



Debtors (Scotland) Act 1987

1987 CHAPTER 18

PART III

DILIGENCE AGAINST EARNINGS

Current maintenance arrestments

51 General effect of current maintenance arrestment

- (1) Subject to sections 58(2) and 69 of this Act, a current maintenance arrestment shall have the effect of requiring the employer of the debtor while the arrestment is in effect to deduct a sum calculated in accordance with section 53 of this Act from the debtor's net earnings on every pay-day and as soon as is reasonably practicable to pay any sum so deducted to the creditor.
- (2) Subject to sections 59 and 62 of this Act, a current maintenance arrestment—
 - (a) shall come into effect on the date of its execution, being the date on which a schedule in the form prescribed by Act of Sederunt (to be known as a "current maintenance arrestment schedule") is served on the employer of the debtor; and
 - (b) shall remain in effect until the debtor has ceased to be employed by the employer concerned, or the arrestment has been recalled or abandoned by the creditor or has ceased to have effect under section 55(8) of this Act or for any other reason.
- (3) The expenses incurred in executing a current maintenance arrestment shall be recoverable from the debtor as an ordinary debt.
- (4) Subject to section 52(2)(b) of this Act, a current maintenance arrestment schedule shall specify the maintenance payable by the debtor expressed as a daily rate.
- (5) For the purposes of subsection (4) above the daily rate shall be arrived at—
 - (a) where the maintenance is paid monthly, by multiplying the monthly rate by 12 and dividing it by 365;

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(b) where it is paid quarterly, by multiplying the quarterly rate by 4 and dividing it by 365.

(6) No interest shall accrue on any arrears of the maintenance which arise while a current maintenance arrestment is in effect.

52 Enforcement of 2 or more obligations to pay maintenance

(1) This section applies where one or more maintenance orders are in effect which provide for the payment by the same debtor to the same person (whether for his own benefit or for another person's) of maintenance in respect of more than one individual.

(2) Where this section applies—

(a) all or any of the obligations to pay maintenance may be enforced by a single current maintenance arrestment against the same earnings; and

(b) in that case, the current maintenance arrestment schedule shall specify one daily rate of maintenance, being the aggregate of the daily rates calculated in accordance with section 51(5) of this Act.

53 Deductions from net earnings to be made by employer

(1) The sum to be deducted from a debtor's net earnings on a payday under section 51 of this Act shall be whichever is the lesser of the amounts mentioned in paragraphs (a) and (b) of subsection (2) below, less any sum which the debtor is entitled to deduct under any enactment in respect of income tax.

(2) The amounts referred to in subsection (1) above are—

(a) subject to subsections (3) and (5) below, a sum arrived at by multiplying the daily rate of maintenance (as specified in the current maintenance arrestment schedule) by the number of days—

(i) since the last pay-day when a deduction was made in respect of the arrestment; or

(ii) if there was no such pay-day, since the date of execution of the arrestment; or

(b) any net earnings in so far as they exceed the sum of £5 per day for the number of days mentioned in paragraph (a) above.

(3) The sum specified in subsection (2)(b) above may be varied by regulations made by the Lord Advocate and such regulations may make different provision for different cases.

(4) Subject to section 69(1) and (2) of this Act, regulations under subsection (3) above shall not apply to an existing current maintenance arrestment unless and until the creditor or the debtor intimates the making of the regulations to the employer in the form prescribed by Act of Sederunt.

(5) An employer operating a current maintenance arrestment shall be entitled, but shall not be required, to apply a change in the small maintenance payments limits before the creditor or the debtor intimates the change to the employer in the form prescribed by Act of Sederunt.

(6) For the purposes of subsection (5) above, the small maintenance payment limits are the rates mentioned in section 65(1A) of the Income and Corporation Taxes Act 1970.

54 Current maintenance arrestment to be preceded by default

- (1) Subject to subsections (2) and (3) below, a current maintenance arrestment schedule may be served in pursuance of a maintenance order which is subsisting at the date of such service only if—
 - (a) the creditor has intimated to the debtor in the manner prescribed by Act of Sederunt—
 - (i) in the case of an order mentioned in paragraph (a) or (b) of the definition of "maintenance order" in section 106 of this Act, the making of the order;
 - (ii) in the case of an order mentioned in paragraph (c), (e), (f), (g) or (h) thereof, the registration mentioned in the paragraph concerned;
 - (iii) in the case of an order mentioned in paragraph (d) thereof, the confirmation of the order mentioned in that paragraph;
 - (b) at least 4 weeks have elapsed since the date of intimation under paragraph (a) above; and
 - (c) except where section 56 of this Act applies, at the time when it is proposed to serve the schedule, a sum not less than the aggregate of 3 instalments of maintenance remains unpaid.
- (2) Subsection (1) above shall not apply where—
 - (a) the maintenance order is one that has been registered in Scotland as mentioned in paragraph (c), (e), (f) or (g) of the said definition; and
 - (b) a certificate of arrears (within the meaning of section 21 of the Maintenance Orders (Reciprocal Enforcement) Act 1972) was produced to the court in Scotland which registered the order to the effect that at the time at which the certificate was issued the debtor was in arrears in his payment of instalments under the order.
- (3) Where a current maintenance arrestment which was validly executed has ceased to have effect otherwise than by virtue of its recall under section 55(2) of this Act, the creditor may within 3 months after the date when the arrestment ceased to have effect execute another current maintenance arrestment without complying with subsection (1) above.

55 Review and termination of current maintenance arrestment

- (1) If the sheriff is satisfied, on an application by the debtor or the person on whom the current maintenance arrestment schedule was served, that a current maintenance arrestment is invalid or has ceased to have effect, he shall make an order declaring that to be the case, and may make such consequential order as appears to him to be necessary in the circumstances.
- (2) If the sheriff is satisfied, on an application by the debtor, that the debtor is unlikely to default again in paying maintenance, he may make an order recalling a current maintenance arrestment.
- (3) The sheriff clerk shall intimate any order made under subsection (1) or (2) above to the debtor, the creditor and the person on whom the current maintenance arrestment schedule was served.
- (4) An order under subsection (1) above declaring that an arrestment is invalid or has ceased to have effect or under subsection (2) above shall not be subject to appeal.

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- (5) The sheriff, on an application by the debtor, the creditor or the employer, may make an order determining any dispute as to the operation of a current maintenance arrestment.
- (6) Without prejudice to section 57(5) of this Act, the sheriff, when making an order under subsection (5) above, may order—
 - (a) the reimbursement of any payment made in the operation of the arrestment which ought not to have been made;
 - (b) the payment of any sum which ought to have been paid in the operation of the arrestment but which has not been paid.
- (7) An order under subsection (6) above shall require the person against whom it is made to pay interest on the sum to be paid by him under the order at the specified rate, and such interest shall be payable as from such date as the sheriff shall specify in the order.
- (8) A current maintenance arrestment shall cease to have effect—
 - (a) on the coming into effect of an order or decree which varies, supersedes or recalls a maintenance order which is being enforced by the arrestment;
 - (b) on an obligation to pay maintenance under a maintenance order being so enforced ceasing or ceasing to be enforceable in Scotland.
- (9) In the case of an order mentioned in paragraph (c), (e), (f) or (g) of the definition of "maintenance order" in section 106 of this Act, the reference in subsection (8)(a) above to the coming into effect of an order or decree shall be construed as a reference to the registration of the order in Scotland.

56 Effect of new maintenance order on current maintenance arrestment

- (1) Where a maintenance order (referred to in this section as "the earlier order") which is being enforced by a current maintenance arrestment is varied or superseded by an order or decree granted by a court in Scotland (referred to in this section as "the later order"), the later order may include a condition that it shall not come into effect until the earlier of—
 - (a) the expiry of such period specified in the later order as the court considers necessary to allow notice to be given to the employer that the earlier order has been varied or superseded; or
 - (b) the service of a new current maintenance arrestment schedule in pursuance of the later order.
- (2) Subsection (1) above shall not apply where the earlier order includes an order for the payment of aliment for the benefit of a spouse and the later order includes an order for the payment of a periodical allowance on divorce or on the granting of a declarator of nullity of marriage for the benefit of that spouse.