



# Debtors (Scotland) Act 1838

1838 CHAPTER 114 1 and 2 Vict

An Act to amend the Law of Scotland in Matters relating to Personal Diligence, Arrestments, and Poindings. [16th August 1838]

## Modifications etc. (not altering text)

- C1 Short title given by [Short Titles Act 1896 \(c. 14\)](#)
- C2 Act repealed so far as inconsistent with Rules of Court by [S.I. 1948/1691](#) (1948 I, p. 3778) and 1965/321
- C3 “Such extract” means an extract of the Court of Session, Teind Court or Court of Justiciary
- C4 Preamble omitted under authority of [Statute Law Revision \(No. 2\) Act 1890 \(c. 51\)](#)

1 ..... <sup>F1</sup>

## Textual Amendments

- F1 [S. 1](#) repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), s. 39, [Sch.](#)

2—15. .... <sup>F2</sup>

## Textual Amendments

- F2 [Ss. 2–15](#) repealed (S.) by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), s. 108, [Sch. 7](#) paras. 5, 9(1), [Sch. 8](#)

[16] <sup>F3</sup>Warrant to arrest may be introduced into summonses before the Court of Session.

It shall be lawful to insert in summonses raised before the lords of council and sessions concluding for payment of money a warrant (or will) to arrest the moveables, debts,

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and money belonging or owing to the defender until caution be found, acted in the books of council and session, that the same shall be made forthcoming as accords of law; and it shall be lawful to writers to the signet to subscribe and to the keeper thereof and his deputies to affix the signet to such summonses without any other authority than this Act.]

**Textual Amendments**

**F3** [S. 16](#) repealed (S.) (5.9.1994) by [S.I. 1994/1443](#), para. 3(2), [Sch. 4](#)

**<sup>F4</sup>17 Arrestment may be executed before executing the summons, but the summons must be executed and called within a limited period.**

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**Textual Amendments**

**F4** [S. 17](#) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007](#) (asp 3), s. 227(3), [Sch. 6 Pt. 1](#) (with [s. 223](#)); [S.S.I. 2008/115](#), art. 3(2)(3), [Sch. 2](#) (with [arts. 4-6, 9, 10, 15](#)) (as amended: (23.2.2009) by [S.S.I. 2009/67](#), art. 7; (31.1.2011) by [S.S.I. 2011/31](#), art. 5(a); and (4.10.2014) by [S.S.I. 2014/173](#), arts. 1(2), 3)

**[18 <sup>F5</sup>Arrestments against persons furth of the kingdom to be executed at the record office.**

It shall not be competent to execute any arrestment as in the hands of a person furth of Scotland by service at the market cross of Edinburgh, and pier and shore of Leith; but such arrestment shall be executed by delivery of a schedule of arrestment at the record office of citations in the Court of Session, which delivery shall be made and the schedule registered and published in the same manner as charges are directed to be registered and published by the Court of Session Act 1825.]

**Textual Amendments**

**F5** [S. 18](#) repealed (S.) (5.9.1994) by [S.I. 1994/1443](#), para. 3(2), [Sch. 4](#)

**19 ..... <sup>F6</sup>**

**Textual Amendments**

**F6** [S. 19](#) repealed by [Sheriff Courts \(Scotland\) Act 1907](#) (c. 51), [Sch.](#)

**[20 <sup>F7</sup>Lord ordinary in the outer house may recall or restrict arrestments, subject to review.**

It shall be competent to the lord ordinary in the Court of Session before whom any summons containing warrant of arrestment shall be enrolled as judge therein, or before whom any action on the dependence whereof letters of arrestment have been executed

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has been or shall be enrolled as judge therein, and to the lord ordinary on the bills in time of vacation on the application of the debtor or defender by petition duly intimated to the creditor or pursuer, to which answers may be ordered, to recall or to restrict such arrestment, on caution or without caution, and dispose of the question of expences, as shall appear just; provided that his judgment shall be subject to the review of the inner house by a reclaiming note duly lodged within ten days from the date thereof.]

#### Textual Amendments

**F7** [S. 20](#) repealed (S.) (5.9.1994) by [S.I. 1994/1443](#), para. 3(2), [Sch. 4](#)

### 21 Sheriff may recall or restrict arrestments, subject to review.

It shall be competent for any [<sup>F8</sup>sheriff principal] from whose books a warrant of arrestment has been issued, on the petition of the debtor or defender duly intimated to the creditor or pursuer, to recall or to restrict such arrestment, on caution or without caution, as to the [<sup>F8</sup>sheriff principal] shall appear just; provided that the [<sup>F8</sup>sheriff principal] shall allow answers to be given in to the said petition, and shall proceed with the further disposal of the cause in the same manner as in summary causes, and his judgment shall be subject to review in the Court of Session.

#### Textual Amendments

**F8** Words substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\)](#), [s. 4](#)

### <sup>F9</sup>22 Arrestments to prescribe in three years.

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#### Textual Amendments

**F9** S. 22 repealed (1.4.2008 for specified purposes and 22.4.2009 in so far as not already in force) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), [Sch. 6 Pt. 1](#) (with s. 223); [S.S.I. 2008/115](#), art. 3(2)(3), [Sch. 2](#) (with arts. 4-6, 9, 10, 15) (as amended: (23.2.2009) by [S.S.I. 2009/67](#), art. 7; (31.1.2011) by [S.S.I. 2011/31](#), art. 5(a); and (4.10.2014) by [S.S.I. 2014/173](#), arts. 1(2), 3); [S.S.I. 2009/67](#), art. 3(2)(3), [Sch. 2](#) (with arts. 4-6)

### 23— ..... <sup>F10</sup> 31.

#### Textual Amendments

**F10** [Ss. 23–31](#) repealed (S.) by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), s. 108, [Sch. 7 paras. 5, 9\(1\)](#), [Sch. 8](#)

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Extracts, citations, deliverances, schedules, and executions may be either printed or in writing, or partly both, and . . . <sup>F11</sup>, more than one witness shall not be required for service or execution thereof.

**Textual Amendments**

**F11** Words repealed (S.) by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), s. 108, Sch. 7 paras. 5, 9(1), Sch. 8

**Modifications etc. (not altering text)**

**C5** S. 32 explained by Citations (Scotland) Act 1846 (c. 67)

**C6** S. 32 excluded in part (1.4.1997) by S.I. 1997/291, rule 3.24, Sch. 3

**33, 34. . . . . F12****Textual Amendments**

**F12** Ss. 33, 34 and 36 repealed by Statute Law Revision Act 1874 (No. 2)

**35 . . . . . F13****Textual Amendments**

**F13** S. 35 repealed (S.) by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), s. 108, Sch. 7 paras. 5, 9(1), Sch. 8

**36 . . . . . F14****Textual Amendments**

**F14** Ss. 33, 34 and 36 repealed by Statute Law Revision Act 1874 (No. 2)

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## SCHEDULES

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F15

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### Textual Amendments

**F15** All schedules repealed (S.) by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), s. 108, Sch. 7 paras. 5, 9(1), [Sch. 8](#)

**Status:**

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**Changes to legislation:**

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