

Arrestment (Scotland)

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[Arrestment: Overview](#)

[1991/48](#) *Section 38(1)(b) of the Child Support Act 1991*

[1987/18](#) *Section 73 onwards of the Debtors (Scotland) Act 1987*

What is an Arrestment?

If a liability order has been granted, the CMG will instruct sheriff officers to undertake arrestment action for certain types of funds / assets, held by a third party, that belong or are owed to the non-resident parent to be "arrested".

Sheriff officers will serve the schedule of arrestment on whoever is holding the funds / assets, (the arrestee) instructing them to "arrest" all or part of them. This means that the funds / assets are effectively frozen and cannot be accessed by the CMG, the non-resident parent or any joint account holder.

The arrestee is not legally required to notify the creditor if no funds have been arrested but must do so if sums are arrested. The arrestee must inform the CMG of the amount that has been arrested within 21 days of the date that the schedule of arrestment was served. The CMG issue a "Form of Debtor Mandate" to the non-resident parent, seeking their authorisation for the arrested funds to be released to the CMG.

The next action will depend on whether the non-resident parent agrees to the funds being released and on the type of funds / assets that have been frozen. Refer to the section on [Arrestment Outcomes](#) for further advice.

REMEMBER:

- more than one arrestment can be instructed at the same time if the non-resident parent has multiple accounts / assets;
- it is only useful to instruct an arrestment where there are funds in excess of the protected minimum of £415 (currently, although this amount will change periodically);
- an arrestment can be instructed on joint accounts.

What is Arrestment on the Dependence?

[1987/18](#) Section 15 and 73 of the Debtors (Scotland) Act 1987

[1993/3240](#) Section 19 of the Act of Sederunt (Sheriff Court Summary Application Rules) 1993

Arrestment on the dependence allows the sheriff to grant a warrant to arrest all or part of a debtor's funds/assets pending the outcome of an associated court action, for example a liability order application. If an arrestment on the dependence is granted, it prevents the debtor from disposing of the relevant funds/asset(s).

Refer to the [Arrestment on the Dependence guidance](#) for further advice.

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[Arrestment: Decision Making Guidance](#)

When should an application for arrestment be considered?

An application for arrestment should be considered if:

- a liability order has been granted and the charge for payment has been served. NOTE: although a charge for payment does not have to be executed before an arrestment is undertaken, it is good practice to instruct sheriff officers to serve the schedule of arrestment concurrently with the service of the charge for payment and the Debt Advice and Information Package, if this action has not already been taken; and
- you have evidence that the non-resident parent has, or is due to receive, funds or assets that can be arrested.

Types of funds and assets that can be arrested

The following funds and assets can all be arrested:

- debt and obligations;
- funds held in bank / building society accounts;
- payments that are owed / due to be paid to the non-resident parent for instance under a contract;
- fees and commissions;
- rents;
- insurance policies;
- investment bonds;

- shares in a Limited Company;
- trust funds;
- pension funds due to be paid to the non-resident parent from a matured policy;
- periodical payments (this means any regular payments that we know the non-resident parent is due to receive. For example: rental income);
- annuities;
- boats, NOTE: certain types of boat are excluded from arrestment action. If the boat is on the water or in dry dock within a harbour or docks then it will be arrested. If, however, the boat is a small leisure craft sitting in the non-resident parent's driveway or on a trailer in a car park somewhere outside the harbour then the boat will be subject to attachment. Therefore, if you have evidence that the non-resident parent holds an asset of this type, you should seek advice from the Sheriff's Office re whether the vessel is suitable for arrestment action before proceeding. Cargo held on a commercial boat may also be arrested;
- corporeal movables: this means articles that belong to the debtor but are held by a third party. For example: a painting on loan to an art gallery or livestock that is held by an auctioneer.

NOTE re bank / building society arrestment's:

- it is not necessary to know the full account details (e.g. sort code and account number) for an arrestment to be served, as this can be done to the head office of the relevant organisation;
- arrestment can be executed on joint accounts;
- "blanket " arrestment can be considered in exceptional circumstances. These instruct the sheriff officers to lodge arrestment at the head offices of the four major Scottish banks (Royal Bank of Scotland, Bank of Scotland, Lloyds TSB and Clydesdale);
- if the non-resident parent's funds are held in an account in England, the liability order must be registered in the magistrate's court in England and enforced through a third party debt order in the county court.

Protected Minimum Balance:

Note: the protected sum only applies to funds held in bank accounts

- from 22 April 2009, debtors must be left with a minimum amount in their accounts if an arrestment is executed. Only sums above this minimum can be arrested;
- the minimum balance is calculated by the arrestee as prescribed under Table B, Schedule 2, Bankruptcy and Diligence (Scotland) Act 2007 and is equivalent to the net monthly earnings from which no deduction would be made under an earnings arrestment. This is currently set at £415 but is subject to periodic change;
- where the non-resident parent has several accounts in the one bank the minimum protected sum will only be applied once. If, however, the non-resident parent has separate accounts in more than one clearing bank the protected minimum sum will be applied by each bank.

NOTE: the minimum balance does not apply to accounts that are operated by the debtor as a trading account or that are held in the name of a company, a limited liability partnership or an unincorporated association.

Arrestment: Outcomes

A schedule of arrestment will be served upon whoever is holding the relevant funds or assets (the arrestee). The arrestee must send a form of disclosure to the CMG, the non-resident parent and any joint account holders within 21 days informing them of any amount that has been successfully arrested.

NOTE: if no funds are attached, the arrestee does not have to notify the creditor of this.

- if you do not receive a response from the arrestee within 4 weeks, you should proceed on the assumption that no funds have been arrested and consider alternative enforcement action(s);
- if the arrestee informs you that no funds have been arrested because the non-resident parent does not hold an account with them, there will be no point making further arrestment's at that institution;
- however, if the arrestee informs you that no funds have been arrested because there are insufficient or no funds available, then it may be appropriate to consider further arrestment's at a later date.

Non-Resident Parent Questions the Arrestment

If funds have been arrested, the non-resident parent may contact the CMG to question this action and / or ask for the funds to be released.

The non-resident parent, arrestee or any other interested party has the right to lodge a notice of objection by making an application to the sheriff, after which a hearing will

be held. If the objection is upheld, the sheriff can order the arrestment to be restricted (in which case only part of the funds are given to the creditor) or recalled (where the funds are restored to their original position).

Any request for all / part of the arrested funds to be released must be considered carefully, taking into account all the circumstances of the case and any information / evidence that the non-resident parent has provided to support their request.

At this stage, you can decide to either:

- let the arrestment stand: this means that none of the arrested funds will be released to the non-resident parent; or
- release a portion of the arrested funds: for example: the amount of a joint account holder's wages that have been arrested, where there is supporting evidence that these belong only to the joint holder who has expenses that must be met. In these circumstances, a notification must be sent to the arrestee, informing them of the amount that should be released; or
- discharge the arrestment and release all the funds to the non-resident parent.

Alternatively, the non-resident parent may apply to the court by a notice of objection, for release of property where they consider the arrestment to be unduly harsh. The court may release the funds or other property attached; or so much of those funds or that property as the sheriff specifies, and order the arrestee to release the funds or property to the debtor.

Funds Arrested: Issuing the Form of Debtor Mandate

When you have received confirmation that money has been arrested (either through a Form of Disclosure or from contact with the non-resident parent), a Form of Debtor Mandate must be issued to the non-resident parent. This form requests their authorisation for the funds to be released to the CMG. The next action will depend on the non-resident parent's response and the type of funds / assets that have been arrested.

Non-resident parent authorises release of funds

If the non-resident parent signs and returns the Mandate, it must be forwarded to the arrestee, so they can release the funds to the CMG.

Bank / Building Society Arrestment: Debtor Mandate not signed

If the funds arrested are held in the non resident parent's bank or building society account and they fail to return the Form of Debtor Mandate, the funds will be automatically released to the CMG after 14 weeks of the date that the Schedule of Arrestment was served. The automatic release of funds will not take place in cases where an objection has been lodged.

However, in this situation, you should consider whether it is appropriate to apply for an order of furthcoming, so that the funds can be obtained more quickly. Refer to the guidance on Furthcoming for further advice.

All Other Arrestment's: Debtor Mandate not signed

An action of furthcoming would be required where moveable goods are arrested in the hands of a third party.

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PLDMG @ 09.03.2017