

SCHEDULE 1

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

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.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(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 consignation 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.