

## Attachment (Scotland)

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### Attachment: Overview

[2007/3](#) *Bankruptcy and Diligence etc. (Scotland) Act 2007*

[2002/17](#) *Debt Arrangement and Attachment (Scotland) Act 2002*

#### What is An Attachment?

The diligence of attachment allows a creditor to instruct sheriff officers to attach a debtor's moveable assets outwith the dwellinghouse in order to recover money owed and secured under a liability order. Assets may be jointly owned or owned in common with a third party.

Once the attachment has been executed and the report submitted to the sheriff, after 14 days have elapsed from the date of execution sheriff officers can arrange to remove the attached items and sell them at auction. Money obtained at auction may be used to pay the sheriff officer's fees and expenses, then pay the creditor what he is owed. Any surplus is returned to the debtor.

Where the moveable property is within the debtor's dwellinghouse, an exceptional attachment will be required. Refer to the Exceptional Attachment section for further information.

A liability order must have been obtained before we can request an attachment or exceptional attachment. If a liability order has not yet been granted, an interim attachment can be requested. Refer to the Interim Attachment section for further information.

Once an attachment has taken place, the action ceases and the goods attached cannot be reattached for the same debt.

Similarly an attachment cannot take place for a second time for the same debt unless there are goods which have since been brought to the premises after the date of the original attachment.

#### When Should An Attachment Be Considered?

Attachments should be considered if there is information / evidence indicating that the non-resident parent has suitable goods that could be sold to meet their child maintenance arrears.

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### Attachment: Process

#### Instruct Sheriff Officers To Attach

Where it has been identified that the non-resident parent has suitable goods for attachment, an attachment instruction letter is issued to sheriff officers. See list of Sheriff Officers.

Note: the majority of sheriff officer instructions are issued to cover multiple diligences, therefore additional instructions may be included with the attachment instruction, such as service of the charge for payment, arrestment, ordinary arrestment and an inhibition.

#### Sheriff Officers Receive Instructions To Attach

Sheriff officers will list all the suitable goods and place an open market value on each of the goods listed up to the value of the debt outstanding. A copy of the report is provided to the non-resident parent and the sheriff court within 14 days of the execution of the attachment using the prescribed form.

The sheriff would need to be satisfied that an attachment would release at least £100 plus a reasonable estimate of any chargeable expenses before granting an attachment order.

Sheriff officers will not execute an attachment on:

- a Sunday; or
- a day which is a public holiday in the area in which the attachment is to be executed; or
- any other day prescribed by an Act of Sederunt.

The execution of an attachment shall not begin before 8a.m. or after 8p.m. or be continued after 8p.m., unless the officer has obtained prior authority from the sheriff for such commencement or continuation.

Non-resident parent redeems the attached goods

The debtor (non-resident parent) is entitled, within 14 days of the date the article is attached, to redeem the article, by making payment of the principle debt and any associated costs.

#### Where Can An Attachment Be Carried Out?

An attachment cannot be carried out at the non-resident parent's domicile (dwellinghouse), although sheriff officers can access business offices if they are contained in a separate building in the same grounds. Cars sitting in a driveway or on the road can also be attached if appropriate. Any business premises can be entered to carry out attachment and sheriff officers are given power in the Debt Arrangement and Attachment Act (Scotland) 2002 Act to "open shut lockfast places" for the purposes of execution an attachment.

Sheriff officers must ensure that premises are left secure and lockfast. Removing we.

Note: legislation provides that a 'dwellinghouse' does not include:

- a garage even if it forms part of the structure or building which consists of or includes the dwellinghouse; or
- other structures or buildings used in connection with the dwellinghouse but does include a mobile home or other place used as a dwelling.

'Mobile home' means a caravan, houseboat or other moveable structure used as a dwelling.

#### Attached Goods Uplifted

Sheriff officers will remove or arrange for the removal of the attached goods, and arrange for auction.

#### Auction

The law in relation to auction in Scotland is prescribed in section 27 onwards of the [2002/17](#) Debt Arrangement and Attachment (Scotland) Act 2002.

An auction is the sale of the 'attached' moveable items on which the sheriff officers have put a value. Note: it is not necessary to make an application for auction.

Fourteen days from the date of execution of an attachment and the reporting to court of the same, the sheriff officer will simply make arrangements for the uplift and auction of the attached moveable items, unless instructed to the contrary by the case manager.

At least seven days must elapse between the removal of the goods and the auction.

If the non-resident parent wished to make an agreement to pay when an auction has been instructed, it is possible to cancel the auction. See the Decision Making Guidance for additional information.

### Goods Which Cannot Be Attached

The following are not suitable for attachment:

- any implements, tools of trade, books or other equipment reasonably required for the use of the debtor in the practice of their profession, trade or business and not exceeding in aggregate value £1000 or such amount as may be prescribed in regulations made by the Scottish Ministers;
- any vehicle, the use of which is so reasonably required by the debtor; not exceeding in value £1000 or such amount as may be prescribed in regulations made by the Scottish Ministers;
- a mobile home which is the debtor's only or principal residence;
- any tools or other equipment reasonably required for the purpose of keeping in good order and condition any garden or yard adjacent to, or associated with, a dwelling house in which the debtor resides;
- any article within a dwelling house;
- a mobile home which is the only or principal residence of a person other than the debtor;
- any article of a perishable nature or which is likely to deteriorate substantially and rapidly in condition or value;
- where the debtor is engaged in trade, any article acquired by the debtor in the ordinary course of that trade: (1) to be sold by the debtor (whether or not after adaptation); or (2) as a material for a process of manufacturing for sale by the debtor.

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### [Attachment: Decision Making Guidance](#)

#### When Should An Application For Attachment Be Considered?

Before making a decision to instruct for an attachment and issuing the instruction letter to sheriff officers you should check:

- that the charge for payment has been served (for this period of liability order debt) and 14/28 days have expired - usually 14 days but can be 28 days if the non-resident parent is out of the UK; and

- that the debtor has been provided with a copy of the 'Debt Advice and Information Pack'; and
- if any payments have been received - sheriff officers must be advised of the correct balance outstanding on the Liability Order; and
- details held of goods possibly suitable for attachment (e.g. vehicle details: make, model, colour, registration mark etc.) and include these in the letter of instruction. See list of Goods Which Cannot Be Attached (within the Process Overview).

The sheriff officer's report from service of the charge may contain details regarding the collection prospects from executing an attachment, which should be considered in making a final decision.

An attachment instruction can be issued to sheriff officers at the same time as instructing a charge for payment. The sheriff officers will wait until the days of charge have expired, following service of the charge, and then attempt an attachment, unless otherwise directed. This reduces the time taken to recover the debt.

#### Sheriff Officers Attach Goods (Attachment in Execution)

This diligence is undertaken after a decree (liability order) has been granted as opposed to a diligence on the dependence being undertaken prior to the liability order being granted.

The attachment in execution is executed by sheriff officers and is a valuation of moveable articles, which must be reported to court within 14 days of the valuation being carried out. The articles attached during an attachment in execution can then be sold at auction in order to release funds.

Where the non-resident parent fails to make payment of the liability order debt and goods are attached, the sheriff officer will contact you regarding the successful outcome of the attachment. With all the facts about the case at hand, discuss the appropriate next steps with the Legal Enforcement HEO due to the nature of the action being taken.

If as a result of this discussion, the next step agreed is to proceed with the uplift and auction, you should instruct the sheriff officer to take the necessary action.

#### **Attached goods unavailable for uplift to auction**

If the sheriff officer has been unable to locate the attached goods, they will make three visits to attempt to locate them.

If the non-resident parent requires moving the attached goods, they would need to seek approval from the sheriff. Unauthorised removal of goods by the non-resident

parent following an attachment is a breach of attachment and may be dealt with as a contempt of court.

To raise such an action can be costly and with no guarantee of a successful outcome. This should only therefore be initiated after seeking appropriate guidance from Advice & Guidance and following authorisation by the Legal Enforcement Principal Manager.

### **Goods available for uplift**

Sheriff officers will remove or arrange for the removal of the attached goods.

For example: if the attached item is a motor vehicle the sheriff officer would usually drive it to the auction room. But the non-resident parent may refuse/fail to hand over the keys to the vehicle, in these circumstances arrangements would have to be made for a recovery vehicle to transport the vehicle to the auction room. The CMG would be responsible for these additional costs incurred.

Note: legislation provides that the costs involved in securing the attachment including the cost of a recovery vehicle can be recovered from the auction proceeds if there are sufficient funds available.

### **Non-Resident Parent Has Not Offered An Acceptable Agreement**

Where the non-resident parent has not offered an acceptable agreement, you must confirm with sheriff officers that auction is the next appropriate action.

### **Non-resident Parent Makes an Acceptable Agreement Offer**

Where the non-resident parent makes an offer to pay, the caseworker, with all the facts about the case at hand will discuss the appropriate next steps with the Legal Enforcement HEO due to the nature of the action being taken.

### **Request Sheriff Officers Do Not Proceed With Auction**

The auction will not proceed if:

- the non-resident parent pays off the liability order debt and all costs in full; or
- an agreement with the non-resident parent is reached for the liability order and all costs in full.

Where an acceptable agreement has been reached between the CMG and the non-resident parent, after goods have been attached but before the goods are taken to the auction room to be auctioned, the solicitor/sheriff should be advised that auction action is not required.

Once the agreement has been honoured:

- contact the sheriff officers to cancel the auction;

- instruct the contracted solicitor that attachment is no longer required.

### Payment To the CMG Of Auctioned Uplifted Goods

When the payment is received it will already have had the auctioneer's costs (typically 10%) deducted. The Policy Steer is that the balance is always paid if the first instance to the principal debt, any remaining balance should be offset against the costs of the attachment and those of the charge for payment.

Whatever the sheriff officers' estimated value of the goods were on the report, will be the total credited to the non-resident parent's debt. The "estimated value" is the amount the sheriff officers will send to the CMG and will not be the actual sale value.

It is important to know that ownership of any goods unsold at auction passes to the creditor (the CMG) and the non-resident parent has to be credited with the value of that article against the sum recoverable. Dependent on the type and condition of the attached goods more than one attempt but no more than three attempts may be made to sell these goods at auction. However the non-resident parent will not be liable for the costs of any subsequent auctions, the CMG will be liable for the auctioneers fees etc.

The creditor (the CMG) has to uplift these articles within three working days after the day on which the auction was held or ownership shall revert to the person who previously owned it, usually the non-resident parent.

Where the goods have sold for less than the estimated value, it is only the amount achieved from the sale that is deducted from the NRP's debt. Therefore, the PWC will only receive the same amount.

The position is different where goods do not sell at auction and as the creditor the ownership of the unsold goods passes to the CMG. Where this occurs the full value of the goods set by Sheriff Officers should then be offset against the NRP's debt and the PWC would then be entitled to a payment of equivalent value.

### Attachment Expiry

An attachment may expire on one of two dates either, the earlier of:

- the date which is 6 months after the date on which the article is attached and
- the date which is 28 days after the date on which the attached article is removed by the sheriff officer from the place at which it was attached

The CMG can apply to the court for an extension if more time is required to instruct the attachment in execution.

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