



Debtors (Scotland) Act 1987

1987 CHAPTER 18

PART I

EXTENSION OF TIME TO PAY DEBTS

Miscellaneous

12 Sequestration and insolvency

- (1) While a time to pay direction or a time to pay order is in effect, the creditor shall not be entitled to found on the debt concerned in presenting, or in concurring in the presentation of, a petition for the sequestration of the debtor's estate.
- (2) A time to pay direction or a time to pay order shall cease to have effect—
 - (a) on the granting of an award of sequestration of the debtor's estate;
 - (b) on the granting by the debtor of a voluntary trust deed whereby his estate is conveyed to a trustee for the benefit of his creditors generally; or
 - (c) on the entering by the debtor into a composition contract with his creditors.

13 Saving of creditor's right and remedies

- (1) No right or remedy of a creditor to enforce his debt shall be affected by—
 - (a) a time to pay direction;
 - (b) a time to pay order; or
 - (c) an interim order under section 6(3) of this Act,except as expressly provided in this Part of this Act.
- (2) The recall—
 - (a) on the making of a time to pay direction or an order under section 3(1) of this Act, of an arrestment; or
 - (b) on the making of a time to pay order or an order under section 10(1) of this Act, of an arrestment or a pouncing,

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shall not prevent the creditor therein from being ranked by virtue of that arrestment or poiding *pari passu* under paragraph 24 of Schedule 7 to the Bankruptcy (Scotland) Act 1985 on the proceeds of any other arrestment or poiding.

14 Circumstances where direction or order not competent or no longer effective

- (1) It shall be competent to make a time to pay direction or a time to pay order only in relation to a debtor who is an individual and only if, and to the extent that, the debtor is liable for payment of the debt concerned in either or both of the following capacities—
 - (a) personally;
 - (b) as a tutor of an individual or as a judicial factor *loco tutoris*, curator bonis or judicial factor *loco absentis* on an individual's estate.
- (2) A time to pay direction or a time to pay order shall cease to have effect on the death of the debtor or on the transmission of the obligation to pay the debt concerned during his lifetime to another person.
- (3) Where a time order for the payment by instalments of a sum owed under a regulated agreement or a security has been made under section 129(2)(a) of the Consumer Credit Act 1974 it shall not thereafter be competent to make a time to pay direction or a time to pay order in relation to that sum.

15 Interpretation of Part I

- (1) In this Part of this Act—

"adjudication for debt" does not include—

 - (a) an adjudication on a *debitum fundi*; or
 - (b) an adjudication under section 23 of the Conveyancing (Scotland) Act 1924 (adjudication to recover arrears of ground annual);

"poiding" does not include poiding of the ground, and "poided" shall be construed accordingly.
- (2) In sections 1 to 4 of this Act—

"the court" means the Court of Session or the sheriff;

"the debt concerned" means the sum or expenses in respect of which a time to pay direction is made.
- (3) In sections 5 to 14 of this Act—

"debt" means the sum due by a debtor under a decree or other document (including any interest thereon and any expenses decerned for), and any expenses of diligence used to recover such sum which are chargeable against the debtor, but does not include—

 - (a) any sum due under an order of court in criminal proceedings;
 - (b) maintenance, whether due at the date of application for the time to pay order or not, or any capital sum awarded on divorce or on the granting of a declarator of nullity of marriage or any other sum due under a decree awarding maintenance or such a capital sum; or
 - (c) any fine imposed—
 - (i) for contempt of court;
 - (ii) under any enactment, for professional misconduct; or

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- (iii) for failure to implement an order under section 91 of the Court of Session Act 1868 (orders for specific performance of statutory duty);

"decree or other document" means—

- (a) a decree of the Court of Session or the sheriff;
- (b) an extract of a document which is registered for execution in the Books of Council and Session or the sheriff court books;
- (c) an order or determination which by virtue of any enactment is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff;
- (d) a civil judgment granted outside Scotland by a court, tribunal or arbiter which by virtue of any enactment or rule of law is enforceable in Scotland; and
- (e) a document or settlement which by virtue of an Order in Council made under section 13 of the Civil Jurisdiction and Judgments Act 1982 is enforceable in Scotland,

but does not include a maintenance order or a summary warrant;

"sheriff"—

- (a) in relation to a debt constituted by decree granted by a sheriff, means that sheriff or another sheriff sitting in the same sheriff court;
- (b) in any other case, means the sheriff having jurisdiction—
 - (i) in the place where the debtor is domiciled;
 - (ii) if the debtor is not domiciled in Scotland, in a place in Scotland where he carries on business; or
 - (iii) if the debtor does not carry on business in Scotland, in a place where he has property which is not exempt from diligence;

and, for the purposes of sub-paragraphs (i) and (ii) above, the debtor's domicile shall be determined in accordance with section 41 of the Civil Jurisdiction and Judgments Act 1982.