
Changes to legislation: Debt Arrangement and Attachment (Scotland) Act 2002, SCHEDULE 1 is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULE 1

(introduced by section 39)

EXPENSES OF ATTACHMENT ETC.

Expenses chargeable against the debtor

- 1 Subject to paragraphs [F1 1A,] 2 and 3 below, there shall be chargeable against the debtor any expenses incurred—
- (a) subject to section 90(7) of the Debtors (Scotland) Act 1987 (c.18), in serving a charge;
 - (b) in executing an attachment;
 - (c) in relation to a valuation arranged under section 15(3), 21(14) or 54(1) above (including the fees and outlays of the person who carried out the valuation);
 - (d) in making a report under section 17(1) of this Act of the execution of an attachment, but not in applying for an extension of time for the making of such a report;
 - (e) in granting a receipt under section 18(3) or 56(4) above;
 - (f) in making a report under section 18(5) above of the redemption by the debtor of any attached article;
 - (g) in giving notice to the debtor under section 27(4) above;
 - (h) in giving public notice under section 27(5) above;
 - (i) in removing any attached articles from the place at which they were attached;
 - (j) in opening shut and lockfast places for that purpose;
 - (k) in storing attached articles during the period between the time when they were removed from the place at which they were attached and the time when the attachment ceases to have effect (by virtue of the articles being auctioned or otherwise);
 - (l) in making arrangements for, conducting and supervising an auction of attached articles;
 - (m) where the arrangements for an auction have been cancelled under section 29(1) above, in returning attached articles to any premises from which they have been removed for auction;
 - (n) in making a report of an agreement under section 29(3)(a) above;
 - (o) subject to section 32(3) above, in making a report of auction under section 32(1) above;
 - [F2 (oa)] in serving notice on the debtor under section 49(1)(b) above;
 - (p) by a solicitor in instructing an officer to take any of the steps specified in this paragraph.

Textual Amendments

- F1** Word in Sch. 1 para. 1 inserted (31.3.2007 for specified purposes) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), [Sch. 5 para. 30\(15\)](#) (with s. 223); S.S.I. 2007/82, art. 4(e)(i)
- F2** Sch. 1 para. 1(oa) inserted (31.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 212\(16\)\(a\)](#), 227(3) (with s. 223); S.S.I. 2007/82, art. 4(b)

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- [^{F3}1A The expenses referred to in sub-paragraphs (i), (j) and (k) of paragraph 1 above shall not be chargeable against the debtor if the articles are removed under section 19A(1) above.]

Textual Amendments

- F3** Sch. 1 para. 1A inserted (31.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. [212\(16\)\(b\)](#), [227\(3\)](#) (with s. 223); S.S.I. 2007/82, art. 4(b)

- 2 Where a new date is arranged under section 28(2) above for the holding of an auction or for the removal of attached articles, there shall be chargeable against the debtor the expenses incurred in connection with arranging the new date but not those incurred in connection with arranging the original date.
- 3 Where arrangements for an auction are cancelled under subsection (1) of section 29 above, if new arrangements are made for the auction in the circumstances mentioned in subsection (4)(a) of that section, there shall be chargeable against the debtor the expenses incurred in the making of the new arrangements but not in the making of the arrangements which have been cancelled.

Circumstances where liability for expenses is at the discretion of the sheriff

- 4 The liability for any expenses incurred by the creditor or the debtor—
- (a) in an application by the creditor or an officer of court to the sheriff under any provision of Part 2 or 3 of this Act, other than an application for an exceptional attachment order; or
 - (b) in implementing an order under—
 - (i) subsection (2)(b) or (10)(a) of section 21 above; or
 - (ii) section 20(1) above,
- shall be as determined by the sheriff.

Calculation of amount chargeable against debtor under the foregoing provisions

- 5 Expenses—
- (a) chargeable against the debtor by virtue of paragraphs 1 or 3 above in respect of an application for the purposes of any of the provisions of Part 2 or 3 of this Act; or
 - (b) awarded by the sheriff against the debtor in favour of the creditor in a determination under paragraph 4 above in respect of an application other than an application for an order under subsection (2)(b) or (10)(a) of section 21 above,
- shall be calculated, whether or not the application is opposed by the debtor, as if it were unopposed, except that, if the debtor opposes the application on grounds which appear to the sheriff to be frivolous, the sheriff may award an additional sum of expenses, not exceeding £25 or such amount as may be prescribed in regulations made by the Scottish Ministers, against the debtor.

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Circumstances where no expenses are due to or by either party

- 6 Subject to paragraph 7 below, the debtor shall not be liable to the creditor nor the creditor to the debtor for any expenses incurred by the other party in connection with—
- (a) an application by the debtor to the sheriff under any provision of Part 2 or 3 of this Act;
 - (b) any objections to such an application;
 - (c) a hearing held by virtue of section 23(3), 26(4) or 33(7) above.
- 7 If—
- (a) an application mentioned in paragraph 6(a) above is frivolous;
 - (b) such an application is opposed on frivolous grounds; or
 - (c) a party requires, on frivolous grounds, a hearing to be held by virtue of any of the provisions mentioned in paragraph 6(c) above,
- the sheriff may award a sum of expenses, not exceeding £25 or such amount as may be prescribed in regulations made by the Scottish Ministers, against the party acting frivolously in favour of the other party.
- 8 Paragraphs 6 and 7 do not apply to expenses incurred—
- (a) in connection with an appeal under any provision of Part 2 or 3 of this Act; or
 - (b) by or against a person other than the debtor or a creditor in connection with an application under any provision of Part 2 or 3 of this Act.

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Changes and effects yet to be applied to :

- [Sch. 1 para. 4\(a\)](#) words repealed by [2007 asp 3 Sch. 6 Pt. 1](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2018/1125 reg. 8](#) (This amendment not applied to [legislation.gov.uk](#). [S.I. 2018/1125](#), reg. 8 omitted (31.12.2020) by virtue of [Private International Law \(Implementation of Agreements\) Act 2020](#) (c. 24), s. 4(3), [Sch. 5 para. 4\(4\)](#))

Commencement Orders yet to be applied to the Debt Arrangement and Attachment (Scotland) Act 2002

Commencement Orders bringing provisions within this Act into force:

- [S.S.I. 2004/401 art. 3](#) commences ([2002 asp 17](#))