

## Interim Attachments: Contents

- [Interim Attachments: Overview](#)
  - [Interim Attachments: Process Overview](#)
  - [Interim Attachments: Decision Making Guidance](#)
- 

### Interim Attachment: Overview

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

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

What is an Interim Attachment?

An interim attachment is a diligence which is sought before a liability order is granted, to prevent the non-resident parent from moving the interim attached articles from the place at which they are attached. This means the non-resident parent cannot:

- sell, make a gift or otherwise relinquish ownership of the interim attached articles; or
- wilfully damage or destroy them.

When should an Interim Attachment be considered?

An interim attachment should be considered if there is evidence of a real and substantial risk that the non-resident parent may:

- become insolvent (or verging on insolvency); or
- be removing, disposing of, concealing, or otherwise dealing with all or some of the moveable assets;

before the CMG can obtain a liability order and instruct an attachment in execution.

[Return to Contents](#)

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### Interim Attachments: Process Overview

Interim Attachment Application

If an interim attachment is appropriate, external solicitors should be instructed to make the application.

NOTE: for these applications, a telephone call should be made to the contracted solicitor, to advise them that an instruction to apply for an interim attachment order will be sent to them shortly.

On receiving the CMG's instruction, solicitors will make an application to the sheriff court.

The sheriff can grant the interim attachment order with or without a court hearing. However, if the order is granted without an initial hearing, the court will fix a date for a subsequent hearing, which must be notified to the non-resident parent, normally by the sheriff clerk of the court.

Solicitors will attend the hearing on behalf of the CMG and will notify the CMG of the court's decision and return the relevant documents and warrant of interim attachment.

If the court agree that an interim attachment is appropriate, if instructed by either the contracted solicitor or the CMG, sheriff officers will list all the suitable goods up to the value of the debt outstanding and provide the non-resident parent and the sheriff court with a copy using 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 interim attachment order.

**Note:** An attachment cannot be carried out at the non-resident parent's domicile, 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 and lockfast places" for the purposes of executing an interim attachment.

#### Goods Which Are Not Suitable For An Interim Attachment

The following goods are not suitable for interim attachment:

- any article within a dwelling house;
- any implements, tools of trade, books or other equipment reasonably required for the use of the debtor in the practice of the debtor's profession, trade or business and not exceeding in aggregate value £1,000 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 £1,000 or such amounts as may be prescribed in regulations made by the Scottish Ministers;
- a mobile home which is the debtor's only or principle 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;
- a mobile home which is the only or principle 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: to be sold by them (whether or not after adaptation); or as a material for a process of manufacturing for sale by the debtor.

### Interim Attachment Granted: Next Steps

If a warrant of interim attachment is granted, the order will be notified to the non-resident parent and the CMG. The sheriff officers will execute the interim attachment and complete a schedule of interim attachment which will be signed by the sheriff officer and specify the articles which were attached and their estimated value.

Once the liability order is obtained, the interim attachment articles must be attached in execution before the attached articles can be taken to auction and sold. See the Decision Making Guidance for further information.

[Return to Contents](#)

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### Interim Attachments: Decision Making Guidance

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

An application for an interim attachment should be considered if:

- we have not yet obtained a liability order; and
- there is evidence that the non-resident parent may dispose of any suitable goods, which may be subject to attachment

NOTE: an interim attachment is not appropriate for goods kept in the non-resident parent's dwellinghouse. For goods kept in a dwellinghouse see Exceptional Attachment.

REMEMBER: a liability order application must be deemed appropriate before an interim attachment application can be made. The liability order application should be prepared as soon as possible, if not already done previously.

#### Interim Attachment: Not Granted

If the sheriff decides not to grant the interim attachment order, you will need to decide whether it is appropriate to appeal. This would only be appropriate if the sheriff erred in law.

### Interim Attachment: Granted

The sheriff court will notify the solicitor if the interim attachment is granted. If this is the case, then once the liability order has been obtained, the interim attached articles must be attached in execution before they can be taken to auction and sold.

Remember: if the liability order fails, the interim attachment also fails

### Attachment in Execution

Once the liability order has been obtained, a request should be made to the sheriff officer to enforce it by granting an attachment in execution for the articles attached during the interim attachment.

Note: the interim attachment will remain in effect for a period of 6 months after the date that the liability order is completed.

Before taking this action you should check that:

- the charge for payment has been served on the non-resident parent;
- the debtor has been provided with a copy of the Debt Advice and Information Pack; and
- if any payments have been received - (sheriff officers are advised of the balance outstanding on the liability order).

If 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. During these 14 days the non-resident parent may redeem the articles at the valuation provided by the sheriff officers.

If not redeemed, the articles attached during an attachment in execution can then be removed and sold at auction in order to release funds. Refer to the guidance on uplifting and auction for ordinary attachment proceedings for further advice.

### Non-resident Parent Does Not Adhere to the Interim Attachment

After the warrant for interim 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 interim attachment.

The non-resident parent may be in breach of the interim 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 high, and any decision to proceed must therefore be made at a senior level.

#### Expiry of Interim Attachment

The interim attachment remains in effect for 6 months from the date the liability order is granted. The timescales can be extended if authorised by the sheriff.

During the 6 months, it can be requested that the sheriff officers attach the articles in execution following the interim attachment (where it is deemed appropriate, based on the other diligences available and their estimated chance of success).

[Return to Content](#)