



# Debtors (Scotland) Act 1987

## 1987 CHAPTER 18

### PART I

#### EXTENSION OF TIME TO PAY DEBTS

##### *Time to pay directions on granting decree*

#### **1 Time to pay directions.**

(1) Subject to subsections (3) to (5) below and to section 14 of this Act, [<sup>F1</sup>on an application by the debtor,] the court [<sup>F2</sup>or the First-tier Tribunal], on granting decree for payment of any principal sum of money [<sup>F3</sup>, shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard in particular to the matters mentioned in subsection (1A) below,] direct that any sum decerned for in the decree (including any interest claimed in pursuance of subsections (6) and (7) below) or any expenses in relation to which the decree contains a finding as to liability or both such sum and such expenses shall be paid—

- (a) by such instalments, commencing at such time after the date of intimation by the creditor to the debtor of an extract of the decree containing the direction, payable at such intervals; or
- (b) as a lump sum at the end of such period following intimation as mentioned in paragraph (a) above,

as the court [<sup>F2</sup>or the First-tier Tribunal] may specify in the direction.

[<sup>F4</sup>(1A) The matters referred to in subsection (1) above are—

- (a) the nature of and reasons for the debt in relation to which decree is granted;
- (b) any action taken by the creditor to assist the debtor in paying that debt;
- (c) the debtor's financial position;
- (d) the reasonableness of any proposal by the debtor to pay that debt; and
- (e) the reasonableness of any refusal by the creditor of, or any objection by the creditor to, any proposal by the debtor to pay that debt.]

(2) A direction under subsection (1) above shall be known as a “time to pay direction”.

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(3) Where a court [<sup>F5</sup>or the First-tier Tribunal] grants a decree which contains a finding as to liability for expenses but does not at the same time make a time to pay direction, then (whether or not the decree also decerns for payment of the expenses), it shall not at any time thereafter be competent for the court [<sup>F5</sup>or the First-tier Tribunal] to make a time to pay direction in relation to those expenses.

(4) Where a court [<sup>F6</sup>or the First-tier Tribunal] grants a decree which contains a finding as to liability for expenses and makes a time to pay direction in relation to those expenses but—

- (a) does not decern for payment of the expenses; or
- (b) decerns for payment of the expenses as taxed by the auditor of court [<sup>F7</sup>or auditor of the Court of Session] but does not specify the amount of those expenses,

in relation to so much of the time to pay direction as relates to the expenses, the reference in subsection (1) above to the date of intimation of an extract of the decree containing the direction shall be treated as a reference to the date of intimation of an extract of a decree decerning for payment of the expenses, being an extract specifying their amount.

(5) It shall not be competent for the court [<sup>F8</sup>or the First-tier Tribunal] to make a time to pay direction—

- (a) where the sum of money (exclusive of any interest and expenses) decerned for exceeds £10,000 or such amount as may be prescribed in regulations made by the Lord Advocate;
- (b) where the decree contains an award of a capital sum on divorce or on the granting of a declarator of nullity of marriage;
- (c) in connection with a maintenance order;
- <sup>F9</sup>(cc) in connection with a liability order within the meaning of the Child Support Act 1991;
- (d) in an action by or on behalf of [<sup>F10</sup>the Commissioners for Her Majesty’s Revenue and Customs] for payment of any sum recoverable [<sup>F11</sup>under or by virtue of any enactment or under a contract settlement];

<sup>F12</sup>(da) in an action by or on behalf of Revenue Scotland for payment of any sum recoverable under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 16) or any other enactment in respect of a devolved tax, under a contract settlement or under a settlement agreement,]

<sup>F13</sup>(e) .....

(f) in an action for payment of—

<sup>F14</sup>(i) .....

(ii) car tax due under the <sup>M1</sup>Car Tax Act 1983 <sup>F15</sup>; . . .

<sup>F16</sup>(iii) .....

<sup>F17</sup>(iv) .....

(6) Without prejudice to section 2(5) of this Act, interest payable under a decree containing a time to pay direction (other than interest awarded as a specific sum in the decree) shall not be recoverable by the creditor except in accordance with subsection (7) below.

(7) A creditor who wishes to recover interest to which subsection (6) above applies shall serve a notice on the debtor, not later than the date prescribed by Act of Sederunt

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[<sup>F18</sup>or the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017] occurring—

- (a) in the case of a direction under subsection (1)(a) above, before the date when the last instalment of the debt concerned (other than such interest) is payable under the direction;
- (b) in the case of a direction under subsection (1)(b) above, before the end of the period specified in the direction,

stating that he is claiming such interest and specifying the amount of the interest claimed.

- (8) Any sum paid by a debtor under a time to pay direction shall not be ascribed to interest claimed in pursuance of subsections (6) and (7) above until the debt concerned (other than such interest) has been discharged.

[<sup>F19</sup>(8A) In paragraph (d) of subsection (5) above, “contract settlement” means an agreement made in connection with any person's liability to make a payment to the Commissioners for Her Majesty's Revenue and Customs under or by virtue of any enactment.]

[<sup>F20</sup>(8B) In paragraph (da) of subsection (5)—

“contract settlement” means any agreement made in connection with any person's liability to make a payment to Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 16) or any other enactment in respect of a devolved tax,

“devolved tax” has the meaning given by section 80A(4) of the Scotland Act 2012 (c. 46),

“settlement agreement” has the meaning given by section 246(1) of the Revenue Scotland and Tax Powers Act 2014 (asp 16).]

<sup>F21</sup>(9) . . . . .

#### Textual Amendments

- F1** Words in s. 1(1) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss. 210(2)(a)(i), 227(3)** (with s. 223); S.S.I. 2008/115, art. 3(1)(g) (with arts. 4-6, 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)
- F2** Words in s. 1(1) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(2)(a)**
- F3** Words in s. 1(1) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss. 210(2)(a)(ii), 227(3)** (with s. 223); S.S.I. 2008/115, art. 3(1)(g) (with arts. 4-6, 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)
- F4** S. 1(1A) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss. 210(2)(b), 227(3)** (with s. 223); S.S.I. 2008/115, art. 3(1)(g) (with arts. 4-6, 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)
- F5** Words in s. 1(3) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(2)(a)**
- F6** Words in s. 1(4) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(2)(b)(i)**
- F7** Words in s. 1(4) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(2)(b)(ii)**

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- F8** Words in s. 1(5) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(2)(a)**
- F9** S. 1(5)(cc) inserted (5.4.1993) by Child Support Act 1991 (c. 48, SIF 20), s. 58(13), **Sch. 5 para. 8(2)** (with s. 9(2)); S.I. 1992/2644, **art. 2**.
- F10** Words in s. 1(5)(d) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 33**; S.I. 2005/1126, art. 2(2)(h)
- F11** Words in s. 1(5)(d) substituted (23.11.2009) by Finance Act 2008 (c. 9), s. 129(4), **Sch. 43 para. 13(1)(a)**; S.I. 2009/3024, art. 3 (with art. 5)
- F12** S. 1(5)(da) inserted (1.4.2015) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(2), **sch. 4 para. 1(2)(a)** (with ss. 257-259); S.S.I. 2015/110, art. 2(1)
- F13** S. 1(5)(e) repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss. 209(2)(a), 227(3)** (with s. 223); S.S.I. 2008/115, art. 3(1)(g) (with arts. 4-6, 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)
- F14** S. 1(5)(f)(i) omitted (23.11.2009) by virtue of Finance Act 2008 (c. 9), s. 129(4), **Sch. 43 para. 13(1)(b)**; S.I. 2009/3024, art. 3 (with art. 5)
- F15** Word in s. 1(5)(f) ceased to have effect (6.4.1999) by virtue of 1998 c. 14, s. 86(1), **Sch. 7 para. 12(a)**; S.I. 1999/526, **art. 2(3)(4)(b)** and repealed (1.6.1999) by 1998 c. 14, s. 86(2), **Sch. 8**; S.I. 1999/1510, **art. 2(f)(ii)**
- F16** S. 1(5)(f)(iii) omitted (23.11.2009) by virtue of Finance Act 2008 (c. 9), s. 129(4), **Sch. 43 para. 13(1)(b)**; S.I. 2009/3024, art. 3 (with art. 5)
- F17** S. 1(5)(f)(iv) omitted (23.11.2009) by virtue of Finance Act 2008 (c. 9), s. 129(4), **Sch. 43 para. 13(1)(b)**; S.I. 2009/3024, art. 3 (with art. 5)
- F18** Words in s. 1(7) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(2)(c)**
- F19** S. 1(8A) inserted (23.11.2009) by Finance Act 2008 (c. 9), s. 129(4), **Sch. 43 para. 13(1)(c)**; S.I. 2009/3024, art. 3 (with art. 5)
- F20** S. 1(8B) inserted (1.4.2015) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(2), **sch. 4 para. 1(2)(b)** (with ss. 257-259); S.S.I. 2015/110, art. 2(1)
- F21** S. 1(9) repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss. 209(2)(b), 227(3)** (with s. 223); S.S.I. 2008/115, art. 3(1)(g) (with arts. 4-6, 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)

### Marginal Citations

**M1** 1983 c. 53.

## 2 Effect of time to pay direction on diligence.

- (1) While a time to pay direction is in effect, it shall not be competent—
- (a) to serve a charge for payment; or
  - (b) to commence or execute any of the following diligences—
    - (i) an arrestment and action of furthcoming or sale;
    - [<sup>F22</sup>(ii) an attachment;]
    - (iii) an earnings arrestment;
    - (iv) an adjudication for debt,
    - [<sup>F23</sup>(v) a money attachment;
    - (vi) a land attachment;
    - (vii) a residual attachment,]
 to enforce payment of the debt concerned.

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- (2) While a time to pay direction is in effect an arrestment used on the dependence of the action or in security of the debt concerned shall remain in effect—
- (a) if it has not been recalled; and
  - (b) to the extent that it has not been restricted under subsection (3) below,
- but, while the direction is in effect, it shall not be competent to commence an action of furthcoming or sale following on such an arrestment.
- [<sup>F24</sup>(2A) Where the arrestment which remains in effect as mentioned in subsection (2) above is an arrestment such as is mentioned in subsection (1) of section 73J of this Act, while the time to pay direction is in effect—
- (a) it shall not be competent to release funds under subsection (2) of that section; and
  - (b) the period during which the direction is in effect shall be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.
- (2B) While a time to pay direction is in effect an interim attachment shall remain in effect—
- (a) if it has not been recalled; or
  - (b) to the extent that it has not been restricted under subsection (3) below.]
- (3) The court [<sup>F25</sup>or the First-tier Tribunal] may, on making a time to pay direction, recall or restrict [<sup>F26</sup>an interim attachment or] an arrestment of the kind described in subsection (2) above.
- (4) If [<sup>F27</sup>an interim attachment or] an arrestment of the kind described in subsection (2) above is in effect, the court [<sup>F28</sup>or the First-tier Tribunal] may order that the making of a time to pay direction and the recall or restriction of the [<sup>F29</sup>interim attachment or] arrestment shall be subject to the fulfilment by the debtor of such conditions within such period as the court [<sup>F28</sup>or the First-tier Tribunal] thinks fit; and, where the court [<sup>F28</sup>or the First-tier Tribunal] so orders, it shall postpone granting decree until such fulfilment or the end of that period, whichever is the earlier.
- (5) Where a time to pay direction is recalled or ceases to have effect, otherwise than—
- (a) under section 12(2)(a) of this Act; or
  - (b) by reason of the debt concerned being paid or otherwise extinguished,
- the debt in so far as it remains outstanding and interest thereon, whether or not awarded as a specific sum in the decree, shall, subject to any enactment or rule of law to the contrary, become enforceable by any diligence mentioned in subsection (1)(b) above.
- [<sup>F30</sup>(5A) Where—
- (a) a time to pay direction is recalled or ceases to have effect as mentioned in subsection (5) above; and
  - (b) an arrestment such as is mentioned in section 73J(1) of this Act is in effect,
- the clerk of court [<sup>F31</sup>, sheriff clerk or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal] shall intimate the fact of that recall or cessation to the arrestee.]

#### Textual Amendments

- F22** S. 2(1)(b)(ii) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(2)** (with s. 63)

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- F23** S. 2(1)(b)(v)-(vii) inserted (23.11.2009 for specified purposes) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), sch. 5 para. 16(2)(a)** (with s. 223); S.S.I. 2009/369, art. 3(2)(3), sch. (with art. 4) (which transitional provisions in art. 4 are revoked (31.1.2011) by S.S.I. 2011/31, art. 5(c))
- F24** S. 2(2A)(2B) inserted (1.4.2008 for specified purposes, 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. 5 para. 16(2)(c)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F25** Words in s. 2(3) inserted (6.3.2019) by **The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, 2(3)(a)**
- F26** Words in s. 2(3) inserted (1.4.2008) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), sch. 5 para. 16(2)(d)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F27** Words in s. 2(4) inserted (1.4.2008) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), sch. 5 para. 16(2)(e)(i)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F28** Words in s. 2(4) inserted (6.3.2019) by **The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, 2(3)(a)**
- F29** Words in s. 2(4) inserted (1.4.2008) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), sch. 5 para. 16(2)(e)(ii)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F30** S. 2(5A) inserted (22.4.2009) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), sch. 5 para. 16(2)(f)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F31** Words in s. 2(5A) substituted (6.3.2019) by **The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, 2(3)(b)**

### 3 Variation and recall of time to pay direction and arrestment.

- (1) The court which granted a decree<sup>F32</sup>, or the First-tier Tribunal, where it has made an order,] containing a time to pay direction may, on an application by the debtor or the creditor—
- (a) vary or recall the direction if it is satisfied that it is reasonable <sup>F33</sup>in all the circumstances] to do so; or
  - (b) if <sup>F34</sup>an interim attachment or] an arrestment in respect of the debt concerned is in effect, recall or restrict the <sup>F35</sup>interim attachment or] arrestment.
- (2) If <sup>F36</sup>an interim attachment or] an arrestment in respect of the debt concerned is in effect, the court <sup>F37</sup>or the First-tier Tribunal] may order that any variation, recall or restriction under subsection (1) above shall be subject to the fulfilment by the debtor of such conditions as the court <sup>F37</sup>or the First-tier Tribunal] thinks fit.
- (3) The clerk of court<sup>F38</sup>, sheriff clerk or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal] shall as soon as is reasonably practicable intimate a variation under subsection (1) above to the debtor and to the creditor, and the variation shall come into effect on the date of such intimation.

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### Textual Amendments

- F32** Words in s. 3(1) inserted (6.3.2019) by [The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019 \(S.S.I. 2019/51\)](#), regs. 1, **2(4)(a)**
- F33** Words in s. 3(1)(a) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), **sch. 5 para. 16(3)(a)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F34** Words in s. 3(1)(b) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), **sch. 5 para. 16(3)(b)(i)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F35** Words in s. 3(1)(b) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), **sch. 5 para. 16(3)(b)(ii)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F36** Words in s. 3(2) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), **sch. 5 para. 16(3)(c)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F37** Words in s. 3(2) inserted (6.3.2019) by [The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019 \(S.S.I. 2019/51\)](#), regs. 1, **2(4)(b)**
- F38** Words in s. 3(3) substituted (6.3.2019) by [The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019 \(S.S.I. 2019/51\)](#), regs. 1, **2(4)(c)**

## 4 Lapse of time to pay direction.

- (1) If, on the day on which an instalment payable under a time to pay direction becomes due, there remains unpaid a sum, due under previous instalments, of not less than the aggregate of 2 instalments, the direction shall cease to have effect.
- (2) If at the end of the period of 3 weeks immediately following the day on which the last instalment payable under a time to pay direction becomes due, any part of the debt concerned remains outstanding, the direction shall cease to have effect.
- (3) If any sum payable under a time to pay direction under section 1(1)(b) of this Act remains unpaid 24 hours after the end of the period specified in the direction, the direction shall cease to have effect.
- (4) Where—
  - (a) a decree for payment of a principal sum of money contains a finding as to liability for expenses and decree for payment of the expenses is subsequently granted; and
  - (b) a time to pay direction is made in relation to both the principal sum and the expenses,

if under subsections (1) to (3) above the direction ceases to have effect in relation to the sum payable under either of the decrees, the direction shall also cease to have effect in relation to the sum payable under the other decree.

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*Time to pay orders following charge or diligence*

**5 Time to pay orders.**

(1) Subject to section 14 of this Act, this section applies to a debt due under a decree or other document in respect of which —

- (a) a charge for payment has been served on the debtor;
- (b) an arrestment has been executed; or
- (c) an action of adjudication for debt has been commenced.

(2) Subject to subsections (4) and (5) below, the sheriff <sup>F39</sup> or the First-tier Tribunal <sup>F40</sup>, on an application by the debtor, shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard in particular to the matters mentioned in subsection (2A) below,] make an order that a debt to which this section applies (including any interest claimed in pursuance of subsections (6) and (7) below) so far as outstanding, shall be paid—

- (a) by such instalments, commencing at such time after the date of intimation in accordance with section 7(4) of this Act <sup>F41</sup> ... to the debtor of the order under this subsection, payable at such intervals; or
- (b) as a lump sum at the end of such period following intimation as mentioned in paragraph (a) above,

as the sheriff may specify in the order.

<sup>F42</sup>(2A) The matters referred to in subsection (2) above are—

- (a) the nature of and reasons for the debt in relation to which the order is sought;
- (b) any action taken by the creditor to assist the debtor in paying that debt;
- (c) the debtor's financial position;
- (d) the reasonableness of any proposal by the debtor to pay that debt; and
- (e) the reasonableness of the objection by the creditor to the offer by the debtor to pay that debt.]

(3) An order under subsection (2) above shall be known as a “time to pay order”.

(4) It shall not be competent for the sheriff <sup>F43</sup> or the First-tier Tribunal] to make a time to pay order—

- (a) where the amount of the debt outstanding at the date of the making of the application under subsection (2) above (exclusive of any interest) exceeds £10,000 or such amount as may be prescribed in regulations made by the Lord Advocate;
- (b) where, in relation to the debt, a time to pay direction or a time to pay order has previously been made (whether such direction or order is in effect or not);

<sup>F44</sup>(c) .....

- (d) in relation to a debt including any sum recoverable by or on behalf of <sup>F45</sup>the Commissioners for Her Majesty’s Revenue and Customs]<sup>F46</sup> under or by virtue of any enactment or under a contract settlement];

<sup>F47</sup>(da) in relation to a debt including any sum recoverable by or on behalf of Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 16) or any other enactment in respect of a devolved tax, under a contract settlement or under a settlement agreement,]

<sup>F48</sup>(e) .....

- (f) in relation to a debt including—



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- F49(i) .....
- (ii) car tax due under the <sup>M2</sup>Car Tax Act 1983; <sup>F50</sup> . . .
- F51(iii) .....
- F52(iv) .....

(5) Where in respect of a debt to which this section applies—

- (a) [<sup>F53</sup>articles belonging to the debtor have been attached and notice of an auction given under section 27(4) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) but no auction has yet taken place;
- (aa) money owned by the debtor has been attached and removed;]
- (b) moveable property of the debtor has been arrested and in respect of the arrested property—
  - (i) a decree in an action of furthcoming has been granted but has not been enforced; or
  - (ii) a warrant of sale has been granted but the warrant has not been executed; or
- (c) [<sup>F54</sup>land owned by the debtor has been attached and an order under section 97(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (in this Part, the “2007 Act”) granting warrant for sale of the land has been made but that warrant has not yet been executed; or
- (d) property owned by the debtor has been attached by residual attachment and a satisfaction order under section 136(2) of the 2007 Act has been made but not yet executed,]

it shall not be competent for the sheriff [<sup>F55</sup>or the First-tier Tribunal] to make a time to pay order in respect of that debt until the diligence has been completed or has otherwise ceased to have effect.

[<sup>F56</sup>(5A) Where, in respect of a debt to which this section applies, an arrestment such as is mentioned in subsection (1) of section 73J of this Act has been executed, the sheriff [<sup>F57</sup>or the First-tier Tribunal] may make a time to pay order in respect of that debt only if less than 8 weeks of the period mentioned in subsection (3) of that section have expired.]

(6) Without prejudice to section 9(12) of this Act, interest payable under a decree for payment of a debt in respect of which a time to pay order has been made (other than interest awarded as a specific sum in the decree) shall not be recoverable by the creditor except in accordance with subsection (7) below.

(7) A creditor who wishes to recover interest to which subsection (6) above applies shall serve a notice on the debtor not later than the date prescribed by Act of Sederunt [<sup>F58</sup>or by rules made under section 68 or paragraph 4 of schedule 9 of the Tribunals (Scotland) Act 2014] occurring—

- (a) in the case of an order under subsection (2)(a) above, before the date when the last instalment of the debt (other than such interest) is payable under the order;
- (b) in the case of an order under subsection (2)(b) above, before the end of the period specified in the order,

stating that he is claiming such interest and specifying the amount of the interest claimed.

(8) Any sum paid by a debtor under a time to pay order shall not be ascribed to interest claimed in pursuance of subsections (6) and (7) above until the debt concerned (other than such interest) has been discharged.

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[<sup>F59</sup>(8A) In paragraph (d) of subsection (4) above, “contract settlement” means an agreement made in connection with any person's liability to make a payment to the Commissioners for Her Majesty's Revenue and Customs under or by virtue of any enactment.]

[<sup>F60</sup>(8B) In paragraph (da) of subsection (4)—

“contract settlement” means any agreement made in connection with any person's liability to make a payment to Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 16) or any other enactment in respect of a devolved tax,

“devolved tax” has the meaning given by section 80A(4) of the Scotland Act 2012 (c. 46),

“settlement agreement” has the meaning given by section 246(1) of the Revenue Scotland and Tax Powers Act 2014 (asp 16).]

<sup>F61</sup>(9) . . . . .

#### Textual Amendments

- F39** Words in s. 5(2) inserted (6.3.2019) by [The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019 \(S.S.I. 2019/51\)](#), regs. 1, **2(5)(a)(i)**
- F40** Words in s. 5(2) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 210(3)(a)**, 227(3) (with s. 223); S.S.I. 2008/115, art. 3(1)(g) (with arts. 4-6, 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)
- F41** Words in s. 5(2) omitted (6.3.2019) by virtue of [The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019 \(S.S.I. 2019/51\)](#), regs. 1, **2(5)(a)(ii)**
- F42** S. 5(2A) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 210(3)(b)**, 227(3) (with s. 223); S.S.I. 2008/115, art. 3(1)(g) (with arts. 4-6, 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)
- F43** Words in s. 5(4) inserted (6.3.2019) by [The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019 \(S.S.I. 2019/51\)](#), regs. 1, **2(5)(b)**
- F44** S. 5(4)(c) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 209(3)(a)**, 227(3) (with s. 223); S.S.I. 2008/115, art. 3(1)(g) (with arts. 4-6, 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)
- F45** Words in s. 5(4)(d) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), **Sch. 4 para. 34**; S.I. 2005/1126, art. 2(2)(h)
- F46** Words in s. 5(4)(d) substituted (23.11.2009) by [Finance Act 2008 \(c. 9\)](#), s. 129(4), **Sch. 43 para. 13(2)(a)**; S.I. 2009/3024, art. 3 (with art. 5)
- F47** S. 5(4)(da) inserted (1.4.2015) by [Revenue Scotland and Tax Powers Act 2014 \(asp 16\)](#), s. 260(2), **sch. 4 para. 1(3)(a)** (with ss. 257-259); S.S.I. 2015/110, art. 2(1)
- F48** S. 5(4)(e) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 209(3)(a)**, 227(3) (with s. 223); S.S.I. 2008/115, art. 3(1)(g) (with arts. 4-6, 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)
- F49** S. 5(4)(f)(i) omitted (23.11.2009) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 129(4), **Sch. 43 para. 13(2)(b)**; S.I. 2009/3024, art. 3 (with art. 5)
- F50** Word in s. 5(4)(f) ceased to have effect (6.4.1999) by virtue of 1998 c. 14, s. 86(1), **Sch. 7 para. 12**; S.I. 1999/526, **art. 2(3)(4)** and repealed (1.6.1999) by 1999 c. 14, s. 86(2), **Sch. 8**; 1999/1510, art. 2(f)(ii)

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- F51** S. 5(4)(f)(iii) omitted (23.11.2009) by virtue of Finance Act 2008 (c. 9), s. 129(4), **Sch. 43 para. 13(2)(b)**; S.I. 2009/3024, art. 3 (with art. 5)
- F52** S. 5(4)(f)(iv) omitted (23.11.2009) by virtue of Finance Act 2008 (c. 9), s. 129(4), **Sch. 43 para. 13(2)(b)**; S.I. 2009/3024, art. 3 (with art. 5)
- F53** S. 5(5)(a)(aa) substituted for s. 5(5)(a) (1.4.2008 for specified purposes, 23.11.2009 in so far as not already in force) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(4)(a)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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. 2009/369, art. 3(2)(3), sch. (with art. 4) (which transitional provisions in art. 4 are revoked (31.1.2011) by S.S.I. 2011/31, art. 5(c))
- F54** S. 5(5)(c)(d) substituted for s. 5(5)(c) (23.11.2009 for specified purposes) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(4)(b)** (with s. 223); S.S.I. 2009/369, art. 3(2)(3), sch. (with art. 4) (which transitional provisions in art. 4 are revoked (31.1.2011) by S.S.I. 2011/31, art. 5(c))
- F55** Words in s. 5(5) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(5)(b)**
- F56** S. 5(5A) inserted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(4)(c)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b)); S.S.I. 2009/369, art. 3(2)(3), sch. (with art. 4) (which transitional provisions in art. 4 are revoked (31.1.2011) by S.S.I. 2011/31, art. 5(c))
- F57** Words in s. 5(5A) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(5)(b)**
- F58** Words in s. 5(7) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(5)(c)**
- F59** S. 5(8A) inserted (23.11.2009) by Finance Act 2008 (c. 9), s. 129(4), **Sch. 43 para. 13(2)(c)**; S.I. 2009/3024, art. 3 (with art. 5)
- F60** S. 5(8B) inserted (1.4.2015) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(2), **sch. 4 para. 1(3)(b)** (with ss. 257-259); S.S.I. 2015/110, art. 2(1)
- F61** S. 5(9) repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss. 209(3)(b)**, 227(3) (with s. 223); S.S.I. 2008/115, art. 3(1)(g) (with arts. 4-6, 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)

#### Marginal Citations

**M2** 1983 c. 53.

## 6 Application for time to pay order.

- (1) An application for a time to pay order shall specify, to the best of the debtor's knowledge, the amount of the debt outstanding as at the date of the making of the application and shall include an offer to pay it—
  - (a) by specified instalments, payable at specified intervals; or
  - (b) as a lump sum at the end of a specified period.
- (2) The <sup>F62</sup>... duty under section 96(2)(b) of this Act [<sup>F63</sup>on the sheriff clerk or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal] to assist the debtor in the completion of certain forms shall, in relation to a form of application for a time to pay order, consist of a duty to assist him in the completion of the form in accordance with proposals for payment made by the debtor.

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- (3) On receipt of an application for a time to pay order, the sheriff [<sup>F64</sup>or the First-tier Tribunal] shall, if the application is properly made and unless it appears <sup>F65</sup>...that the making of a time to pay order would not be competent, make an interim order sisting diligence as provided for in section 8(1) of this Act.
- (4) The sheriff may [<sup>F64</sup>or the First-tier Tribunal], where the debtor is unable to furnish the necessary information, make an order requiring the creditor, within such period as may be specified therein, to furnish to the sheriff [<sup>F64</sup>or the First-tier Tribunal] such particulars of the decree or other document under which the debt is payable as may be prescribed by Act of Sederunt [<sup>F66</sup>or rules made under section 68 or paragraph 4 of schedule 9 of the Tribunals (Scotland) Act 2014].
- (5) If a creditor fails to comply with an order under subsection (4) above the sheriff [<sup>F64</sup>or the First-tier Tribunal] may, after giving the creditor an opportunity to make representations, make an order recalling or extinguishing any existing diligence, and interdicting the creditor from executing diligence, for the recovery of the debt.
- (6) Where the sheriff [<sup>F67</sup>or the First-tier Tribunal] makes an interim order under subsection (3) above, the sheriff clerk [<sup>F68</sup>or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal] shall as soon as is reasonably practicable—
- (a) serve a copy of the application for the time to pay order on the creditor informing him that he may object to the granting of the application within a period of 14 days after the date of service;
  - [<sup>F69</sup>(b) serve on—
    - (i) the creditor; and
    - (ii) where an arrestment such as is mentioned in section 73J(1) of this Act is in effect, the arrestee,
 

a copy of the interim order; and
  - (c) serve on the creditor a copy of any order under subsection (4) above.]

#### Textual Amendments

- F62** Words in s. 6(2) omitted (6.3.2019) by virtue of The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(6)(a)(i)**
- F63** Words in s. 6(2) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(6)(a)(ii)**
- F64** Words in s. 6(3)-(5) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(6)(c)**
- F65** Words in s. 6(3) omitted (6.3.2019) by virtue of The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(6)(b)**
- F66** Words in s. 6(4) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(6)(d)**
- F67** Words in s. 6(6) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(6)(e)(i)**
- F68** Words in s. 6(6) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(6)(e)(ii)**
- F69** S. 6(6)(b)(c) substituted for s. 6(6)(b) and word (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(5)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), **sch. 1** (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))

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## 7 Disposal of application.

- (1) If no objection is made in pursuance of section 6(6)(a) of this Act, the sheriff [<sup>F70</sup>or the First-tier Tribunal] shall make a time to pay order in accordance with the application.
- (2) If such an objection is made, the sheriff [<sup>F70</sup>or the First-tier Tribunal] shall not dispose of the application without first—
  - (a) giving the debtor an opportunity to make representations; and
  - (b) if agreement is not reached as to whether a time to pay order should be made or as to its terms, giving the parties an opportunity to be heard.
- (3) Where the sheriff [<sup>F70</sup>or the First-tier Tribunal] refuses to make a time to pay order, he shall recall any interim order under section 6(3) of this Act.
- (4) The sheriff clerk [<sup>F71</sup>or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal] shall as soon as is reasonably practicable—
  - (a) intimate the decision of the sheriff [<sup>F72</sup>or the First-tier Tribunal] on an application for a time to pay order (including any recall of an interim order under subsection (3) above) to the debtor [<sup>F73</sup>, the creditor and, where an arrestment such as is mentioned in section 73J(1) of this Act is in effect, the arrestee]; and
  - (b) if the sheriff [<sup>F74</sup>or the First-tier Tribunal] has made a time to pay order, inform the creditor of the date when he intimated that fact to the debtor.

### Textual Amendments

- F70** Words in s. 7(1)-(3) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, 2(7)(a)
- F71** Words in s. 7(4) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, 2(7)(b)(i)
- F72** Words in s. 7(4)(a) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, 2(7)(b)(ii)
- F73** Words in s. 7(4)(a) substituted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(6)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F74** Words in s. 7(4)(b) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, 2(7)(b)(ii)

## 8 Effect of interim order on diligence.

- (1) While an interim order under section 6(3) of this Act is in effect it shall not be competent in respect of the debt—
  - [<sup>F75</sup>(za) to attach in execution of the decree any articles which have been attached by interim attachment;]
  - [<sup>F76</sup>(a) to [<sup>F77</sup>give, in relation to any articles which have been attached, notice of an auction under section 27(4) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)];]
  - [<sup>F78</sup>(aa) to execute a money attachment;]
  - (b) to execute an earnings arrestment;
  - (c) [<sup>F79</sup>subject to subsection (1A) below,] where an arrestment of property belonging to the debtor (other than an arrestment of earnings in the hands of

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his employer) has been executed before or after the making of the interim order, to commence an action of furthcoming or sale, or to grant decree in any such action which has already been commenced, in pursuance of that arrestment;

- (d) to commence an action of adjudication for debt or, if such an action has already been commenced, to take any steps other than the registration of a notice of litigiousity in connection with the action, the obtaining and extracting of a decree in the action, the registration of an abbreviate of adjudication and the completion of title to property adjudged by the decree.

[<sup>F80</sup>(1A) Where the arrestment mentioned in subsection (1)(c) above is an arrestment such as is mentioned in subsection (1) of section 73J of this Act, while the interim order is in effect—

- (a) it shall not be competent to release funds under subsection (2) of that section; and  
 (b) the period during which the order is in effect shall be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.

(1B) Where, before the interim order is made—

- (a) a notice of land attachment is registered, it shall not be competent to take any steps other than—  
     (i) serving, under subsection (5) of section 83 of the 2007 Act, a copy of that notice; and  
     (ii) registering, under subsection (6) of that section, a certificate of service; or  
 (b) a land attachment is created, it shall not be competent to make, under section 97(2) of the 2007 Act, an order granting a warrant for sale of the attached land.

(1C) Where, before the interim order is made, a residual attachment order has been made, it shall not be competent—

- (a) to take any steps other than serving, under section 133(1) of the 2007 Act, a schedule of residual attachment; or  
 (b) to make, under section 136(2) of the 2007 Act, a satisfaction order.]

(2) An interim order under section 6(3) of this Act shall come into effect on intimation to the creditor under section 6(6)(b) of this Act and shall remain in effect until intimation of the sheriff's [<sup>F81</sup>or the First-tier Tribunal's] decision on the application for a time to pay order is made to the debtor and the creditor under section 7(4)(a) of this Act.

<sup>F82</sup>(3) . . . . .

#### Textual Amendments

**F75** S. 8(1)(za) inserted (1.4.2008) by *Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)*, s. 227(3), **sch. 5 para. 16(7)(a)(i)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)

**F76** S. 8(1)(a) substituted (30.12.2002) by *Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)*, s. 61, **Sch. 3 Pt. 1 para. 17(3)** (with s. 63)

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- F77** Words in s. 8(1)(a) substituted (22.4.2009) by *Bankruptcy and Diligence etc. (Scotland) Act 2007* (asp 3), s. 227(3), **sch. 5 para. 16(7)(a)(ii)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F78** S. 8(1)(aa) inserted (23.11.2009) by *Bankruptcy and Diligence etc. (Scotland) Act 2007* (asp 3), s. 227(3), **sch. 5 para. 16(7)(a)(iii)** (with s. 223); S.S.I. 2009/369, art. 3(2)(3), sch. (with art. 4) (which transitional provisions in art. 4 are revoked (31.1.2011) by S.S.I. 2011/31, art. 5(c))
- F79** Words in s. 8(1)(c) inserted (22.4.2009) by *Bankruptcy and Diligence etc. (Scotland) Act 2007* (asp 3), s. 227(3), **sch. 5 para. 16(7)(a)(iv)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F80** S. 8(1A)-(1C) inserted (22.4.2009) by *Bankruptcy and Diligence etc. (Scotland) Act 2007* (asp 3), s. 227(3), **sch. 5 para. 16(7)(b)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F81** Words in s. 8(2) inserted (6.3.2019) by *The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019* (S.S.I. 2019/51), regs. 1, **2(8)**
- F82** S. 8(3) 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)

## 9 Effect of time to pay order on diligence.

- (1) While a time to pay order is in effect, it shall not be competent—
- (a) to serve a charge for payment; or
  - (b) to commence or execute any of the following diligences—
    - (i) an arrestment and action of furthcoming or sale;
    - [<sup>F83</sup>(ii) an attachment;]
    - (iii) an earnings arrestment;
    - (iv) an adjudication for debt,
    - [<sup>F84</sup>(v) a money attachment;
    - (vi) a land attachment;
    - (vii) a residual attachment,]to enforce payment of the debt concerned.
- (2) On making a time to pay order, the sheriff in respect of the debt—
- (a) shall make an order recalling any existing earnings arrestment;
  - (b) where the debt is being enforced by a conjoined arrestment order, shall—
    - (i) if he, or another sheriff sitting in the same sheriff court, made the conjoined arrestment order, vary it so as to exclude the debt or, where no other debt or maintenance is being enforced by the order, recall the order;
    - (ii) if a sheriff sitting in another sheriff court made the conjoined arrestment order, require intimation of the time to pay order to be made to a sheriff sitting there who shall so vary or, as the case may be, recall the conjoined arrestment order;
  - (c) [<sup>F85</sup>where a notice of land attachment has been registered under section 83(1)(c) of the 2007 Act, shall make an order prohibiting the taking of any steps other than—
    - (i) the serving, under subsection (5) of that section, of a copy of the notice; and

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- (ii) the registration, under subsection (6) of that section, of a certificate of service;
  - (ca) where a residual attachment order has been made under section 132(2) of the 2007 Act, shall make an order prohibiting the taking of any steps other than the serving, under section 133(1) of the 2007 Act, of a schedule of residual attachment;
  - (cb) may make an order recalling an interim attachment;]
  - (d) may make an order recalling [<sup>F86</sup>an attachment];
  - (e) may make an order recalling or restricting any arrestment other than an arrestment of the debtor's earnings in the hands of his employer.
- [<sup>F87</sup>(2A) On making a time to pay order, the First-tier Tribunal in respect of the debt—
- (a) must make an order recalling any existing earnings arrestment,
  - (b) where the debt is being enforced by a conjoined arrestment order, must—
    - (i) if the First-tier Tribunal Housing and Property Chamber made the conjoined arrestment order, vary it so as to exclude the debt or, where no other debt or maintenance is being enforced by the order, recall the order,
    - (ii) if either—
      - (aa) another Chamber of the First-tier Tribunal, or
      - (bb) a sheriff sitting in the sheriff court,
 made the conjoined arrestment order, require intimation of the time to pay order to be made to the other Chamber or to the sheriff who must so vary or, as the case may be, recall the conjoined arrestment order,
  - (c) where a notice of land attachment has been registered under section 83(1)(c) of the 2007 Act, must make an order prohibiting the taking of any steps other than—
    - (i) the serving, under subsection (5) of that section, of a copy of the notice, and
    - (ii) the registration, under subsection (6) of that section, of a certificate of service,
  - (d) where a residual attachment order has been made under section 132(2) of the 2007 Act, must make an order prohibiting the taking of any steps other than the serving, under section 133(1) of the 2007 Act, of a schedule of residual attachment,
  - (e) may make an order recalling an interim attachment,
  - (f) may make an order recalling an attachment,
  - (g) may make an order recalling or restricting any arrestment other than an arrestment of the debtor's earnings in the hands of the debtor's employer.]
- (3) If [<sup>F88</sup>an interim attachment,]<sup>F89</sup>[<sup>F89</sup>an attachment] or such an arrestment as is mentioned in subsection (2)(e) above is in effect, the sheriff [<sup>F90</sup>or the First-tier Tribunal] may order that the making of a time to pay order<sup>F91</sup>, the recall of the interim attachment or<sup>F92</sup>[<sup>F92</sup>the attachment] or the recall or restriction of the arrestment shall be subject to the fulfilment by the debtor of such conditions as the sheriff [<sup>F90</sup>or the First-tier Tribunal] thinks fit.
- (4) [<sup>F93</sup>Subject to subsection (4A) below,] where the sheriff [<sup>F94</sup>or the First-tier Tribunal] does not exercise the powers conferred <sup>F95</sup>... by subsection [<sup>F96</sup>(2)(cb), (d) or (e)] above to recall a diligence, [<sup>F97</sup>the sheriff or the First-tier Tribunal] shall order that no further steps shall be taken by the creditor in the diligence concerned other than, in the case



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of <sup>F98</sup>an attachment, making a report of attachment under section 17 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) or applying for an order under section 20(1) of that Act.]

<sup>F99</sup>(4A) Where, in relation to an arrestment such as is mentioned in subsection (1) of section 73J of this Act, the sheriff <sup>F100</sup>or the First-tier Tribunal] does not exercise the power conferred <sup>F101</sup>... by subsection (2)(e) above to recall that arrestment, <sup>F102</sup>the sheriff or that tribunal] shall make an order—

- (a) prohibiting, while the time to pay order is in effect, the release of funds under subsection (2) of section 73J of this Act; and
- (b) providing that the period during which the time to pay order is in effect shall be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.]

(5) Any order made under subsection (2) or (4) above shall specify the diligence in relation to which it is made.

(6) The sheriff <sup>F103</sup>or the First-tier Tribunal] shall not make an order under subsection <sup>F104</sup>(2)(cb), (d) or (e)] above without first giving the creditor an opportunity to make representations.

(7) The sheriff clerk <sup>F105</sup>or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal] shall, at the same time as <sup>F106</sup>intimation is made] under section 7(4)(a) of this Act—

- (a) intimate any order under subsection (2) or (4) above to the debtor and the creditor and the order shall come into effect on such intimation being made to the creditor;
- (b) intimate any order under subsection (2)(a) or (b) above to the employer<sup>F107</sup>; and
- (c) where any order under subsection (4A) above is made in relation to an arrestment such as is mentioned in section 73J(1) of this Act is in effect, intimate that order to the arrestee.]

(8) While an order under subsection (4) above is in effect it shall not be competent <sup>F108</sup>...—

- <sup>F109</sup>(a) to sell articles which have been attached (other than by virtue of section 20(1) or 22(3) of the Debt Arrangement and Attachment (Scotland) Act (asp 17);]
- (b) <sup>F110</sup>to grant] a decree of furthcoming or sale of arrested property.

(9) For the purposes of section <sup>F111</sup>24 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)], the period during which an order under subsection (4) above is in effect shall be disregarded in calculating the period during which <sup>F112</sup>an attachment] to which the order applies remains in effect.

(10) Where, before the making of a time to pay order in respect of a debt, a charge to pay that debt has been served—

- (a) if the period for payment specified in the charge has not expired, the charge shall lapse on the making of the order;
- (b) if that period has expired, nothing in the time to pay order nor in any order under this section shall affect retrospectively the effect of the charge in the constitution of apparent insolvency within the meaning of section <sup>F113</sup>16 of the Bankruptcy (Scotland) Act 2016].

(11) If, when a time to pay order in relation to a debt is made, any diligence enforcing it is in effect which is not specified in an order under subsection (2) or (4) above, the

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diligence shall remain in effect unless and until it is recalled under section 10(4) of this Act.

- (12) Where a time to pay order is recalled or ceases to have effect, otherwise than—
- (a) under section 12(2)(a) of this Act; or
  - (b) by the debt payable under the order being paid or otherwise extinguished,
- the debt in so far as it remains outstanding (including interest thereon, whether or not awarded as a specific sum in the decree) shall, subject to any enactment or rule of law to the contrary, become enforceable by any diligence mentioned in subsection (1)(b) above; and, notwithstanding section [F114]25 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)], in this subsection “diligence” includes, where the debt was, immediately before the time to pay order was made, being enforced by [F115]an attachment] in any premises, [F116]another attachment] in those premises.

#### Textual Amendments

- F83** S. 9(1)(b)(ii) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(4)(a)** (with s. 63)
- F84** S. 9(1)(b)(v)-(vii) inserted (23.11.2009 for specified purposes) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(a)** (with s. 223); S.S.I. 2009/369, art. 3(2)(3), sch. (with art. 4) (which transitional provisions in art. 4 are revoked (31.1.2011) by S.S.I. 2011/31, art. 5(c))
- F85** S. 9(2)(c)-(cb) substituted for s. 9(2)(c) (1.4.2008 for specified purposes) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(b)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F86** Words in s. 9(2)(d) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(4)(b)** (with s. 63)
- F87** S. 9(2A) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(9)(a)**
- F88** Words in s. 9(3) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(d)(i)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F89** Words in s. 9(3) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, {Sch. 3 Pt. 1 para. 17(4)(c)(i)} (with s. 63)
- F90** Words in s. 9(3) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(9)(b)**
- F91** Words in s. 9(3) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(d)(ii)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F92** Words in s. 9(3) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(4)(c)(ii)** (with s. 63)
- F93** Words in s. 9(4) inserted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(e)(i)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F94** Words in s. 9(4) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(9)(c)(i)**
- F95** Words in s. 9(4) omitted (6.3.2019) by virtue of The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(9)(c)(ii)**

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- F96** Words in s. 9(4) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(e)(ii)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F97** Words in s. 9(4) substituted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(9)(c)(iii)**
- F98** Words in s. 9(4) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(4)(d)** (with s. 63)
- F99** S. 9(4A) inserted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(f)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F100** Words in s. 9(4A) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(9)(d)(i)**
- F101** Words in s. 9(4A) omitted (6.3.2019) by virtue of The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(9)(d)(ii)**
- F102** Words in s. 9(4A) substituted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(9)(d)(iii)**
- F103** Words in s. 9(6) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(9)(b)**
- F104** Words in s. 9(6) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(g)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F105** Words in s. 9(7) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(9)(e)(i)**
- F106** Words in s. 9(7) substituted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(9)(e)(ii)**
- F107** S. 9(7)(c) and word inserted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(h)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))
- F108** Words in s. 9(8) 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)
- F109** S. 9(8)(a) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(i)(i)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F110** Words in s. 9(8)(b) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(8)(i)(ii)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F111** Words in s. 9(9) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(4)(f)(i)** (with s. 63)
- F112** Words in s. 9(9) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(4)(f)(ii)** (with s. 63)
- F113** Words in s. 9(10)(b) substituted (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), **sch. 8 para. 11(2)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2
- F114** Words in s. 9(12) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(4)(g)(i)** (with s. 63)
- F115** Words in s. 9(12) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(4)(g)(ii)** (with s. 63)

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**F116** Words in s. 9(12) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002](#) (asp 17), s. 61, [Sch. 3 Pt. 1 para. 17\(4\)\(g\)\(iii\)](#) (with s. 63)

## 10 Variation and recall of time to pay order and arrestment.

- (1) The sheriff <sup>F117</sup>or the First-tier Tribunal] may, on an application by the debtor or the creditor—
- (a) vary or recall a time to pay order if <sup>F118</sup>the sheriff or the Tribunal] is satisfied that it is reasonable <sup>F119</sup>in all the circumstances] to do so; or
  - (b) if <sup>F120</sup>an interim attachment,]<sup>F121</sup>an attachment] or an arrestment in respect of the debt is in effect, recall <sup>F122</sup>the attachment] or recall or restrict the arrestment.
- (2) If <sup>F123</sup>an interim attachment,]<sup>F124</sup>an attachment] or an arrestment in respect of the debt is in effect, the sheriff <sup>F125</sup>or the First-tier Tribunal] may order that any variation, recall or restriction under subsection (1) above shall be subject to the fulfilment by the debtor of such conditions as the sheriff <sup>F125</sup>or the First-tier Tribunal] thinks fit.
- (3) The sheriff clerk <sup>F126</sup>or, in relation to time to pay directions made by the First-tier Tribunal, a member of administration staff of the First-tier Tribunal] shall as soon as is reasonably practicable intimate a variation under subsection (1) above to the debtor and to the creditor, and the variation shall come into effect on the date of such intimation.
- (4) Where, after a time to pay order has been made, it comes to the knowledge of the sheriff <sup>F127</sup>or the First-tier Tribunal] that the debt to which the order applies is being enforced by any of the diligences mentioned in section 9(1)(b) of this Act which was in effect when the time to pay order was made, the sheriff <sup>F127</sup>or the First-tier Tribunal], after giving all interested parties an opportunity to be heard, may make—
- (a) an order recalling the time to pay order; or
  - (b) any of the orders mentioned in subsection (2) or (4) of section 9 of this Act; and that section shall, subject to any necessary modifications, apply for the purposes of an order made under this paragraph as it applies for the purposes of an order made under either of those subsections.

### Textual Amendments

- F117** Words in s. 10(1) inserted (6.3.2019) by [The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019](#) (S.S.I. 2019/51), regs. 1, [2\(10\)\(a\)](#)
- F118** Words in s. 10(1)(a) substituted (6.3.2019) by [The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019](#) (S.S.I. 2019/51), regs. 1, [2\(10\)\(b\)](#)
- F119** Words in s. 10(1)(a) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007](#) (asp 3), s. 227(3), [sch. 5 para. 16\(9\)\(a\)](#) (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F120** Words in s. 10(1)(b) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007](#) (asp 3), s. 227(3), [sch. 5 para. 16\(9\)\(b\)](#) (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F121** Words in s. 10(1)(b) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002](#) (asp 17), s. 61, [Sch. 3 Pt. 1 para. 17\(5\)\(a\)\(i\)](#) (with s. 63)

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- F122** Words in s. 10(1)(b) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(5)(a)(ii)** (with s. 63)
- F123** Words in s. 10(2) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **sch. 5 para. 16(9)(c)** (with s. 223); S.S.I. 2008/115, art. 3(2)(3), sch. 1 (with arts. 4-6, 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)
- F124** Words in s. 10(2) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, **Sch. 3 Pt. 1 para. 17(5)(b)** (with s. 63)
- F125** Words in s. 10(2) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(10)(a)**
- F126** Words in s. 10(3) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(10)(c)**
- F127** Words in s. 10(4) inserted (6.3.2019) by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 (S.S.I. 2019/51), regs. 1, **2(10)(a)**

## 11 Lapse of time to pay order.

- (1) If, on the day on which an instalment payable under a time to pay order becomes due, there remains unpaid a sum, due under previous instalments, of not less than the aggregate of 2 instalments, the order shall cease to have effect.
- (2) If at the end of the period of 3 weeks immediately following the day on which the last instalment payable under a time to pay order becomes due, any part of the debt payable under the order remains outstanding, the order shall cease to have effect.
- (3) If any sum payable under a time to pay order under section 5(2)(b) of this Act remains unpaid 24 hours after the end of the period specified in the order, the order shall cease to have effect.

### *Miscellaneous*

## 12 Sequestration and insolvency.

- (1) While a time to pay direction or a time to pay order is in effect, the creditor shall not be entitled to found on the debt concerned in presenting, or in concurring in the presentation of, a petition for the sequestration of the debtor's estate.
- (2) A time to pay direction or a time to pay order shall cease to have effect—
  - (a) on the granting of an award of sequestration of the debtor's estate;
  - (b) on the granting by the debtor of a voluntary trust deed whereby his estate is conveyed to a trustee for the benefit of his creditors generally; or
  - (c) on the entering by the debtor into a composition contract with his creditors.

## 13 Saving of creditor's rights and remedies.

- (1) No right or remedy of a creditor to enforce his debt shall be affected by—
  - (a) a time to pay direction;
  - (b) a time to pay order; or
  - (c) an interim order under section 6(3) of this Act,except as expressly provided in this Part of this Act.

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(2) The recall—

- (a) on the making of a time to pay direction or an order under section 3(1) of this Act, of an arrestment; or
- (b) on the making of a time to pay order or an order under section 10(1) of this Act, of an arrestment or [<sup>F128</sup>an attachment] ,

shall not prevent the creditor therein from being ranked by virtue of that arrestment or [<sup>F129</sup>attachment] *pari passu* under paragraph [<sup>F130</sup>1 of schedule 7 of the Bankruptcy (Scotland) Act 2016] on the proceeds of any other arrestment or [<sup>F129</sup>attachment] .

**Textual Amendments**

- F128** Words in s. 13(2)(b) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(6)(a)** (with s. 63)
- F129** Word in s. 13(2) substituted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(6)(b)** (with s. 63)
- F130** Words in s. 13(2) substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), **sch. 8 para. 11(3)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2

**14 Circumstances where direction or order not competent or no longer effective.**

- (1) It shall be competent to make a time to pay direction or a time to pay order only in relation to a debtor who is an individual and only if, and to the extent that, the debtor is liable for payment of the debt concerned in either or both of the following capacities—
- (a) personally;
  - (b) as a tutor of an individual or as a judicial factor *loco tutoris*, *curator bonis* or *judicial factor loco absentis* on an individual’s estate.
- (2) A time to pay direction or a time to pay order shall cease to have effect on the death of the debtor or on the transmission of the obligation to pay the debt concerned during his lifetime to another person.
- (3) Where a time order for the payment by instalments of a sum owed under a regulated agreement or a security has been made under section 129(2)(a) of the <sup>M3</sup>Consumer Credit Act 1974 it shall not thereafter be competent to make a time to pay direction or a time to pay order in relation to that sum.

**Marginal Citations**

- M3** 1974 c. 39.

**15 Interpretation of Part I.**

- (1) In this Part of this Act—

[<sup>F131</sup>“2007 Act” means the Bankruptcy and Diligence etc. (Scotland) Act 2007,]

“adjudication for debt” does not include—

- (a) an adjudication on a *debitum fundi*; <sup>F132</sup>...
- (b) <sup>F132</sup>.....

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[<sup>F133</sup>“the First-tier Tribunal” means the First-tier Tribunal for Scotland Housing and Property Chamber.]

<sup>F134</sup>  
.....

(2) In sections 1 to 4 of this Act—

“the court” means the Court of Session or the sheriff;

“the debt concerned” means the sum or expenses in respect of which a time to pay direction is made.

[<sup>F135</sup>“decree”, where the context requires or permits, includes an order made by the First-tier Tribunal.]

(3) In sections 5 to 14 of this Act—

“debt” means the sum due by a debtor under a decree or other document (including any interest thereon and any expenses decerned for), and any expenses of diligence used to recover such sum which are chargeable against the debtor, but does not include—

- (a) any sum due under an order of court in criminal proceedings;
- (b) maintenance, whether due at the date of application for the time to pay order or not, or any capital sum awarded on divorce or on the granting of a declarator of nullity of marriage or any other sum due under a decree awarding maintenance or such a capital sum; or
- (c) any fine imposed—
  - (i) for contempt of court;
  - (ii) under any enactment, for professional misconduct; or
  - (iii) for failure to implement an order under section 91 of the <sup>M4</sup>Court of Session Act 1868 (orders for specific performance of statutory duty);

“decree or other document” means—

- (a) a decree of the Court of Session or the sheriff;
- (aa) [<sup>F136</sup>a summary warrant;]
- (b) an extract of a document which is registered for execution in the Books of Council and Session or the sheriff court books;
- (c) an order or determination which by virtue of any enactment is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff;
- (d) a civil judgment granted outside Scotland by a court, tribunal or arbiter which by virtue of any enactment or rule of law is enforceable in Scotland; and
- (e) a document or settlement which by virtue of an Order in Council made under section 13 of the <sup>M5</sup>Civil Jurisdiction and Judgments Act 1982 is enforceable in Scotland,

but does not include a maintenance order [<sup>F137</sup>, a liability order within the meaning of the Child Support Act 1991]<sup>F138</sup> ...;

“sheriff”—

- (a) in relation to a debt constituted by decree granted by a sheriff, means that sheriff or another sheriff sitting in the same sheriff court;
- (b) in any other case, means the sheriff having jurisdiction—
  - (i) in the place where the debtor is domiciled;

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- (ii) if the debtor is not domiciled in Scotland, in a place in Scotland where he carries on business; or
- (iii) if the debtor does not carry on business in Scotland, in a place where he has property which is not exempt from diligence;

and, for the purposes of sub-paragraphs (i) and (ii) above, the debtor's domicile shall be determined in accordance with section 41 of the Civil Jurisdiction and Judgments Act 1982.

#### Textual Amendments

- F131** Words in s. 15(1) inserted (6.3.2019) by [The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019 \(S.S.I. 2019/51\)](#), regs. 1, **2(11)(a)(i)**
- F132** Words in s. 15(1) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), **Sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F133** Words in s. 15(1) inserted (6.3.2019) by [The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019 \(S.S.I. 2019/51\)](#), regs. 1, **2(11)(a)(ii)**
- F134** S. 15(1): definition of "pounding" repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 17(7)** (with s. 63)
- F135** Words in s. 15(2) inserted (6.3.2019) by [The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019 \(S.S.I. 2019/51\)](#), regs. 1, **2(11)(b)**
- F136** Words in s. 15(3) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 209(4)(a)**, 227(3) (with s. 223); S.S.I. 2008/115, art. 3(1)(g) (with arts. 4-6, 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)
- F137** Words in s. 15(3) inserted (5.4.1993) by [Child Support Act 1991 \(c. 48, SIF 20\)](#), s. 58(13), **Sch. 5 para. 8(3)** (with s. 9(2)); S.I. 1992/2644, **art. 2**.
- F138** Words in s. 15(3) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 209(4)(b)**, 227(3) (with s. 223); S.S.I. 2008/115, art. 3(1)(g) (with arts. 4-6, 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)

#### Marginal Citations

- M4** 1868 c. 100.  
**M5** 1982 c. 27.



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**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))

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- s. 8(1)(d)(e) substituted for s. 8(1)(d) by [2007 asp 3 Sch. 5 para. 16\(7\)\(a\)\(v\)](#)