SCOTTISH STATUTORY INSTRUMENTS

2002 No. 560

COURT OF SESSION
SHERIFF COURT

Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002

Made - - - -	*19th December 2002*
Coming into force - -	*30th December 2002*

The Lords of Council and Session, under and by virtue of the powers conferred by section 247(2) of the Local Government (Scotland) Act 1947(**1**), section 63(1) of the Taxes Management Act 1970(**2**), section 32 of the Sheriff Courts (Scotland) Act 1971(**3**), paragraph 3(3) of Schedule 1 to the Car Tax Act 1983(**4**), paragraph 7(2) of Schedule 2 to the Abolition of Domestic Rates Etc. (Scotland) Act 1987(**5**), section 5 of the Court of Session Act 1988(**6**), paragraph 2(2) of Schedule 8 to the Local Government Finance Act 1992(**7**), paragraph 2(2) of Schedule 10 to the Local Government etc. (Scotland) Act 1994(**8**), paragraph 13(2) of Schedule 5 to the Finance Act 1996(**9**), section 52 of the Finance Act 1997(**10**), and sections 12, 17, 18, 32, 56 and 64 of the Debt Arrangement and

(**1**) 1947 c. 43; section 247 was substituted by the Debtors (Scotland) Act 1987 (c. 18) ("the 1987 Act"), section 74(1) and Schedule 4, paragraph 1 and relevantly amended by the Abolition of Poindings and Warrant Sales Act 2001 (asp 1), ("the 2001 Act") section 3 and the schedule, part 2, and by the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ("the 2002 Act"), section 61 and schedule 3, Part 1, paragraph. 22. See section 379 for the definition of "prescribed".

(**2**) 1970 c. 9; section 63(1) was applied with modifications to employer's liability for Schedule E income tax by S.I. 1973/334, to sub contractor deductions in the construction industry by S.I. 1975/1960, to windfall tax by the Finance (No. 2) Act 1997 (c. 58), section 53 and Schedule 2, paragraph 15, and to stamp duty penalties by S.I. 1999/2537; amended by the Finance Act 1989 (c. 26), section 154, by the 2001 Act, section 3 and the schedule, Part 2, and by the 2002 Act, section 61 and schedule 3, Part 1, paragraph 11.

(**3**) 1971 c. 58; section 32 was relevantly amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13 and the 2002 Act, section 43, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c. 48).

(**4**) 1983 c. 53; paragraph 3(3) was substituted by the 1987 Act, section 74(1) and Schedule 4, paragraph 3 and amended by the 2001 Act, section 3 and the schedule, Part 2, and the 2002 Act, section 61 and schedule 3, Part 1, paragraph 14.

(**5**) 1987 c. 47; paragraph 7 was repealed in part by the Local Government Finance Act 1992 (c. 14), section 149 and Schedule 13, Part IV, and relevantly amended by the Local Government Finance Act 1992 (c. 14), section 137 and Schedule 12, paragraph 36, and by the 2002 Act, section 61 and schedule 3, Part 1, paragraph 18. See section 29 for the definition of "prescribed".

(**6**) 1988 c. 36; section 5 was relevantly amended by section 2(3) of the Civil Evidence Act 1988 (c. 32) and paragraph 45 of Schedule 4 to the Children (Scotland) Act 1995 (c. 36). See section 51 for the definition of "prescribed".

(**7**) 1992 c. 14; paragraph 2(2) of Schedule 8 was relevantly amended by Local Government etc. (Scotland) Act 1994 (c. 39), section 180(1) and Schedule 13, paragraph 176(18), and the 2002 Act, section 61 and schedule 3, Part 1, paragraph 22.

(**8**) 1994 c. 39; Schedule 10 confers power to make orders for recovery of diligence by virtue of that Schedule, which power is exercised in S.I. 1996/325; paragraph 2 of Schedule 10 was amended by the 2001 Act, section 3 and the schedule, Part 2, and by the 2002 Act, section 61 and Schedule 3, Part 1, paragraph 23.

(**9**) 1996 c. 8; paragraph 13 was prospectively repealed by the Finance Act 1997 (c. 16), section 113 and Schedule 18, Part V(2).

(**10**) 1997 c. 16; section 52 was relevantly amended by the 2001 Act, section 3 and the schedule, Part 2, and by the 2002 Act, section 61 and schedule 3, Part 1, paragraph 26.

Attachment (Scotland) Act 2002(**11**) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt–

(a) may be cited as the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002;

(b) shall come into force on 30th December 2002; and

(c) shall be inserted in the Books of Sederunt.

(2) In this Act of Sederunt, "the 2002 Act" means the Debt Arrangement and Attachment (Scotland) Act 2002.

Rules for Applications in the Sheriff Court under the 2002 Act

2. Schedule 1 to this Act of Sederunt provides rules for applications in the sheriff court under the 2002 Act.

Summary warrants

3.—(1) Schedule 2 to this Act of Sederunt provides forms for summary warrants, and any reference in this article to a form means the form so specified in Schedule 2.

(2) A summary warrant for recovery of any sum shall be in form A or B, as the case may be.

Minor and consequential amendments

4. Schedule 3 to this Act of Sederunt (which contains minor amendments and amendments consequential upon the provisions of the 2002 Act) shall have effect.

Revocation and savings

5. The Acts of Sederunt mentioned in column (1) of Schedule 4 to this Act of Sederunt are revoked to the extent specified in column (3) of that Schedule except–

(a) in relation to a debt in respect of which a warrant sale has been completed before the date on which section 58 of the 2002 Act comes into force ("the commencement date");

(b) in relation to a debt in respect of which a poinding was executed before the commencement date if–

(i) the poinding was executed at a place other than a dwellinghouse; and

(ii) a warrant sale is completed in respect of the poinding on or before 31st March 2003; or

(c) in relation to an application for sequestration for rent on which warrant was granted on or before the commencement date.

(**11**) 2002 asp 17.

Edinburgh,
19th December 2002

W DOUGLAS CULLEN
Lord President I.P.D.

SCHEDULE 1 Article 2

RULES FOR APPLICATIONS IN THE SHERIFF COURT UNDER THE DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002

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APPENDIX 1 FORMS
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CHAPTER 1

GENERAL

Citation and interpretation

1.—(1) These Rules may be cited as the Rules for Applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002(**12**).

(2) In these Rules–

"the 2002 Act" means the Debt Arrangement and Attachment (Scotland) Act 2002;

"authorised lay representative" means a person to whom section 32(1) of the Solicitors (Scotland) Act 1980(**13**) (offence for unqualified persons to prepare certain documents) does not apply by virtue of section 32(2)(a) of that Act;

"decree" and "document of debt" have the meanings given to them in section 10(5) of the 2002 Act; and

"exceptional attachment order" has the meaning given to it by section 47(1) of the 2002 Act;

(3) Any reference in these Rules–

(a) to a section is to be construed as the section bearing that number in the 2002 Act;

(b) to a specified paragraph is to be construed as a reference to the paragraph so numbered or lettered in the provision in which that reference occurs; or

(c) to a numbered form means the form so numbered in Appendix 1 to these Rules, or a form of substantially the same effect with such variation as circumstances may require.

(4) The glossary in Appendix 2 to these Rules is a guide to the meaning of certain legal expressions, but is not to be taken as giving those expressions any meaning that they do not have in law generally.

Dispensing power of sheriff

2.—(1) The sheriff may relieve any party from the consequences of any failure to comply with the provisions of these Rules which is shown to be due to mistake, oversight or other excusable cause, on such conditions as the sheriff thinks fit.

(**12**) 2002 asp 17.
(**13**) 1980 c. 46; section 32(1) was relevantly amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 56 and Schedule 1, Part I, paragraph 9, the Solicitors (Scotland) Act 1988 (c. 42), section 6 and Schedule 1, paragraph 7, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 74 and Schedule 8, Part II, paragraph 29, and S.S.I. 2000/121.