



# Debtors (Scotland) Act 1987

## 1987 CHAPTER 18

### PART III

#### DILIGENCE AGAINST EARNINGS

##### *Supplementary provisions*

#### 73 Interpretation of Part III.

(1) In this Part of this Act—

“creditor”, in relation to maintenance, means the payee specified in the maintenance order or orders or anyone deriving title from the payee;

“current maintenance” means maintenance being deducted from earnings in accordance with section 53(1) or 63(3) or (5) of this Act;

[<sup>F1</sup>“debt advice and information package” has the meaning given by section 47(4) of this Act;]

“debt recoverable” has the meaning given in section 48(1) of this Act;

“decree or other document” means —

- (a) a decree of the Court of Session or the sheriff or a document registered for execution in the Books of Council and Session or the sheriff court books;
- (b) a summary warrant, a warrant for the civil diligence or a bill protested for non-payment by a notary public;
- (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;  
<sup>F2</sup> ...
- (e) <sup>M1</sup> a document or settlement which by virtue of an Order in Council made under section 13 of the Civil Jurisdiction and Judgements Act 1982 is enforceable in Scotland,
- (f) <sup>F3</sup> ...

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**Changes to legislation:** *Debtors (Scotland) Act 1987, Section 73 is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (g) [<sup>F4</sup>a maintenance arrangement (within the meaning of Article 3(e) of the Hague Convention) which is registered in the sheriff court under the Hague Convention,]

on which, or on an extract of which, an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order is founded;

“earnings” has the meaning given in subsection (2) below;

“employer” means any person who pays earnings to a debtor under a contract of service or apprenticeship, but—

- (a) in relation to any sum payable as a pension within the meaning of subsection (2)(c) below, means the person paying that sum; and
- (b) where the employee is an officer of the Crown, means, subject to subsection (5) below, the chief officer in Scotland of the department or other body concerned,

and “employee”, “employed” and “employment” shall be construed accordingly; “net earnings” means the earnings which remain payable to the debtor after the employer has deducted any sum which he is required to deduct in respect of—

- (a) income tax;
- (b) <sup>M2</sup>primary class 1 contributions under Part I of the Social Security Act 1975;
- (c) amounts deductible under any enactment, or in pursuance of a request in writing by the debtor, for the purposes of a superannuation scheme [<sup>F5</sup>, namely any enactment, rules, deed or other instrument providing for the payment of annuities or lump sums—
  - (i) to the persons with respect to whom the instrument has effect on their retirement at a specified age or on becoming incapacitated at some earlier age, or
  - (ii) to the personal representatives or the widows, relatives or dependants of such persons on their death or otherwise,

whether with or without any further or other benefit;]

- (d) [<sup>F6</sup>any amount deductible by virtue of a deduction from earnings order which, in terms of regulations made under section 32(4)(c) of the Child Support Act 1991, is to have priority over diligences against earnings.]

“ordinary debt” means any debt (including a fine or any sum due under an order of court in criminal proceedings in respect of which a warrant for civil diligence has been issued, arrears of maintenance and the expenses of current maintenance arrestments) other than current maintenance;

“pay-day” means a day on which the employer of a debtor pays earnings to the debtor;

“sheriff”, in relation to an application—

- (a) under section 50(1) or (3), 55(1), (2) or (5) or 57(6) of this Act, means the sheriff having jurisdiction—
  - (i) over the place where the earnings arrestment or the current maintenance arrestment to which the application relates was executed; or
  - (ii) if that place is unknown to the applicant, over an established place of business of the debtor’s employer;
- (b) under section 59(5) or 62(4), means the sheriff having jurisdiction over the place where a creditor serves an earnings arrestment or a current

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- maintenance arrestment schedule in relation to an arrestment which is not competent by reason of section 59 or 62 of this Act;
- (c) under section 60(2), means the sheriff having jurisdiction over
    - (i) [<sup>F7</sup>the place where the debtor is principally employed;
    - (ii) where that place is outside Scotland, any other place where the debtor is employed; or
    - (iii) where neither sub-paragraph (i) nor sub-paragraph (ii) above applies, the place where the debtor is domiciled.]
  - (d) under section 60(9)(c), 62(5), 65 or 66 means the sheriff who made the conjoined arrestment order;
    - “specified rate”, in relation to interest—
      - (a) <sup>M3</sup>included in a decree, order or extract, means the rate specified in such decree, order or extract (or deemed to be so specified by virtue of section 9 of the Sheriff Courts (Scotland) Extracts Act 1892);
      - (b) not included in a decree, order or extract, means the rate for the time being specified by virtue of that section.
- (2) Subject to subsection (3) below, in this Part of this Act “earnings” means any sums payable to the debtor—
- (a) as wages or salary;
  - (b) as fees, bonuses, commission or other emoluments payable under a contract of service or apprenticeship;
  - (c) as a pension, including a pension declared to be alimentary, an annuity in respect of past services, (whether or not the services were rendered to the person paying the annuity), and any periodical payments of compensation for the loss, abolition, relinquishment, or diminution in earnings of any office or employment; or
  - (d) as statutory sick pay.
- (3) The following shall not be treated as earnings—
- (a) a pension or allowance payable in respect of disablement or disability;
  - (b) any sum the assignment of which is precluded by [<sup>F8</sup>section 356 of the Armed Forces Act 2006][<sup>F9</sup>unless it is a sum consisting of pay or allowance payable by his employer to him as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996)];
  - <sup>F10</sup>(c) . . . . .
  - (d) any occupational pension payable under any enactment which precludes the assignment of the pension or exempts it from diligence;
  - [<sup>F11</sup>(da) a tax credit (within the meaning of the Tax Credits Act 2002);]
  - (e) a pension, allowance or benefit payable under any enactment relating to social security;
  - (f) a guaranteed minimum pension within the meaning of the <sup>M4</sup>Social Security Pensions Act 1975;
  - (g) a redundancy payment within the meaning of [<sup>F12</sup>the Employment Rights Act 1996].
- <sup>F13</sup>(4) . . . . .
- (5) Any question arising as to who is the chief officer in Scotland of a department or body referred to in paragraph (b) of the definition of “employer” in subsection (1) above shall be referred to and determined by the Minister for the Civil Service, and

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a document purporting to set out a determination of the Minister and signed by an official of the Minister shall be sufficient evidence of that determination.

### Textual Amendments

- F1** Words in s. 73(1) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 201\(4\)](#), [227\(3\)](#) (with s. 223); S.S.I. 2008/115, art. 3(1)(d) (with arts. 4-6, 10, 14, 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** Word in s. 73(1) omitted (1.8.2014 as notified in the Edinburgh Gazette dated 27.6.2014 (Issue 27425)) by virtue of [The International Recovery of Maintenance \(Hague Convention 2007\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/301\)](#), reg. 1(b), [sch. para. 1\(5\)\(a\)](#)
- F3** Words in s. 73(1) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/519\)](#), reg. 1(1), [Sch. para. 16\(5\)](#) (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in s. 73(1) inserted (1.8.2014 as notified in the Edinburgh Gazette dated 27.6.2014 (Issue 27425)) by [The International Recovery of Maintenance \(Hague Convention 2007\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/301\)](#), reg. 1(b), [sch. para. 1\(5\)\(b\)](#)
- F5** Words in s. 73(1) (definition of "net earnings", para. (c)) substituted (5.4.1993) by [Child Support Act 1991 \(c. 48, SIF 20\)](#), s. 58(13), [Sch. 5 para. 8\(6\)\(a\)](#) (with s. 9(2)); S.I. 1992/2644, [art. 2](#).
- F6** In s. 73(1) (definition of "net earnings"), para. (d) added (5.4.1993) by [Child Support Act 1991 \(c. 48, SIF 20\)](#), s. 58(13), [Sch. 5 para. 8\(6\)\(b\)](#) (with s. 9(2)); S.I. 1992/2644, [art. 2](#).
- F7** Words in s. 73(1) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 204](#), [227\(3\)](#) (with s. 223); S.S.I. 2008/115, art. 3(1)(d) (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)
- F8** Words in s. 73(3)(b) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 109](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F9** Words in s. 73(3) inserted (1.1.1999) by S.I. 1998/3086, [reg. 6\(2\)](#)
- F10** S. 73(3)(c) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 205](#), [227\(3\)](#) (with s. 223); S.S.I. 2008/115, art. 3(1)(d) (with arts. 4-6, 10, 13, 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. 73(3)(da) inserted (6.4.2003) by [Tax Credits Act 2002 \(c. 21\)](#), s. 61, [Sch. 3 para. 13](#); S.I. 2003/962, [art. 2\(3\)\(d\)\(iii\)](#)
- F12** Words in s. 73(3)(g) substituted (22.8.1996) by 1996 c. 18, [ss. 240, 243](#), [Sch. 1 para. 31](#) (with [ss. 191-195, 202](#))
- F13** S. 73(4) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 205](#), [227\(3\)](#) (with s. 223); S.S.I. 2008/115, art. 3(1)(d) (with arts. 4-6, 10, 13, 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** 1982 c. 27  
**M2** 1975 c. 14  
**M3** 1892 c. 17.  
**M4** 1975 c. 60.

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