

## Arrestment on the Dependence

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### [Arrestment on the Dependence: Overview](#)

[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

What is Arrestment on the Dependence?

Arrestment on the dependence allows the sheriff to grant a warrant to arrest all or part of a debtor's funds/ assets which are held by a third party 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).

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### [Arrestment on the Dependence: Decision Making Guidance](#)

When can an application for arrestment on the dependence be considered?

An application for arrestment on the dependence can be considered if:

- a liability order has not yet been granted; but
- you have evidence that the non-resident parent is owed or is due to received funds or assets which are held by a third party that can be arrested; and
- there is a risk that the non-resident parent will dispose of the relevant funds/asset(s) before the liability order has been obtained.

In these circumstances, the application on the dependence should be included with the liability order application.

NOTE: the court may decide to grant an arrestment on the dependence without a hearing. However, this will only be considered in exceptional circumstances, where the court is satisfied that, without it, any order made under the associated action

could be defeated by the debtor becoming insolvent or making the relevant asset(s) unavailable. For example: by selling or concealing it.

Refer to the drop-downs below for further guidance on the types of funds that can be arrested and deciding whether there is a risk of the funds/asset(s) being disposed of.

Types of funds and assets that can be arrested

The following funds and assets can all be arrested:

- debt and obligations;
- cash in bank/building society accounts;
- payments that are owed/due to be paid to the non-resident parent, for instance under a contract;
- 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: for example, rental income;
- annuities;
- boats, NOTE: not all boats can be arrested. 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 NRP's driveway or on a trailer in a car park somewhere outside the harbour then the boat will be subject to attachment. Cargo held on a commercial boat may also be arrested;
- corporeal movables: this means articles that belong to the debtor but that 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: you should contact the sheriff officer for advice if you have evidence that the non-resident parent owns an asset of this type;

NOTE re bank/building society arrestments:

- 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. However it is crucial that the account holder can be identified for the arrestment to be effective and therefore the more information there is to identify him or her, the better. For example: a full name, account details and address if known;

- arrestments can be executed on joint accounts;
- "blanket" arrestments can be considered in exceptional circumstances. These instruct the sheriff officers to lodge arrestments at the head offices of the four major 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 and enforced through a third party debt order in a county court;
- arrestment is not effective for future or contingent debts. A contingent debt is something which might/might not happen, it is not a definitive liability because it is based on the outcome of an event, such as a court verdict.

Protected Minimum Balance:

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

- from 22nd 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.

Evidence the funds/asset(s) may be disposed of

Note: it is the responsibility of the Child Maintenance Service to ensure sufficient robust evidence is available to satisfy the sheriff of the need to grant the warrants to arrest on the dependence.

You should only apply for an arrestment on the dependence if recent, reliable information is held indicating:

- the non-resident parent is about to dispose of the relevant funds/asset(s); or
- they will be unable to satisfy the debt due on the liability order unless the arrestment on dependence is granted. For example, information is held indicating the non-resident parent will shortly be moving to an area outside the CMG's jurisdiction.

Note: In the event that a liability order is refused, any diligence on the dependence will also fall.

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