

DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002

EXPLANATORY NOTES

THE ACT

Part 2 – Attachment

Attachment of articles kept outwith dwellinghouses

Section 14 – Procedure for attachment of articles kept outwith dwellinghouses etc.

39. **Section 14** provides that sections 15 to 19 apply only to the attachment of articles which are kept outwith a dwellinghouse and that they do not apply to a mobile home which is the debtor's only or principal residence.

Section 15 – Power of entry and valuation

40. **Section 15(1)** provides for entry into premises which are not a home (dwellinghouse) for the purpose of executing an attachment and permits locked premises to be opened if necessary. Sections 15(2) and (3) provide that the valuation of an article is to be based on the amount the article would be likely to fetch if sold on the open market, and is to be carried out, where appropriate, by a professional valuer or other suitably skilled person. This will be applicable in cases where, for example, the article concerned is antique or unusual.

Section 16 – Attachment of mobile homes

41. This permits a caravan, houseboat or other moveable structure used as a dwellinghouse, which is the only or principal residence of a third party, to be released from an attachment. The third party must be given notice of the attachment. The debtor or the third party may then, within 14 days of the attachment, apply to the sheriff for its release. If, however, there is good reason for the application being made late the sheriff can consider an application made after that period but before the mobile home is auctioned.

Section 17 – Report of attachment

42. This section provides for judicial supervision of the attachment by requiring that a report of the attachment be made to the sheriff within 14 days of its execution. The sheriff may allow a longer period on cause shown. If there is some irregularity in the format of, or procedure by which the report was made, the sheriff may refuse to accept the report and the attachment will cease to have effect.
43. **Section 17(2)** provides that the report must be in the form prescribed in rules of court and that it must be signed by the officer. **Section 17(3)** stipulates what the report should specify. Under **section 17(4)** the report need not specify articles which have been sold following specific orders made by the court regarding the sale of perishables nor a vehicle that has been sold.

Section 18 – Redemption

44. **Section 18** enables attached articles to be redeemed by the debtor within 14 days of the date on which the article was attached. This provides for circumstances where an article has been attached but the debtor wants to buy it back before auction.
45. **Section 18(2)** specifies that the article must be redeemed at the attached value. **Section 18(3)** and (4) provide for a receipt to be given when payment is made upon which the attachment will cease to have effect. The receipt will be in a form prescribed by rules of court.
46. **Section 18(5)** provides for a supplementary report to be made as soon as reasonably practicable to the sheriff in respect of a redemption made after the original report of attachment has been made.

Section 19 – Removal and auction of attached articles

47. **Section 19** requires arrangements for the auction of attached articles to be made and, after notice of the date on which the auction is to take place has been given, permits the removal of articles from the place where they are kept to the place where the auction is to take place. **Section 19(4)** and (5) permit only sufficient articles as would, if sold at their attached values cover the debt due, to be removed for auction. Any remaining attached articles will cease to be subject to attachment.

Section 20 – Order for security of articles or sale of articles which are perishable etc.

48. **Section 20** allows the sheriff to make an order for the security of attached articles and for the immediate sale of perishable articles so that they will not deteriorate and lose value. The proceeds of sale are then consigned in court.
49. **Section 20(2)** provides that an application for such an order must be intimated to the debtor or creditor and the officer depending on which party makes the application.
50. **Section 20(4)** provides that where an attachment ceases to have effect before an auction takes place the sum consigned in court will be paid to the creditor to meet the debt and any surplus will be paid to the debtor.

Section 21 – Unlawful acts after attachment

51. This section prohibits the removal, sale, gifting or other disposal of attached articles and their wilful destruction or damage. To do so will be in breach of the attachment and may be dealt with as a contempt of court.
52. **Section 21(7)** requires the debtor to give notification to the creditor and officer if an attached article is stolen and of any insurance claim which the debtor intends to make. **Section 21(10)** provides that, where attached articles have been damaged, destroyed or stolen, the sheriff may order that others be attached. Damaged articles may, on the authority of the sheriff, be revalued.
53. **Section 21(11) to (15)** makes provision for a sum of money to be consigned in court in circumstances where an article is made unavailable by the debtor or any third party who knows the article is attached. These include where the debtor or third party moves an attached article and it is subsequently damaged, destroyed, lost or stolen or is acquired by another person who is unaware of the attachment, and where the debtor or third party wilfully damages or destroys the article. The sum to be consigned will be equal to the difference between the value of the article when attached and the value of the damaged article or, in any other case, a sum equal to the attached value. Where the attachment of a damaged article ceases to have effect before its auction, any sum which has been consigned in court will be paid to the creditor to the extent necessary to meet the debt with any surplus left over being paid to the debtor.

Section 22 – Release of vehicle from attachment

54. This section provides for the protection of vehicles where auction would be unduly harsh in the circumstances, for example, vehicles used for travel to work or for regular medical treatment in a rural area not serviced by public transport. Circumstances which would constitute undue harshness are not specified, thus allowing the sheriff to make a decision based on the debtor's individual circumstances. This section implements recommendation 11 of the Scottish Law Commission in Scot Law Com No 177.
55. **Section 22(1)** entitles the sheriff, on an application by the debtor, to make an order for release of the vehicle. **Section 22(2)** restricts the release to vehicles whose value does not exceed £1,000. This monetary limit may be varied by the Scottish Ministers in regulations. **Section 22(3)** provides that, where the value of the vehicle is over £1,000, the sheriff may order the sale of the vehicle and for the proceeds of sale up to £1,000 to be paid to the debtor to enable a replacement vehicle to be obtained and for any surplus to remain in court. **Section 22(5)** provides that if the vehicle cannot be sold within 14 days of the date of the order the attachment will cease to have effect.

Section 23 - Appeals against valuation

56. **Section 23** provides that, where a sheriff is satisfied that the aggregate value of the attached articles is substantially below market value, the sheriff may, up until the date of their auction, order the attachment to cease.. **Section 23(2)** provides that this can be done either on the sheriff's own accord or on an application by the debtor. **Section 23(3)** ensures that such an order cannot be made without the debtor and creditor having been given an opportunity to make representations and, if they so wish, be heard.

Section 24 – Duration of attachment

57. This section provides that an attachment will cease to have effect if no further action is taken within six months of the attachment or 28 days of the removal of the attached article from the place at which it was attached, whichever is the earlier. An extension of the period may be permitted only by order of the sheriff in circumstances where the debtor is likely to comply with an agreement with the creditor to pay the debt due by instalments or where the auction cannot take place before the date on which the attachment ceases through no fault of the creditor and that will prejudice the creditor.

Section 25 – Second attachment at same place

58. **Section 25** provides that a second attachment may not be undertaken at the same premises to enforce the same debt unless other articles were brought onto the premises after the first attachment took place.

Section 26 – Invalidity and cessation of attachment

59. **Section 26** provides that, at any time before the auction of attached articles, the sheriff may, on his own initiative or on an application by the debtor, make an order declaring the attachment to be invalid or having ceased to have effect. The sheriff may also make such other order as is considered necessary in the circumstances. This enables enforcement action to be halted in the event of an irregularity in procedure or if an attachment should have ceased to have had effect.
60. **Section 26(4)** gives the debtor and the creditor an opportunity to make representations and, if either so wishes, to be heard. **Section 26(5)** provides for any articles removed to be returned in the event of an order being made. **Section 26(6)** provides for the sheriff to give reasons for a refusal to grant such an order.