

Status: Point in time view as at 22/04/2009. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, SCHEDULE 5. (See end of Document for details)

SCHEDULE 5

(introduced by section 226)

MINOR AND CONSEQUENTIAL AMENDMENTS

VALID FROM 23/11/2009

The Companies Clauses Consolidation (Scotland) Act 1845 (c. 17)

- 1 In section 114 of the Companies Clauses Consolidation (Scotland) Act 1845 (summary remedy against parties failing to account), after “attachment” insert “ or money attachment ”.

VALID FROM 23/11/2009

The Harbours, Docks and Piers Clauses Act 1847 (c. 27)

- 2 In section 46 of the Harbours, Docks and Piers Clauses Act 1847 (power of justice or sheriff to settle disputes over costs of diligence), after “attachment” insert “ or money attachment ”.

PROSPECTIVE

The Titles to Land Consolidation (Scotland) Act 1868 (c. 101)

- 3 In section 3 of the Titles to Land Consolidation (Scotland) Act 1868 (definitions), in the definition of the “deed” and “conveyance”—
- (a) after “adjudged” insert “ in implement ”; and
 - (b) after “adjudication”, where it third occurs, insert “ in implement ”.

VALID FROM 23/11/2009

The Writs Execution (Scotland) Act 1877 (c. 40)

- 4 In section 3(a) of the Writs Execution (Scotland) Act 1877 (warrant in extract writ to authorise diligence)—
- (a) after “arrestment” insert “ , a land attachment, a residual attachment, a money attachment ”; and
 - (b) after “executing the” insert “ land attachment, residual attachment, money attachment or ”.

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Commencement Information

- II** Sch. 5 para. 4 partly in force; Sch. 5 para. 4 not in force at Royal Assent see s. 227; Sch. 5 para. 4 in force for certain purposes at 23.11.2009 by S.S.I. 2009/369, art. 3(2)(3), Sch. 1 para. 3 (with transitional modifications in art. 4)

The Judicial Factors (Scotland) Act 1889 (c. 39)

- 5 In section 11A of the Judicial Factors (Scotland) Act (application for judicial factor on estate of deceased person)—
- (a) in subsection (1)—
 - (i) for “petition to the Court of Session or” substitute “ application ”;
 - and
 - (ii) for “petition”, where it second occurs, substitute “ application ”; and
 - (b) in subsection (2), for “petition” substitute “ application ”.

VALID FROM 23/11/2009

The Sheriff Courts (Scotland) Extracts Act 1892 (c. 17)

- 6 (1) The Sheriff Courts (Scotland) Extracts Act 1892 is amended as follows.
- (2) In section 7(1)(a) (warrant in extract decree to authorise diligence)—
- (a) after “arrestment” insert “ , a land attachment, a residual attachment, a money attachment ”; and
 - (b) after “executing the” insert “ land attachment, residual attachment, money attachment or ”.
- (3) In section 7(4) (warrant in extract decree of removing), for the words “forty-eight hours” in both places where they occur substitute “ 14 days ”.
- (4) In section 8 (persons who may execute on extracts), for the words “messengers-at-arms, officers of court,” substitute “ judicial officers ”.

Commencement Information

- II** Sch. 5 para. 6 partly in force; Sch. 5 para. 6 not in force at Royal Assent see s. 227; Sch. 5 para. 6 in force for certain purposes at 23.11.2009 by S.S.I. 2009/369, art. 3(2)(3), Sch. 1 para. 4 (with transitional modifications in art. 4)

The Execution of Diligence (Scotland) Act 1926 (c. 16)

- 7 (1) The Execution of Diligence (Scotland) Act 1926 is amended as follows.
- (2) In section 2 (execution by registered letter)—
- (a) in subsection (1)(b), for “sheriff officer” substitute “ judicial officer ”;
 - (b) in subsection (2)(b)—

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- (i) for the words from “sheriff officer”, where they first occur, to “situated” substitute “judicial officer”;
 - (ii) for “sheriff officer, or messenger-at-arms” substitute “judicial officer”; and
 - (iii) for “law agent enrolled in such sheriffdom” substitute “solicitor”;
 - (c) in subsection (2)(c), for “law agent, messenger-at-arms or sheriff officer” substitute “solicitor or judicial officer”; and
 - (d) in subsection (2)(g), for “rule 111” substitute “rule 6.1”.
- (3) In section 3 (authorisation by sheriff to do diligence)—
- (a) for “messenger-at-arms or sheriff officer”, in both places where it occurs, substitute “judicial officer”; and
 - (b) for “law agent” substitute “solicitor”.
- (4) In section 6 (regulations, forms and fees), for “messengers-at-arms, sheriff officers” substitute “judicial officers”.

Commencement Information

- I3** Sch. 5 para. 7 partly in force; Sch. 5 para. 7 not in force at Royal Assent see s. 227; Sch. 5 para. 7(2)(b)(iii)(d)(3)(b) in force and Sch. 5 para. 7(1)(2)(c) in force for certain purposes at 22.4.2009 by S.S.I. 2009/67, art. 3(2)(3), Sch. 1 para. 2 (with transitional modifications and savings in arts. 4-6)

VALID FROM 23/11/2009

The Local Government (Scotland) Act 1947 (c. 43)

- 8 (1) The Local Government (Scotland) Act 1947 is amended as follows.
- (2) In section 247(3) (diligences which can be used to recover rates), after paragraph (a) insert—
- “(aa) a money attachment;”.
- (3) In section 247A(1) (sheriff officer's fees and outlays), after “attachment)” insert “and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment) ”.

VALID FROM 23/11/2009

The Taxes Management Act 1970 (c. 9)

- 9 (1) The Taxes Management Act 1970 is amended as follows.
- (2) In section 63(2) (diligences which can be used to recover tax), after paragraph (a) insert—
- “(aa) a money attachment;”.

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- (3) In section 63A(1) (sheriff officer's fees and outlays), after “attachment” insert “ and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment) ”.

The Sheriff Courts (Scotland) Act 1971 (c. 58)

- 10 In section 32(1) of the Sheriff Courts (Scotland) Act 1971 (power of Court of Session to regulate sheriff court civil procedure), in paragraph (1), for the words “an attachment” substitute “ an interim attachment, an attachment, a money attachment, a land attachment or a residual attachment ”.

Commencement Information

- I4** Sch. 5 para. 10 partly in force; Sch. 5 para. 10 not in force at Royal Assent see s. 227; Sch. 5 para. 10 in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, art. 3(2), Sch. 1 (subject to art. 3(3) and with arts. 4-6, 10); Sch. 5 para. 10 in force for certain further purposes at 23.11.2009 by S.S.I. 2009/369, art. 3(2)(3), Sch. 1 para. 7 (with transitional modifications in art. 4)

PROSPECTIVE

The Animal Health Act 1981 (c. 22)

^{F1}11

Textual Amendments

- F1** Sch. 5 para. 11 repealed (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), Sch. 4 Pt. 2; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

The Civil Jurisdiction and Judgments Act 1982 (c. 27)

- 12 In section 27 of the Civil Jurisdiction and Judgments Act 1982 (power of Court of Session to grant provisional and protective measures in respect of proceedings outwith Scotland)—
- (a) in subsection (1), after paragraph (b), insert—
- “(ba) subject to subsection (2)(c) below, grant a warrant for the interim attachment of corporeal moveable property situated in Scotland;”;
- and
- (b) in subsection (2)(c), for the words “and (b)” substitute “ , (b) and (ba) ”.

The Bankruptcy (Scotland) Act 1985 (c. 66)

- 13 (1) The 1985 Act is amended as follows.
- (2) In section 31 (vesting of estate in trustee), in subsection (1)—
- (a) after “shall”, where it first occurs, insert “ , by virtue of the trustee's appointment, ”; and
- (b) after “vest”, where it first occurs, insert “ in the trustee ”.

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- (3) In section 37 (effect of sequestration on diligence)—
- (a) in subsection (1)(b), for “a completed poinding” substitute “ an attachment ”;
 - (b) in subsection (2), for “No” substitute “ Where an ”;
 - (c) in subsection (4)—
 - (i) after “arrestment” insert “ , money attachment, interim attachment ”; and
 - (ii) after “attached” insert “ , or any funds released under section 73J(2) of the Debtors (Scotland) Act 1987 (c. 18) (automatic release of funds) ”;
 - (d) in subsection (5)—
 - (i) after “arrestment”, where it first occurs, insert “ , money attachment, interim attachment ”;
 - (ii) in paragraph (a), after “obtaining” insert—
 - “(i) warrant for interim attachment; or
 - (ii)”;
 - (iii) after “arrestment”, where it second occurs, insert “ , money attachment ”; and
 - (iv) in paragraph (b), after “arrestment” insert “ , money attachment, interim attachment ”;
 - (e) after subsection (5A) insert—
 - “(5B) No land attachment of heritable property of the debtor created within the period of six months before the date of sequestration and whether or not subsisting at that date shall be effectual to create a preference for the creditor.
 - (5C) A creditor who creates a land attachment within the period of six months mentioned in subsection (5B) above shall be entitled to payment, out of the attached land or out of the proceeds of the sale of it, of the expenses incurred—
 - (a) in obtaining the extract of the decree, or other document, containing the warrant for land attachment; and
 - (b) in—
 - (i) serving the charge for payment;
 - (ii) registering the notice of land attachment;
 - (iii) serving a copy of that notice; and
 - (iv) registering certificate of service of that copy.”;
 - (f) after subsection (8) insert—
 - “(8A) A notice of land attachment registered—
 - (a) on or after the date of sequestration against land forming part of the heritable estate of the debtor (including any estate vesting in the trustee by virtue of section 32(6) of this Act); or
 - (b) before that date in relation to which, by that date, no land attachment is created,shall be of no effect.
 - (8B) Subject to subsections (8C) to (8F) below, it shall not be competent for a creditor to insist in a land attachment—

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- (a) created over heritable estate of the debtor before the beginning of the period of six months mentioned in subsection (5B) above; and
 - (b) which subsists on the date of sequestration.
- (8C) Where, in execution of a warrant for sale, a contract to sell the land has been concluded—
- (a) the trustee shall concur in and ratify the deed implementing that contract; and
 - (b) the appointed person shall account for and pay to the trustee any balance of the proceeds of sale which would, but for the sequestration, be due to the debtor after disbursing those proceeds in accordance with section 116 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (disbursement of proceeds of sale of attached land).
- (8D) Subsection (8C) above shall not apply where the deed implementing the contract is not registered before the expiry of the period of 28 days beginning with the day on which—
- (a) the certified copy of the order of the sheriff granting warrant is recorded under subsection (1)(a) of section 14 of this Act; or
 - (b) the certified copy of the determination of the Accountant in Bankruptcy awarding sequestration is recorded under subsection (1A) of that section,
- in the register of inhibitions.
- (8E) Where a decree of foreclosure has been granted but an extract of it has not registered, the creditor may proceed to complete title to the land by so registering that extract provided that the extract is registered before the expiry of the period mentioned in subsection (8D) above.
- (8F) The Scottish Ministers may—
- (a) prescribe such other period for the period mentioned in subsection (8D) above; and
 - (b) prescribe different periods for the purposes of that subsection and subsection (8E) above,
- as they think fit.”; and
- (g) at the end insert—
- “(10) Expressions used in subsections (5B), (5C) and (8A) to (8F) above which are also used in Chapter 2 of Part 4 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) have the same meanings in those subsections as they have in that Chapter.”.

Commencement Information

- I5** Sch. 5 para. 13 partly in force; Sch. 5 para. 13 not in force at Royal Assent see s. 227; Sch. 5 para. 13(2)(3)(a)(c)(ii)(d)(ii) in force and Sch. 5 para. 13(1)(3)(c)(i)(d)(i)(iv) in force for certain purposes and Sch. 5 para. 13(3)(f)(g) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, art. 3(2){(4)}, Schs, 1, 3 (subject to art. 3(3) and with arts. 4-6, 10); Sch. 5 para. 13(1) in force for certain purposes and Sch.

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5 para. 13(3)(b) in force at 22.4.2009 by S.S.I. 2009/67, art. 3(2)(3), Sch. 1 para. 3 (with transitional modifications and savings in arts. 4-6); Sch. 5 para. 13(1)(3)(c)(i)(d)(i)(iii)(iv) in force for certain further purposes at 23.11.2009 by S.S.I. 2009/369, art. 3(2)(3), Sch. 1 para. 8 (with transitional modifications in art. 4)

PROSPECTIVE

The Insolvency Act 1986 (c. 45)

- 14 (1) The Insolvency Act 1986 is amended as follows.
- (2) After section 61(1) (which sets out the process by which a receiver may dispose of property subject to both the floating charge and to another security, other encumbrance or diligence) insert—
- “(1B) For the purposes of subsection (1) above, an arrestment is an effectual diligence only where it is executed before the floating charge, by virtue of which the receiver was appointed, attaches to the property comprised in the company's property and undertaking.”
- (3) In section 185(1)(a) (effect of diligence in the winding up of a company registered in Scotland), after “subsection (6)” insert “, (8A) to (8F) and (10)”.

VALID FROM 23/11/2009

The Legal Aid (Scotland) Act 1986 (c. 47)

- 15 In Part 2 of Schedule 2 to the Legal Aid (Scotland) Act 1986 (proceedings in which civil legal aid is not available)—
- (a) in paragraph 4, after “(asp 17)” insert “ or Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) ”; and
- (b) in paragraph 5, after “(asp 17)” insert “ or Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) ”.

The Debtors (Scotland) Act 1987 (c. 18)

- 16 (1) The 1987 Act is amended as follows.
- (2) In section 2 (effect of time to pay direction on diligence)—
- (a) in subsection (1)(b), after sub-paragraph (iv) insert—
- “(v) a money attachment;
(vi) a land attachment;
(vii) a residual attachment;”;
- (b) in subsection (2), at beginning insert “ Subject to subsection (2A) below, ”;
- (c) after that subsection insert—
- “(2A) Where the arrestment which remains in effect as mentioned in subsection (2) above is an arrestment such as is mentioned in

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subsection (1) of section 73J of this Act, while the time to pay direction is in effect—

- (a) it shall not be competent to release funds under subsection (2) of that section; and
- (b) the period during which the direction is in effect shall be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.

(2B) While a time to pay direction is in effect an interim attachment shall remain in effect—

- (a) if it has not been recalled; or
- (b) to the extent that it has not been restricted under subsection (3) below.”;
- (d) in subsection (3), after “restrict” insert “ an interim attachment or ”;
- (e) in subsection (4)—
 - (i) after “If” insert “ an interim attachment or ”; and
 - (ii) after “restriction of the” insert “ interim attachment or ”; and
- (f) after subsection (5) insert—

“(5A) Where—

- (a) a time to pay direction is recalled or ceases to have effect as mentioned in subsection (5) above; and
- (b) an arrestment such as is mentioned in section 73J(1) of this Act is in effect,

the clerk of court or sheriff clerk shall intimate the fact of that recall or cessation to the arrestee.”.

(3) In section 3 (variation and recall of time to pay direction and arrestment)—

- (a) in subsection (1)(a), after “reasonable” insert “ in all the circumstances ”;
- (b) in subsection (1)(b)—
 - (i) after “if” insert “ an interim attachment or ”;
 - (ii) after “restrict the” insert “ interim attachment or ”; and
- (c) in subsection (2), after “If” insert “ an interim attachment or ”.

(4) In section 5 (time to pay orders)—

- (a) in subsection (5), for paragraph (a) substitute—
 - “(a) articles belonging to the debtor have been attached and notice of an auction given under section 27(4) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) but no auction has yet taken place;
 - (aa) money owned by the debtor has been attached and removed.”;
- (b) for paragraph (c) and the word “or” immediately preceding it substitute—
 - “(c) land owned by the debtor has been attached and an order under section 97(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (in this Part, the “2007 Act”) granting warrant for sale of the land has been made but that warrant has not yet been executed; or

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- (d) property owned by the debtor has been attached by residual attachment and a satisfaction order under section 136(2) of the 2007 Act has been made but not yet executed,”; and
- (c) after subsection (5) insert—
- “(5A) Where, in respect of a debt to which this section applies, an arrestment such as is mentioned in subsection (1) of section 73J of this Act has been executed, the sheriff may make a time to pay order in respect of that debt only if less than 8 weeks of the period mentioned in subsection (3) of that section have expired.”.
- (5) In section 6 (application for time to pay order), in subsection (6), leave out paragraph (b) and the word “and” immediately preceding it and insert—
- “(b) serve on—
- (i) the creditor; and
- (ii) where an arrestment such as is mentioned in section 73J(1) of this Act is in effect, the arrestee,
- a copy of the interim order; and
- (c) serve on the creditor a copy of any order under subsection (4) above.”.
- (6) In section 7 (disposal of application for time to pay order), in subsection (4)(a), for “and the creditor” substitute “, the creditor and, where an arrestment such as is mentioned in section 73J(1) of this Act is in effect, the arrestee ”.
- (7) In section 8 (effect of interim order on diligence)—
- (a) in subsection (1)—
- (i) before paragraph (a) insert—
- “(za) to attach in execution of the decree any articles which have been attached by interim attachment;”;
- (ii) in paragraph (a), for “auction any articles which have been attached” substitute “give, in relation to any articles which have been attached, notice of an auction under section 27(4) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) ”;
- (iii) after paragraph (a) insert—
- “(aa) to execute a money attachment;”;
- (iv) in paragraph (c), at the beginning insert “ subject to subsection (1A) below, ”; and
- (v) for paragraph (d) substitute—
- “(d) subject to subsection (1B) below, to register, under section 83(1)(c) of the 2007 Act, a notice of land attachment;
- (e) subject to subsection (1C) below, to apply, under section 130(1) of the 2007 Act, for a residual attachment order.”; and
- (b) after subsection (1) insert—
- “(1A) Where the arrestment mentioned in subsection (1)(c) above is an arrestment such as is mentioned in subsection (1) of section 73J of this Act, while the interim order is in effect—

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- (a) it shall not be competent to release funds under subsection (2) of that section; and
 - (b) the period during which the order is in effect shall be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.
- (1B) Where, before the interim order is made—
- (a) a notice of land attachment is registered, it shall not be competent to take any steps other than—
 - (i) serving, under subsection (5) of section 83 of the 2007 Act, a copy of that notice; and
 - (ii) registering, under subsection (6) of that section, a certificate of service; or
 - (b) a land attachment is created, it shall not be competent to make, under section 97(2) of the 2007 Act, an order granting a warrant for sale of the attached land.
- (1C) Where, before the interim order is made, a residual attachment order has been made, it shall not be competent—
- (a) to take any steps other than serving, under section 133(1) of the 2007 Act, a schedule of residual attachment; or
 - (b) to make, under section 136(2) of the 2007 Act, a satisfaction order.”.
- (8) In section 9 (effect of time to pay order on diligence)—
- (a) in subsection (1)(b), after sub-paragraph (iv) insert—
 - “(v) a money attachment;
 - (vi) a land attachment;
 - (vii) a residual attachment;”;
 - (b) in subsection (2), for paragraph (c) substitute—
 - “(c) where a notice of land attachment has been registered under section 83(1)(c) of the 2007 Act, shall make an order prohibiting the taking of any steps other than—
 - (i) the serving, under subsection (5) of that section, of a copy of the notice; and
 - (ii) the registration, under subsection (6) of that section, of a certificate of service;
 - (ca) where a residual attachment order has been made under section 132(2) of the 2007 Act, shall make an order prohibiting the taking of any steps other than the serving, under section 133(1) of the 2007 Act, of a schedule of residual attachment;
 - (cb) may make an order recalling an interim attachment;”;
 - (c) after subsection (2) insert—
 - “(2A) While a time to pay order is in effect, it shall not be competent in respect of the debt—
 - (a) to make, under section 97(2) of the 2007 Act, an order granting warrant for sale of attached land; or

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- (b) to make, under section 136(2) of the 2007 Act, a satisfaction order.”;
- (d) in subsection (3)—
 - (i) after “If” insert “ an interim attachment, ” and
 - (ii) for “or the recall of” substitute “ , the recall of the interim attachment or ”;
- (e) in subsection (4)—
 - (i) at the beginning insert “ Subject to subsection (4A) below, ”; and
 - (ii) for “(2)(d) or (e)” substitute “ (2)(cb), (d) or (e) ”;
- (f) after subsection (4) insert—

“(4A) Where, in relation to an arrestment such as is mentioned in subsection (1) of section 73J of this Act, the sheriff does not exercise the power conferred on him by subsection (2)(e) above to recall that arrestment, he shall make an order—

 - (a) prohibiting, while the time to pay order is in effect, the release of funds under subsection (2) of section 73J of this Act; and
 - (b) providing that the period during which the time to pay order is in effect shall be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.”;
- (g) in subsection (6), for “(2)(d) or (e)” substitute “ (2)(cb), (d) or (e) ”;
- (h) in subsection (7), after paragraph (b) insert “; and

 - (c) where any order under subsection (4A) above is made in relation to an arrestment such as is mentioned in section 73J(1) of this Act is in effect, intimate that order to the arrestee.”; and
 - (i) in subsection (8)—
 - (i) for paragraph (a) substitute—

“(a) to sell articles which have been attached (other than by virtue of section 20(1) or 22(3) of the Debt Arrangement and Attachment (Scotland) Act (asp 17);”; and
 - (ii) in paragraph (b), at the beginning insert “ to grant ”.

- (9) In section 10 (variation and recall of time to pay order and arrestment)—
 - (a) in subsection (1)(a), after “reasonable” insert “ in all the circumstances ”;
 - (b) in subsection (1)(b), after “if” insert “ an interim attachment, ”; and
 - (c) in subsection (2), after “If” insert “ an interim attachment, ”.
- (10) In section 13 (saving of creditor's rights and remedies), in the full-out words to subsection (2), for “pounding”, in any place where it occurs, substitute “ attachment ”.
- (11) In section 87(2)(a) (warrant in extract decree to authorise diligence)—
 - (a) after “arrestment” insert “ , a land attachment, a residual attachment, a money attachment ”; and
 - (b) after “executing the” insert “ land attachment, residual attachment, money attachment or ”.
- (12) In section 104 (regulations), after “Regulations” insert “ and orders ”.

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(13) In section 105 (application to Crown)—

- (a) the existing words become subsection (1);
- (b) after “1947” insert “ and subject to subsection (2) below ”; and
- (c) at the end insert—

“(2) Section 70B of this Act does not affect Her Majesty in Her private capacity as an employer.”

(14) In section 106 (interpretation)—

- (a) after the definition of “current maintenance”, insert—

““debt advice and information package” has the meaning given to it in section 47(4) of this Act;”;

- (b) after the definition of “employer”, insert—

““enactment” includes an Act of the Scottish Parliament and any enactment comprised in subordinate legislation under such an Act;”;
and

- (c) in the definition of “officer of court”, for the words from “a” where it first occurs to the end substitute “ a judicial officer ”.

Commencement Information

- I6** Sch. 5 para. 16 not in force at Royal Assent see s. 227; Sch. 5 para. 16(2)(d)(e)(3)(7)(a)(i)(8)(d)(e)(ii)(g)(i)(9)(10)(12)(13)(14(a)(b) in force and Sch. 5 para. 16(1)(2)(c)(4)(a)(8)(b) in force for certain purposes at 1.4.2008 by [S.S.I. 2008/115](#), [art. 3\(2\)](#), [Sch. 1](#) (subject to [art. 3\(3\)](#) and with [arts. 4-6, 10](#)); Sch. 5 para. 16(1) in force for certain purposes and Sch. 5 para. 16(2)(c)(f)(4)(c)(5)(6)(7)(a)(ii)(iv)(b)(8)(e)(i)(f)(h) in force at 22.4.2009 by [S.S.I. 2009/67](#), [art. 3\(2\)\(3\)](#), [Sch. 1 para. 4](#) (with transitional modifications and savings in [arts. 4-6](#)); Sch. 5 para. 16(1)(2)(a)(4)(a)(8)(a)(11)(a)(b) in force for certain purposes and Sch. 5 para. 16(7)(a)(iii) in force at 23.11.2009 by [S.S.I. 2009/369](#), [art. 3\(2\)\(3\)](#), [Sch. 1 para. 10](#) (with transitional modifications in [art. 4](#))

VALID FROM 23/11/2009

The Abolition of Domestic Rates etc. (Scotland) Act 1987 (c. 47)

- 17 (1) Schedule 2 to the Abolition of Domestic Rates etc. (Scotland) Act 1987 is amended as follows.
- (2) In paragraph 7(3) (diligences which can be used to recover community charge), after paragraph (a) insert—
- “(aa) a money attachment;”.
- (3) In paragraph 8(1) (sheriff officer's fees and outlays), after “attachment)” insert “ and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment) ”.

Status: Point in time view as at 22/04/2009. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, SCHEDULE 5. (See end of Document for details)

The Child Support Act 1991 (c. 48)

- 18 In section 38 of the Child Support Act 1991 (enforcement of liability orders by diligence)—
- (a) in subsection (1)—
 - (i) after paragraph (a) insert—
 - “(aa) for the Secretary of State—
 - (i) to charge the person to pay the appropriate amount; and
 - (ii) to execute, in respect of the person's land, a land attachment;”;
 - (ii) for the words from “and”, where it fifth occurs, to the end, substitute—
 - “(c) for an inhibition.”; and
 - (b) for subsection (2) substitute—
 - “(2) In subsection (1)—
 - (a) the “appropriate amount” means the amount in respect of which the order was made, to the extent that it remains unpaid; and
 - (b) in paragraph (aa), “land” has the same meaning as in section 82 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).”.

Commencement Information

- 17** Sch. 5 para. 18 partly in force; Sch. 5 para. 18 not in force at Royal Assent see s. 227; Sch. 5 para. 18(a)(ii) in force for certain purposes at 22.4.2009 by S.S.I. 2009/67, art. 3(2)(3), Sch. 1 para. 5 (with transitional modifications and savings in arts. 4-6)

VALID FROM 23/11/2009

The Social Security Administration Act 1992 (c. 5)

- 19 In section 121B of the Social Security Administration Act 1992—
- (a) in subsection (1) (diligences which can be used to recover unpaid contributions), after paragraph (a) insert—
 - “(aa) a money attachment;”;
 - (b) in subsection (4) (sheriff officer's fees and outlays), after “attachment” insert “ and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment) ”.

VALID FROM 23/11/2009

The Local Government Finance Act 1992 (c. 14)

- 20 (1) Schedule 8 to the Local Government Finance Act 1992 is amended as follows.

Status: Point in time view as at 22/04/2009. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, SCHEDULE 5. (See end of Document for details)

- (2) In paragraph 2(3) (diligences which can be used to recover council tax etc.), after paragraph (a) insert—
“(aa) a money attachment;”.
- (3) In paragraph 4(1) (sheriff officer's fees and outlays), after “attachment” insert “and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment) ”.

PROSPECTIVE

The Tribunals and Inquiries Act 1992 (c. 53)

F21

Textual Amendments

- F2** Sch. 5 para. 21 repealed (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), Sch. 4 Pt. 2; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

The Proceeds of Crime (Scotland) Act 1995 (c. 43)

- 22 In section 32 of the Proceeds of Crime (Scotland) Act (inhibition of property affected by restraint order or by interdict)—
- (a) in subsection (1)—
- (i) for the words “Lord Advocate, the Court of Session” substitute “prosecutor, the court ”;
- (ii) in paragraph (a), for the words “Lord Advocate” substitute “prosecutor ”; and
- (iii) in paragraph (b), for the words from “have” to the end substitute “ forthwith be registered by the prosecutor in the Register of Inhibitions. ”; and
- (b) in subsection (5), for the words “Lord Advocate” substitute “ prosecutor ”.

VALID FROM 23/11/2009

The Criminal Procedure (Scotland) Act 1995 (c. 46)

- 23 In section 221 of the Criminal Procedure (Scotland) Act 1995 (fines: recovery by civil diligence), in subsection (1)(a)—
- (a) for “the execution of an arrestment and the attachment of articles belonging to him” insert—
- “(i) the execution of an arrestment;
(ii) the attachment of articles belonging to him; and
(iii) the execution of a money attachment;” and
- (b) after “attachment”, where it second occurs, insert “ or the money attachment ”.

Status: Point in time view as at 22/04/2009. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, SCHEDULE 5. (See end of Document for details)

VALID FROM 23/11/2009

The Finance Act 1997 (c. 16)

- 24 In section 52 of the Finance Act 1997—
- (a) in subsection (2) (diligences which can be used to recover certain taxes), after paragraph (a) insert—
 - “(aa) a money attachment;”;
 - (b) in subsection (3) (sheriff officer's fees and outlays), after “attachment” insert “ and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment) ”.

PROSPECTIVE

The Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

F³25

Textual Amendments

- F3** Sch. 5 para. 25 repealed (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), Sch. 4 Pt. 2; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

The Water Industry (Scotland) Act 2002 (asp 3)

- 26 (1) Schedule 4 to the Water Industry (Scotland) Act 2002 is amended as follows
- (2) In paragraph 2(3) (diligences which can be used to recover unpaid charges), after sub-paragraph (za) insert—
 - “(zb) a money attachment;”.
 - (3) In paragraph 4(1), at the beginning insert “ Without prejudice to section 39(1) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) (expenses of attachment) and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment), ”.

Commencement Information

- I8** Sch. 5 para. 26 partly in force; Sch. 5 para. 26 not in force at Royal Assent see s. 227; Sch. 5 para. 26(1)(3) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, art. 3(2), Sch. 1 (subject to art. 3(3) and with arts. 4-6, 10); Sch. 5 para. 26(2) in force and Sch. 5 para. 26(1)(3) in force for certain further purposes at 23.11.2009 by S.S.I. 2009/369, art. 3(2)(3), Sch. 1 para. 16 (with transitional modifications in art. 4)

Status: Point in time view as at 22/04/2009. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, SCHEDULE 5. (See end of Document for details)

PROSPECTIVE

The Scottish Public Services Ombudsman Act 2002 (asp 11)

F427

Textual Amendments

- F4** Sch. 5 para. 27 repealed (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), Sch. 4 Pt. 2; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

PROSPECTIVE

The Freedom of Information (Scotland) Act 2002 (asp 13)

F528

Textual Amendments

- F5** Sch. 5 para. 28 repealed (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), Sch. 4 Pt. 2; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

The Proceeds of Crime Act 2002 (c. 29)

29

In section 123 of the Proceeds of Crime Act (inhibition of property affected by a restraint order)—

- (a) in subsection (1), for the words “Lord Advocate, the Court of Session” substitute “prosecutor, the court”;
- (b) in subsection (3)—
 - (i) in paragraph (a), for the words “Lord Advocate” substitute “prosecutor”; and
 - (ii) for paragraph (b) substitute—

“(b) must forthwith be registered by the prosecutor in the Register of Inhibitions”; and
- (c) in subsection (7), for the words “Lord Advocate” substitute “prosecutor”.

The Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)

30

- (1) The 2002 Act is amended as follows.
- (2) In section 10(3) (competence of attachment), for paragraphs (a) and (b) substitute—
 - “(a) the debtor has been charged to pay the debt;
 - (b) the period for payment specified in the charge has expired without payment being made; and
 - (c) where the debtor is an individual, the creditor has, no earlier than 12 weeks before taking any steps to execute the attachment, provided the debtor with a debt advice and information package.”

Status: Point in time view as at 22/04/2009. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, SCHEDULE 5. (See end of Document for details)

- (3) In section 11 (articles exempt from attachment)—
- (a) in subsection (1), after paragraph (d) insert—
- “(e) any money.”; and
- (b) after subsection (2) insert—
- “(3) In subsection (1)(e) above, “money” has the same meaning as in section 175 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).”.
- (4) After section 13 insert—

“13A Schedule of attachment

- (1) The officer must, immediately after executing an attachment, complete a schedule such as is mentioned in subsection (2) below (in this section, the “attachment schedule”).
- (2) An attachment schedule—
- (a) must be in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
- (b) must specify—
- (i) the articles attached; and
- (ii) their value, so far as ascertainable.
- (3) The officer must—
- (a) give a copy of the attachment schedule to the debtor; or
- (b) where it is not practicable to do so—
- (i) give a copy of the schedule to a person present at the place where the attachment was executed; or
- (ii) where there is no such person, leave a copy of it at that place.
- (4) An attachment is executed on the day on which the officer complies with subsection (3) above.”.
- (5) In section 14 (procedure for attachment of articles kept outwith dwellinghouses), for “19” substitute “ 19A ”.
- (6) In section 15, the title to that section becomes “ Valuation ”.
- (7) In section 28(1)(b) (restriction on alteration of arrangements for auctions), for “19” substitute “ 19A ”.
- (8) In section 32 (report of auction)—
- (a) in subsection (2)(a), after sub-paragraph (iii) insert—
- “(iiia) any sums paid by the debtor to account of the sum recoverable.”; and
- (b) in subsection (4), for the words from “Court” to the end substitute “ Scottish Civil Enforcement Commission under section 67(1)(b) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3). ”.
- (9) In section 33 (audit of report of auction)—
- (a) in subsection (7), for the words from “providing” to the end substitute—
- “(a) giving—

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Changes to legislation: There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, SCHEDULE 5. (See end of Document for details)

- (i) the debtor;
 - (ii) the creditor; and
 - (iii) any third party who claims ownership (whether alone or in common with the debtor) of any attached article,
- an opportunity to make representations; or
- (b) holding a hearing.”; and
- (b) in subsection (8), for “debtor” substitute “ persons mentioned in subsection (7)(a) above. ”.
- (10) In section 34 (articles belonging to third parties), in subsection (1)(b)(ii), for “so satisfied” substitute “ satisfied that the claim is valid ”.
- (11) In section 40 (recovery from debtor of expenses of attachment)—
- (a) in subsection (3)—
 - (i) in paragraph (a), for “9(2)(a), (d) or (e)” substitute “ 9(2)(d) or (10)(b) ”; and
 - (ii) in paragraph (c), for “presentation of a petition for an administration order” substitute “ appointment of an administrator ”; and
 - (b) in subsection (4)(b), for “administration order” substitute “ appointment ”.
- (12) In section 41(2)(a) (ascription of sums recovered by attachment), after subparagraph (i) insert—
- “(ia) any previous interim attachment the expenses of which are chargeable against and recoverable from the debtor under section 9Q(1)(a) of this Act;”.
- (13) In section 45 (interpretation of Parts 2, 3 and 4 of that Act), in the definition of “officer”, for the words from “the” where it first occurs to the end substitute “ a judicial officer appointed by a creditor ”.
- (14) In section 60(2) (application of the Act to sequestration for rent and arrestment) for the words “such a” substitute “ the landlord's ”.
- (15) In schedule 1, in paragraph 1, before “2” insert “ 1A, ”.

Commencement Information

- 19** Sch. 5 para. 30 partly in force; Sch. 5 para. 30 not in force at Royal Assent see s. 227; Sch. 5 para. 30(1)(5)-(8)(a)(15) in force for certain purposes and Sch. 5 para. 30(10)(11)(a)(ii)(b) in force at 31.3.2007 by S.S.I. 2007/82, art. 4(e); Sch. 5 para. 30(2)(12)(14) in force and Sch. 5 para. 30(1)(4) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, art. 3(2){(4)}, Schs. 1, 3 (subject to art. 3(3) and with arts. 4-6, 10); Sch. 5 para. 30(1) in force for certain further purposes and Sch. 5 para. 30(4)(9)(11)(a)(i) in force at 22.4.2009 by S.S.I. 2009/67, art. 3(2)(3), Sch. 1 para. 8 (with transitional modifications and savings in arts. 4-6); Sch. 5 para. 30(1) in force for certain purposes and Sch. 5 para. 30(3) in force at 23.11.2009 by S.S.I. 2009/369, art. 3(2)(3), Sch. 1 para. 17 (with transitional modifications in art. 4)

Status: Point in time view as at 22/04/2009. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, SCHEDULE 5. (See end of Document for details)

PROSPECTIVE

The Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

F⁶31

Textual Amendments

F6 Sch. 5 para. 31 repealed (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), Sch. 4 Pt. 2; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

VALID FROM 23/11/2009

The Finance Act 2003 (c. 14)

32 In paragraph 3(2) of Schedule 12 to the Finance Act 2003 (diligences which can be used to recover stamp duty land tax), after sub-paragraph (a) insert—
“(aa) a money attachment;”.

PROSPECTIVE

The Civil Partnership Act 2004 (c. 33)

F⁷33

Textual Amendments

F7 Sch. 5 para. 33 repealed (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), Sch. 4 Pt. 2; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

Status:

Point in time view as at 22/04/2009. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation:

There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, SCHEDULE 5.