



# Debtors (Scotland) Act 1987

## 1987 CHAPTER 18

### PART VII

#### MISCELLANEOUS AND GENERAL

#### **92 General provision relating to liability for expenses in court proceedings**

(1) Subject to subsection (2) below, a debtor shall not be liable to a creditor, nor a creditor to a debtor, for any expenses incurred by the other party in connection with an application, any objections to an application, or a hearing, under any provision of this Act.

(2) If—

- (a) an application under any provision of this Act is frivolous;
- (b) such an application is opposed on frivolous grounds; or
- (c) a party requires a hearing under any provision of this Act to be held on frivolous grounds,

the sheriff may award a sum of expenses, not exceeding £25 or such amount as may be prescribed in regulations made by the Lord Advocate, against the party acting frivolously in favour of the other party.

(3) Subsections (1) and (2) above do not apply to—

- (a) expenses of poinding and sale for which provision is made in Schedule 1 to this Act or paragraphs 25 to 34 of Schedule 5 to this Act; or
- (b) expenses incurred—
  - (i) under section 1 of this Act;
  - (ii) in connection with an appeal under any provision of this Act; or
  - (iii) by or against a person other than the debtor or a creditor in connection with an application under any provision of this Act.

---

*Status: This is the original version (as it was originally enacted).*

---

### **93 Recovery from debtor of expenses of certain diligences**

(1) Subject to subsections (3) and (5) below, any expenses chargeable against the debtor which are incurred in—

- (a) a pouncing and sale (including the service of the charge preceding it);
- (b) the service of an earnings arrestment schedule (including the service of the charge preceding it);
- (c) an application for, or for inclusion in, a conjoined arrestment order under section 60(2) or 62(5) of this Act,

shall be recoverable from the debtor by the diligence concerned but not by any other legal process, and any such expenses which have not been recovered by the time the diligence is completed or otherwise ceases to have effect shall cease to be chargeable against the debtor.

(2) Subject to subsection (5) below, any expenses chargeable against the debtor which are incurred in the service of a schedule of arrestment and in an action of furthcoming or sale shall be recoverable from the debtor out of the arrested property; and the court shall grant a decree in the action of furthcoming for payment of the balance of any expenses not so recovered.

(3) The sheriff shall grant decree for payment of—

- (a) any expenses awarded by him against the debtor in favour of the creditor under paragraph 8 or 11 of Schedule 1 or paragraph 30 or 33 of Schedule 5 to this Act; or
- (b) any additional sum of expenses awarded by him against the debtor in favour of the creditor under paragraph 9 of Schedule 1 or paragraph 31 of Schedule 5 to this Act.

(4) Subsection (5) below applies where any diligence mentioned in subsection (1) or (2) above is—

- (a) recalled under section 9(2)(a), (d) or (e) of this Act in relation to a time to pay order;
- (b) in effect immediately before the date of sequestration (within the meaning of the Bankruptcy (Scotland) Act 1985) of the debtor's estate;'
- (c) in effect immediately before the presentation of a petition for an administration order under Part II of the Insolvency Act 1986;
- (d) in effect against property of the debtor immediately before a floating charge attaches to all or part of that property under section 53(7) or 54(6) of that Act;
- (e) in effect immediately before the commencement of the winding up, under Part IV or V of that Act, of the debtor;
- (f) rendered unenforceable by virtue of the creditor entering into a composition contract or acceding to a trust deed for creditors or by virtue of the subsistence of a protected trust deed within the meaning of Schedule 5 to the Bankruptcy (Scotland) Act 1985; or
- (g) recalled by a conjoined arrestment order.

(5) Where this subsection applies—

- (a) the expenses of the diligence which were chargeable against the debtor shall remain so chargeable; and
- (b) if the debtor's obligation to pay the expenses is not discharged under or by virtue of the time to pay order, sequestration, administration order, receivership, winding up, composition contract, trust deed for creditors or

conjoined arrestment order, those expenses shall be recoverable by further diligence in pursuance of the warrant which authorised the original diligence.

- (6) The expenses incurred in the execution of a current maintenance arrestment shall be recoverable by any diligence other than a current maintenance arrestment, and shall be so recoverable in pursuance of the warrant which authorised the current maintenance arrestment.

#### **94 Ascription of sums recovered by diligence or while diligence is in effect**

- (1) This section applies to any sums recovered by any of the following diligences—
- (a) a poinding and sale;
  - (b) an earnings arrestment;
  - (c) an arrestment and action of furthcoming or sale; or
  - (d) a conjoined arrestment order in so far as it enforces an ordinary debt,
- or paid to account of the sums recoverable by the diligence while the diligence is in effect.
- (2) A sum to which this section applies shall be ascribed to the following in the order in which they are mentioned—
- (a) the expenses already incurred in respect of—
    - (i) the diligence;
    - (ii) any previous diligence the expenses of which are chargeable against and recoverable from the debtor under section 93(5) of this Act;
    - (iii) the execution of a current maintenance arrestment;
  - (b) any interest, due under the decree or other document on which the diligence proceeds, which has accrued at the date of execution of the poinding, earnings arrestment or arrestment, or in the case of<sup>1</sup> an ordinary debt included in a conjoined arrestment order which has accrued at the date of application under section 60(2) or 62(5) of this Act;
  - (c) any sum (including any expenses) due under the decree or other document, other than any expenses or interest mentioned in paragraphs (a) and (b) above.

#### **95 Certain diligences terminated by payment or tender of full amount owing**

- (1) Any of the following diligences—
- (a) a poinding and sale;
  - (b) an earnings arrestment;
  - (c) an arrestment and action of furthcoming or sale,
- shall cease to have effect if the full amount recoverable thereby is paid to the creditor, an officer of court, or any other person who has authority to receive payment on behalf of the creditor, or is tendered to any of those persons and the tender is not accepted within a reasonable time.
- (2) Any rule of law whereby any diligence mentioned in subsection (1) above ceases to have effect on payment or tender of the sum due under the decree or other document is hereby abolished.

#### **96 Provisions to assist debtor in proceedings under Act**

- (1) No fees shall be payable by a debtor in connection with—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) any application by him;
- (b) objections by him to an application by any other person; or
- (c) a hearing held,

under any provision of this Act, to any officer of any office or department connected with the Court of Session or the sheriff court the expenses of which are paid wholly or partly out of the Consolidated Fund or out of money provided by Parliament.

- (2) The sheriff clerk shall, if requested by the debtor—
- (a) provide him with information as to the procedures available to him under this Act; and
  - (b) without prejudice to subsection (2) of section 6 of this Act, assist him in the completion of any form required in connection with any proceedings under this Act,

but the sheriff clerk shall not be liable for any error or omission by him in performing the duties imposed on him by this subsection or that subsection.

## 97 Lay representation

In relation to any proceedings before the sheriff under any provision of this Act, the power conferred on the Court of Session by section 32 of the Sheriff Courts (Scotland) Act 1971 (power of Court of Session to regulate civil procedure in sheriff court) shall extend to the making of rules permitting a party to such proceedings, in such circumstances as may be specified in the rules, to be represented by a person who is neither an advocate nor a solicitor.

## 98 Legal aid

At the end of Part II of Schedule 2 to the Legal Aid (Scotland) Act 1986 (proceedings for which civil legal aid shall not be available) there shall be added the following paragraphs—

- “4 Subject to paragraph 5 below, civil legal aid shall not be available in relation to proceedings at first instance under the Debtors (Scotland) Act 1987, other than proceedings in connection with an application under section 1(1) or 3(1) of that Act to a Lord Ordinary or to the sheriff in an ordinary cause.
- 5 Nothing in paragraph 4 above shall preclude any third party to proceedings under the Debtors (Scotland) Act 1987 from obtaining legal aid in connection with those proceedings.”.

## 99 Sequestration for rent or feuduty and arrestments other than arrestments of earnings

- (1) Sections 16 to 18, 23 and 26 of this Act shall apply to a landlord's or superior's right of hypothec and its enforcement by a sequestration for rent or feuduty as they apply to a poiding.
- (2) Section 16 of this Act shall apply to an arrestment other than an arrestment of a debtor's earnings in the hands of his employer as it applies to a poiding.

## **100 Obligations ad factum praestandum**

- (1) An obligation ad factum praestandum which is contained in a document registered in the Books of Council and Session or in sheriff court books shall not by virtue of that registration be enforceable by imprisonment.
- (2) A charge for the purpose of enforcing an obligation ad factum praestandum which is contained in an extract of a decree or of a document registered as aforesaid shall not be competent.

## **101 Adjudication for debt**

It shall not be competent for a creditor to bring an action of adjudication for debt (other than an action under section 23(5) of the Conveyancing (Scotland) Act 1924) to enforce a debt payable under a liquid document of debt unless—

- (a) the debt has been constituted by decree; or
- (b) the debt is a debitum fundi; or
- (c) the document of debt or, if the document is a bill of exchange or a promissory note, a protest of the bill or note, has been registered for execution in the Books of Council and Session or in sheriff court books.

## **102 Procedure in diligence proceeding on extract of registered document etc.**

- (1) The Court of Session may by Act of Sederunt—
  - (a) regulate and prescribe the procedure and practice in; and
  - (b) prescribe the form of any document to be used in, or for the purposes of, diligence of a kind specified in subsection (2) below.
- (2) The diligences referred to in subsection (1) above are diligences proceeding—
  - (a) on an extract of a document which has been registered for execution in the Books of Council and Session or in sheriff court books; or
  - (b) on an order or a determination which by virtue of any enactment is to be treated as if it were so registered.

## **103 Appeals**

- (1) Subject to subsection (9) below and sections 21(1), 27(4), 43(5), 50(2), 55(4), 60(8), 62(9) and 66(9) of this Act and paragraphs 6(1), 11(4) and 14(5) of Schedule 5 thereto, an appeal may be made against any decision of the sheriff under this Act but only on a question of law and with the leave of the sheriff; and section 38 of the Sheriff Courts (Scotland) Act 1971 (appeal in summary causes) shall not apply to any appeal or any further appeal taken under this Act.
- (2) Any appeal against a decision of the sheriff under subsection (1) above must be made within a period of 14 days from the date when leave to appeal against the decision was granted.
- (3) An appeal may be made against any decision of the Lord Ordinary on an application under section 1(1) or 3(1) of this Act but only on a question of law and with the leave of the Lord Ordinary.

---

*Status: This is the original version (as it was originally enacted).*

---

- (4) Subject to subsections (6) and (7) below, any decision of the sheriff or of the Lord Ordinary under this Act shall take effect as soon as it is made and shall remain in effect unless and until it is reversed on appeal and either—
- (a) the period allowed for further appeal has expired without an appeal being made; or
  - (b) if such a further appeal has been made, the matter has been finally determined in favour of the reversal of the sheriff's or Lord Ordinary's decision.
- (5) No decision reversing a decision of the sheriff or Lord Ordinary under this Act shall have retrospective effect.
- (6) A decision or order of the sheriff under any provision of this Act mentioned in subsection (7) below shall not take effect—
- (a) until the period for leave to appeal specified in rules of court has expired without an application for leave having been made;
  - (b) where an application for leave to appeal is made, until leave has been refused or the application has been abandoned;
  - (c) where leave to appeal has been granted, until the period for an appeal has expired without an appeal being made; or
  - (d) where an appeal against the decision is made, until the matter has been finally determined or the appeal has been abandoned.
- (7) The provisions of this Act referred to in subsection (6) above are—
- (a) section 16(4);
  - (b) section 23(1);
  - (c) section 24(1) except in so far as it relates to orders declaring that a pinding is invalid or has ceased to have effect;
  - (d) section 24(3);
  - (e) section 30;
  - (f) section 35(1);
  - (g) section 39(5)(b) and (c);
  - (h) section 40(2);
  - (j) section 41(3);
  - (k) section 50(1) except in so far as it relates to orders declaring that an arrestment is invalid or has ceased to have effect;
  - (l) section 50(4);
  - (m) section 55(1) except in so far as it relates to orders declaring that an arrestment is invalid or has ceased to have effect;
  - (n) section 55(6);
  - (o) section 65(2);
  - (p) section 66(3);
  - (q) paragraphs 1(4), 7(1), 8(1) and (3), 21(2) and 22(3) of Schedule 5.
- (8) A court to which an appeal under this Act or a further appeal is made may—
- (a) before it disposes of the appeal, make such interim order; and
  - (b) on determining the appeal, make such supplementary order, as it thinks necessary or reasonable in the circumstances.
- (9) This section does not apply to any decision of a court under Part V of this Act.

## 104 Regulations

- (1) Regulations under this Act shall be made by statutory instrument and shall, except as provided in subsection (2) below, be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) No regulation shall be made under paragraph 1(2) of Schedule 1 or paragraph 25(2) of Schedule 5 to this Act unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

## 105 Application to Crown

Without prejudice to the Crown Proceedings Act 1947, this Act shall bind the Crown acting in its capacity as a creditor or employer.

## 106 Interpretation

In this Act—

"current maintenance" has the meaning given to it in section 73(1) of this Act;

"earnings" has the meaning given to it in section 73(2) of this Act;

"employer" has the meaning given to it in section 73(1) of this Act;

"maintenance" means periodical sums payable under a maintenance order;

"maintenance order" means—

- (a) an order granted by a court in Scotland for payment of a periodical allowance on divorce or on the granting of a declarator of nullity of marriage, or for aliment;
- (b) an order under section 43 or 44 of the National Assistance Act 1948, section 23 or 24 of the Ministry of Social Security Act 1966, section 80 or 81 of the Social Work (Scotland) Act 1968, section 11(3) of the Guardianship Act 1973, section 18 or 19 of the Supplementary Benefits Act 1976, section 50 or 51 of the Child Care Act 1980 or section 24 or 25 of the Social Security Act 1986;
- (c) an order of a court in England and Wales or Northern Ireland registered in Scotland under Part II of the Maintenance Orders Act 1950;
- (d) a provisional order of a reciprocating country which is confirmed by a court in Scotland under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972;
- (e) an order of a reciprocating country which is registered in Scotland under that Part of that Act;
- (f) an order registered in Scotland under Part II, or under an Order in Council made in pursuance of Part III, of that Act;
- (g) an order registered in Scotland under section 5 of the Civil Jurisdiction and Judgments Act 1982; or
- (h) an alimentary bond or agreement (including a document providing for the maintenance of one party to a marriage by the other after the marriage has been dissolved or annulled)—
  - (i) registered for execution in the Books of Council and Session or sheriff court books; or
  - (ii) registered in Scotland under an Order in Council made under section 13 of the Civil Jurisdiction and Judgments Act 1982;

---

*Status: This is the original version (as it was originally enacted).*

---

"net earnings" has the meaning given to it in section 73(1) of this Act;  
"officer of court" means a messenger-at-arms or a sheriff officer;  
"ordinary debt" has the meaning given to it in section 73(1) of this Act;  
"summary warrant" means a summary warrant granted under or by virtue of  
any of the enactments mentioned in Schedule 4 to this Act;  
"warrant of sale" has the meaning given in section 30 of this Act.

#### **107 Financial provisions**

- (1) Any sums recovered by the Lord Advocate under section 79(6)(b) or 80(9) of this Act shall be paid by him into the Consolidated Fund.
- (2) There shall be paid out of money provided by Parliament—
  - (a) any fees or outlays payable under section 78(4) or 79(4) of this Act;
  - (b) any expenses payable by the Lord Advocate under section 79(6)(a) of this Act;  
and
  - (c) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

#### **108 Minor and consequential amendments, transitional provisions and repeals**

- (1) The amendments specified in Schedule 6 to this Act, being minor amendments or amendments consequential on the provisions of this Act, shall have effect.
- (2) The transitional provisions contained in Schedule 7 to this Act shall have effect.
- (3) The enactments mentioned in columns 1 and 2 of Schedule 8 to this Act are repealed to the extent specified in column 3 thereof.

#### **109 Short title, commencement and extent**

- (1) This Act may be cited as the Debtors (Scotland) Act 1987.
- (2) This Act (except this section) shall come into force on such day as the Lord Advocate may by order made by statutory instrument appoint, and different days may be so appointed for different purposes and for different provisions.
- (3) This Act extends to Scotland only.