



Scotland

Narrative National Report

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Table of Contents

PART I: LEGAL FRAMEWORK	4
I.1 Legislation affecting civil enforcement.....	4
I.2 Enforceable titles.....	5
I.3 Service of documents to parties and third parties	6
I.4 Legal remedies, appeal and objection.....	8
I.5 Postponement, suspension and termination of enforcement	9
I.6 Counter enforcement	10
I.7 Objects and exemptions on enforcement	11
I.8 (Court) penalties and fines	12
I.9 Access to information on the domicile and assets of the debtor	13
PART II: ORGANIZATION OF ENFORCEMENT.....	14
II.1 The status of the judicial officer.....	14
II.2 Supervision over enforcement	16
II.3 Access to the premises.....	16
II.4 Obstructing the judicial officer from carrying out enforcement	17
II.5 Time of enforcement	18
II.6 Mediation	19
PART III: ENFORCEMENT PROCEDURES	19
III.1 Initiation and end of the enforcement procedure	19
III.2 Enforcement against movable assets to settle pecuniary claims	21
III.3 Attachment on the bank account of the debtor.....	24
III.4 Enforcement against savings deposits and current accounts.....	26
III.5 Enforcement on immovable property	26
III.6 Enforcement against wages and other permanent pecuniary income	28
III.7 Attachment under the debtor’s debtor.....	30
III.8 Enforcement against shares	32
III.9 Other attachment procedures	32
III.10 Handing over movable assets	34
III.11 Enforcement in reinstatement of employee to work	35
III.12 Eviction	36
III.13 Enforcement of obligations to act, refrain from acting or suffer action.....	38
III.14 Sequestration of goods	39

III.15 Enforcement of foreign enforceable documents from non-EU States	40
<i>PART IV: ENFORCEMENT COSTS</i>	40
IV.1 The costs of enforcement	40
<i>PART V: LINKS, LITERATURE AND SOURCES</i>	43



PART I: LEGAL FRAMEWORK

I.1 Legislation affecting civil enforcement

Since its establishment in 1999, the Scottish Parliament has been responsible for regulating both the criminal and civil law. To achieve this important function, it continues to monitor and amend all domestic legislation, including regular reviews of civil enforcement and debtor protection measures. In addition, the parliament has adapted and implemented, both UK wide and European legislation, such as the GDPR.

In Scotland, there are several sources of law, both primary and secondary legislation which regulate enforcement procedures. An enforceable title or court decision is commonly known as a ‘decree’. After a decree has been granted, or similar enforceable title from another country has been successfully registered in Scotland, it can then be passed to a judicial officer to be enforced against the debtor. The enforcement process in Scotland is known as “executing diligence”.

The legislation surrounding the diligence process, bankruptcy and recovery of heritable property has been revised in recent years, allowing it to function effectively in modern Scottish society. The challenge for our legislators, is to strike the right balance by supporting the commercial interests of the creditor, without causing harm and distress to the debtor. In addition, we have an effective Money Advice sector, which provides free, impartial advice to debtors, helping them to engage with their creditors, often resulting in accessing statutory controlled, repayment schemes which will effectively pause enforcement.

Civil enforcement, relating to debt is performed by a Sheriff Officer or Messenger at Arms (also known as judicial officers).¹ The principal legislation which regulates enforcement are: Debtors (Scotland) Act 1987;² Debt Arrangement and Attachment (Scotland) Act 2002³ and the Bankruptcy and Diligence etc. (Scotland) Act 2007.⁴

These statutes provide various methods of enforcement, available to a creditor to recover money owed. Methods of enforcement include service of a charge for payment, attachments, money attachments and exceptional attachment orders, earning arrestments, third party arrestment and inhibitions. Each of these methods will be explained fully, elsewhere throughout this report.

Bankruptcy in Scotland is known as “sequestration”. The law of bankruptcy is covered under specific legislation; The Bankruptcy (Scotland) Act 2016⁵ which governs the sequestration of an individual, including living and deceased persons, partnerships and limited partnerships (but not limited liability partnerships), a trust, body corporate

¹ A sheriff officer is commissioned to work for the local sheriff courts in Scotland. There are 39 sheriff courts based in various towns and cities throughout the country. A messenger-at-arms is commissioned to work for the Court of Session in Scotland which is the highest civil court.

² Full legislation available on: <http://www.legislation.gov.uk/ukpga/1987/18/contents>.

³ Full legislation available on: <http://www.legislation.gov.uk/asp/2002/17/contents>.

⁴ Full legislation available on: <https://www.legislation.gov.uk/asp/2007/3/contents>.

⁵ Full legislation available on: <http://www.legislation.gov.uk/asp/2016/21/contents>.

or unincorporated body. The Insolvency Act 1986⁶ sets out the regulations regarding the winding up of a company or limited liability partnership. There are other minor pieces of legislation which also provide rules in relation to bankruptcy, which will be covered fully in this report.

The law in Scotland also provides controlled processes, to allow a creditor to recover possession of heritable or immovable property, such as land and buildings, again subject to significant debtor protection. This process is commonly known as “eviction”, always following upon the issue of a decree or enforceable title. The legislation is strict and must be adhered to in order to prevent an individual being removed from the property unlawfully.⁷

The foregoing is a high-level overview of the legal structure in Scotland. The judicial officer remains a key actor by continuing to provide an efficient and effective service, by hand serving claims to initiate court proceedings and highly regulated enforcement, providing a fair and proportionate legal framework, for the benefit of all stakeholders.

1.2 Enforceable titles

In Scotland, it is primarily court decisions, known as an “extract decree” which are enforced, typically in relation to a personal, commercial or family law dispute. This is by far the most common type of enforceable title used, always following a court process, where both parties will be represented in court and a judge will pronounce his/her decision or “decree”. Any judgment or document to be enforced in Scotland must contain specific wording: “**grants warrant for all lawful execution hereon**”.

At the end of the litigation process, a decree will become enforceable after a brief period of time to allow for an appeal. If an appeal has been lodged against the judgement, then enforcement cannot proceed until the appeal has been disposed of. Where the court action goes undefended, then the creditor must wait either 7, 14 days or 28 days, dependent on the debt value and process used. Thereafter, the judgment can be issued by the court and passed to a judicial officer for enforcement.

We also have specialist, dedicated courts, called tribunals, which deal with employment disputes and private landlord matters. These tribunals are low cost and relatively quick but follow the same legal principals as the traditional court process, with a “decision” issued, which is the same as an extract decree.

Another type of enforceable title is known as an “extract registered document” This is available where the parties have agreed a contract, possibly a financial arrangement following divorce, a commercial lease or commercial loan. There must be a specific clause within the contract, where the parties agree to register the agreement for “preservation and execution”. Once registered if there is default, the party in whose favour the agreement is made, may instruct “summary diligence”, as they can proceed

⁶ Full legislation available on: <http://www.legislation.gov.uk/ukpga/1986/45/contents>.

⁷ Various pieces of legislation regulate the procedure of recovering property and more information can be found in Chapter III.12.

directly to enforcement.

Typically, the contract will be registered in the Court of Session (Scotland's supreme civil court). A valid copy of the contract, properly authenticated and bearing warrant for execution, issued by the clerk of the court, is the equivalent to an extract decree. As such, enforcement can proceed immediately by the judicial officer, who has exclusive responsibility for providing this service.

1.3 Service of documents to parties and third parties

In Scotland, most civil court actions are initiated by a lawyer using registered postal service or by the Sheriff Clerk (court official in charge of the administration in court), always in accordance with rules of service. It is also possible for direct transmission from the creditor's lawyer to the debtor's lawyer, where there is agreement to accept service in this manner.

The judicial officer is primarily involved with the hand service of documents where registered postal service has failed or where the rules of service do not permit postal service. The judicial officer may also serve by post, if specifically requested by a client. Typically, the judicial officer is instructed by a lawyer representing the creditor. This process of formal intimation is known as "citation". When serving most documents, the judicial officer will be accompanied by a colleague, known as a "witness" to verify proper legal service. We believe that this is a unique feature of the Scottish legal system.

Documents which are to be served are normally in a set format prescribed by legislation. Judicial officers have the relevant technical knowledge, of which forms are to be used and how they are completed. Although the creditor's lawyer or the sheriff clerk can serve documents which initiate proceedings, after a judgement (decree) has been pronounced, the creditor will have to instruct a judicial officer who has exclusive responsibility for enforcement. This enforcement stage is known as "diligence".

Where postal service has failed or not applicable, then the creditor will instruct hand service by a judicial officer operating in the geographical area where the debtor resides or operates their business.⁸ Following judgment, moving to the enforcement stage, most documents require to be served by hand by a judicial officer, following similar rules for citation. The main exception being, service of an earnings arrestment⁹ which will be done by registered post, to the debtor's employer. Failing which, service can be done by any of the methods of hand service detailed below.¹⁰

The methods of service of documents are contained within specific legislation, however they are broadly similar and can be applied across the service of most

⁸ Hand service is the umbrella term to cover service of documents by a judicial officer requiring them to attend the debtor's address and attempt to serve at their home/business.

⁹ An earnings arrestment requires the employer of a debtor to make deductions from their pay to pass onto the creditor. Full details of an earnings arrestment are contained within Chapter III.6.

¹⁰ Section 70 of the Debtors (Scotland) Act 1987 allows for service of an Earnings Arrestment to take place in this manner. Legislation available on:

<http://www.legislation.gov.uk/ukpga/1987/18/section/70>.

documents. Where a judicial officer is required to serve a document by hand service, there are several options available. Typically, the judicial officer will attempt to serve documents at the place where the debtor resides or at their place of business.¹¹ Should the officer meet with the debtor personally, the officer will hand the documents to the debtor; this is known as personal service. This method of service can be done in any public or private place and does not have to take place at their place of residence or business.

If the judicial officer has been unsuccessful in meeting with the debtor and serving personally, they can formally serve the documents by leaving them with a resident at the debtor's dwelling place, or with an employee at their place of business. The judicial officer will ask their name and relationship to the debtor, which will be narrated in the certificate of service which is returned to the instructing party. However, the individual is not obliged to give this information and if declined, the certificate of service would describe this information as being "refused".

Should the judicial officer be unsuccessful in either serving personally or leaving the documents with a resident/employee, the judicial officer will make rigorous enquiries to establish that the debtor resides at such address or operates a business from an address. Discreet enquiries are often made with neighbours in the area and the officer will not disclose any information regarding their visit to any neighbours interviewed. Should the officer be successful in establishing that the debtor either resides or has a place of business at an address, the officer can then deposit the documents into such an address. Although this is commonly done by posting them through the letterbox, the legislation allows for documents to be deposited in any lawful way.¹²

If for any reason, a judicial officer is unable to deposit the documents after making enquiries, the officer has the authority to leave the documents at the debtor's dwelling place or place of business in such a way that it is likely to come to their attention. Although legislation does not specify how documents should be left, in common practice this would be done by the officer affixing the documents to the door of the property or other noticeable place.¹³

Legislation allows for service of a document prior to a judgment being pronounced where the debtor's whereabouts are unknown by two methods. The creditor's lawyer can request permission from the court to serve the documents by either publishing a notice on the walls of the court which has jurisdiction over the last known address of the debtor, or by publishing an advertisement in a specified newspaper, which circulates in the location of the debtor's last known address. Due to the COVID-19

¹¹ A debtor's place of business must be the place they trade from as an individual/sole trader and not as a company or other legal entity. However, a document can be served personally on a debtor at any place.

¹² Examples of this include putting documents through an open window or where there is no letterbox or sliding the documents under the door.

¹³ Following service of a document by depositing or leaving in such a way, the judicial officer is thereafter required to send a copy of the document to the debtor by first class post as soon as practical after service.

pandemic, emergency provisions have been recently introduced, permitting intimation and publication on the official website of Scottish Courts and Tribunals, given that most smaller courts will have been closed during the lockdown phase of the crisis.

1.4 Legal remedies, appeal and objection

Typically, a debtor will be able to challenge the enforcement process at two stages, after decree (judgement) has been granted, but not yet enforced and after enforcement has commenced. The processes are significantly different and can be summarised as follows.

After judgement: After the court process has been completed by the issue of a decree (judgement), assuming that the debtor did not respond to the claim or lodge a formal defence, then dependent on the value of the claim, there is a process to effectively take the court process back one stage, so that the debtor can challenge the granting of the decree.

If the debt is less than £5000.00 then the procedure is known as applying to 'recall a decision'.¹⁴ Typically, this will occur after the judicial officer has intimated the decree by serving a charge for payment. This must be done no later than 14 days after service of this formal command to pay.

If the debt is greater than £5000.00, then a more formal process is required, typically processed by a lawyer, who will draft a “reponing note” which once lodged with the court, will then be served on the creditor.¹⁵ Again, this will result in the action going back to court and the defender will be able to lodge defences. It will be for the judge to decide the merits of the case and either cancel the decree or uphold the earlier decision.

After enforcement: Where the debtor has been unsuccessful in defending the action or has simply ignored the court process, then the creditor will proceed to enforce, by instructing a judicial officer to take the most suitable action to recover the money owed. Typically, this will be by way of an earnings arrestment, seizure and auction of moveable goods or possibly a bank arrestment. In most cases, the judicial officer will intimate the decree by serving a “charge a payment” and report to the creditor on the most effective recovery options.

Following a major refresh of enforcement legislation around 1987, simple, informal

¹⁴ Part 13 of the Act of Sederunt (Simple Procedure) 2016 details how and when a decision may be recalled where the simple procedure has been used, available on: <https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/sheriff-court---civil-procedure-rules/ordinary-cause-rules>, and Chapter 24 of the Act of Sederunt (Summary Cause Rules) 2002 details the procedure for recalling a decision pronounced under the summary cause procedure, available on: <https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/sheriff-court---civil-procedure-rules/summary-cause-rules>.

¹⁵ Full details regarding a “reponing note” are contained within Chapter 7 of the Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993. The Scottish Courts website has links to all the up-to-date legislation and this chapter is available on: <https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/sheriff-court---civil-procedure-rules/ordinary-cause-rules>.

processes were introduced to provide the debtor with protection and an option to challenge the measures used by the judicial officer to recover the debt. The focus was to make it easy and cost free, for the debtor to attend court for an informal hearing before the judge, who will consider all the circumstances and determine if the judicial officer has acted fairly and within the scope of the specific procedural rules. It is also possible for a third-party, such as a spouse or a business associate, who has been implicated in the enforcement process, to make a similar informal application to the judge, who will consider any claim on assets, owned in common or in full by a third party.

Due in part to the professional status and flexible approach of the Scottish judicial officer, such claims are very infrequent but do represent an important feature of a modern, balanced and effective civil enforcement system.

1.5 Postponement, suspension and termination of enforcement

In Scotland, after a judgement or other enforceable title has been issued, there are several situations which can lead to the suspension and termination of enforcement. A judicial officer can suspend or terminate enforcement at any time, if directed by the creditor. Should the debtor wish to stop or postpone enforcement, then there are various statutory schemes available. Typically, the debtor will engage with a free or fee-paying Money Advisor who will assess the debtor's financial circumstances and recommend the most suitable solution. It is worth noting that the provision of this service, has become a significant business opportunity for specialist companies, as they are authorised to charge for their service. It is also possible to access free money advice, which is provided by charities supported by government and other sources.

Where the debtor has numerous creditors and is unable to negotiate individual repayment plans, then there are two main options. Either a statutory controlled payment arrangement known as a Debt Arrangement Scheme (DAS) or formal insolvency, which may include a Trust Deed or full Bankruptcy. Both will suspend enforcement whilst in operation.

A debtor or money advisor on their behalf, will apply to the office of the Accountant in Bankruptcy (AiB) through an online portal for a DAS, which automatically stops enforcement. All creditors will be contacted and offered a repayment plan, which will typically be accepted. The debtor will then make regular payments to a third-party agency called a Payment Distributor, which in turns pays the money to each creditor within the scheme. If the debtor defaults, then a creditor can apply for "revocation" which will cancel the scheme and enforcement can then continue. This process has proven to be fairly popular, as the creditor receives a better financial return when compared to Bankruptcy or Trust Deeds. Also, the debtor will be fully protected from enforcement, whilst the scheme is in operation.

Should a debtor decide to proceed along the formal insolvency route, then there are two options i.e., a Trust Deed or Bankruptcy. For both procedures, a specially qualified accountant, known as an Insolvency Practitioner, will be appointed to manage the formal process. As this process is supervised by the court, then a lawyer will also be

used to deal with the formal court-based procedure. The main difference between the two processes is that with a Trust Deed, the debtor commits to a lengthy repayment arrangement with their creditors, whereas Bankruptcy will effectively write off all the debt.¹⁶

Where the debtor is struggling to deal with a single debt, then again there are options. One possibility is a Moratorium on Diligence, which is a simple online application to the AiB. This automatic order will provide relief from enforcement proceedings for 6 weeks (recently extended to 6 months due to COVID 19). The purpose of the application is to allow the debtor a period of ‘breathing space’ and time to regain control of their finances, seek help and/or take further steps to resolving financial problems.¹⁷

1.6 Counter enforcement

The concept of “Counter Enforcement” has never really been a feature of the Scottish enforcement process. There is an opportunity for the debtor to lodge a “counter claim” in course of litigation process and before judgement is granted, however this is rather uncommon. After the enforcement process has started, then there are several options available to pause, either through a statutory debt repayment scheme or to challenge the use of a specific enforcement action or procedure.

Since its establishment in 1999, the Scottish Parliament, which is responsible for regulating both the criminal and civil law, has carried out a series of very thorough reviews of debtor protection measures. This is to ensure that citizens are not too badly impacted by debt and best able to deal effectively with their creditors. This resulted in changes to bankruptcy, enforcement legislation and the creation of a statutory repayment scheme called the “Debt Arrangement Scheme”, all designed to encourage negotiation and repayment, without the need for enforcement.

One specific reform in 2002, which replaced the historic “poinding” procedure, with a new form of seizure within the debtor’s dwelling place, really changed the enforcement landscape in Scotland. The new application process effectively made the process redundant, as the creditor or judicial officer, had to demonstrate that the debtor owned sufficient luxury goods, to make the enforcement process commercially viable. This change in legislation, meant that it was no longer common practice for the judicial officer, to enter the debtors’ homes to inventory and value their personal goods. This change also meant that level of disputes and confrontation, between

¹⁶ The Bankruptcy (Scotland) Act 2016 and subsequent regulations; The Bankruptcy (Scotland) Regulations 2016 cover the bankruptcy of a debtor (except for a company or limited liability partnerships). Available on: <http://www.legislation.gov.uk/asp/2016/21/contents> and <https://www.legislation.gov.uk/ssi/2016/397/contents/made> respectively. The insolvency of a company or limited liability partnership is regulated by The Insolvency Act 1986, available on: <https://www.legislation.gov.uk/ukpga/1986/45/contents>.

¹⁷ Full details surrounding moratorium on diligence are contained within the Bankruptcy (Scotland) Act 2016, available on: <http://www.legislation.gov.uk/asp/2016/21/part/15>.

judicial officers and the general public, very significantly reduced.¹⁸

Today, the attachment of earnings and bank accounts, are the most common and effective enforcement tools. Should the debtor wish to challenge the use of such an enforcement procedure, then they can make an application to the clerk of court, who will arrange and intimate a hearing for all stakeholders. This will provide the debtor an opportunity to present their challenge to the judge (Sheriff), in an informal court hearing. The Sheriff will decide and make an order, possibly cancelling or restricting the enforcement procedure. Typically, expenses are not awarded but any statutory fees are likely to be cancelled, assuming the debtor is successful.¹⁹

In the context of the aforementioned debtor protection culture and informal appeal process, it is not necessary or common practice for the debtor to seek any form of counter enforcement in Scotland. It is also important to remember that the judicial officer must act fairly and proportionately at all times, strictly in accordance with the regulations, which have been designed to strike the right balance, between the interests of both creditor and debtor.

I.7 Objects and exemptions on enforcement

Since its establishment in 1999, the Scottish Parliament, which is responsible for regulating both the criminal and civil law, has carried out a series of very thorough reviews of debtor protection measures. This is to ensure that citizens are not too badly impacted by debt and best able to deal effectively with their creditors. One specific reform in 2002, which replaced the historic “pounding” procedure, with two new types of seizure, also modernised certain categories of assets which are to be protected for the benefit of the debtor and their family.

In Scotland, there are two types of seizure for moveable goods, “Attachment” – typically used in a business environment and “Exceptional Attachment” – specifically used within the debtor’s home.²⁰

If the judgement is against a debtor operating a business, then Attachment, may well be an effective enforcement process. However, there are some restrictions, detailed within section 11 of Debt Arrangement and Attachment (Scotland) Act 2002.²¹

Generally speaking, the debtor must not be deprived of an opportunity to earn a living, and must be left with tools of their trade up to a value of £1000.00 or a motor vehicle to the value of £3000, if it is necessary for their business. A mobile home which is the

¹⁸ The new process, known as an exceptional attachment is heavily regulated within the Debt Arrangement and Attachment (Scotland) Act 2002, available on:

<http://www.legislation.gov.uk/asp/2002/17/part/3>.

¹⁹ Details regarding an application to recall or restrict an arrestment are contained within Part 3A of the Debtors (Scotland) Act 1987, available on: <http://www.legislation.gov.uk/ukpga/1987/18/part/3A>, and an application for review on an earnings arrestment may be made under section 50 of the Debtors (Scotland) Act 1987, available on: <http://www.legislation.gov.uk/ukpga/1987/18/section/50>.

²⁰ Both procedures are regulated and executed in accordance with the Debt Arrangement and Attachment (Scotland) Act 2002, available on: <http://www.legislation.gov.uk/asp/2002/17/contents>.

²¹ Legislation available on: <http://www.legislation.gov.uk/asp/2002/17/section/11>.

principal residence is also exempt from seizure and sale.

A seizure of goods within the debtor's home is more complex with significantly more debtor protection. Within SCHEDULE 2 of this same legislation, we find clear guidance on what is deemed to be a "Non-essential Asset". In effect, by default the legislation describes what must be regarded as "essential" for the debtor and their family to comfortably occupy the home and enjoy a normal standard of living, without detriment or hardship.²² In reality, this means that only what might be deemed luxury goods, such as expensive works of art, HI-FI systems, large screen televisions etc., would be available for seizure and sale.

Another important debtor protection feature, which ensures that the debtor is not treated too harshly, applies to both attachments on bank accounts and earnings. This is to ensure that the debtor is left with sufficient money to pay for essential items, such as rent and food. This protected amount is reviewed on an ongoing basis by Scottish Ministers and presently equates to £529.90 for a monthly earnings attachment and the same amount must be left, in the context of an attachment on the debtor's personal bank account.²³ This protected sum is not applicable if it is a business bank account.

In the context of foreign judgements, registered for enforcement in Scotland, any such judgement, would be enforced, strictly in accordance with the aforementioned provisions and regulation.

1.8 (Court) penalties and fines

In Scotland there are no fines which can be imposed upon a debtor for failure to adhere to the requests of a judicial officer. The only penalty which can arise during enforcement proceeding is where a debtor moves, damages or destroys any articles subject to seizure (attachment), where the court may order a second seizure to take place; order the revaluation of any damaged articles or make an order for the debtor to pay a sum of money to the creditor, relative to the value of the damage or destruction of the article.²⁴

In Scotland there is also a court process for dealing with debtors who deliberately refuse to cooperate or defy the will of the judge. This process will result in the issuing

²² A full list of the exempt items is available on:

<http://www.legislation.gov.uk/asp/2002/17/schedule/2>.

²³ The Debtors (Scotland) Act 1987 details that a protected sum must be left in a debtor's account subject to criteria and The Diligence Against Earnings (Variation) (Scotland) Regulations 2018 details that this sum, and the protected sum in regard to monthly earnings is £529.90. Both pieces of legislation are available on: <http://www.legislation.gov.uk/ukpga/1987/18/section/73F> and <http://www.legislation.gov.uk/ssi/2018/345/made> respectively.

²⁴ The Debt Arrangement and Attachment (Scotland) Act 2002 details unlawful acts before attachment and the sanctions for a debtor or third party acting in such a way. Full details are contained within section 21 of the act, available on: <http://www.legislation.gov.uk/asp/2002/17/section/21>.

of a specific judgment, known as a “decree ad factum praestandum”.²⁵ This type of court order may relate to the delivery of an asset or possibly in a family action, where one spouse has deliberately frustrated the court process.

This is possibly the most serious situation for any belligerent debtor, as it is the only instance where they may face imprisonment under the Scottish civil enforcement system. The maximum period of incarceration is 6 months; however, such orders are very rare, and it is more likely that the debtor will reluctantly comply or at worst, be imprisoned for several days. That said, it does remain a potent and effective sanction available to Scottish judges, for dealing with the most obstructive and difficult individuals.

1.9 Access to information on the domicile and assets of the debtor

At present in Scotland, there is limited access to relevant databases which might provide useful intelligence to assist the judicial officer in determining the most efficient and effective enforcement strategy. In general, there are three categories:

Public Data: The general public and judicial officers have free access to certain databases, including the land register, births, deaths and marriages. There is also controlled access for certain organisations, including judicial officers, to the UK vehicle data base. Access is only permissible if the officer is in possession of a judgement or other enforceable title.

Commercial CRA Data: There are several larger, commercial organisations operating within the UK, specialising in the provision of credit reference information, used extensively by banks for commercial risk management and by creditors when deciding if it is appropriate to initiate debt collection or litigation. Judicial officers often use this type of third-party data to trace debtors or help build a personal profile, to evaluate the prospects of successful enforcement. Normally there is a “pay per click” tariff which will be absorbed by the user or passed on to the client.

Restricted Access, State Controlled Data: Regrettably, judicial officers in Scotland are not permitted access to state-controlled data, such as health records, social security, tax, employment etc. We have very strong data protection traditions and controls, including all GDPR provisions. There was an attempt to rectify this issue, when enforcement legislation was last reviewed in 2007, with the introduction of “Disclosure of Information Orders” into primary legislation. However, for political reasons, the required secondary legislation has yet to be developed. This issue is presently being re-considered by Scottish Ministers; however, we have no idea if there will be any significant developments in the near future. This is a source of great frustration for Scottish judicial officers, as we are certain that suitably controlled access, would significantly improve access to justice for creditors, whilst still protecting the human rights of law-abiding citizens.

²⁵ The Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 contains the regulations regarding a decree ad factum praetandum, available on: <https://www.legislation.gov.uk/ukpga/Geo6/3-4/42/section/1>.

In respect of accessing information from banks, again due to data protection, there are significant controls to protect the debtor. Only after a judgement has been obtained and a “bank arrestment” served, or possibly an “arrestment on dependence” which is protective measure, will a bank provide any indication if the debtor has money deposited. The bank has three weeks to declare if an arrestment has been successful and the money is automatically released after 14 weeks.²⁶ There is no central register of bank accounts and judicial officers have no way of proactively establishing this information. For this reason, the use of “bank arrestment” is highly speculative and normally used where a creditor has specific intelligence, possibly from a previous business transaction.

Given the nature of their official function, judicial officers must comply with all current data protection regulations. This is a mandatory requirement, fully supported by the UK wide legislation and the code of conduct of the Society of Messengers at Arms and Sheriff Officers. There have been a number of complaints over the years, to the UK regulator, namely the Information Commissioner’s Office (ICO), relating to Sheriff Officer activity. Fortunately, the regulator takes a pragmatic and flexible approach and on the basis that the officer has operated within the scope of their official duties, then thus far there have been no significant breaches or offences committed.

There are real practical difficulties, where the judicial officer receives more than one file for the same debtor. It would be an offence to access one file and to then use that data for another enforcement procedure. The officer must use their best judgment and act with complete integrity in such matters.

As previous stated, we have a liberal and possibly old-fashioned approach to personal privacy law in the UK. As such the debtor enjoys significant privilege, in terms of non-engagement with their creditors. In respect of traditional enforcement, there is no requirement to cooperate with the judicial officer or volunteer specific details, relating to assets, savings or other forms of investment. Only in the event of full bankruptcy, will the debtor be compelled to account for and divulge their full personal assets.

This in part, is the reason why “Information Disclosure Orders”²⁷ were introduced by the Bankruptcy and Diligence (Scotland) Act 2007. Until the necessary secondary legislation is forthcoming, then the debtor will continue to be protected. It therefore falls to the judicial officer, to develop the best interview skills and investigative resources, to access a combination of public and commercial data, to help develop a good understanding of the debtor’s financial position and recommend the most effective enforcement process, based on this information.

PART II: ORGANIZATION OF ENFORCEMENT

II.1 The status of the judicial officer

²⁶ There is no obligation upon the bank to declare if an arrestment has failed. These provisions are contained within The Debtors (Scotland) Act 1987, available on:

<http://www.legislation.gov.uk/ukpga/1987/18/section/73G>.

²⁷ The provisional legislation is contained within section 220 of the 2007 act, available on:

<http://www.legislation.gov.uk/asp/2007/3/part/16>.

In Scotland, we have a very long and strong tradition for effective civil enforcement with a strong emphasis on the need for the highest moral and professional standards to operate as an effective and trusted officer of court. All judicial officers hold public office, in the form of “personal commission” issued by the relevant senior court judge to operate in their jurisdiction. Scotland has 39 sheriff courts which are located within 6 ‘sheriffdoms’ (larger geographical districts). Judicial officers servicing such courts are known as Sheriff Officers, duly authorised to work throughout a sheriffdom or restricted to specific court districts. It is not uncommon for a judicial officer to be commissioned in several sheriffdoms but there is a separate, administrative process for each appointment.

The supreme civil court in Scotland is the Court of Session, which deals with more complex and higher value claims. Judicial officers servicing this court are known as a Messenger at Arms. They are authorised to work throughout Scotland without geographical limitation, whilst serving any documents in relation to an action from the Court of Session. A Sheriff Officer must be qualified for at least two years, before they can apply to become a Messenger at Arms, which is seen as a normal career path for many officers.²⁸

In Scotland, judicial officers are a liberal profession, either self-employed or working for a larger professional practice. The profession is highly regulated, in terms of specific legislation and oversight from the statutory governing body, the Society of Messenger at Arms and Sheriff Officers (SMASO) which has robust codes of conduct for dealing with the general public, clients and fellow officers of court. Every judicial officer carries official identification which must be produced when the officer is requested to do so.

The SMASO constitution and code of conduct requires officers to act honestly and with integrity. They are required to treat people fairly and with compassion, especially individuals whose circumstances have left them in a vulnerable situation, be it ill health, severe poverty or other life changing circumstances. Officers must act and dress professionally whilst performing their duties and must refrain from doing anything which could tarnish the profession.

Should any person be concerned or dissatisfied with an officer’s conduct, then they are able to make a formal complaint. Complaints can be made to the firm which employs the officer concerned, which will be fully considered and ideally quickly resolved. Failing which, they can also lodge a complaint with SMASO, which will attempt to resolve the issue internally, failing which referring the matter to a higher authority, typically the relevant Sheriff Principle or Court of Session, dependent on the jurisdiction.

An officer who admits that they are guilty of misconduct or where the Sheriff Principal finds an officer guilty following disciplinary proceedings, then that officer may be

²⁸ The legislation regulating the appointment of a sheriff officer and messenger-at-arms is contained within the Act of Sederunt (Messenger-at-Arms and Sheriff Officer Rules 1991), available on: <http://www.legislation.gov.uk/uksi/1991/1397/part/III/made>.

suspended from practice for a specified period or indefinitely. The officer's functions may be restricted, or they may be required to pay a fine.

It is worth noting, that there have been very few instances, where formal proceedings have been brought against an officer for alleged misconduct. We believe this is a positive reflection of the professional status of judicial officers in Scotland and the effectiveness of the informal, internal processes for dealing with any aggrieved creditor, debtor, or other stakeholder.

II.2 Supervision over enforcement

There has always been a strong emphasis on the moral and professional characteristics of the independent officer of court, who holds a unique form of public office. Although the officer is self-employed, or directly employed by a larger business, to operate in any jurisdiction, they must receive a personal commission from the most senior judge (Sheriff Principal) or Court of Session for a Messenger at Arms.

To regulate this historic function, legislation has always been the primary source of control and oversight, effectively governing all aspects of the judicial officer's role and responsibility. The Court of Session (Scotland's supreme civil court) has the authority to create and bring into force, secondary legislation, known as an "Act of Sederunt" which tends to be more procedural and specific in nature, such as the regulation for fees payable to the judicial officer.

Another important oversight function, is performed by the Society of Messenger at Arms and Sheriff Officers (SMASO), being the only statutory appointed, professional body for judicial officers. This controlling body has established a constitution, by-laws, and codes of conduct which every officer must adhere to. These detail how an officer should conduct themselves when dealing with the general public, clients and fellow officers of court.

Unlawful practices, excessive charging of fees and any misuse of an officer's power are all controlled by disciplinary proceedings. Typically, SMASO will receive and investigate any complaint, by contacting the officer concerned, who will explain their conduct and respond as appropriate. Most complaints are dealt with relatively quickly and effectively by SMASO. If it established that there has been serious misconduct, then SMASO will refer the matter to the relevant Sheriff Principal, who will conduct a more formal inquiry, in accordance with the appropriate legislation.

II.3 Access to the premises

Whilst there are several methods of diligence (enforcement) in Scotland, only when carrying out seizure of moveable goods, such as an "attachment" and an "exceptional attachment order", does a judicial officer have to enter a debtor's premises.²⁹

²⁹ For reference, an attachment is executed where the judicial officer makes an inventory of a debtor's belongings with a view to selling them to recover money owed to the creditor. An attachment cannot be executed within a debtor's home and is commonly executed in a debtor's business premises or outside their home if they own a car for example. An exceptional attachment order allows the judicial

Typically, an attachment will be in a commercial/business premise or outside the debtor's home. We have a specific process for seizing goods within the debtor's home, called an "exceptional attachment order", which requires specific permission from the judge, upon formal application. In reality, this process is very rarely used due practical and cost related factors.

Relevant legislation allows a judicial officer to enter premises and to also force access where no person is present.³⁰ No notice is required to be given to the debtor prior to executing an attachment; however, where the judicial officer is executing an exceptional attachment, there are strict rules as to when a judicial officer can enter the premises.

Whilst executing an exceptional attachment order, the judicial officer can only access the premises without giving prior notice, if a person over the age of 16 is present and they are able to understand the proceedings. If no one is present at the first visit, or where someone is present who does not meet the criteria set, the judicial officer must give a minimum of 4 days' notice prior to entering a debtor's home, to execute an exceptional attachment order. At this stage the judicial officer would be able to force access if no one is present. An application could be made to the sheriff (local court judge) to allow access without giving notice, however this decision is made by the sheriff based upon the facts provided to them.³¹

It is very important that where a judicial officer forces entry to any property, they must leave it in a suitably secure condition when the attachment process is completed.

II.4 Obstructing the judicial officer from carrying out enforcement

It is relatively uncommon for a judicial officer to be physically confronted and prevented from carrying out their duties. However, given the nature of their official function, they do occasionally come across an individual, who may be the debtor, a family member or other third party, who attempts to obstruct the due process of the law. This is clearly unacceptable in any modern, civilised environment.

Typically, the officer will use their diplomatic skills to defuse a difficult situation. Where this is simply not possible and there is a clear threat of violence or physical obstruction, then the officer will withdraw and seek police assistance.

The police will attend and support the officer by allowing the enforcement process to be completed, be it an eviction, seizure of goods or perhaps taking custody of a child in a bitter family dispute. Only where there is an infringement of the criminal law, in form of "assault" will the police intervene by cautioning and charging the offending individual. This might be aggressive and threatening behaviour, verbal abuse, spitting or

officer to enter a debtor's home and seize items from within the home (subject to items which are exempt). Both are discussed in detail in Chapter III.2 and Chapter III.9.

³⁰ Relevant legislation is contained within the Debt Arrangement and Attachment (Scotland) Act 2002, available on: <http://www.legislation.gov.uk/asp/2002/17/section/15>.

³¹ Relevant legislation is contained within the Debt Arrangement and Attachment (Scotland) Act 2002, available on: <http://www.legislation.gov.uk/asp/2002/17/section/49>.

actual physical violence.

There is another, ancient and less well-known process, known as “deforcement”. This offence specifically relates to the obstruction of a judicial officer in the course of their lawful duty. To the best of our knowledge, there has been no instances in recent years when this legal process has been applied. That said, we understand that a judge could still impose a lengthy prison sentence, if they deemed it appropriate to use the legal remedy for obstructing a judicial officer.

In terms of compelling a debtor to provide specific information, such as details of their personal assets, to assist the officer in course of enforcement, there is no effective solution, presently available in Scotland which places an obligation on the debtor to provide this type of information.

II.5 Time of enforcement

There are specific methods of enforcement which can only be executed at specified times in accordance with relevant legislation.

All forms of seizure, such as attachment of goods, money attachment or exceptional attachment (within a dwelling place) cannot be executed on a Sunday or a day which is a public holiday in the area where the enforcement is to take place. The enforcement cannot begin before 8am or after 8pm and cannot be continued beyond 8pm. An application can be made to the Sheriff (local court judge) for an order allowing the enforcement to be executed out with the times specified.³²

When executing an order to recover possession of property by way of eviction, the same regulations as detailed above also apply. A judicial officer would not be able to execute an order without specific prior authorisation, allowing proceedings to be conducted outside the detailed times.³³

It is worth noting that the fees payable to a Sheriff Officer for conducting proceedings before 9am or after 5pm are subject to a surcharge on top of the standard fee. Where enforcement is executed on a weekday (Monday-Friday) between 5pm and 10pm, a surcharge of 33.3% is chargeable and a surcharge of 75% is chargeable where enforcement is carried out on a weekday after 10pm and before 9am or on a Saturday, Sunday or a public holiday.³⁴

³² The regulations detailing the dates and times when an attachment or an exceptional attachment order are not competent are detailed within the Debt Arrangement and Attachment (Scotland) Act 2002, available on: <http://www.legislation.gov.uk/asp/2002/17/section/12>. The Bankruptcy and Diligence etc. (Scotland) Act 2007, section 176 details the days and times when it is not competent to execute a money attachment. Legislation is available on: <https://www.legislation.gov.uk/asp/2007/3/section/176>.

³³ The regulations detailing the dates and times when removing is not competent is detailed within the Bankruptcy and Diligence etc. (Scotland) Act 2007, available on: <http://www.legislation.gov.uk/asp/2007/3/section/217>.

³⁴ The fees chargeable by a sheriff officer are controlled by regulations. The regulations providing for additional fees are detailed within the Act of Sederunt (Fees of Sheriff Officers) (No 2) 2002, available on: <http://www.legislation.gov.uk/ssi/2002/567/schedule/1/made> and the table of fees currently in force is detailed within the Act of Sederunt (Fees of Messenger at Arms, Sheriff Officers and

II.6 Mediation

Dependent on the nature of the relationship and terms of the instruction from the creditor to the judicial officer, then there may well be an opportunity for the judicial officer to act as a mediator, by consulting with all interested parties and negotiating an amicable solution. It is worth noting that the officer is an independent officer of court, sworn to discharge their duties in a fair and equitable manner, for the benefit of all stakeholders. Also, after a judgment (decree) has been obtained, then debt collection is regarded as an official function, requiring the officer to proactively negotiate the best outcome for both parties.

There are no formal standards or specific regulation for the provision of this service. The judicial officer will use their best judgment and communication skills to negotiate, possibly in accordance with a client specific service level agreement. Perhaps the best example of this intermediary function, relates to the collection and enforcement of debts due to local government, for the UK property tax, known as “Council Tax”.

In this role, the judicial officer will provide a full contact, negotiation and remittance service, only reverting to the use of their enforcement powers, where the debtor has failed to cooperate or broken promises, that the debt will be paid by regular instalments. In this scenario, the creditor will have minimal involvement, instead relying on the judicial officer to be the main point of contact with the debtor, until the debt is fully recovered.

In recent years, formal mediation has become more common, typically used by lawyers, as an alternative to traditional litigation. This form of alternative dispute resolution is usually found in family and construction law. Most modern commercial contracts will direct the parties towards mediation in the first instance, however, this is a function for Scottish lawyers or other accredited experts, with no real judicial officer involvement. This is possibly an area of future diversification for judicial officers, given that they have the necessary independent status, legal background and excellent communication skills.

PART III: ENFORCEMENT PROCEDURES

III.1 Initiation and end of the enforcement procedure

Following a judgment being issued in Scotland, or an overseas judgment being issued and thereafter properly registered for enforcement, it is directly enforceable against the debtor. Most judgments issued, require a short period of time to lapse to allow an appeal to be lodged. The document is then “*extracted*” or published by the court for enforcement. Any judgment to be enforced in Scotland must contain the wording “*This extract contains warrant for all lawful execution hereon*” which enables a judicial officer to conduct enforcement proceedings. There are no further, formal procedural steps unless the judgement is later challenged by the debtor.

Shorthand Writers) (Amendment) 2018, available on:
<http://www.legislation.gov.uk/ssi/2018/126/schedule/2/made>.



Enforcement is then initiated by the creditor or their lawyer, formally instructing the judicial officer to start the process, subject to the debtor's circumstances. Typically, this will be done by a written request, containing the principal judgment and authority to proceed with formal enforcement. Any specific knowledge or intelligence the creditor might have, regarding assets belonging to the debtor should be passed to the judicial officer to aid enforcement proceedings, including any information they have regarding employment status and bank account information.

Methods of enforcement can be discussed between the judicial officer and the creditor, however, should a creditor wish to use a specific method of enforcement, they can instruct the judicial officer to proceed, only if it is compatible with current regulation. Most enforcement is initiated by the service of a *Charge for Payment* (formal command to pay) by a judicial officer and their witness at the debtor's home or business address. The debtor will not be consulted or have any say or influence in respect of the enforcement process selected by the creditor or judicial officer.

In the course of their enquires, a judicial officer may gain information surrounding a debtor's employment, bank details, house or vehicle ownership, which would enable subsequent enforcement proceedings to be undertaken. Any further enforcement proceedings would be discussed with the creditor prior to enforcement being attempted. The creditor can request a judicial officer to withdraw from enforcement proceedings at any time.

There may be circumstances which allow for enforcement proceedings to be commenced prior to a final judgment being issued. This is a preventative measure to secure money in a bank or other assets, which might be disposed of by the debtor. However, there will be a specific hearing before a judge, who must be convinced that there is a real danger that the debtor will deliberately frustrate the enforcement. In Scotland, these types of preventative measures are known as *diligence on the dependence*.

The types of preventative enforcement available before a final judgment being issued are; an *Arrestment on the Dependence*, an *Inhibition of the Dependence*³⁵ and an *Interim Attachment*.³⁶ The judicial officer can proceed with these enforcement proceedings so long as the court has granted a specific order or *interlocutor* for this purpose. All assets attached by the process will remain frozen, until a final judgment is issued, which will direct if the assets are to be conveyed to the creditor or returned to the debtor. This process will only be used where the creditor has reliable intelligence that assets are likely to be available for seizure or where there is specific information on bank or other financial transactions.

At present, in Scotland there is no effective process where the creditor or judicial

³⁵ Information and the legislative framework surrounding an arrestment or inhibition on the dependence is contained within Part 1A of the Debtors (Scotland) Act 1987, available on: <http://www.legislation.gov.uk/ukpga/1987/18/part/1A>.

³⁶ Information and the legislative framework surrounding an interim attachment is contained within Part 1A of the Debt Arrangement and Attachment (Scotland) Act 2002, available on: <http://www.legislation.gov.uk/asp/2002/17/part/1A>.

officer can effectively compel the debtor to disclose information on their assets. Also, due to data protection legislation, including GDPR, it is exceedingly difficult to access third-party databases to access relevant intelligence, which might assist with the enforcement process.

Within the context of a recent review on enforcement, primary legislation has provided the framework for a new process to compel third parties to disclose relevant information known as an *Information Disclosure Order*.³⁷ However, the required detailed, secondary legislation is still to be drafted and there is no clear timeframe for when this new process might be available to creditors or judicial officers.

III.2 Enforcement against movable assets to settle pecuniary claims

In Scotland, the seizure process on moveable property for recovery of money owed is known as *Attachment*.³⁸ An *Attachment* is executed by a judicial officer and enables the officer to inventory items (commonly referred to as *articles*) belonging to the debtor which are valued and may be later removed to sell at auction. The proceeds of the auction are transferred to the creditor after deduction of any fees due to the judicial officer. The creditor must have a valid court judgement or other enforceable title.

Following a major review of enforcement, new debtor protection measures were introduced in 2002, focusing on attachment within the debtor's home. A new type of attachment, known as *Exceptional Attachment* was introduced. It is only applicable within the home and any assets, such as a car outside the home would be seized by ordinary *Attachment*. In reality, this process is now rarely used, as it is necessary to make a specific application to court, explaining all other enforcement options have been attempted and that there are sufficient non-essential, luxury goods, which if sold will cover the cost of enforcement and make a reasonable reduction to the debt value. In practice, this is rarely the case and creditors tend to focus on other enforcement options instead.

An *Attachment* or *Exceptional Attachment* is only competent after a *Charge for Payment* (written demand for payment) has been formally served on the debtor by the judicial officer and 14 days have passed without payment or contact³⁹.

Also, there is a requirement where the debtor is a private person (non-business) that the creditor must provide the debtor with a *debt advice and information package* no

³⁷ The framework regulating Information Disclosure Orders is contained within the Bankruptcy and Diligence etc (Scotland) Act 2007, available on: <http://www.legislation.gov.uk/asp/2007/3/section/220>.

³⁸ The Debt Arrangement and Attachment (Scotland) Act 2002 sets out the legislation governing attachments. Available on: <http://www.legislation.gov.uk/asp/2002/17/part/2>.

³⁹ A charge for payment allows the debtor to make payment to the creditor of the sums due. There is a period of time which must be allowed for the debtor to make contact following service of the charge for payment. The days which must be allowed are 14 days where the debtor is in the United Kingdom or 28 days where the debtor is outside the United Kingdom or their whereabouts are unknown.

earlier than 12 weeks prior to executing the *Attachment*.⁴⁰ The judicial officer can provide this to the debtor on behalf of the creditor and complete a certificate to confirm this has been provided.

Typically, an *Attachment* will be used in respect of a business property or possibly a motor vehicle or other moveable goods. For debtor protection reasons, it cannot be used within the dwelling place of a debtor.⁴¹ There is also a list of discretionary items that are exempt from attachment, including any tools of the trade which are reasonably required for use in the debtor's profession, any vehicle which is reasonably required by the debtor and does not exceed £3000 in value, a mobile home (such as a caravan) which is the debtor's home. It is also not possible to attach money (cash or cheques) by this method of attachment.⁴²

A judicial officer is not able to execute an *Attachment* on a Sunday or on a day which is a public holiday in the area where the procedure is to be carried out, without prior authority from the judge. An *Attachment* can also not be carried out before 8am or after 8pm without prior authority from the judge.

A judicial officer also has the authority to force open shut and locked places for the purposes of executing the procedure. In practice entry would not be forced during the first visit and the creditor would be consulted prior to forcing entry as it is likely additional fees may be charged. It is important that the premises are left secure after the judicial officer's visit.

The judicial officer must list the items to be attached on an inventory and value them in a fair way, being their best estimation as to what they will sell for at a public auction. A copy of the inventory is left with the debtor and a report is made to the local court. Following the *Attachment*, the debtor is able to redeem (reclaim) the articles which have been attached, by paying the sum of money which the articles have been valued at. These funds are paid to the creditor after any outstanding fees of the judicial officer have been deducted.

The judicial officer can also presume that a debtor owns articles within their possession, that are to be attached unless he/she is shown evidence to prove otherwise. Articles which are partly owned with a third party, can still be attached, however articles fully owned by a third party, after receiving satisfactory evidence that the debtor does not own them, are exempt from the procedure.

Prior to an attached article being sold at auction, a third party who partly owns an article in common with the debtor, can pay a sum to the judicial officer, equal to the

⁴⁰ A debt advice and information package are documents which provide general advice to a debtor along-with telephone numbers and websites where a debtor can seek financial help. The package is created by the Accountant in Bankruptcy, Scotland's insolvency service. The package can be viewed here: https://www.aib.gov.uk/sites/default/files/debt_advice_and_information_package.pdf.

⁴¹ There is another form of diligence known as an exceptional attachment order, which enables a judicial officer to list and value items kept within a debtor's dwelling place. The procedure of an exceptional attachment order is detailed within Chapter III.9.

⁴² There is a form of diligence which allows for the attachment of money known as a money attachment. The procedure of a money attachment is detailed within Chapter III.9.

debtor's share, which would transfer the ownership of the article to the third party. Where the article has been removed from the place where the attachment was performed, the third party can apply to the judge on the grounds that the auction of the article would be "unduly harsh" to the third party. If the judge is satisfied, they may order that the attachment of the article is to cease to have effect.

Following an *Attachment*, it is unlawful for a debtor or any other person to move the article from the place where it is attached. The debtor is also not permitted to damage, sell, transfer, or give away any articles which have been attached. Any action to this effect is treated as contempt of court and the debtor can be punished. Where an article has been damaged or destroyed, the debtor may be ordered to pay a sum of money to the creditor, equal to what they would have been gained, had the article been sold at auction.

After the report of *Attachment* has been made to the local court, the judicial officer may make arrangements to remove the attached articles. Notice of the removal must be given to the debtor at least 7 days prior to the date scheduled to remove the articles. Again, the officer has the authority to force entry to premises for the purpose of removing the articles. The date set for the auction must be at least 7 days after the date when the articles were removed.

It is possible to cancel the arrangements for the auction should the debtor wish to pay the sum due, however the auction cannot be cancelled on more than two occasions. Where this occurs, the judicial officer must arrange for the attached articles to be returned to the place from where they were removed. The judicial officer and witness must be present at the auction and a report must be made to the local court, detailing the articles which have been sold and their value. Where an article is sold at auction for less than the value estimated by the judicial officer, the difference is credited to the amount owed by the defender, meaning it is imperative that a judicial officer does not value articles too high.

Legislation also allows for the judicial officer to remove attached articles without giving notice to the debtor, if the judicial officer deems it necessary to secure the articles or if it is necessary to protect them.

There are circumstances where the debtor can apply to the court on the grounds that the attachment of a vehicle is "unduly harsh" (unfair) or the judicial officer's estimated valuation is too low. In practice, such applications are very uncommon. Where the debtor does apply to the court on the grounds that the attachment is unduly harsh or the value estimated is too low, the court will set a time and date for a hearing which must be intimated to the creditor and the judicial officer. The judge would then decide as to whether the attachment is to continue or should be cancelled.

The cost of performing the procedure, giving notice of removing the articles, removing the articles, making any reports to court, a judicial officer and witness attending the auction and any costs in forcing access to premises are all chargeable against the debtor. The costs of an *Attachment* vary according to the value of the attached article

and the type of article attached.⁴³

III.3 Attachment on the bank account of the debtor

In Scotland, the process for attachment of a bank account is known as *Arrestment*.⁴⁴ This type of attachment can be used for both money and moveable property, owned by the debtor which is under the control of a third-party known as the *arrestee*. This could be a bank, financial institution or any other third-party holding funds or goods owed to or belonging to the debtor.

Initially, the *Arrestment* freezes the money or property and prevents the *arrestee* from returning or releasing the funds or asset to the debtor. The creditor must have an enforceable title, such as judgment. Unlike other forms of enforcement in Scotland, there is no requirement to first serve a formal demand for payment, known as a *Charge for Payment*⁴⁵ on the debtor, prior to serving an *Arrestment*.

A creditor can instruct a judicial officer to serve an *Arrestment* in the hands of the debtor's bankers. Commonly referred to as a *Bank Arrestment*, this is served on the bank which holds the debtor's account and any funds at credit, or goods to the value specified on the order, are frozen subject to debtor protection measures. A *Bank Arrestment* is served by a judicial officer serving a specific, style of arrestment document on the bank.⁴⁶ There is no provision for service by electronic means. A *Bank Arrestment* only freezes funds or goods which are available on the day and at the specific time when the arrestment is served. Funds deposited into the debtor's account(s) after the arrestment has been served, would not be frozen by the arrestment.

The schedule of arrestment contains the debtor and creditor's details, the details of the judicial order or judgement authorising the arrestment, together with the sum sought to be attached. There is no requirement for a debtor's account details, such as account number and sort code, to be provided, however if they are available to the judicial officer, they are very beneficial as it will make it easier for the bank to locate the debtor's accounts. In practice, it is sufficient for the judicial officer to be provided with the debtor's name and address. The schedule contains 2 monetary figures; the maximum sum which can be arrested which comprises of the principle sum, any interest and expenses due in terms of the judgment, the expenses of executing the arrestment and any judicial interest which would be accrued in the period of 1 year

⁴³ The fees of a judicial officer are detailed within legislation and the most recent fees chargeable are detailed within the Act of Sederunt (Fees of Messenger-at-Arms, Sheriff Officers and Shorthand Writers) (Amendment) 2018, available on: <http://www.legislation.gov.uk/ssi/2018/126/made>.

⁴⁴ Debtors (Scotland) Act 1987, Part 3A, available on: <http://www.legislation.gov.uk/ukpga/1987/18/part/3A>.

⁴⁵ A charge for payment is a formal demand which must be served upon a debtor prior to certain diligences being served. However, where the arrestment is served following a decree or document being registered in Scotland, there is no requirement to serve a charge for payment prior to serving an arrestment.

⁴⁶ The relevant forms used in the execution of an arrestment can be located within The Diligence (Scotland) Regulations 2009, available on: <http://www.legislation.gov.uk/ssi/2009/68/contents/made>. Schedule 7, schedule 8 and schedule 9 are applicable to this form of diligence.

following service of the arrestment. The second monetary figure comprises of the principle sum, any interest and expenses due in terms of the judgment, the expenses of executing the arrestment and any interest which would be accrued in the period of 14 weeks following execution of the arrestment.

In Scotland, judicial officers have no access to a debtor's banking arrangements, prior to serving an arrestment, nor do we have any method of determining where a debtor holds a bank account. This information would normally be provided by the creditor or the instructing lawyer. Some relevant information may be obtained from the debtor if the judicial officer had interviewed the debtor prior to serving the arrestment, however the debtor is not legally required to cooperate with such enquires.

In accordance with legislation, where the debtor is a private individual as opposed to a business, such as an incorporated company, limited liability partnership, a partnership or an unincorporated association, there is a sum of money which must be left in the debtor's account, known as the "protected minimum balance". If the account is operated by the debtor as a business account, the protected minimum balance will not apply. The protected minimum balance is currently £529.90⁴⁷ and this is the amount which must remain in the debtor's account for their basic living needs.

This means that the arrestment may not always successfully attach the whole sum due. For example, if the arrestment is for a total sum of £1000.00 and the debtor who is an individual has £1000.00 in their account, £470.10 would be arrested, ensuring that the debtor has the protected amount of £529.90 remaining in their account. If the account holds funds less than £529.90, or the account is overdrawn the arrestment will not be successful and no funds will be arrested.

If the arrestment has been successful, the bank has a duty to notify the creditor and specify the amount which has been arrested. This must be done within 3 weeks beginning with the date on which the arrestment was served. There is no obligation for the bank to notify the creditor if the arrestment has been unsuccessful.⁴⁸

Legislation details that the bank must hold the arrested funds for a period of 14 weeks after which they are obliged to automatically release the money to the creditor. However, the debtor may sign a mandate which would allow release of the money sooner. Should the money be released at the end of the 14-week period, the second monetary sum detailed above shall be released to the creditor.

There are circumstances which may prevent the automatic release of the money such as where the debtor, the arrestee or a third party, lodges an objection with the *Sheriff* (local court judge) or where the debtor applies to the *Sheriff* on the basis that transfer of the funds would be "unduly harsh" due to family or personal circumstances. The arrestment may also be recalled, or the amount of money restricted and any application made, would have to be resolved prior to any money being released to the

⁴⁷ The Diligence against Earnings (Variation) (Scotland) Regulations 2018, available on: <http://www.legislation.gov.uk/ssi/2018/345/made>, effective from 6th April 2019.

⁴⁸ This obligation is detailed within the Debtors (Scotland) Act 1987, available on: <http://www.legislation.gov.uk/ukpga/1987/18/section/73G>.

creditor.

The *Bank Arrestment* remains a popular and effective enforcement process. Ideally, the creditor will have useful intelligence on the debtor's bank details, failing which, it is possible to attempt speculative arrestments, in several banks at the same time, however this can be expensive as the creditor will have to pay the officer's fees, for any unrecovered costs.

Also, given that the arrestment will only catch money at the exact date and time the arrestment is served, timing is critical. In practice, most banks will notify the debtor if an arrestment has been served and possibly add bank charges for internal administration. This notification often has a positive effect, as it may prompt the debtor to contact the creditor to discuss some form of repayment plan, so although money may not be attached, it can be the catalyst for amicable settlement.

III.4 Enforcement against savings deposits and current accounts

The attachment process for both savings and deposit accounts is the same as described in section III.3, which deals with attachment on bank accounts, known as *Bank Arrestments* in Scotland.

When a bank receives an arrestment order, they will search their records to identify all accounts and money held in the name of the debtor. It is possible that there will be several accounts, possibly a current account (checking account), savings account, mortgage account or other investments. Typically, the bank aggregates the debtor's credit balance to establish if there is enough money to operate the arrestment, subject to the "minimum protected sum" for personal or non-business accounts.

The arrestment order specifies and limits the amount to be frozen and any other funds remain available to the debtor. On the basis that it is a personal and not a business account, then under debtor protection regulation, the bank must leave a minimum protected sum of £529.90 for the essential day to day expenditure.⁴⁹

Apart from this specific debtor protection provision, there are no other specific rules or protection applicable to a deposit or savings account, which are treated no differently to a personal current or checking account.

III.5 Enforcement on immovable property

At present in Scotland, there is no effective or rapid enforcement process which will allow a creditor to seize and sell the debtor's immovable property, such as land or a building.

Following a major reform of enforcement, *The Bankruptcy and Diligence etc (Scotland) Act 2007* created two new enforcement processes over the debtor's property,

⁴⁹ The Debtors (Scotland) Act 1987 details that a protected balance must be left in certain bank accounts and The Diligence Against Earnings (Variation) (Scotland) Regulations 2018 sets out the amount which is protected. Both pieces of legislation are available on:

<http://www.legislation.gov.uk/ukpga/1987/18/section/73F> and
<http://www.legislation.gov.uk/ssi/2018/345/made>.

including immovable and intangible assets, to be known as *Land Attachment* and *Residual Attachment*, however due to competing political pressures, the required detailed secondary legislation, is still to be drafted and then scrutinised by the Scottish Parliament. At the time of writing this report, there is no clear timeline for when these new measures might come into force.⁵⁰

The principal and most commonly used method of enforcement over immovable property, is known as *Inhibition*. An *Inhibition* can be used where the debtor owns immovable or “*heritable*” property such as land and buildings. This will block the sale or disposal of the property/land and prevent it being used to secure further borrowings, without the money owed to the creditor being paid. This process differs from that of moveable goods, as the sale of property cannot be enforced, however it does secure the creditor’s position should the debtor wish to sell their property.

Typically, this will work best where the debtor has placed their house on the market for sale. The lawyer acting for the buyer will undertake various searches of the land and *Inhibition Register* to determine if an *Inhibition* is in effect. This will effectively block the sale transaction unless the debt is settled. Where a third party acquires the property in good faith, that is to say they are unaware of the *Inhibition* and has taken reasonable steps to determine whether an *Inhibition* is active, the third party would still acquire the property and the *Inhibition* would cease to have effect.⁵¹

An *Inhibition* can only be used to enforce a judgment which includes the payment of a sum of money except where the judgment only contains payment for expenses.

An *Inhibition* takes effect by a judicial officer serving a *Schedule of Inhibition*⁵² on the debtor along with a debt advice and information package.⁵³ The *Schedule of Inhibition* and certificate of service of the *Inhibition* is then registered in the *Register of Inhibitions* which then prohibits the sale or disposal of the property. In these circumstances, the *Inhibition* takes effect from the day it was registered with the *Register of Inhibitions*.

Should a property belonging to the debtor be for sale and no *Inhibition* is in effect, legislation allows for the *Inhibition* to take effect sooner than the date of registration by allowing for a *Notice of Inhibition* to be registered in the *Register of Inhibitions* and where the document is subsequently served and registered, then the *Inhibition* takes

⁵⁰ April 2020

⁵¹ This is detailed within section 159 of the Bankruptcy and Diligence etc (Scotland) Act 2007, available on: <https://www.legislation.gov.uk/asp/2007/3/section/159>.

⁵² The schedule on inhibition is a form prescribed by legislation. Both the inhibition and the certificate of execution must be completed accurately and follow the format set by legislation. The form of schedule of inhibition is contained within schedule 1 of the Diligence (Scotland) Regulations 2009 and the certificate of execution is contained within schedule 2 or schedule 3 of the 2009 regulations. All forms can be accessed on: <http://www.legislation.gov.uk/ssi/2009/68/contents/made>.

⁵³ A debt advice and information package are documents which provide general advice to a debtor along with telephone numbers and websites where a debtor can seek financial help. The package is created by the Accountant in Bankruptcy, Scotland’s insolvency service. The package can be viewed here: https://www.aib.gov.uk/sites/default/files/debt_advice_and_information_package.pdf.

effect on the day it was served on the debtor as opposed to the date of registration.⁵⁴

Service of an *Inhibition* follows the normal methods of hand service detailed within Chapter III.3 and where the debtor's whereabouts are unknown and cannot be ascertained by the judicial officer, the document and debt advice and information package can be served upon the debtor by being left with/for the Sheriff Clerk (official in charge of court administration) at the Sheriff Court which has jurisdiction over the last known whereabouts of the debtor. The judicial officer is thereafter obliged to send a copy of the document and debt advice and information package by post to the last known address of the debtor.

An *Inhibition* lasts for 5 years from the date it takes effect and should the debt remain outstanding after this period, another *Inhibition* can be served and registered to further secure the creditor's position.⁵⁵ An *Inhibition* may be terminated prior to this period where the debtor makes full payment of money owed, along with the expenses incurred by the creditor in registering and discharging the *Inhibition*.⁵⁶

Apart from *Inhibition*, there is another less popular and seldom used enforcement procedure for immovable property call *Adjudication*. The creditor requires to hold a judgement, and where this remains unsatisfied, an *Action of Adjudication* can be raised in the Court of Session. A *Decree of Adjudication* once obtained is effectively a two-stage process before ownership of the heritable property passes to the creditor. The property will initially be blocked from being sold, for a period of ten years (known as "the legal"), during which time the creditor can receive the benefit of any potential rental income. If the debt is not settled at the end of the period, then following a further application to court, the property can then be sold, with the proceeds being used to settle the debt, with any surplus paid over to the debtor. As one can imagine, most creditors are dissuaded from using this procedure, due to the very lengthy period of time, required to complete enforcement.

III.6 Enforcement against wages and other permanent pecuniary income

In Scotland, one of the most effective enforcement processes against an individual person, is known as "*diligence against earnings*".⁵⁷ There are three types of 'diligence against earnings'; an *Earnings Arrestment*, a *Current Maintenance Arrestment* and an order known as a *Conjoined Arrestment Order*. An *Earnings Arrestment* is used to enforce a debt due constituted by decree or other enforceable title. A *Current Maintenance Arrestment* is used to enforce arrears of maintenance due and a *Conjoined Arrestment Order* is used to enforce two or more debts owed to different

⁵⁴ Details of when an inhibition takes effect is contained within the Title to Lands Consolidation (Scotland) Act 1868, available on: <http://www.legislation.gov.uk/ukpga/Vict/31-32/101/section/155>.

⁵⁵ Details surrounding the time limit of an inhibition are contained within the Conveyancing (Scotland) Act 1924, section 44 (3)(aa), available on: <http://www.legislation.gov.uk/ukpga/Geo5/14-15/27/section/44>.

⁵⁶ This is prescribed by legislation, located within the Bankruptcy and Diligence etc (Scotland) Act 2007, available on: <https://www.legislation.gov.uk/asp/2007/3/section/157>.

⁵⁷ Debtors (Scotland) Act 1987, Part 3, available on: <http://www.legislation.gov.uk/ukpga/1987/18/part/III>.

creditors.

Whilst an *Earnings Arrestment* is in operation, the employer is obliged to make deductions from the debtor's earnings on every pay-day and pass them to the creditor. There is a prescribed amount which must be deducted from the earnings depending on how much they earn.⁵⁸ This means that the whole debt may not be recoverable from one instalment and it may take several deductions to recover all money owed. If the debtor's earnings vary, this will impact the amount that can be deducted. The deduction is made from the employee's net earnings, meaning it is calculated after any relevant tax deductions are made.⁵⁹

An *Earnings Arrestment* schedule is served by a judicial officer upon the debtor's employer. This is normally done by the judicial officer posting the order by using registered post, failing which hand service. The judicial officer should also intimate a copy of the order to the debtor however this is not mandatory and where the judicial officer has not been successful in doing so, this alone will not render the arrestment incompetent.

The employer has a duty to notify the creditor as soon as possible after receiving an *Earnings Arrestment*, how often the debtor is paid, the next pay date, the debtors net earnings and the sum to be deducted. Also, if the debtor ceases to be employed by the employer, there is a duty to notify the creditor of this information and provide the name and address of any new employer. It is not possible to serve an arrestment unless the debtor has first been served with a formal command, called a *Charge for Payment*⁶⁰ which details the creditors information and the sums outstanding.⁶¹ A period of time must be allowed after service for the debtor to make settlement.⁶²

In addition to the requirement of the serving a *Charge for Payment* prior to executing an *Earnings Arrestment*, the creditor must provide the debtor with a *debt advice and information package (DAIP)* within 12 weeks prior to serving the earnings arrestment schedule.⁶³ In practice, most judicial officers will provide the *DAIP* at the same time as serving a *Charge for Payment* therefore allowing an earnings arrestment to be executed as soon as possible once the days specified in the *Charge for Payment* have

⁵⁸ The most recent chart detailing the amount to be deducted from a debtor's earnings can be found within the schedule contained in The Diligence Against Earnings (Variation) (Scotland) Regulations 2018, available on: <http://www.legislation.gov.uk/ssi/2018/345/made>.

⁵⁹ This can include any tax or national insurance deductions.

⁶⁰ Section 90 of the Debtors (Scotland) Act 1987 details provisions relating to service of a charge for payment. Available on: <http://www.legislation.gov.uk/ukpga/1987/18/section/90>.

⁶¹ The format of a charge for payment is set out in legislation. The current legislation which contains the charge for payment is the Act of Sederunt (Form of charge for payment) 1988 and is available on: <http://www.legislation.gov.uk/uksi/1988/2059/schedule/made>, as amended.

⁶² The period which must be allowed is 14 days where the debtor is in the United Kingdom and 28 days where the debtor is outside the United Kingdom or their whereabouts are unknown.

⁶³ A debt advice and information package are documents which provide general advice to a debtor along with telephone numbers and websites where a debtor can seek financial help. The package is created by the Accountant in Bankruptcy, Scotland's insolvency service. The package can be viewed here: https://www.aib.gov.uk/sites/default/files/debt_advice_and_information_package.pdf.

lapsed.

All the costs of serving both the both documents are fully recoverable from the debtor and fully detailed on the documentation. It is also competent to recover the whole principle sum due along with any judicial interest which has accrued until the date of service of the *Earnings Arrestment* schedule.

The employer must comply with an *Earnings Arrestment*. Where an employer does not comply, then they are liable to pay the creditor the sum due to the value which should have been deducted. After the debt has been collected or otherwise extinguished, it is the responsibility of the creditor to intimate to the employer that the *Earnings Arrestment* should end. If the creditor does not intimate to the employer that no further deductions should be made and such deductions are made, the debtor is able to apply to the sheriff court for an order requiring the creditor to pay the debtor a sum which doesn't exceed twice the amount deducted by the employer.

It is now uncommon for a judicial officer to recover child maintenance following divorce or separation. Since the establishment of the *Child Maintenance Service*, which is a government supported, civil service agency, any dispute between separated parents, over alimony for children, is now controlled by this agency, which has the power to investigate and enforce compliance by serving a *deduction from earnings order* on an employer. As such, there is no longer any real need to use a *Current Maintenance Arrestment* given the effective service provided by the *Child Maintenance Service*.

Where the debtor has more than one creditor, intending to arrest the same salary, then another process must be used. The second arresting creditor will apply to court for a *Conjoined Arrestment Order*.⁶⁴ Whilst a *Conjoined Arrestment Order* is in effect, the employer will continue to make same level of deduction, however, instead of passing the money to the creditor, it is passed to the Sheriff Clerk who then distributes the money between each creditor, on a pro-rata basis. It is possible for additional creditors to join the same conjoined order, however, the more creditors involved, then the smaller the deduction the creditor will receive.

III.7 Attachment under the debtor's debtor

As explained in our response to section III.3, the use of *Bank Arrestment* can be an effective remedy where the creditor has useful, relevant intelligence, specifically the location and details of the debtor's bank account. This can be a highly effective enforcement process where the bank is holding assets belonging to the debtor. In this context, the bank is known as the *arrestee*, i.e., a third-party with direct accountability to the debtor for the control of their money while it is deposited with a bank. This enforcement process applies to both business and personal accounts.

This principle of third-party accountability can also apply to other relationships and types of assets. Where it can be reasonably established there is direct accountability

⁶⁴ Section 60 to section 66 of the Debtors (Scotland) Act 1987 set out the legislation governing conjoined arrestment orders.

and control over money or moveable assets belonging to a debtor, by a third-party, then a *Third-Party Arrestment* is a possible option for the creditor. NB it is not possible to arrest money or property in the hands and control of the debtor themselves.

The key to the success of this enforcement process is to identify a potential *arrestee*. This will require specific information from the creditor, possibly gained through prior business dealings or other useful intelligence sources. There is no process currently in place to compel a third-party to volunteer if they have assets belonging to the debtor under their control. This intelligence gathering process is strictly controlled by data protection legislation. Accordingly, the only way to establish if assets are available for seizure, is to serve an *Arrestment* and wait for the *arrestee* to respond within a three-week period.⁶⁵

A possible example might be a garage which has the debtor's motor vehicle on its premises for repair. As the vehicle is under the direct control of the garage, then it can be arrested by serving on the garage owner (*arrestee*), who would then be prevented from releasing the car to the debtor, without authority from the creditor.

Another common example of this tri-party relationship is where the debtor owns an apartment which has been rented to a tenant. In this regard, it would be possible to arrest the rent payments due to be paid to the debtor under the rental contract. Here, the tenant is the *arrestee* due to their direct accountability to the debtor.

Unlike a *Bank Arrestment* which will freeze money, where movable property has been arrested, then there is still a requirement for the *arrestee* to disclose if property owned by the debtor has been frozen in their hands and its estimated value, within a 3-week period. However, unlike money, there is no mandatory release of the moveable property after 14 weeks. In this scenario, it is necessary for the creditor to arrange a court process called an *Action of Furthcoming* if the debtor refuses to cooperate by settling the debt or providing a mandate to the *arrestee*, authorising the release of their property to the creditor.

The *Action of Furthcoming* will be heard in court by a judge, who will consider all the facts and order the release of the property, to either the creditor or the debtor.

Like a traditional *Bank Arrestment*, the creditor must be in possession of a valid judgement or other enforceable title and must instruct a judicial officer, authorised to operate in the area where the arrestee has their place of business or residence. The process is relatively quick in terms of the service, however, as previously explained, the *arrestee* has three weeks to divulge if assets have been caught. The *arrestee* will normally immediately notify the debtor of the arrestment, which often encourages negotiation to start between all parties, leading to an amicable resolution, possibly resulting in the arrestment being withdrawn, or the sum attached, restricted and released by way of a mandate.

⁶⁵ In accordance with relevant legislation, where funds or other moveable property have been “arrested” following service of an arrestment, the arrestee must inform the creditor the nature and value of the property and/or the value of the funds. This is detailed within the Debtors (Scotland) Act 1987, available on: <http://www.legislation.gov.uk/ukpga/1987/18/section/73G>.

III.8 Enforcement against shares

In theory, it is possible to attach certain types of shares held by a debtor, however in practice, it rarely occurs. In the course of the last major review of enforcement proceedings in Scotland, leading to the enactment of the *Bankruptcy & Diligence (Scotland) Act 2007*. This was a relatively bold step, as this new legislation introduced several new enforcement procedures to modernise enforcement, based on the concept of “universal attachability” such that there should be a process to attach and sell all categories of assets owned by the debtor.

This primary legislation created a new enforcement process called *Residual Attachment* which enabled the seizure and sale of intangible assets which are out with the scope of existing attachment and arrestment procedures. In theory, this new process would be used to attach stocks and shares or other diverse types of assets such as intellectual property, computer software, private number plates and other assets which can be identified, quantified and sold through a controlled judicial process.

Whilst the necessary primary legislation has been in place since 2007, due to competing political pressures, the required detailed, secondary procedural legislation has never been effectively progressed. The matter is presently under review by Scottish Ministers, however, at present there is no clear timeline for when this innovative enforcement procedure might be available to creditors.

In the meantime, the only possible option might be personal bankruptcy, whereby all assets, including shareholdings belonging to the debtor, will be ingathered by a trustee and the dispersed amongst all creditors.

III.9 Other attachment procedures

III.9.1 Exceptional attachment order

In Scotland there is an enforcement procedure known as an *Exceptional Attachment Order*.⁶⁶ As previously explained, an attachment cannot be used within the dwelling place of a debtor, however a judicial officer can apply to the Sheriff (local court judge) for the authority to enter a debtor’s home and prepare an inventory and valuation of non-essential items (referred to as “articles”) which could be sold in situ or at auction to repay money owed to the creditor.

The Sheriff must be satisfied that the creditor has attempted to negotiate settlement of the debt and that other methods of enforcement against the debtor have been attempted and unsuccessful.⁶⁷ Before making an order, the Sheriff may order that financial advice be given to the debtor by an independent money advisor. The Sheriff must also be satisfied that there is a reasonable prospect that the sum recoverable from the process will exceed £100.00 along with a reasonable estimate of any expenses, chargeable against the debtor. This means that where it is expected the

⁶⁶ The relevant legislation covering an exceptional attachment order is the Debt Arrangement and Attachment (Scotland) Act 2002, available on: <http://www.legislation.gov.uk/asp/2002/17/part/3>.

⁶⁷ Other methods include an earnings arrestment and bank arrestment.

attachable goods belonging to the debtor fall below this anticipated value, then it is unlikely that the Sheriff will permit this process to be attempted. In reality, the very strict, practical requirements of this application process, have effectively made the process for seizing property in the debtor's home, more or less obsolete in Scotland.

If authorised, then the judicial officer has the authority to force entry and open any shut and locked places however in order to enter a debtor's home there must be a person present over the age of 16 years, who has the ability to understand the procedure being carried out and this ability is not infringed because of their understanding of English, mental illness or mental or physical disability. A judicial officer may also force entry to a debtor's home after they have given at least 4 days' notice.

The judicial officer will value the articles at the price which the judicial officer believes they are likely to fetch when sold on the open market (at auction). The judicial officer may arrange for articles to be valued by a professional valuer if required, the costs of which can be charged against the debtor. The attached articles are removed from the debtor's house at the time of executing the attachment unless it is not practical to do so (for example, items are too large, or items which may be plumbed in and require tradesmen to remove to prevent damage). Prior to removing articles at a later date, notice of the intended date of removal must be given to the debtor.

To provide suitable debtor protection, there is an extensive list of items which are exempt from attachment and include many household items required by the debtor and/or their family.⁶⁸ Also, a judicial officer is not permitted to attach any item considered to be of sentimental value to the debtor where their value is less than £150.

III.9.2 Money attachment

There is also an enforcement process in Scotland known as a *Money Attachment*. As previously discussed in Chapter III.2, money is exempt from being attached by virtue of a regular attachment.⁶⁹ A judicial officer is not permitted to execute a money attachment within a debtor's dwelling place therefore in practice a money attachment is executed within a debtor's business or commercial premises.

A *Money Attachment* is only competent after a *Charge for Payment* (hand-served demand for payment) has been served on the debtor and the period of days specified within the charge for the debtor to make payment have expired without payment or contact being made.⁷⁰

⁶⁸ A full list of 'non-essential' items is detailed within the 2002 act, available on: <http://www.legislation.gov.uk/asp/2002/17/schedule/2>.

⁶⁹ Legislation concerning money attachments can be found in the Bankruptcy and Diligence etc (Scotland) Act 2007, available on: <http://www.legislation.gov.uk/asp/2002/17/schedule/2>

⁷⁰ A charge for payment allows the debtor to make payment to the creditor of the sums due. There is a period of time which must be allowed for the debtor to make contact following service of the charge for payment. The days which must be allowed are 14 days where the debtor is in the United Kingdom or 28 days where the debtor is outside the United Kingdom or their whereabouts are unknown.

A judicial officer is not able to execute a *Money Attachment* on a Sunday or on a day which is a public holiday in the area where the attachment is to be carried out without prior authority from the Sheriff (local court judge). A *Money Attachment* cannot be carried out before 8am or after 8pm without prior authority from the Sheriff.⁷¹ It is also not competent to execute such an attachment on a second occasion, at the same premises to enforce the same judgement unless the money was brought to the premises after the first attachment was executed.

When the judicial officer attends premises to execute a *Money Attachment*, they will count and verify the amount of money on the premises and detail the amount on a regulated form. Foreign currency and cheques can also be attached however the judicial officer is required to exchange any foreign currency into British Sterling after attachment. The judicial officer can proceed on the assumption that the debtor owns solely or in common with a third party all money found on the premises unless they are provided documentation to prove otherwise.

The judicial officer removes all money attached from the premises at the time of executing the attachment and afterwards the cash is deposited into a bank account. The judicial officer must make a report to the Sheriff within 14 days of making the attachment and send a copy of the report to the creditor and the debtor. Within 14 days of making the report the judicial officer must make an application to the sheriff seeking an order to release the funds to the creditor (known as a *Payment Order*).

All costs for processing the *Money Attachment* including making any reports or applications are recoverable from the debtor but only from the process of the attachment. Any costs which have not been recovered by the process after the funds are disposed of cease to be chargeable against the debtor.⁷²

III.10 Handing over movable assets

Where items are to be handed over or returned to another party, that decision must be ratified by the appropriate court and detailed within an enforceable judgment, known as a *Decree for Delivery*, which can then be passed to a judicial officer for enforcement.⁷³ A judicial officer will always communicate with the debtor in a professional manner to gain their co-operation and trust. Should the debtor agree to cooperate, the judicial officer shall meet with the debtor, take possession of the assets, and make arrangements to convey them to the creditor.

In an action to recover moveable assets, it is common for warrant to be granted allowing the officer to force entry and “open shut and locked places” which allows the officer to enter a debtor’s premises to search for the assets. The judicial officer will

⁷¹ Detailed within section 176 of the Bankruptcy and Diligence etc (Scotland) Act 2007, available on: <http://www.legislation.gov.uk/asp/2007/3/section/176>.

⁷² In practice, a judicial officer would not execute a money attachment without ensuring that there are enough funds to cover any costs or expenses.

⁷³ This is common in Scotland in cases which involve vehicles where the debtor has defaulted on a finance agreement and the creditor seeks repossession of the vehicle.

take all necessary steps to locate and seize the assets, where there is no cooperation or obstruction from the debtor.

Where the assets are in possession of a third-party who is willing to hand them over, the judicial officer will make arrangements for this to be completed by conveying them to the creditor. If a third-party is unwilling to hand over the assets, this may pose difficulties for the judicial officer. Depending on the wording of the judgment issued by the court, access may only be allowed to a debtor's premises. In these circumstances, the creditor may have to return to court for an amended judgment, allowing access to force entry to any address, where the assets are likely to be found.

A judicial officer will make several attempts to locate and recover assets, however if a debtor frustrates the process, by deliberately hiding them, then the officer will report all their attempts and other relevant detail to the creditor. The creditor will instruct their lawyer to seek further orders from the court, possibly including a warrant to apprehend and bring the debtor to court for examination by the Sheriff. The Sheriff may direct that the debtor is held in prison, until they agree to cooperate with the recover process.

Such measures are rarely necessary, as the judicial officer will use their effective communication and negotiation skills to gain the debtor's trust and cooperation, which normally result in the assets being recovered with minimal resistance from most debtors.

III.11 Enforcement in reinstatement of employee to work

In the UK, there is a specific type of court, known as an *Employment Tribunal*, for dealing with all matters relating to employment law, including reinstatement. This can be ordered by an *Employment Tribunal* after a finding of unfair dismissal. It is in fact rather uncommon for someone to be reinstated (to their previous position on the same terms and conditions) or reengaged (by their previous employer but to a different role and possibly on different terms and conditions).

While an employee can raise as part of their action a claim for reinstatement, where the Employment Tribunal orders reinstatement, judicial officers are unlikely to be involved. It is more common for a disgruntled employee to seek financial damages. This is now a highly specialised area for qualified lawyers and specialist advisors, as the law is complex and constantly changing. Dependent on the length of service, it is now relatively difficult for an employer to simply dismiss an employee without very good reason. There are significant financial penalties, especially where the employer has discriminated against an individual, due to their individual, personal circumstances or character.

In Scotland, it is the role of the *Scottish Employment Tribunal* to administer justice by providing a forum to deal with employment disputes. This is similar to a traditional court, with court-based personnel and a specialist Judge, who is legally qualified. For discrimination cases, a judge is accompanied by two lay members, who are not legally qualified but have suitable professional qualifications and experience to determine the issues before them, to create a panel.

Prior to lodging a claim, an aggrieved individual will contact ACAS (*the Advisory, Conciliation and Arbitration Service*), which is a government funded body, which will attempt to mediate by contacting the employer to help resolve the dispute. Where this process fails, then the next step is processing a claim via the Employment Tribunal.

Tribunal hearings tend to be less formal than traditional court proceedings, as it is not necessary to have a qualified lawyer to present the case, indeed it is not uncommon for the claimant, to present their own case. The judge or panel will consider the merits of each case, based on the evidence and testimony presented by both sides.

Having decided the outcome, a formal written judgment will be issued, referring to the relevant regulation, explaining the rationale and detailing the specific calculation of the financial award or other such order. This judgment is known as a *Decision* and assuming that it is not appealed, then must be complied with as quickly as possible.

In the event that the monetary element of the *Decision* is not complied with by the employer, then the claimant will have the option to enforce the decision, which has the same power and authority as a traditional court judgment. It is the role of the judicial officer, to act on behalf of the claimant, to initially serve a demand to pay, called a *Charge for Payment*. After 14 days have elapsed, without the matter being resolved, then the judicial officer will use the various enforcement powers described elsewhere in the report to enforce the Tribunal's Decision, to the satisfaction of the claimant.

III.12 Eviction

The eviction procedure in Scotland is tightly controlled by specific legislation which sets out deadlines and obligations which must be adhered to.⁷⁴ This procedure must be followed unless the Sheriff (local court judge) has allowed for the set procedures to be deviated from. Failure to follow the set rules leaves the landlord and/or the judicial officer open to a challenge for unlawful eviction.⁷⁵

It is important to note that an eviction cannot be carried out on a Sunday or a day which is a public holiday in the area where the eviction is to be carried out without prior authority from the Sheriff. An eviction also cannot commence prior to 8am or continue after 8pm if prior authority has not been granted.

⁷⁴ The relevant legislation setting out rules for eviction is contained within the Bankruptcy and Diligence etc. (Scotland) act 2007, available on: <https://www.legislation.gov.uk/asp/2007/3/part/15> and the Act of Sederunt (Actions for Removing from Heritable Property) 2012 as amended, available on: <http://www.legislation.gov.uk/ssi/2012/136/contents/made>.

⁷⁵ There was a recent case published where the tenant of a property successfully brought a claim against the landlord for unlawful eviction after the landlord wrongly changed the locks on the premises, ejecting the tenant without an enforceable judgement. The judgment was pronounced by the Tribunal in Scotland which deals with private housing matters known as the First-Tier Tribunal for Scotland, Housing and Property Chamber. The written decision of the tribunal can be viewed here: https://www.housingandpropertychamber.scot/sites/default/files/Other_specific_applications_decisions/2712%20Updated%20Decision%20%20%281%29_Redacted.pdf. Although this case was awarded when no judgement had been granted allowing an eviction, it highlights the sanctions for executing an unlawful eviction including potential criminal convictions.

The first step in the eviction process is that the debtor must be *Charged to Remove* from the premises. This is a formal command, served by a judicial officer, in a prescribed form which sets out the details of the judgement and details that they must remove themselves and others from the property within 14 days of service.⁷⁶

The *Charge for Removing* can be served on the debtor by a judicial officer by personal service (handing it to the debtor), by leaving the document with a resident at the debtor's dwelling place or an employee at their place of business. If either of these methods are unsuccessful, the judicial officer may, after making enquires and confirming that the debtor continues to live at the address or trade from a place of business, deposit the document into the dwelling place or place of business.⁷⁷

If the officer is unable to deposit the charge into the dwelling place or place of business, they may leave it at the property in such a way that it is likely to come to the attention of the debtor.⁷⁸

If the debtor's whereabouts are unknown (normally where they have vacated the premises and left no forwarding address) the *Charge for Removing* is deemed to have been served upon the debtor if it is left with or deposited at the office of the sheriff clerk⁷⁹ and the sheriff court⁸⁰ which has jurisdiction over the place where the property is located.⁸¹ The document is displayed upon the walls of court for 14 days and only after this period of time has lapsed can an eviction be carried out.

In addition to commanding the debtor to remove from the premises, notice of the date and time of scheduled removal must be given to the debtor unless the Sheriff has allowed for notice not to be given. Notice is given by a judicial officer in a prescribed form which details the time and date of eviction. Service of notice of the date of removal must be executed at least 48 hours prior to the date scheduled for the eviction.

Whilst carrying out the eviction, the judicial officer has the authority to open shut and locked places. In practice, the judicial officer will arrange for a locksmith/joiner to be in attendance who will gain access causing minimal damage to the door and also change the lock allowing for the premises to be secured. If the debtor or other persons

⁷⁶ The form of charge for removing is located within The Removing from Heritable Property (Form of Charge) (Scotland) Regulations 2012 as amended, available on:
<http://www.legislation.gov.uk/ssi/2011/158/contents/made>.

⁷⁷ In practice this is commonly done by putting the charge through the letterbox, or any other lawful way such as under the door.

⁷⁸ This is often done by affixing the charge to the door of the property. However, it can include other methods, such as securing the charge to the seal of the door so long as it is in a prominent place that it will come to the debtor's attention.

⁷⁹ The sheriff clerk is a court official who is in charge of the administration and cases being dealt with in Scottish Courts.

⁸⁰ The sheriff court is a local court in Scotland which deals with civil and criminal matters. There are 39 sheriff courts located in various towns and cities in Scotland.

⁸¹ For example, if the subject address is in Glasgow, Glasgow sheriff court has jurisdiction and the charge for removing would be left there. The judicial officer will be aware of which court will have jurisdiction and can serve the charge for removing accordingly.

are present within the property, they will normally be given time to collect personal belongings and thereafter be made to vacate the property.⁸² Where children are present at the premises, the eviction shall proceed unless the judicial officer is instructed otherwise by the pursuer.

Any items removed from the premises must be documented on an inventory and if requested, the officer can provide an inventory of items left in the premises and/or photographs of the premises. Once the eviction has been carried out arrangements may be made between the pursuer and the debtor for the collection of any other belongings left in the premises.

The judicial officer has no further role in the eviction process and will have no further involvement in the subsequent sale or public auction of the property. In reality, due to the various stages and separate intimations, it is relatively uncommon for the debtor to be present on the day of the eviction. Occasionally, it will be necessary for the officer to forcibly remove the debtor and any other occupier; in doing so, they will always be courteous, professional, and only use as much force as absolutely necessary.

III.13 Enforcement of obligations to act, refrain from acting or suffer action

This chapter refers to various procedures: (1) enforcement of the decision for division of items and (2) enforcement of a decision in which the debtor has a duty to perform a certain action.

(1) In Scottish law, there is a presumption of 50/50 ownership between a husband and wife. This principle is equally applicable for most enforcement procedures. In respect of attachment of moveable goods, after attachment, a spouse can make an informal application to court, without the need of involving a lawyer, to have a hearing before a Sheriff, to consider if an article is owned in common. If upheld, then the applicant is obliged to pay 50% of the judicial officer's valuation, which will release the item from attachment and sale. Such procedures are now very rarely used, as it is uncommon to carry out an attachment within a debtor's home for debtor protection reasons.

The same principle applies in respect of an attachment on a husband and wife's personal bank account. Again, following an application to the relevant Sheriff Court, there will be a hearing before the Sheriff who will use their best judgement to decide if the money is jointly owned, and on this basis will restrict the effect of the attachment by 50%, effectively releasing the spouse's share from the enforcement process, or making any other orders, as appropriate.

Similar arrangements exist where an attached article is claimed to be owned in part or in full by a third-party, possibly a business associate or customer who has left property in the debtor's premises. The judicial officer can proceed on the assumption, that all goods on the debtor's premises, are their property unless convinced

⁸² In practice, most individuals will leave the premises when requested to do so. If any difficulties arise the officer is aware, they can contact Police Scotland and request support although this is rare.

otherwise. In such circumstances, a similar hearing will be arranged, when the Sheriff will consider representation from the third-party and possibly seek documentary evidence to verify ownership. If upheld, then the attached article will be released or the third-party will be required to pay a sum equal to the debtor's share, to gain full ownership and control. Any such sums paid will be paid over to the creditor.

All such hearings are intimated by post by the Sheriff Clerk, directing all stakeholders to attend, including the judicial officer. There are no awards of costs to minimise the financial impact on either the creditor or the debtor. The involvement of the judicial officer is limited to service of the summons, interlocutors, forcing entry for the purposes of allowing the valuator to value either heritable or movable assets.⁸³

(2) Where a judgement has been issued requiring a debtor to comply with a specific order, possibly returning a motor vehicle in an action for delivery, or in the case of boundary disputes, to remove a fence or wall from land encroached upon, the judge will issue an interlocutor, ordaining the debtor to comply with the order, normally within a set time frame. This order is then served on the debtor by judicial officer. The order will normally grant power to the judicial officer to intervene, should a debtor fail to comply with the order. In the case of delivery of goods, it is common for the order to grant warrant to the judicial officer to search for and take possession of the goods, should they fail to deliver the goods within the set time frame. Likewise, in the example of the boundary dispute, the order will contain powers for the judicial officer to remove or demolish the wall or fence. This specific judgment is known as a "*decree ad factum praestandum*".

Then the judge has discretionary power for dealing with a debtor who deliberately refuses to cooperate or defies the will of the judge.⁸⁴ If a debtor wilfully refuses to comply with a decree ad factum praestandum, for example by hiding a vehicle, the creditor may raise an action for their imprisonment.

This is possibly the most serious sanction for any belligerent debtor as it is one of the very few circumstances where they may face imprisonment under the Scottish civil enforcement system. The maximum period of incarceration is 6 months; however, such orders are very rare, and it is more likely that the debtor will reluctantly comply or at worst, be imprisoned for several days. That said, it does remain a potent and effective sanction available to Scottish judges, for dealing with the most obstructive and difficult individuals.

III.14 Sequestration of goods

In Scotland, the term "*Sequestration*" principally relates to personal bankruptcy, which is not considered an enforcement procedure as such. This is the ingathering of the debtor's assets by a court appointed trustee, which are thereafter sold and

⁸³ <https://www.morton-fraser.com/knowledge-hub/fairness-division-and-sale-property>

⁸⁴ The Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 contains the regulations regarding a decree ad factum praestandum, available on: <https://www.legislation.gov.uk/ukpga/Geo6/3-4/42/section/1>.

distributed to all creditors.

The seizure and sale of goods following a court judgement is known as *attachment* and is more fully explained under section III.5 of this report.

Historically, it was possible to *sequester goods* under a landlord and tenant legislation, however this law was repealed many years ago. The only similar enforcement process currently available, which may be of some relevance is a protective measure, known as *Diligence on Dependence*, whereby at the start of the litigation process the creditor can apply to the Sheriff for an *Interim Attachment Order*.

This enforcement process is only available in commercial or business premises. This attachment process is designed to secure moveable assets on debtor's premises, which cannot be disposed of during court process and before a final judgement is pronounced by the Sheriff. If the matter is not resolved during the court process, then an order will be issued by the Sheriff and after a final judgement has been obtained, a formal demand to pay, called a *Charge for Payment* will be served by the judicial officer. It is then necessary to complete a further attachment of the same goods, before proceeding to auction.

An interesting debtor protection feature of this process, is that the judicial officer cannot attach any material or "stock in trade", used by the debtor in a manufacturing process, which would adversely impact their normal business process and prevent the debtor from making a decent living. There are several stages to the process, including a valuation at the start of the litigation process and after the judgement has been granted.

Although the preventative measure is rarely used in practice, in the right circumstances, it will provide the creditor with some welcome protection, pending the issue of a final judgement.

III.15 Enforcement of foreign enforceable documents from non-EU States

No information available.

PART IV: ENFORCEMENT COSTS

IV.1 The costs of enforcement

To best understand how the costs for enforcement are applied and controlled, it is first important to understand the commercial business model of a judicial officer's office. In Scotland, judicial officers are self-employed entrepreneurs, or employed by a larger company, operated by a commercial organisation.

As such, there is no direct financial support from the government or the Scottish Courts system. This means that the owner of the business has all the financial risk associated with effectively operating their office as a commercial enterprise. The officer is therefore required to build a client base and generate enough sales to sustain this business model.

IV.1.1 Statutory fees



To ensure fairness and transparency, all judicial officers are required to apply a strictly controlled feeing structure, known as *Statutory Fees*.

It is not possible to offer “discounts” or other financial inducements to attract new business. This provides a level playing field and benefits all stakeholders, especially the debtor who will be ultimately responsible for the statutory controlled fees. If there is any form of discount provided, then it must be to the benefit of the debtor. It is not possible for the creditor to share any part of the judicial officer’s statutory fees.

These statutory fees are strictly controlled by procedural rules from the Court of Session. They are reviewed regularly by an independent body of experts, under the supervision of the Scottish Civil Justice Council, which will then make a recommendation to the Lord President, to adjust the statutory table of fees, typically in line with inflation.

Most statutory fees are charged to and recoverable from the debtor. Where the enforcement process is ultimately unsuccessful and no money is recovered from the debtor, then the creditor is obliged to underwrite all statutory fees, unless there is an agreement to cancel or restrict. In most circumstances the expectation is that the creditor will cover the cost of enforcement.

IV.1.2 Messenger at Arms and Sheriff Officer table of fees

The current table of fees came into force on the 4th June 2018 and is due to be reviewed by Q1 2021.

The table of fees describes most of the typical services provided by the judicial officer, such as serving statutory documents and common enforcement procedures including earnings arrestment, attachment and auction of goods, evictions, forcing entry, repossessions and apprehensions.

Schedule 1 relates to fees for Messengers at Arms (Court of Session / supreme court) and **Schedule 2** relates to Sheriff Officer (Sheriff / local court) instructions. Due to the status of Court of Session instructions, Court of Session fees are more expensive than Sheriff Court fees.

In addition to the fee stipulated in the relevant schedule, there is scope for the officer to increase the fee in the following circumstances:

- Outside normal business hours – additional 33.3 % between 17.00 and 22.00;
- Outside normal business hours – additional 75 % after 22.00 before 9.00;
- Outside normal business hours – additional 75% Saturday, Sunday or public holiday;
- Reasonable costs associated with ferry, air travel or overnight accommodation;
- Units of time after first hour (chargeable every 30 minutes) – £30.57 with witness;
- Remote rural areas with a population of less than 3,000 people, and with a

drive time of over 30 minutes to a settlement of 10,000 or more.

- By agreement with client where there are special circumstances

IV.1.3 Incentive fees

Debt collection is a recognised official function but only after judgement has been obtained or where the creditor has an enforceable title. There is no prescribed fee of recognised commission rate included in the statutory table of fees, for providing a proactive debt collection and remitting service. In such a scenario, the judicial officer can negotiate with the creditor and agree a fee structure. It is not possible to add any kind of surcharge to the debtor, so any commission element retained by the officer will be funded by the creditor from the money recovered, or other arrangement.

Apart from this commission model, where the officer is paid purely on results, there are no other circumstances where the officer is incentivised to deliver a basic or enhanced level of service.

IV.1.4 Payment in advance

The judicial officer may request to have their fee paid in advance. This is quite normal where there is no historic business relationship with the client or creditor. Typically, where the creditor is the *party litigant*, i.e., the creditor is managing their own recovery process, then the officer will ask for the fees to be paid “up-front”. This is to avoid any difficulties, where the enforcement process is not successful, and the creditor is unhappy to the extent that they refuse to pay the officer’s fees.

There are no specific arrangements within the statutory table of fees for dealing with government files or debt recovery activity. The collection of local government or municipal tax is dealt with by way of public procurement tendering. For certain local taxes, the local government organisation will impose a surcharge of 10%, payable by the debtor. The tendering process will then determine how much of this surcharge will be payable to or retained by the judicial officer for providing a collection and enforcement service.

It is also the norm, to request that a fee is paid in advance, in respect of cross border services. Fortunately, the current EU service arrangements work well, with suitable transparency, given that each jurisdiction is able to stipulate the value of the fee payable. The current cross border service fee in Scotland is: £142.51 GBP / euro 157.00. This may seem relatively high when compared with other jurisdictions, but it is aligned to the supreme court (Court of Session) fee and includes a unit of time, to compensate for the additional, associated cost for managing the more complex nature of cross border service.

Where the officer is genuinely concerned that their statutory fee is unlikely to be paid and having effectively communicated this concern to the creditor, then all enforcement activity will be suspended until the matter of payment is resolved. This may result in the return of documents and complete disengagement with the debtor.

IV.1.5 Typical service and enforcement measures

To provide an indication of the cost of typical service or enforcement measures in Scotland, the following is a brief summary of what a foreign creditor may be required to pay at the time of writing. For ease of reference, we have converted pounds sterling (GBP) into euros, at a rate of £1.00 = euro 1.10.

- Service of document under EU Regulation 1393/2007;
- Initial demand to pay (Charge for Payment);
- Service of bank attachment;
- Service of and Earnings Arrestment;
- Attachment of moveable goods value of euro 1000;
- Attachment of moveable goods value of euro 5000;
- Auction of moveable goods euro 1000;
- Auction of moveable goods euro 5000;
- Serving Inhibition (which stops the sale of immovable property);

In conclusion, Scotland continues to provide all domestic and international stakeholders with suitable access to justice, which strikes an appropriate balance between the rights of both the creditor and debtor. The cost of enforcement is borne by the debtor, failing which, the creditor. To ensure transparency and fairness, all Scottish judicial officers will charge the same fee for delivering the same service. There is limited scope to negotiate any reduction in statutory fees, that said the officer will always be fair and pragmatic when dealing with all instructions. For instructions being transmitted from elsewhere in Europe, then the expectation is that the fee will be paid in advanced.

PART V: LINKS, LITERATURE AND SOURCES

In Scotland, there are various items of legislation regulating enforcement proceedings, as well as various secondary items of legislation. There is also separate, specific legislation which governs practice in relation to sequestration (bankruptcy) and evictions.

All UK legislation and draft legislation is published on a searchable, free to access government website. Whilst this contains legislation as published and it seeks to have legislation updated as amendments are passed, not all pieces of legislation are updated, and caution should be exercised. This site can be accessed here: <https://www.legislation.gov.uk/>.

The primary pieces of legislation which regulate the proceedings are:

Debtors (Scotland) Act 1987, accessible here: <https://www.legislation.gov.uk/ukpga/1987/18/contents>

Debt Arrangement and Attachment (Scotland) Act 2002, accessible here: <https://www.legislation.gov.uk/asp/2002/17/contents>



Bankruptcy and Diligence etc (Scotland) Act 2007, accessible here:
<https://www.legislation.gov.uk/asp/2007/3/contents>

Bankruptcy (Scotland) Act 2016, accessible here:
<https://www.legislation.gov.uk/asp/2016/21/contents>

Insolvency (Scotland) (Receivership and Winding up) Rules 2018, which set out the detailed procedures for the conduct of receivership and winding up proceedings in Scotland under the Insolvency Act 1986, accessible here:
<https://www.legislation.gov.uk/ssi/2018/347/contents>

Secondary pieces of legislation which govern the practice of judicial officers include:

Bankruptcy (Scotland) Regulations 2016, accessible here:
<https://www.legislation.gov.uk/ssi/2016/397/contents>

The Diligence (Scotland) Regulations 2009, accessible here:
<https://www.legislation.gov.uk/ssi/2009/68/contents/made>

Act of Sederunt (Messenger-at-Arms and Sheriff Officer Rules) 1991, accessible here:
<https://www.legislation.gov.uk/uksi/1991/1397/contents/made>

Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002, accessible here: <http://www.legislation.gov.uk/ssi/2002/560/contents/made>

Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988, accessible here: <https://www.legislation.gov.uk/uksi/1988/2013/made>

Act of Sederunt (Money Attachment Rules) 2009, accessible here:
<http://www.legislation.gov.uk/ssi/2009/382/contents/made>

Act of Sederunt (Actions for Removing from Heritable Property) 2012, accessible here:
<http://www.legislation.gov.uk/ssi/2012/136/contents/made>

The fees payable to and chargeable by a judicial officer are also set in legislation. These are updated when required and the most recent table of fees is included within the Act of Sederunt (Fees of Messenger-at-Arms, Sheriff Officers and Shorthand Writers) (Amendment) 2018, accessible here:
<http://www.legislation.gov.uk/ssi/2018/126/made>

The Scottish Courts website details the rules of practice applicable to both sheriff court (local court) practice and the rules of the court of session (Scotland's highest civil court). These are kept up to date and are a good source of reading material. The civil procedure rules for the sheriff court can be accessed here: <https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/sheriff-court---civil-procedure-rules> and the rules for the court of session can be accessed here: <https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>

The society of Messenger-at-Arms and Sheriff Officers is the governing professional body of judicial officers. Their website contains a search function to find a judicial officer, which is accessible here: <https://www.smaso.org/>

The Judiciary of Scotland website, which can be found here: <https://www.judiciary.scot/>, contains information about Scotland's civil and criminal judges, their roles and work within the justice system.