



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, the court, on granting decree for payment of any principal sum of money may, on an application by the debtor, 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 may specify in the direction.
- (2) A direction under subsection (1) above shall be known as a "time to pay direction".
- (3) Where a court 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 to make a time to pay direction in relation to those expenses.
- (4) Where a court 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 but does not specify the amount of those expenses,

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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 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;
 - (d) in an action by or on behalf of the Inland Revenue for payment of any sum recoverable in respect of tax or as if it were tax;
 - (e) in an action by or on behalf of a rating authority for payment of rates; or
 - (f) in an action for payment of—
 - (i) any duty due under the Betting and Gaming Duties Act 1981;
 - (ii) car tax due under the Car Tax Act 1983; or
 - (iii) value added tax due under the Value Added Tax Act 1983 or any sum recoverable as if it were value added tax.
- (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 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.

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;
 - (ii) a poinding and sale;
 - (iii) an earnings arrestment;
 - (iv) an adjudication for debt,

to enforce payment of the debt concerned.

- (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.
- (3) The court may, on making a time to pay direction, recall or restrict an arrestment of the kind described in subsection (2) above.
- (4) If an arrestment of the kind described in subsection (2) above is in effect, the court may order that the making of a time to pay direction and the recall or restriction of the arrestment shall be subject to the fulfilment by the debtor of such conditions within such period as the court thinks fit; and, where the court 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.

3 Variation and recall of time to pay direction and arrestment

- (1) The court which granted a decree 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 to do so; or
 - (b) if an arrestment in respect of the debt concerned is in effect, recall or restrict the arrestment.
- (2) If an arrestment in respect of the debt concerned is in effect, the court 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 thinks fit.
- (3) The clerk of court or sheriff clerk 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 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.

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- (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.

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 may, on an application by the debtor, 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 by the sheriff clerk 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.
- (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 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);
 - (c) where, in relation to the debt, a summary warrant has been granted;
 - (d) in relation to a debt including any sum recoverable by or on behalf of the Inland Revenue in respect of tax or as if it were tax;
 - (e) in relation to a debt including rates payable to a rating authority; or
 - (f) in relation to a debt including—
 - (i) any duty due under the Betting and Gaming Duties Act 1981;

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- (ii) car tax due under the Car Tax Act 1983; or
 - (iii) value added tax due under the Value Added Tax Act 1983 or any sum recoverable as if it were value added tax.
- (5) Where in respect of a debt to which this section applies—
 - (a) there has been a poinding of articles belonging to the debtor and a warrant of sale has been granted in respect of them but has not been executed;
 - (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) a decree in an action of adjudication for debt has been granted and the creditor has, with the debtor's consent or acquiescence, entered into possession of any property adjudged by the decree or has obtained a decree of maills and duties, or a decree of removing or ejection, in relation to any such property,

it shall not be competent for the sheriff 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.
- (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 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.

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 sheriff clerk's duty under section 96(2)(b) of this Act 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 shall, if the application is properly made and unless it appears to him 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, 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 such particulars of the decree or other document under which the debt is payable as may be prescribed by Act of Sederunt.
- (5) If a creditor fails to comply with an order under subsection (4) above the sheriff 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 makes an interim order under subsection (3) above, the sheriff clerk 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; and
 - (b) serve on the creditor a copy of the interim order and of any order under subsection (4) above.

7 Disposal of application

- (1) If no objection is made in pursuance of section 6(6)(a) of this Act, the sheriff shall make a time to pay order in accordance with the application.
- (2) If such an objection is made, the sheriff 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 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 shall as soon as is reasonably practicable—
 - (a) intimate the decision of the sheriff on an application for a time to pay order (including any recall of an interim order under subsection (3) above) to the debtor and the creditor; and
 - (b) if the sheriff has made a time to pay order, inform the creditor of the date when he intimated that fact to the debtor.

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—
 - (a) to grant a warrant of sale of articles which, before or after the making of the interim order, have been poinded, and any application for such warrant of sale (other than an application for an order under section 21 (1)(b) of this Act) which is pending when the interim order comes into effect shall fall;

- (b) to execute an earnings arrestment;
 - (c) where an arrestment of property belonging to the debtor (other than an arrestment of earnings in the hands of 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.
- (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 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.
- (3) For the purposes of section 27 of this Act, the period during which such an interim order is in effect shall be disregarded in calculating the period during which a pouncing to which the interim order applies remains in effect.

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;
 - (ii) a pouncing and sale;
 - (iii) an earnings arrestment; .
 - (iv) an adjudication for debt,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) where an action of adjudication for debt has been commenced, shall make an order prohibiting the taking of 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;
 - (d) may make an order recalling a pouncing;
 - (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.

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- (3) If a pouncing or such an arrestment as is mentioned in subsection (2)(e) above is in effect, the sheriff may order that the making of a time to pay order or the recall of the pouncing or the recall or restriction of the arrestment shall be subject to the fulfilment by the debtor of such conditions as the sheriff thinks fit.
- (4) Where the sheriff does not exercise the powers conferred on him by subsection (2)(d) or (e) above to recall a diligence, he shall order that no further steps shall be taken by the creditor in the diligence concerned other than, in the case of a pouncing, applying for an order under section 21 (1) of this Act or making a report of the execution of the pouncing under section 22 of this Act.
- (5) Any order made under subsection (2) or (4) above shall specify the diligence in relation to which it is made.
- (6) The sheriff shall not make an order under subsection (2)(d) or (e) above without first giving the creditor an opportunity to make representations.
- (7) The sheriff clerk shall, at the same time as he makes intimation 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.
- (8) While an order under subsection (4) above is in effect it shall not be competent to grant—
 - (a) a warrant (other than an order under section 21(1)(b) of this Act) to sell articles which have been pounced;
 - (b) a decree of furthcoming or sale of arrested property.
- (9) For the purposes of section 27 of this Act, the period during which an order under subsection (4) above is in effect shall be disregarded in calculating the period during which a pouncing 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 7 of the Bankruptcy (Scotland) Act 1985.
- (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 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 25 of this Act, in this subsection "diligence" includes, where the debt was, immediately before the time to pay order was made, being enforced by a poinding in any premises, another poinding in those premises.

10 Variation and recall of time to pay order and arrestment

- (1) The sheriff may, on an application by the debtor or the creditor—
 - (a) vary or recall a time to pay order if he is satisfied that it is reasonable to do so; or
 - (b) if a poinding or an arrestment in respect of the debt is in effect, recall the poinding or recall or restrict the arrestment.
- (2) If a poinding or an arrestment in respect of the debt is in effect, the sheriff 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 thinks fit.
- (3) The sheriff clerk 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 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, 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.

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.

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- (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 right 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.
- (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 a poinding,
- shall not prevent the creditor therein from being ranked by virtue of that arrestment or poinding *pari passu* under paragraph 24 of Schedule 7 to the Bankruptcy (Scotland) Act 1985 on the proceeds of any other arrestment or poinding.

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 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.

15 Interpretation of Part I

- (1) In this Part of this Act—
- "adjudication for debt" does not include—
- (a) an adjudication on a *debitum fundi*; or
 - (b) an adjudication under section 23 of the Conveyancing (Scotland) Act 1924 (adjudication to recover arrears of ground annual);
- "poinding" does not include poinding of the ground, and "poinded" shall be construed accordingly.

(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.

(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 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;
- (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 Civil Jurisdiction and Judgments Act 1982 is enforceable in Scotland,

but does not include a maintenance order or a summary warrant;

"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;
 - (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.