

DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002

EXPLANATORY NOTES

THE ACT

Part 2 – Attachment

General and miscellaneous provisions

Section 34– Articles belonging to a third party

74. **Section 34(1)** enables articles, prior to auction, to be released from attachment where a third party claims ownership and either the officer is satisfied as to the validity of the claim or the sheriff grants an order.
75. **Section 34(3)** provides for other articles owned by the debtor and kept at the same place as where the original attachment took place to be attached instead of the released articles.

Section 35 – Articles in common ownership

76. **Section 35(1)** allows articles commonly owned by a debtor and a third party to be attached and sold in satisfaction of the debtor's debt.
77. **Section 35(2)** allows the common owner to redeem such articles on payment of an amount equal to the debtor's interest in the article.
78. **Section 35(3)** enables the sheriff to order that the article be released from attachment where its sale would be unduly harsh to the common owner.
79. **Section 35(4)** provides for other articles owned by the debtor to be attached in replacement.

Section 36 – Procedure where articles in common ownership are sold at auction.

80. **Section 36** covers circumstances where assets in common ownership are sold at auction. Section 36(1) and (2) entitles the third party to a proportion of the proceeds of sale corresponding to his/her interest in them.

Section 37 – Attachment terminated by payment or tender of full amount owing

81. **Section 37** provides that an attachment will cease to be effective where the full amount owing to the creditor is paid.

Section 38 – Assistance to debtor

82. **Section 38** allows the sheriff clerk to provide debtors with assistance in explaining the procedure involved or completing any forms which may be necessary in connection with any of the procedures in the Act.

Section 39 – Expenses chargeable in relation to attachment etc.

83. This section makes provision for determining liability as between debtor and creditor for the expenses of the procedures in the Act.

Section 40 – Recovery from debtor of expenses of attachment

84. This section specifies when the expenses of an attachment chargeable against the debtor may be recovered otherwise than from the proceeds of auction.

Section 41 – Ascription of sums recovered by attachment or while attachment is in effect

85. This section provides for the order in which amounts recovered by attachment are to be applied, namely towards the cost of attachment, then to interest payable which had accrued by the date of the attachment, then to the debt due including expenses.

Section 42 – Restriction on fees payable by debtor

86. This section prohibits the charging of fees to the debtor for any application made by the debtor under the Act, any objections made by the debtor to an application made by another party or in relation to any hearing.

Section 43 – Power to provide for lay representation

87. This section confers power to make provision in rules of court for lay representation to be permitted in proceedings concerning attachment.

Section 44 – Legal aid

88. This section provides that legal aid is not available for proceedings under Parts 2 and 3 of the Act. Third parties are not prevented from obtaining legal aid in connection with those proceedings.

Section 45 – Interpretation of this Part and Parts 3 and 4

89. This section defines terms used in Parts 2, 3 and 4 of the Act.