified above**
- 6 To appoint *(insert name)*, officer of court, to arrange for such attachment, removal and auction, and to grant authority to open shut and lockfast places for these purposes**

*(*delete as appropriate)*

(Date)

NOTE: IF NECESSARY ATTACH A SEPARATE SHEET FOR DETAILS IN SECTION D

**IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL
ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR**

Rule 25(2)(c)(i)

Form 23

Debt Arrangement and Attachment (Scotland) Act 2002, section 47

APPLICATION UNDER SECTION 47(1) OF THE DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002 FOR EXCEPTIONAL ATTACHMENT ORDER

FORM OF SERVICE

(Place)

(Date)

To

(debtor)

You are served with a copy of the above application together with a copy of Form 24 (*declaration by Debtor*)

If you want the court to take account of your financial circumstances prior to the hearing you must complete the declaration in Form 24 and lodge it with the Sheriff Clerk at (*address*) no later than*

You may appear or be represented (by an advocate, solicitor or other authorised person) at the hearing of the application but if you fail to do so the application may be considered and granted in your absence.

Signed Sheriff Clerk/Depute

Sheriff Clerk to insert dates before service

**insert date that is 10 days before the date of the hearing*

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Debt Arrangement and Attachment (Scotland) Act 2002, section 47(4)(g)

DECLARATION BY DEBTOR OF FINANCIAL CIRCUMSTANCES IN AN APPLICATION FOR AN EXCEPTIONAL ATTACHMENT ORDER

SECTION A
This section must be completed before service

Sheriff Court (including address)	Court Ref No
	Hearing Date
CREDITOR'S FULL NAME AND ADDRESS	DEBTOR'S FULL NAME AND ADDRESS

I, (*name*) debtor in the foregoing application would like the court to consider my financial circumstances in considering whether to make an exceptional attachment order.
 And/or
 I, Declare that I own the following non-essential assets. These assets are located at
 (*insert address*) and are valued at (*insert estimated value of each article*)

My outgoings are *weekly/monthly/fortnightly	My income is *weekly/monthly/fortnightly
Rent/Mortgage £	Wages £
Council Tax £	Benefits (specify) £
Gas/electricity etc £	Other (details) £
Food £	
Loans and credit £	
Agreements £	
Other (details)	
Total £	Total £

If you wish to provide more details please Attach a separate sheet

Number of Dependant children		Number of Dependent relatives	
------------------------------	--	-------------------------------	--

Please list details of all capital held, eg equity on house, amount in savings account, shares or other investments as necessary on a separate sheet

If appropriate, give details of any money adviser who has advised in the completion of this declaration

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Rule 28

Form 25

Debt Arrangement and Attachment (Scotland) Act 2002, section 47

Important Notice

With these papers is a copy of an Exceptional Attachment Order made by the court.

It shall be regarded as a breach of an Exceptional Attachment Order if you, the debtor, or any other person who knows that the Exceptional Attachment Order has been made—

1. moves any article that forms part of the debtor's non-essential assets from the dwellinghouse in which it is kept, or
2. or for the debtor to sell, make a gift of or otherwise relinquish ownership of any such article,

without the consent of the sheriff.

Any person who knows that an Exceptional Attachment Order has been made who wilfully damages or destroys any article(s) which forms part of the debtor's non-essential assets before an attachment is executed shall be regarded as acting in breach of the order.

If at any time after an Exceptional Attachment Order has been made, an article which forms part of the debtor's non-essential assets is stolen, the debtor shall give notice to the creditor, the officer of court (if known) and the sheriff who granted the order of that fact and of any related claim which the debtor makes, or intends to make, under a contract of insurance. Any failure by the debtor to give notice shall be regarded as a breach of the order.

**IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE
BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR**

Rule 29

Form 26

Debt Arrangement and Attachment (Scotland) Act 2002, section 47(5)

Sheriff Court, (name).....

REPORT OF VISIT TO GIVE MONEY ADVICE

- 1

On (date) the sheriff made an order for a visit to (name) the debtor at (address).

- 2

The application for an Exceptional Attachment Order was continued until (date).
--

- 3

(State here that visit made to debtor or give details of attempts to make visit. also confirm whether money advice given to debtor. Unless confidential, state advice given to debtor)

- 4

(Report here on any matters ordered by the sheriff).

- 5

*The debtor indicated that he intends to attend court at the next hearing./The debtor will not attend the next hearing./I will attend the next hearing.
--

**(Designation of money adviser
and date of report)**

*** - delete as appropriate**

Rule 31(1)

Form 27

Debt Arrangement and Attachment (Scotland) Act 2002, section 50(1)

Sheriff Court, (name)

**APPLICATION FOR
CONSENT TO MOVE
ANY ARTICLES,
SELL, MAKE A GIFT
OF OTHERWISE
RELINQUISH
OWNERSHIP**

	...../20....
	<i>(Court Ref No)</i>
(1)	APPLICANT

**delete*

A

<p>The Applicant is * The Debtor</p> <p>* A person who knows the exceptional attachment Order was made</p>

(1) Insert name and address

B

<p>Other persons having an interest The Creditor (1) * The Debtor (1)</p> <p>* The Officer of Court (1)</p>

(2) Insert name

C

(3) Insert address

<p>An exceptional attachment order was executed by (2) Officer of Court on the instructions of the Creditor on 20 at (3)</p>

(specify details of where and when auction to be held if this has been fixed)

D

<p>Among the articles attached was/were the following:-</p> <p>An auction of the attached article(s) has not yet taken place</p> <p>* The applicant seeks consent to move the above article(s) from the dwellinghouse</p> <p>* The applicant seeks consent to *sell/make a gift of or otherwise relinquish ownership of the above article(s)</p>
--

(give reasons for application)

This application is made under Section 50(1)(a)/(b) of the Debt Arrangement and Attachment (Scotland) Act 2002

The Applicant asks the court:-

- 1 To fix a Hearing**
- 2 To order the Sheriff Clerk to intimate this application and the date of the hearing to the Applicant ,and to those persons stated above as having an interest ,and the Officer of Court who carried out the attachment**
- 3* To consent to the removal of the article(s) from the dwellinghouse**
- 4* To consent to the sale/making a gift of/or to relinquishing of ownership of the article(s)**
- 5 To award expenses (if competent)**

**delete as appropriate*

(Date)

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

Rule 34(1)

Form 28

Debt Arrangement and Attachment (Scotland) Act 2002, section 55(2)

Sheriff Court, (name)

APPLICATION FOR RETURN OF ARTICLES SUBJECT TO EXCEPTIONAL ATTACHMENT (1) REMOVED WHERE ATTACHMENT NOT COMPETENT (2) WHERE AUCTION UNDULY HARSH OR (3) SENTIMENTAL VALUE (1) <i>Insert name and address</i>/20.... (Court Ref No) (1) APPLICANT
--	--

(2) <i>Insert name.</i> (3) <i>Insert address</i>	A The Applicant is the Debtor
--	--

(1) <i>Insert name and address</i>	B Other persons having an interest The Creditor (1) Officer of Court (1)
---	---

(2) <i>Insert name.</i> (3) <i>Insert address</i>	C An exceptional attachment order was carried out by (2) Officer of Court on the instructions of the Creditor on 20 at (3)
--	--

*delete as appropriate	D Among the articles attached was/were the following:- The(se) articles should be released from attachment * (a) as the attachment is not competent * (b) sale of the articles would be unduly harsh * (c) the article(s) is/are of sentimental value to the debtor and is/ are likely to realise, on sale by auction, an aggregate amount not exceeding £150 (state reasons why application should be granted)
------------------------	---

This application is made under Section 55(2) of the Debt Arrangement and Attachment (Scotland) Act 2002

The Applicant asks the court:-

- 1 To fix a Hearing
- 2 To order the Sheriff Clerk to intimate this application and the date of the hearing to the Applicant, and the other persons having an interest
- 3 To order that attachment of the said article(s) is to cease to have effect
- 4 To order Officer of Court (2) to return the said articles(s) to the dwellinghouse at which it was/they were attached
- 5 To award expenses (if competent)

(Date)

**IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL
 ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR**

APPENDIX 2

GLOSSARY

Absolve

To find in favour of and exonerate the defender.

Absolvitor

An order of the court granted in favour of and exonerating the defender which means that the pursuer is not allowed to bring the same matter to court again. See also *dismissal* below.

Action of count, reckoning and payment

A legal procedure for requiring someone to account for their dealings with assets under their stewardship. For example, a trustee might be subject to such an action.

Action of furthcoming

A final stage of diligence or enforcement. It results in whatever has been subject to arrestment being made over to the person who is suing. For example, where a bank account has been arrested this results in the appropriate amount being transferred to the pursuer.

Appellant

A person making an appeal against the sheriff's decision. This might be the pursuer or the defender.

Arrestee

A person with whom an arrestment is lodged, and therefore subject to the arrestment.

Arrestment on the dependence

A court order granting until a final court decision a temporary security over goods, or funds in a bank account, held on behalf of the defender by someone else (for example, a bank).

Arrestment to found jurisdiction

An order to give the court jurisdiction to hear a case against a person who has goods or other assets in Scotland. This is achieved by arresting the goods or assets on the dependence of the action.

Lay representative

A person other than a solicitor or advocate who represents a party to a cause or application. In particular, in these Rules such a person unless employed as a lay representative must receive no fee, gain or reward (directly or indirectly) for their actions.

Calling date

The date on which a summary cause action will first be held in court.

Cause

Another word for case or claim.

Caution (pronounced kay-shun)

A security given to ensure that some obligation will be carried out. This will be either a sum of money, or a guarantee of payment by someone other than the parties to a case (for example, an insurance company).

Certificate of execution of service

The document recording that an application to, or order or decree of, the court for service of documents has been effectively served.

Charge

A notice to obey a decree of a court. A common type is one served on the defender by a sheriff officer on behalf of the pursuer who has won a case demanding payment of a sum of money.

Claim

The part of the writ or summons which sets out the legal remedy which the pursuer is seeking.

Commission and diligence

An order appointing a solicitor or advocate (the Commissioner) to supervise on behalf of the court the disclosure of documents relating to a case. It is combined with a diligence authorising the Commissioner to require attendance as a witness of the person alleged to be holding any particular document (the *haver*).

Consign, or consignment

The deposit in court, or with a third party, of money or an article in dispute.

Continuation

An order made by the sheriff postponing the completion of a hearing until a later date or dates.

Contribution, Right of

The right of one person who is legally liable to pay money to someone to claim a proportionate share from others who are also liable.

Counterclaim

A claim made by a defender in response to the pursuer's case and which is not necessarily a defence to that case. It is a separate but related case against the pursuer, which is dealt with at the same time as the pursuer's case.

Damages

Money compensation payable for a breach of contract or some other legal duty.

Declarator of irritancy of a lease

A decision of a court finding that a tenant has failed to observe a term of a lease, and that the landlord is therefore entitled to insist that the tenant shall leave the property.

Decree

An order of the court containing the decision of the case in favour of one of the parties and granting the remedy sought or disposing of the case.

Decree of ejection

A decree ordering someone to leave land or property which they are occupying. For example, it is used to remove tenants in arrears with their rent.

Decree of removing

A court order entitling someone to recover possession of heritable property and ordering a person to leave land which he is occupying. For example, it is used to remove tenants in arrears with their rent.

Defender

Person against whom a court action is started.

Deliverance

A decision or order of a court.

Diet

Date for a court hearing.

Diligence

The collective term for the procedures used to enforce a decree of a court. These include attachment of moveable items and arrestment of wages.

Dismissal

An order bringing to an end the proceedings in an action. Unlike an order for *absolvitor* (see above), it is usually possible for a new action to be brought.

Domicile

The place where a person is normally resident or where, in the case of a company, it has its place of business or registered office.

Execution of service

See *Certificate of execution of service*

Execution of a charge

The service by sheriff officers of a formal notice requiring that a decree or order of a court be obeyed. See also *Charge*.

Execution of an arrestment

The carrying out of an order of arrestment.

Expenses

The costs of a court case.

Ex proprio motu

A decision or order of the court on the sheriff's own initiative, and not requested by a party to a claim or application

Extract decree

The actual decree (or *interlocutor*) is recorded in the court registers. The extract is the official document, which is proof of any order of the court, although usually it is used as proof of the final decision in the action. It is used, for example, to enforce payment of a sum awarded.

Fund in medio

See *Multiplepoinding*.

Haver

A person who holds documents which are required as evidence in a case (see *Commission and Diligence* above).

Hearing date

The date on which a small claim action will first be held in court.

Heritable property

Land and buildings.

Incidental application

An application that can be made during the course of a small claim or summary cause for certain orders. Examples are applications for the recovery of documents or to amend the statement of claim.

Interlocutor

The official record of the order or judgement of a court.

Interrogatories

Written questions put to someone in the course of a court case, and answered on oath.

Intimation

Giving notice to another party of some step in a cause.

Jurisdiction

The authority of a court to hear particular cases.

Ish

The date on which a lease terminates.

Letter of request

A document issued by the sheriff court requesting a foreign court to take evidence from a specified person within its jurisdiction or to serve Scottish Court documents on that person.

Messenger at arms

Officers of court who serve documents issued by the Court of Session.

Minute

A document produced in the course of a case in which a party makes an application or sets out his position on some matters.

Minute for recall

A form lodged with the court by one party asking the court to recall a decree.

Motion

An application that can be made during the course of an action for certain orders. This type of application is called an incidental application in small claim or summary cause actions (see above).

Multiplepinding (pronounced “multiple pinding”)

A special type of action in which the holder of property, etc. (referred to as the fund *in medio*) requires claimants upon it to appear and settle claims in court. For example, where the police come into possession of a stolen car of which two or more people claim to be owner this procedure could be used.

Officer of court

A sheriff officer, messenger at arms, advocate, solicitor or sheriff clerk.

Options Hearing

A preliminary stage in an ordinary cause action.

Ordinary cause

Another legal procedure for higher value cases available in the sheriff court.

Party litigant

A person who conducts his own case.

Process

The court file containing the collection of documents relating to a case.

Productions

Documents or articles which are used in evidence.

Pursuer

The person who starts a claim or cause.

Recall of an arrestment

A court order withdrawing an arrestment.

Restriction of an arrestment

An order releasing part of the money or property arrested.

Recall of a decree

An order cancelling a decree which has been granted.

Recovery of documents

The process of obtaining documentary evidence which is not in the possession of the person seeking it (eg hospital records necessary to establish the extent of injuries received in a road accident). See also *Commission and Diligence* above.

Remit between procedures

A decision of the sheriff to transfer an action to another court procedure eg a summary cause to either the small claim or ordinary cause procedure.

Respondent

When a decision of the sheriff is appealed against, the person making the appeal is called the appellants. The other side in the appeal is called the respondent.

Return day

The date by which the defender must send a written reply to the court in a small claim or summary cause and, where appropriate, the date by which the pursuer must return the summons to court.

Schedule of arrestment

A list of items which has been arrested.

Serve/service

Sending a copy of the summons or other court document to the defender or another party.

Sheriff clerk

The court official responsible for the administration of the sheriff court.

Sheriff officer

The officer of court who serve sheriff court documents and enforces sheriff court orders.

Sist of action

The temporary suspension of a court case by court order.

Sist as a party

To add another person as a litigant in a case.

Small claim

Another legal procedure in the sheriff court for claims having a lower value than summary cause.

Specification of documents

A list lodged in court of documents for the recovery of which a party seeks a court order (see *Commission and Diligence*).

Stated case

An appeal procedure where the sheriff sets out his findings and the reasons for his decision and states the issues on which the decision of the sheriff principal is requested.

Statement of claim

The part of the summons in which pursuers set out details of their cases against defenders.

Summary cause

Another legal procedure available in the sheriff court. It is used for certain types of claim usually having a higher value than a small claim, and a lesser value than those dealt with as ordinary actions.

Summons

The form which must be filled in to begin a small claim or summary cause.

Time to pay direction

A court order for which a defender who is an individual may apply permitting a sum owed to be paid by instalments, or by a single payment at a later date.

Time order

A court order that assists debtors who have defaulted on an agreement regulated by the Consumer Credit Act 1974 (c.39), and which may be applied for during a court action.

Warrant for diligence

Authority to carry out one of the diligence procedures.

Writ

A legally significant writing. An example is an Initial Writ, which is used to begin an ordinary action in the same way that a summons is used to begin a *small claim or a summary cause* action.

SCHEDULE 2
FORMS OF SUMMARY WARRANT

<i>Form No.</i>	<i>Description</i>	<i>Article No.</i>
A	Warrant for recovery of rates etc.	3(2)
B	Warrant for recovery of VAT etc.	3(2)

Article 3(2)

Form A

SUMMARY WARRANT FOR THE RECOVERY OF
(insert type of sum due eg, Rates, Community Charge, Council Tax etc
under *(insert section and statute under which sum due)*

(Place and date)

The Sheriff having considered the application dated *(date)* by *(name and address of applicant)* along with the certificate produced, and it being stated in the application that an action has not been commenced for the recovery of any amount due, grants a summary warrant authorising recovery of the amount remaining due and unpaid by each person specified in the application along with a surcharge of 10 per cent of that amount, by all lawful execution.

Sheriff

Article 3(2)

Form B

SUMMARY WARRANT FOR THE RECOVERY OF
(insert type of sum due eg, Value Added Tax, Car Tax etc)
under *(insert section and statute under which sum due)*

(Place and date)

The Sheriff having considered the application dated *(date)* by *(name and address of applicant)* along with the certificate produced, grants a summary warrant authorising recovery of the amount remaining due and unpaid by each person specified in the application by all lawful execution.

Sheriff

SCHEDULE 3

MINOR AND CONSEQUENTIAL AMENDMENTS

Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988(a) (S.I. 1988/2013)

1.—(1) In rule 6 (applications for variation or recall of time to pay orders, poindings or advertisements)—

- (a) in the heading for “poindings” substitute “attachments”; and
- (b) in paragraph (1) for “a poinding” substitute “an attachment”.

(2) In the Schedule (Forms)—

- (a) in form 2 (application for a time to pay order), in Part C—
 - (i) for “*poinding*” substitute “*attachment*”;
 - (ii) in crave 2, for “poinding” substitute “attachment”;
 - (iii) for crave 4, substitute—
 - “*4. To order that no further steps shall be taken by the creditor or the sheriff officer in the diligence concerned, other than in the case of an attachment making a report of the attachment under section 17 of the Debt Arrangement and Attachment (Scotland) Act 2002, or applying for an order under sections 17(1), 20(1), and 21(10) of that Act.”; and
 - (iv) in the extract from section 5(4) and (5) of the Debtors (Scotland) Act—
 - (aa) in subsection (4) for paragraphs (e) and (ee) substitute—
 - “(e) in relation to a debt including any sum due to—
 - (i) a rating authority for payment of rates;
 - (ii) a regional or islands council for the payment of any community charge, community water charge, council tax, or council water charge;
 - (iii) a collecting authority (within the meaning of section 79 of the Local Government etc. (Scotland) Act 1994) in respect of any charges payable to them by virtue of that section; or
 - (iv) a regional or islands council for payment of any amount payable as a civil penalty within the meaning of subsection (9) below.”; and
 - (bb) in subsection (5), omit paragraph (a);
 - (b) in form 3 (application for variation or recall of a time to pay order, arrestment and poinding)—
 - (i) in the heading, for “POINDING” substitute “ATTACHMENT”;
 - (ii) in section 3, in paragraph (c) for “poinding” or “*poinding*” in each case where either occurs substitute “attachment” or “*attachment*” as appropriate; and
 - (iii) in section 4, in paragraph 3 for “poinding” substitute “attachment”;
 - (c) in form 43 (application for a conjoined arrestment order), in section 5 for “poinding” substitute “attachment”; and
 - (d) in form 64 (warrant for intimation), in section 3, for “poinding” substitute “attachment”.

Act of Sederunt (Form of Charge for Payment) 1988(b) (S.I. 1988/2059)

2. In the Schedule (form of charge for payment of money), for “poinding and sale” substitute “attachment and auction”.

(a) S.I. 1988/2013; amended by S.I. 1996/2709 and 1999/1820.

(b) S.I. 1988/2059; revoked so far as it applied to the Court of Session by S.I. 1994/1443.

Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991(a) (S.I. 1991/1397)

3. In rule 30 (dealings in goods poinded or sold by virtue of diligence)–
- (a) in the heading, for “poinded” substitute “attached”; and
 - (b) in paragraph (a), for “poinded” substitute “attached”.

Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993(b) (S.I. 1993/1956)

4. In rule 33.67 (form of applications), in paragraph (2) for “poinding” substitute “attachment”.

Act of Sederunt (Rules of the Court of Session 1994) 1994(c) (S.I. 1994/1443)

5. In rule 16.15 (forms for diligence), in section (1) for paragraph (j) substitute–
- “(j) in the case of an attachment, a schedule in form 3, and a report of attachment in form 8, in Appendix 1 of Schedule 1 to the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002.”.

Act of Sederunt (Sheriff Court Bankruptcy Rules 1996)(d) (S.I. 1996/2507)

6. In the Schedule (Sheriff Court Bankruptcy Rules) in Appendix 1 (forms), in form 2 (form of debtor’s petition (without concurrence of qualified creditor(s) under the Bankruptcy (Scotland) Act 1985) for “poinding” substitute “attachment (or any attempt to attach)”.

Act of Sederunt (Child Care and Maintenance Rules) 1997(e) (S.I. 1997/291)

7. In rule 5.43 (enforcement of registered order)–
- (a) for “poind” substitute “attach”; and
 - (b) for “sale in respect of a poinding” substitute “auction in respect of an attachment”.

(a) S.I. 1991/1397; amended by S.I. 1998/2636 and 1999/678, and by S.S.I. 2000/20.

(b) S.I. 1993/1956; amended by S.I. 1996/2167, rule 6 substituted by S.S.I. 2000/239, and repealed in part by S.S.I. 2002/132 and 133.

(c) S.I. 1994/1443; relevant amending instrument is S.I. 1998/2637.

(d) S.I. 1996/2507.

(e) S.I. 1997/291; amended by S.I. 1998/1993 and 2130, and by S.S.I. 2000/388.

SCHEDULE 4
REVOCATIONS

<i>(1)</i> <i>Act of Sederunt</i>	<i>(2)</i> <i>Reference</i>	<i>(3)</i> <i>Extent of revocation</i>
Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988	S.I. 1988/2013	The whole of Part III and in the Schedule, Forms 4 to 29
Act of Sederent (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) (Amendment) 1996(a)	S.I. 1996/2709	The whole instrument

(a) S.I. 1996/2709.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes rules of procedure in the sheriff court for applications relating to attachments and auctions.

The form of diligence over corporeal moveable property known as attachment was created by Parts 2 and 3 of the Debt Arrangement and Attachment (Scotland) Act 2002. That Act of the Scottish Parliament also abolished the form of diligence over corporeal moveable property known as poinding, and any consequent warrant sale.

This Act therefore revokes the rules of procedure for applications relating to poindings and warrant sales, made under the Debtors (Scotland) Act 1987. It makes the savings provision necessary as a result of that revocation.

This Act makes minor and consequential amendments to other rules of procedure in the sheriff courts and Court of Session.

This Act provides for new forms of summary warrant, which may be granted by the sheriff for recovery of certain kinds of taxes and charges.

£7.50

© Crown Copyright 2002