



Debtors (Scotland) Act 1987

1987 CHAPTER 18

PART I

EXTENSION OF TIME TO PAY DEBTS

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

- (2) Subject to subsections (4) and (5) below, the sheriff ^[F1]or the First-tier Tribunal^[F2], 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—

- by such instalments, commencing at such time after the date of intimation in accordance with section 7(4) of this Act ^{F3}... to the debtor of the order under this subsection, payable at such intervals; or
- 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.

^[F4](2A) The matters referred to in subsection (2) above are—

- the nature of and reasons for the debt in relation to which the order is sought;
- any action taken by the creditor to assist the debtor in paying that debt;
- the debtor's financial position;

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- (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 ^[F5]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);
 - ^{F6}(c)
 - (d) in relation to a debt including any sum recoverable by or on behalf of ^[F7]the Commissioners for Her Majesty’s Revenue and Customs][^{F8}under or by virtue of any enactment or under a contract settlement];
 - ^[F9](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,]
 - ^{F10}(e)
 - (f) in relation to a debt including—
 - ^{F11}(i)
 - (ii) car tax due under the ^{M1}Car Tax Act 1983; ^{F12} . . .
 - ^{F13}(iii)
 - ^{F14}(iv)
- (5) Where in respect of a debt to which this section applies—
- (a) ^[F15]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) ^[F16]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 ^[F17]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.

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[^{F18}(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 [^{F19}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 [^{F20}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.

[^{F21}(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.]

[^{F22}(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).]

[^{F23}(9)]

Textual Amendments

- F1** 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)**
- F2** 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)
- F3** 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)**

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- F4** 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)
- F5** 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)**
- F6** 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)
- F7** 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)
- F8** 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)
- F9** 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)
- F10** 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)
- F11** 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)
- F12** 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)
- F13** 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)
- F14** 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)
- F15** 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))
- F16** 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))
- F17** 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)**
- F18** 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))
- F19** 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)**
- F20** 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)**
- F21** 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)
- F22** 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)

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F23 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

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Changes and effects yet to be applied to :

- s. 5(1)(c) repealed by [2007 asp 3 Sch. 6 Pt. 1](#)
- s. 5(5)(c)(d) substituted for s. 5(5)(c) and word by [2007 asp 3 Sch. 5 para. 16\(4\)\(b\)](#)

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\(7\)\(a\)\(v\)](#)