

NOTICE PERIODS FOR ‘EXCEPTIONAL ATTACHMENT’

Purpose

1. To consider whether (or not) to add a 14 day notice period into the rule 19 of diligence procedures for ‘exceptional attachment’.

Terminology

2. The following terms are used for the purposes of this paper:

Term	Meaning
ATTACHMENT	A type of formal debt enforcement - in which assets belonging to a debtor that are in their possession can be seized by creditors (for example, stock in a shop). Those seized assets can then be sold to raise money to pay the debt.
EXCEPTIONAL ATTACHMENT	A more intrusive type of formal debt enforcement - in which non-essential assets situated within a debtor's home can be seized by creditors. Those seized assets can then be sold to raise money to pay the debt. <i>Notes:</i> 1. In 2002 ‘exceptional attachment’ replaced the previous diligence of “poundings and warrant sales”. 2. On expiry of the period of notice, the seized assets are auctioned to raise funds to repay the debt.
“The 2002 Act”	Means - the Debt Arrangement and Attachment (Scotland) Act 2002. (SSI 2002/17)
“The 2002 rules”	Means - the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002”. (SSI 2002/560)
“The 2024 Act”	Means - the Bankruptcy and Diligence (Scotland) Act 2024. (SSI 2024/9)

Timing

3. *ROUTINE* – the 2024 Act received Royal Assent in July 2024 and the Accountant in Bankruptcy (AiB) then lodged this rules request in October 2024. The Scottish Government set a ‘target date’ for the commencement of section 18 of the 2024 Act in due course.

Vires

4. The power to amend ‘diligence’ procedures is narrated in [sections 103 \(2\) \(a\) and 104 2 \(a\)](#) of the Courts Reform (Scotland) Act 2014 ([SSI 2014/18](#)).

(2) Without limiting that generality, the power in subsection (1) includes power to make provision for or about:

(a) execution or **diligence following on such proceedings...**

Background

5. In 2021 the diligence working group¹ issued its final report which reads:

“The group also considered whether the current 7 day timescale for the redemption of assets was sufficient. This redemption period is the timescale that a debtor has to avoid the attached items from being sold, by paying the appraised value.

In most cases attached items are left in situ rather than being removed and put into storage, but it was acknowledged that any increase in the redemption period would increase storage costs where the items are removed.

It was agreed that where assets are attached and not removed from the premises the redemption period should be extended to 14 days which would bring the timescale in line with Attachment. However, where the items are attached and removed the redemption period should remain at 7 days to help limit the costs associated with this diligence.

Recommendation - The timescale for disposal of assets should be amended to 7 days in the event articles are removed immediately and 14 days if they are left in situ”.

6. In addition the AiB had noted the potential policy gap where, having considered the requirements in both the 2002 Act and the 2002 rules, a debtor could try to apply to the court to redeem seized assets after they had been sold at auction.
7. In response the 2024 Act now states those 7 day and 14 day notice periods within the primary legislation (*rather than in the 2002 diligence rules*).
8. The body of this paper considers whether there is a consequential need to amend the 2002 diligence rules. Further background is available in:
- *Annex 1* – The changes being made by primary legislation.
 - *Annex 2* – Giving notice on the removal of assets.
 - *Annex 3* – Giving notice of the ability to redeem assets.
 - *Annex 4* – History of changes made to the 2002 rules.

The removal of assets

9. When non-essential assets in a person’s home are ‘attached’ then under section 53 (1) of the 2002 Act an ‘officer of court’ can choose a) to remove those assets immediately or b) to delay removal if it is impractical² to do so:

Section 53 (1) -The officer shall, unless the officer considers it impractical to do so, immediately remove any article which is attached in execution of an exceptional attachment order from the dwellinghouse in which it is attached.

10. Where those attached assets are not removed immediately - that officer must give notice to the debtor (*or any other person in possession of the asset*) of any future date that may be scheduled for that removal to take place:

¹ <https://aib.gov.uk/policy-and-legislation/closed-consultations-and-reviews>

² *If specialist handling and/or short term storage is required.*

*Section 53 (2) - If an article is not immediately removed from the dwellinghouse in which it is attached, **the officer shall give notice** to the debtor and to any other person in possession of the article of the date arranged for the removal of the article from that dwellinghouse.*

11. Since 2002 rule 19 had stipulated the requirement for that ‘notice’ to be given to the debtor at least 7 days before the scheduled ‘date for removal’:

Rule 19 - Notice of removal and auction of an attached article

(1) An officer of court shall make the following notices in form 14:–

- (a) a notice under section 27(4) of **the date and location of an auction**, and the date of removal of an attached article from the place at which it is kept; and*
- (b) a notice under section 53(2) of **the date of removal of an attached article** from the dwellinghouse at which it is kept.*

(2) A notice under paragraph (1) shall be given to the debtor, and to any other person in possession of an article which is the subject of that notice, no later than 7 days before the proposed date of removal.

12. Section 18 of the 2024 Act now amends section 53 (1) of the 2002 Act (refer Annex 1) so that that 7 day notice period is stated in the primary legislation.

The redemption of assets

13. In situations where assets are being attached then a 7 day window applies after the ‘date of attachment’ to allow debtors to apply to ‘redeem’ their assets³:

*Section 56 (1) - Subject to any order made under section 20(1)(b) above, the debtor is entitled, within 7 days of **the date on which an article is attached**, to redeem that article.*

14. Rule 19 stipulates the different types of notices that could arise, and then specifies a notice period of 7 days:

Rule 19 - Notice of removal and auction of an attached article

(1) An officer of court shall make the following notices in form 14:–

- (a) a notice under section 27(4) of **the date and location of an auction**, and the date of removal of an attached article from the place at which it is kept; and*
- (b) a notice under section 53(2) of **the date of removal of an attached article** from the dwellinghouse at which it is kept.*

*(2) A notice under paragraph (1) shall be given to the debtor, and to any other person in possession of an article which is the subject of that notice, **no later than 7 days before the proposed date of removal**.*

15. Section 18 of the 2024 Act now amends section 56 (1) of the 2002 Act (refer Annex 2):

- It replicates the 7 day notice period from rule 19 if the seized assets were not removed immediately; and

³ If the attachment was not competent, an auction would be unduly harsh, or the article has sentimental value.

- It adds a new 14 day notice period if the date for removal of assets was deferred.

16. That amended section 56 (1) of the 2002 Act reads:

Section 56 (1) - Subject to any order made under section 20 (1) (b) above, the debtor is entitled, within 7 days:

*(a) where an article was removed immediately by the officer from the dwellinghouse in which it was attached, to redeem that article **within 7 days of the date on which it was attached,***

*(b) where an article was not removed immediately by the officer from the dwellinghouse in which it was attached, to redeem that article **within 14 days of the date on which it was attached.***"

The drafting instructions (for exceptional attachment)

17. To reflect the rule changes requested by AiB the 'proposed drafting instruction' is:

- To enable those that do not subscribe to legal databases to easily find⁴ these rules this amending order should be enacted as a standalone instrument.
- To amend rule 19 and the accompanying form:
 - To only retain the 7 day notice period for the notices given for an 'ordinary attachment' under rule 27 (4); and
 - To remove the requirement that a 7 day notice period applies for an 'extraordinary attachment' sought under rule 56 (1) (*As the 7 day and 14 days are now stated within the primary legislation it is not essential to have that information repeated within the 2002 rules.*

18. The alternative option would be:

- To reword rule 19 to retain the references to both the existing types of notices, retain the current 7 day notice period; and then add the 14 day notice period now specified in relation to the notices given under section 56 (1) (b)).

19. **The Committee should discuss amending rule 19 and decide whether:**

- **To exclude both notice periods - given they are already stated in the primary legislation; or**
- **To include both notice periods - if that would improve the readability of these rules.**

Compatibility with the Guiding Principles

⁴ The 2002 rules are not made available for download from the SCTS website. Those without access to a legal database such as Westlaw would need to view the rules as amended via legislation.gov.uk

20. Once drafted - the instrument amending the 2002 rules will be checked for compatibility against the guiding principles⁵ of the Council:

<i>Guiding Principles (of the SCJC)</i>	<i>Compatibility with each principal</i>
<i>The civil justice system should be fair, accessible and efficient.</i>	<i>EFFICIENCY</i> – the courts can avoid the potential workload and communication problems arising if an application was made to redeem assets after they were sold at auction.
<i>Rules relating to practice and procedure should be as clear and easy to understand as possible.</i>	<i>USER EXPERIENCE</i> – debtors will better understand that they will have up to 14 days to seek to redeem their seized assets (where removal was deferred).
<i>Practice and procedure should, where appropriate, be similar in all civil courts.</i>	<i>NOT APPLICABLE (the diligence of ‘exceptional attachment’ only applies in the sheriff court).</i>
<i>Methods of resolving disputes which do not involve the courts should, where appropriate, be promoted.</i>	<i>NOT APPLICABLE – (diligence takes place after the court has taken decisions on dispute resolution).</i>

Recommendations

21. It is recommended that the Committee instructs amendments to the ‘diligence procedures’ prescribed by the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002⁶ so that either:

- Rule 19 is reworded to remove the 7 day notice period for an ‘extraordinary attachment’; or
- Rule 19 is reworded to retain the existing 7 day notice period and add the new 14 day notice period for an ‘extraordinary attachment’.

Secretariat to the Scottish Civil Justice Council
May 2025

⁵ As prescribed in section 2 (3) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013

⁶ [SSI 2002/560](#)

BIBLIOGRAPHY

Legislation:

Debt Arrangement and Attachment (Scotland) Act 2002

<https://www.legislation.gov.uk/asp/2002/17/contents>

Bankruptcy and Diligence (Scotland) Act 2024

<https://www.legislation.gov.uk/asp/2024/9/contents>

The existing rules: (on ‘exceptional attachment’)

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

<https://www.legislation.gov.uk/ssi/2002/560/contents/made>

Note:

1. Annex 4 lists all subsequent amending orders made

Consultation

Diligence Working Group – Final Report (Mar 2021, AIB)

<https://aib.gov.uk/policy-and-legislation/closed-consultations-and-reviews>

Scotland’s statutory debt solutions and diligence: policy review response (Aug 2022, SG)

<https://www.gov.scot/publications/scottish-government-consultation-scotlands-statutory-debt-solutions-diligence-policy-review-response/documents/>

ANNEX 1 – THE CHANGES BEING MADE BY PRIMARY LEGISLATION

Section 18 of the 2024 Act reads as follows:

Section 18 - Notice and redemption periods

(1) Part 3 of the Debt Arrangement and Attachment (Scotland) Act 2002 is modified as follows.

(2) In section 53 (removal of articles attached in dwellinghouse), in subsection (2), at the end insert “**(which is to be not less than 7 days from the date on which the notice is given)**”.

(3) In section 56 (redemption), in subsection (1), for the words from “, within 7 days” to the end of that subsection substitute “—

(a) where an article was removed immediately by the officer from the dwellinghouse in which it was attached, to redeem that article within 7 days of the date on which it was attached,

(b) where an article was not removed immediately by the officer from the dwellinghouse in which it was attached, to redeem that article within 14 days of the date on which it was attached.”.

The rationale for making these changes was narrated in the ‘explanatory notes’:

<https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/bankruptcy-and-diligence-scotland-bill/stage-2/revised-explanatory-notes-accessible.pdf>

Section 18 – Notice and redemption periods

Para. 53 - Exceptional attachment is a form of diligence which can be used, in specific circumstances, to recover debt owed by a debtor to a creditor using a procedure which allows the attachment of non-essential assets within a debtor’s home. Section 53 of the Debt Arrangement and Attachment (Scotland) Act 2002 (the “2002 Act”) provides for immediate removal of non-essential assets in execution of an exceptional attachment order once an attachment schedule has been completed unless the officer considers it impractical to do so, for example where specialist handling is required. Section 53(2) provides that if an article is not immediately uplifted, the officer must inform the debtor or any person in possession of the article when it will be removed. Rule 19.2 of the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002 currently provides that a notice under section 53(2) must be given to the debtor and to any other person in possession of an article which is the subject of that notice, no later than 7 days before the proposed date of removal. This section modifies section 53(2) to cement that minimum notice period of 7 days into primary legislation.

Para. 54 - Section 56 of the 2002 Act provides that the debtor may redeem non-essential assets within 7 days of the date on which they were attached. This section modifies section 56 so that, if an article was not removed immediately by the officer from the home in which it was attached, the debtor is entitled to redeem that article within 14 days of the date on which it was attached. Where an article is removed immediately by the officer from the home in which it was attached, the debtor has the same time to redeem the article as the legislation currently allows – i.e. 7 days from the date on which the article was attached.

ANNEX 2 – GIVING NOTICE ON THE REMOVAL OF ASSETS

To remove articles from a home section 53 of the Act of 2002 currently reads:

Section 53 - Removal of articles attached in dwellinghouse

(1)The officer shall, unless the officer considers it impractical to do so, immediately remove any article which is attached in execution of an exceptional attachment order from the dwellinghouse in which it is attached.

(2)If an article is not immediately removed from the dwellinghouse in which it is attached, the officer shall give notice to the debtor and to any other person in possession of the article of the date arranged for the removal of the article from that dwellinghouse.

(3)The officer may remove from the dwellinghouse only such attached articles as, if sold at their values fixed under section 51 above, would realise in aggregate the sum recoverable.

When commenced - section 18 the 2024 Act will amend subsection 53 (2) to read:

*(2)If an article is not immediately removed from the dwellinghouse in which it is attached, the officer shall give notice to the debtor and to any other person in possession of the article of the date arranged for the removal of the article from that dwellinghouse (**which is to be not less than 7 days from the date on which the notice is given**).*

ANNEX 3 – GIVING NOTICE OF THE ABILITY TO REDEEM ASSETS

To redeem articles before an auction section 56 of the Act of 2002 currently reads:

Section 56 - Redemption

(1) Subject to any order made under section 20 (1) (b) above, the debtor is entitled, within 7 days of the date on which an article is attached, to redeem that article.

(2) The amount for which such an article may be redeemed is the value fixed under section 51 or 54(1) above.

(3) The officer shall, on receiving payment from the debtor for the redemption of an attached article, grant a receipt in the form prescribed by Act of Sederunt to the debtor.

(4) The attachment of the article is, on the grant of such a receipt, to cease to have effect.

When commenced - section 18 the 2024 Act will amend subsection 56 (1) to read:

Section 56 - Redemption

(1) Subject to any order made under section 20 (1) (b) above, the debtor is entitled, within 7 days:

(a) where an article was removed immediately by the officer from the dwellinghouse in which it was attached, to redeem that article within 7 days of the date on which it was attached,

(b) where an article was not removed immediately by the officer from the dwellinghouse in which it was attached, to redeem that article within 14 days of the date on which it was attached."

ANNEX 4 – HISTORY OF CHANGES MADE TO THE 2002 DILIGENCE RULESArrestment - the initial 'diligence procedures' and forms (1 instrument / 129 pages)

<i>Count</i>	<i>Pages</i>	<i>SSI</i>	<i>Description</i>	<i>Summary</i>
1	69	2002/560	<i>Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002</i> ”.	Schedule 1 - Rules 1 to 36 (12 pages) Schedule 1 - Forms 1 to 28 (50 pages)

The amendments” made by Act of Sederunt (3 instruments / 21 pages)

<i>Count</i>	<i>Pages</i>	<i>SI</i>	<i>Description</i>	<i>Summary of changes</i>
1	14	2004/505	Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) Amendment (The Debt Arrangement Scheme (Scotland) Regulations 2004) 2004	Adds new rules 37-41 (for variation of debt payment plans)
2	3	2007/466	Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2007	Applications in relation to vulnerable witnesses, and special measures
3	4	2009/403	Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) Amendment 2009	Adds form B - summary warrant under section 128(6) of the Finance Act 2008 (allows recovery of HMRC debt)
	21 pages			