

## Exceptional Attachment

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### Exceptional Attachment: Overview

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

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

What is an exceptional attachment?

An exceptional attachment order:

- authorises the attachment, removal and auction of non-essential assets belonging to the debtor and kept in a dwelling house
- specifies the period during which the order is to be executed
- empowers the sheriff officer to open shut and lockfast places for the purpose of executing the order

REMEMBER: a liability order must have been obtained and the Debt Advice Information Pack and charge for payment must have been issued before we can request an exceptional attachment. If a liability order has not been obtained it is not possible to apply for an interim attachment in respect of goods in a dwellinghouse.

Before granting an order the sheriff will take a number of matters into consideration including:

- the nature of the debt
- whether the debtor resides in the dwellinghouse
- whether the debtor carries on a trade or business in the dwellinghouse
- whether money advice has been given to the debtor, and
- whether there is, or has been, any agreement between the debtor and creditor for the payment of the debt
- any declaration or representation made by or on behalf of the debtor about:
  - the existence of non essential assets

- the value likely to be achieved in the market place or the value assumed by a professional valuer or suitably skilled person
- the debtor's financial circumstances

An exceptional attachment order will:

- authorise the attachment, removal and auction of non essential assets of the debtor (non-resident parent) which are at the time when the attachment is executed kept in any dwellinghouse specified in the application order
- specify a period during which the order is to be executed, and
- empower the sheriff officer to open shut and lockfast places for the purpose of executing the order

Unlike ordinary attachment, articles attached under authority of an exceptional attachment order are removed immediately from the dwellinghouse unless it is impractical to do so. Once removed, attached articles may not be auctioned before 7 days have elapsed from the date of removal. During this 7 day period the debtor:

- may redeem the article at the value likely to be achieved in the marketplace or the value given by a professional valuer / suitably skilled person, or
- may apply to the sheriff for an order that will cease the attachment and return the attached articles to the debtor at the dwellinghouse from which they were attached, if the sheriff considers this appropriate in the circumstances

Applications for an exceptional attachment order are made to the sheriff court by the contracted solicitors and it is executed by sheriff officers.

If the order is granted, the sheriff officers decide which non-essential assets in the debtor's house, up to the value of the debt, are suitable to be attached.

When should an exceptional attachment be considered?

An exceptional attachment can be used where the CMG is alerted to the fact that the non-resident parent may have goods that will realise the debt within his domicile.

This diligence is not used as frequently as an attachment, as it is necessary to establish that the non-resident parent may have valuable assets and that they are non-essential items.

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[Exceptional Attachments: Process](#)

Exceptional attachment application

The application for an exceptional attachment order is made to the sheriff court (see Which court) by the contracted solicitors and is executed by sheriff officers. See list of Sheriff officers.

The exceptional attachment application information must be accurate in relation to the diligences that have already been taken (e.g. in the form of charge for payment, inhibition, arrestment) and any payment arrangements that have been negotiated with the debtor. This is essential, as the court will only consider an exceptional attachment in exceptional circumstances and where other more traditional methods of recovery have failed.

Sheriff officers will visit the debtor to determine whether the debtor has suitable goods which will realise a minimum of £300. This is to ensure that the sale of any attached goods would achieve prescribed minimum amounts (see the Decision Making Guidance for further advice).

Where this applies, sheriff officers will then remove or arrange for the removal of the attached goods (this is referred to as the Attached goods being uplifted) and will arrange for auction.

Although sheriff officers have the power to enter shut and lockfast places they cannot enter a dwellinghouse unless they have served notice on the debtor at least four days before the intended date of entry. The notice must advise the debtor of the date of the intended visit and the intention of executing the exceptional attachment.

Where sheriff officers consider this may prejudice the execution of the order having liaised with the CMG, an application may be made to the sheriff to dispense with the four days notice requirement.

Sheriff officers cannot enter if the only person present in the dwellinghouse is:

- under the age of 16; and
- is not able to understand the consequences of the procedure being taken because of their age, knowledge of English, mental illness, mental or physical disability.

### **Which court**

Which court the Exceptional Attachment action will be heard at is dependent on which court has jurisdiction to deal with the action based on the defender's domicile. In order to establish domicile the defender generally must have resided within the Sheriffdom for three months immediately preceding the raising of the action and is therefore presumed domiciled in the Sheriffdom.

Goods which cannot be exceptionally attached

An officer may not, in executing an exceptional attachment order, attach any articles which the officer considers likely to be of sentimental value to the debtor.

This applies only where the aggregate values of the articles considered likely to be of that type does not exceed £150, or such other amount as may be prescribed in regulations made by Scottish Ministers.

## Auction

The law in relation to auction in Scotland is prescribed in section 21 'Unlawful acts after an attachment' of the 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.

The sheriff officers will remove any article which is attached in execution immediately, unless it is impractical to do so. Where the attached article is not removed immediately, the sheriff officer must give notice to the debtor or person in possession of the article of the date of removal of the article from the dwellinghouse.

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

If the non-resident parent makes a satisfactory agreement to pay after the auction has been instructed, it is possible to cancel the auction. See the Decision Making Guidance for additional information.

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

When an application for exceptional attachment should be made

Before making a decision to apply for an exceptional attachment the CMG must have executed or attempted to execute all other diligences and check:

- the amount on the liability order(s) is still outstanding
- 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 outside the UK
- the debtor has been provided with a copy of the 'Debt Advice and Information Pack'
- if any collections have been received (because sheriff officers must be advised of the correct balance outstanding on the liability order)

- details held of goods that are possibly suitable for exceptional attachment.  
See Goods which cannot be exceptionally attached

REMEMBER: when considering exceptional attachment procedures, the sheriff must be satisfied:

- that the creditor (CMG) has taken reasonable steps to negotiate (or to seek to negotiate) a settlement of the debt
- that the debtor (non-resident parent) has been issued with a Debt Advice and Information Pack
- that the creditor has executed, or as far as it is reasonable to do so has attempted to execute, an arrestment and action of furthcoming (if appropriate), and a DEO/DER in order to secure the debt
- that there is a reasonable prospect the sum recovered from an auction of the debtor's non-essential assets would be at least equal to the aggregate of the following -
  - a reasonable estimate of any chargeable expenses, and
  - £100 or such other amount as may be specified by order made by Scottish Ministers
- having regard to the matters set out above and any other matters which the sheriff considers appropriate, it would be reasonable in the circumstances to grant the exceptional attachment order

#### **Sheriff officers report:**

When making the decision whether an exceptional attachment is appropriate, consider any information that may be held in any sheriff officer's reports received.

Sheriff officers are highly trained and are very experienced. Clients, such as the CMG have to rely heavily on this expertise and experience when instructing sheriff officers. They act as the "eyes and ears" on the ground for their clients. The CMG often hold only very limited information on the non-resident parent asset position. When sheriff officers visit a debtor, they will ask the relevant questions to satisfy themselves that goods can properly be considered for exceptional attachment. Additionally, by law they are required to hold a high level of professional indemnity insurance to cover them against incorrectly executing wrongful diligences.

#### **Exceptional Attachment Application: Initial Outcomes**

The contracted solicitor will contact the CMG to confirm whether the application for exceptional attachment was successful or not and to discuss any next steps prior to auction.

Sheriff officers will also send a report to the CMG to advise whether goods were attached.

### **Exceptional attachment order - not granted**

Where the sheriff's decision is to not grant the exceptional attachment order, a decision will have to be made on whether it is appropriate to appeal. An appeal would only be appropriate if the sheriff erred in law.

Refer to the guidance on CMG appeals against enforcement action for further advice.

### **Exceptional attachment order - granted**

Where the sheriff grants the exceptional attachment order, sheriff officers are instructed to execute the order. Sheriff officers decide which non-essential assets in the debtor's house, up to the value of the debt and expenses, are suitable to be attached.

### **Sheriff officers attach goods (exceptional attachment in execution)**

Where the non-resident parent has failed to pay the liability order debt and goods have been exceptionally attached the sheriff officer will contact you regarding the successful outcome of the attachment and the removal / proposed removal of articles to discuss the next appropriate steps.

Solicitors are not normally involved here, unless the non-resident parent applies to the sheriff for an order that the exceptional attachment ceases to have effect.

The exceptional attachment in execution is executed by sheriff officers and must be reported to court within 14 days of the goods being removed.

The articles attached during an attachment in execution cannot then be sold at auction less than 7 days following removal.

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

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

Unauthorised removal of goods by the non-resident parent following an attachment may constitute a breach of exceptional attachment and may be dealt with as a contempt of court.

To raise such an action can be costly, with legal fees of £3,000 to £4,000 minimum (if the non-resident parent lodges Objections), 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 an appropriate senior manager.

## **Goods available for uplift**

Sheriff officers will remove or arrange for the removal of the attached goods. The CMG are responsible for any additional costs incurred in removing the goods to auction.

Goods removed: is auction appropriate?

Auction action will not proceed if:

- the non-resident parent redeems the articles
- the non-resident parent pays off the remaining liability order or debt in full, or
- an acceptable payment agreement is reached

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

If the non-resident parent makes an offer to pay to the solicitor or sheriff, the non-resident parent can either redeem the articles attached prior to auction and / or is directed to contact the caseworker to negotiate a settlement or agreement.

If an acceptable agreement is 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 removed goods

When the payment is received it will already have had the auctioneers costs (typically 10%) deducted.

Whatever the sheriff officers' estimated value of the goods was on the report, will be the total sent to the CMG (toward non-resident parent's arrears), not 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 imposed by the sheriff officer of that article against the sum recoverable. Dependant upon 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.

The creditor (the CMG) has to uplift these articles within 3 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.

Non-resident parent does not adhere to the exceptional attachment

After the warrant to exceptionally attach has been granted and executed by the sheriff officers, contempt of court proceedings can be commenced if the non-resident parent does not abide by the terms of the exceptional attachment.

The non-resident parent may be in breach of the exceptional attachment if they:

- move the attached article from the place at which it was attached without the permission of the court or the CMG, or
- relinquish ownership of any of the attached goods, or
- deliberately damage or destroy any of the attached articles

If any of these situations applies, solicitors' advice must be sought in relation to whether breach of attachment proceedings should be undertaken

The costs of commencing contempt of court proceedings can be very high, and any decision to proceed must therefore be made at a senior level.

Exceptional attachment expiry

Exceptional attachments must be reported to court within 14 days of execution and expire within six months unless the CMG applies to the court for an extension.

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