



Debtors (Scotland) Act 1987

1987 CHAPTER 18

PART I

EXTENSION OF TIME TO PAY DEBTS

Time to pay directions on granting decree

1 Time to pay directions

- (1) Subject to subsections (3) to (5) below and to section 14 of this Act, the court, on granting decree for payment of any principal sum of money may, on an application by the debtor, direct that any sum decerned for in the decree (including any interest claimed in pursuance of subsections (6) and (7) below) or any expenses in relation to which the decree contains a finding as to liability or both such sum and such expenses shall be paid—
 - (a) by such instalments, commencing at such time after the date of intimation by the creditor to the debtor of an extract of the decree containing the direction, payable at such intervals; or
 - (b) as a lump sum at the end of such period following intimation as mentioned in paragraph (a) above,as the court may specify in the direction.
- (2) A direction under subsection (1) above shall be known as a "time to pay direction".
- (3) Where a court grants a decree which contains a finding as to liability for expenses but does not at the same time make a time to pay direction, then (whether or not the decree also decerns for payment of the expenses), it shall not at any time thereafter be competent for the court to make a time to pay direction in relation to those expenses.
- (4) Where a court grants a decree which contains a finding as to liability for expenses and makes a time to pay direction in relation to those expenses but—
 - (a) does not decern for payment of the expenses; or
 - (b) decerns for payment of the expenses as taxed by the auditor of court but does not specify the amount of those expenses,

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in relation to so much of the time to pay direction as relates to the expenses, the reference in subsection (1) above to the date of intimation of an extract of the decree containing the direction shall be treated as a reference to the date of intimation of an extract of a decree decerning for payment of the expenses, being an extract specifying their amount.

- (5) It shall not be competent for the court to make a time to pay direction—
- (a) where the sum of money (exclusive of any interest and expenses) decerned for exceeds £10,000 or such amount as may be prescribed in regulations made by the Lord Advocate;
 - (b) where the decree contains an award of a capital sum on divorce or on the granting of a declarator of nullity of marriage;
 - (c) in connection with a maintenance order;
 - (d) in an action by or on behalf of the Inland Revenue for payment of any sum recoverable in respect of tax or as if it were tax;
 - (e) in an action by or on behalf of a rating authority for payment of rates; or
 - (f) in an action for payment of—
 - (i) any duty due under the Betting and Gaming Duties Act 1981;
 - (ii) car tax due under the Car Tax Act 1983; or
 - (iii) value added tax due under the Value Added Tax Act 1983 or any sum recoverable as if it were value added tax.
- (6) Without prejudice to section 2(5) of this Act, interest payable under a decree containing a time to pay direction (other than interest awarded as a specific sum in the decree) shall not be recoverable by the creditor except in accordance with subsection (7) below.
- (7) A creditor who wishes to recover interest to which subsection (6) above applies shall serve a notice on the debtor, not later than the date prescribed by Act of Sederunt occurring—
- (a) in the case of a direction under subsection (1)(a) above, before the date when the last instalment of the debt concerned (other than such interest) is payable under the direction;
 - (b) in the case of a direction under subsection (1)(b) above, before the end of the period specified in the direction,
- stating that he is claiming such interest and specifying the amount of the interest claimed.
- (8) Any sum paid by a debtor under a time to pay direction shall not be ascribed to interest claimed in pursuance of subsections (6) and (7) above until the debt concerned (other than such interest) has been discharged.

2 **Effect of time to pay direction on diligence**

- (1) While a time to pay direction is in effect, it shall not be competent—
- (a) to serve a charge for payment; or
 - (b) to commence or execute any of the following diligences—
 - (i) an arrestment and action of furthcoming or sale;
 - (ii) a poinding and sale;
 - (iii) an earnings arrestment;
 - (iv) an adjudication for debt,

to enforce payment of the debt concerned.

- (2) While a time to pay direction is in effect an arrestment used on the dependence of the action or in security of the debt concerned shall remain in effect—
 - (a) if it has not been recalled; and
 - (b) to the extent that it has not been restricted under subsection (3) below,but, while the direction is in effect, it shall not be competent to commence an action of furthcoming or sale following on such an arrestment.
- (3) The court may, on making a time to pay direction, recall or restrict an arrestment of the kind described in subsection (2) above.
- (4) If an arrestment of the kind described in subsection (2) above is in effect, the court may order that the making of a time to pay direction and the recall or restriction of the arrestment shall be subject to the fulfilment by the debtor of such conditions within such period as the court thinks fit; and, where the court so orders, it shall postpone granting decree until such fulfilment or the end of that period, whichever is the earlier.
- (5) Where a time to pay direction is recalled or ceases to have effect, otherwise than—
 - (a) under section 12(2)(a) of this Act; or
 - (b) by reason of the debt concerned being paid or otherwise extinguished,the debt in so far as it remains outstanding and interest thereon, whether or not awarded as a specific sum in the decree, shall, subject to any enactment or rule of law to the contrary, become enforceable by any diligence mentioned in subsection (1)(b) above.

3 Variation and recall of time to pay direction and arrestment

- (1) The court which granted a decree containing a time to pay direction may, on an application by the debtor or the creditor—
 - (a) vary or recall the direction if it is satisfied that it is reasonable to do so; or
 - (b) if an arrestment in respect of the debt concerned is in effect, recall or restrict the arrestment.
- (2) If an arrestment in respect of the debt concerned is in effect, the court may order that any variation, recall or restriction under subsection (1) above shall be subject to the fulfilment by the debtor of such conditions as the court thinks fit.
- (3) The clerk of court or sheriff clerk shall as soon as is reasonably practicable intimate a variation under subsection (1) above to the debtor and to the creditor, and the variation shall come into effect on the date of such intimation.

4 Lapse of time to pay direction

- (1) If, on the day on which an instalment payable under a time to pay direction becomes due, there remains unpaid a sum, due under previous instalments, of not less than the aggregate of 2 instalments, the direction shall cease to have effect.
- (2) If at the end of the period of 3 weeks immediately following the day on which the last instalment payable under a time to pay direction becomes due, any part of the debt concerned remains outstanding, the direction shall cease to have effect.

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(3) If any sum payable under a time to pay direction under section 1(1)(b) of this Act remains unpaid 24 hours after the end of the period specified in the direction, the direction shall cease to have effect.

(4) Where—

(a) a decree for payment of a principal sum of money contains a finding as to liability for expenses and decree for payment of the expenses is subsequently granted; and

(b) a time to pay direction is made in relation to both the principal sum and the expenses,

if under subsections (1) to (3) above the direction ceases to have effect in relation to the sum payable under either of the decrees, the direction shall also cease to have effect in relation to the sum payable under the other decree.