

SERVING A SCHEDULE OF ARRESTMENT

Purpose

1. To propose amendments to;
 - *Court Procedure* - to support a Schedule of Arrestment being served electronically; and
 - *Diligence Procedure* – to support a creditor seeking sanctions for an arrestee failing to disclose why an ‘arrestment’ was unsuccessful.

Terminology

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

Term	Meaning
ARRESTEE	Means - the person or body that is holding assets belonging to a debtor
ARRESTMENT	A type of debt enforcement - where assets belonging to a debtor in the hands of a third party can be seized by creditors. The common types are: <ul style="list-style-type: none"> • Arresting money in a bank account (<i>a "bank arrestment"</i>); and • Arresting wages in the hands of an employer (<i>an "earnings arrestment"</i>).
ELECTRONIC TRANSMISSION	Means – the relevant documents can be legally served by a sheriff officer transmitting those documents to an arrestee by any electronic means (<i>subject to that arrestee indicating they are willing to accept documents sent in that manner</i>).
PERSONAL SERVICE	Means – the relevant documents can be served by a ‘sheriff officer’ visiting the intended recipient at their normal dwelling place or place of work and either: <ul style="list-style-type: none"> • Hand delivering the documents to that intended recipient, or • Hand delivering the documents to another person at either of those addresses; or • Placing the documents through the letter box¹ (<i>at either address</i>); or • Otherwise leaving the documents where they are most likely to be brought to the attention of the intended recipient (<i>at either address</i>).
POSTAL COPIES	Means - the additional copies of the documents served that must be sent by ‘ordinary first class mail’ as soon as a sheriff officer has executed ‘Personal Service’.
“The 1987 Act”	Means - the Debtors (Scotland) Act 1987 (UKSI 1987/18)
“The 1988 rules”	Means – <i>the</i> “Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987” (UKSI 1988/2013).
“The 2024 Act”	Means - the Bankruptcy and Diligence (Scotland) Act 2024 (SSI 2024/9).

¹ Also referred to as “letterbox service” or “keyhole service”.

Timing

3. *ROUTINE* – the 2024 Act received Royal Assent in July 2024 and the subsequent rules request from the Accountant in Bankruptcy (AiB) was logged in October 2024. The Scottish Government will set a ‘target commencement date’ for sections 14 and 16 of that 2024 Act in due course.

Vires

4. The power to amend ‘court procedure’ is provided by [sections 103 \(1\) and 104 \(1\)](#) of the Courts Reform (Scotland) Act 2014 ([SSI 2014/18](#)):
- (1) The Court of Session may by act of sederunt make provision for or about—
- (a) The **procedure and practice to be followed** in civil proceedings in the sheriff court or in the Sheriff Appeal Court,
- (b) Any matter incidental or ancillary to such proceedings.
5. The power to amend ‘diligence procedure’ is provided by [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

6. In 2021 - the Final Report of the Diligence Working Group² recommended that:
- **Electronic service of bulk arrestments should be introduced where appropriate.**
 - Further work needed to identify if there is any other circumstances when electronic service and personal service would be appropriate.
 - Diligence language should be simplified and where appropriate, a clearer explanation of what the diligence achieves to be provided in legislation and/or supporting documentation.
 - **Banks and other arrestees should be required to notify sheriff officers where a diligence is unsuccessful, within 21 days.** Further work should be carried out to determine how this can be done with minimum impact on banks, the costs associated with this change and who should bear this additional cost.
 - Consider changes needed to allow bank arrestment's to take place where a bank account is held outwith Scotland.
 - Further work needed to determine how Universal Credit and other benefits can be protected from arrestment.
 - The requirement to send a further Recorded Delivery copy of the arrestment schedule to the arrestee should be removed.

² <https://aib.gov.uk/policy-and-legislation/closed-consultations-and-reviews>

7. Part 1 of this paper covers amendment of ‘court procedures’ - to anticipate the option for electronic transmission of an arrestment. Further detail is available in:
 - *Annex 1 – Serving documents by electronic transmission.*
 8. Part 2 of this paper covers the amendment of ‘diligence procedures’ - to recognise the extended duty of disclosure. Further detail is available in:
 - *Annex 2 – Expanding the duty of disclosure.*
 - *Annex 3 – Diligence rule 65A.*
 - *Annex 4 – Diligence form 59a.*
 - *Annex 5 – History of the rule changes made.*
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PART 1 – SERVING A ‘SCHEDULE OF ARRESTMENT’ ELECTRONICALLY

9. The policy objectives when serving a Schedule of Arrestment are:
 - To enable a creditor to seize assets belonging to a debtor that are held by a third party (such as a bank or employer).

Existing Rules

10. Under OCR rule 5.4(4) ‘Postal Copies’ are to be sent by “ordinary first class post”. The differential approach then required by OCR rule 6.1(*refer Annex 1*) is that “registered post or a first class recorded delivery service” must be used if serving a Schedule of Arrestment on an arrestee.

Policy Development

11. *In 2018* - the Accountant in Bankruptcy (AiB) set up a diligence working group.
12. *In 2021* – that working group recommended the better use of technology within the processes used for the arrestment of a bank account or wages:
“Electronic service of bulk arrestments should be introduced where appropriate”.
13. *In 2024* – the Scottish Parliament agreed to insert options for ‘electronic transmission’ of Schedules of Arrestment via [sections 14](#) and [section 16](#) of the Bankruptcy and Diligence (Scotland) Act 2024 ([SSI 2024/9](#)) (*refer Annex 3*). The relevant subsections are:
 - *FOR BANKS* - subsection 14 (2) enables the electronic transmission of Schedules of Arrestment by inserting section 73CA into the 1987 Act; and
 - *FOR EMPLOYERS* - subsection 16 (2) enables the electronic transmission of these schedules by amending section 70 of the 1987 Act.

14. SMASO is now compiling an implementation plan to cover the identification of willing banks³, and the development of appropriate new systems of work⁴.
15. Once those new systems of work start to “go live” the use of electronically transmitted Schedules of Arrestment will progressively increase, leading to a consequential fall in documents posted.
16. That in turn will facilitate arrestees reducing the administrative burden placed on them by using a generic email box to securely receive all schedules of arrestment; which will enable a more efficient allocation of workload to their staff (*whether office based or home based*).

The drafting instructions (*for the electronic transmission of an arrestment*)

17. For the sheriff court procedures on serving documents to keep pace with the changes within the 2024 Act - the Drafting Instruction is to amend OCR rule 6.1:
 - To recognise “electronic transmission’ as an additional option available to sheriff officers when serving a Schedule of Arrestment⁵; and
 - To amend OCR forms G4B and G4C.
18. For the Court of Session procedures on serving documents to keep pace with the 2023 Act - the Drafting Instruction is to amend RCS rules 16.1, 16.3 and 16.4:
 - To recognise “electronic transmission’ as an additional option available to messengers at arms when serving a Schedule of Arrestment; and
 - To amend RCS forms 16.3 and 16.4.
19. **The Committee should discuss and agree Drafting Instructions that would:**
 - **Amend OCR rule 6.1 (and associated Forms) to make provision for sheriff officers to choose the Electronic Transmission option; and**
 - **Amend RCS rules 16.1, 16.3 and 16.4 (and associated Forms) to make provision for messengers at arms to choose the Electronic Transmission option.**

Exclusions:

20. The AiB had asked the Council to disapply the requirement in OCR rule 6.1 to send Postal Copies when the ‘electronic transmission’ of a Schedule of Arrestment takes place. If the Council agrees to withdraw that obligation to send postal copies from all court procedures that change will not be required.

³ Implementation will start with the high street banks, but the online challenger banks may take much longer.

⁴ The ‘systems of work’ are likely to include a willing arrestee providing a generic email box so that an email with an attached PDF can be sent via a secure network to that arrestee; or a notification email can be sent with a secure link to a PDF that can be viewed via a password controlled online document storage system.

⁵ Not all banks will be willing to accept electronic transmission (for a Schedule of Arrestment).

PART 2 – PROVIDING INFORMATION ON UNSUCCESSFUL ARRESTMENTS

21. On receiving a Schedule of Arrestment - the arrestee already has an existing duty under section 70A of the 1987 Act to disclose relevant information to a creditor where an arrestment was successful. Sanction can then be sought by that creditor under section 70B of the 1987 Act if the arrestee fails to provide that information.
22. To enable creditors to be better informed; the 2024 Act has amended sections 70A and 70B of the 1987 Act to extend that duty of disclosure to include information on the reasons why an arrestment did not succeed.

The existing rules

23. The 'diligence procedures' that cover arrestment are prescribed under the 1988 rules⁶ for "Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987". Annex 5 lists the subsequent amending orders made.

The drafting instructions (on the duty to disclose information)

24. The drafting instructions are:

- *AMENDING ORDER* – to support lay users to easily find ⁷ these rules they need to be enacted as 1 standalone instrument that amends the 1988 rules.
- *RULE 65A⁸ (Refer Annex 3)* – should be reworded to support applications for sanction against an arrestee with regard to an unsuccessful arrestment, as well as a successful arrestment. That change could be effected by making reference to section 70A itself rather than each of the subsections within it; and by changing the heading of rule 65A:
 - *FROM: "Application where employer fails to give notice under section 70A(5) of the Act",*
 - *TO: "Failure to give notice under section 70A"*
- *FORM 59a⁹ (Refer Annex 4)* – should be amended to allow that existing form to be used by creditors when seeking sanction with regard to either a successful arrestment or an unsuccessful arrestment. The alternative option would have been to add another new form 59B (as suggested by the AiB)

25. The Committee should discuss the options and agree Drafting Instructions:

- **To recognise the added duty on arrestees to disclose information if an arrestment was unsuccessful; and**
- **To update the ability to apply for sanctions where the arrestee fails to comply with the expanded duty of disclosure.**

⁶ <https://www.legislation.gov.uk/ukxi/1988/2013/contents/made>

⁷ The 1988 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](https://www.legislation.gov.uk)

⁸ Inserted by the Act of Sederunt (Sheriff Court Rules Amendment) (Diligence) 2008 ([SSI 2008/121](#))

⁹ Inserted by the Act of Sederunt (Sheriff Court Rules Amendment) (Diligence) 2008 ([SSI 2008/121](#))

Compatibility with the Guiding Principles

26. Once drafted - the amending instrument will be checked for compatibility against the following guiding principles¹⁰:

<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>	<p>EFFICIENCY – the ability to electronically transmit a Schedule of Attachment will allow willing banks to better allocate the administrative workload they receive.</p> <p>EFFICIENCY – creditors can use one form to seek sanctions for non-disclosure of information (<i>irrespective of whether an arrestment was successful or unsuccessful</i>).</p>
<i>Rules relating to practice and procedure should be as clear and easy to understand as possible.</i>	USER EXPERIENCE – updating these rules will reinforce the option to use electronic transmission, and that the duty of disclosure now includes unsuccessful arrestments.
<i>Practice and procedure should, where appropriate, be similar in all civil courts .</i>	CONSISTENCY – the option to use electronic transmission, or to seek sanctions for unsuccessful arrestments, will be provided for in both the Court of Session and the sheriff courts.
<i>Methods of resolving disputes which do not involve the courts should, where appropriate, be promoted.</i>	NOT APPLICABLE – (<i>diligence only follows on after the court has already taken decisions on dispute resolution.</i>)

Conclusions

27. The overall conclusions of this paper are:

- That ‘court procedure’ should make provision for a Schedule of Arrestment to be electronically transmitted; and
- That ‘diligence procedure’ should support creditors using the 1 generic form to make an application for sanctions following a non-disclosure of information.

Recommendations:

28. It is recommended that the Committee instructs amendments to RCS rules 16.1, 16.3, 16.4 and OCR rule 6.1 in order to:

- **Insert ‘Electronic Transmission’ as an option for both sheriff officers and messengers at arms to select when serving a Schedule of Arrestment on a bank or employer**

¹⁰ As prescribed in section 2 (3) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013.

29. It is recommended that the Committee instructs the amendment of rule 65A and form 59A of the 1988 rules¹¹ that cover “Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987” in order to:

- **Recognise that creditors can now make an application for sanction where an arrestee fails to disclose reasons why a particular arrestment had not been successful.**

**Secretariat to the Scottish Civil Justice Council
May 2025**

¹¹ <https://www.legislation.gov.uk/ukSI/1988/2013/contents/made>

BIBLIOGRAPHY

Legislation – for establishing ‘court procedure’

Courts Reform (Scotland) Act 2014

<https://www.legislation.gov.uk/asp/2014/18/contents>

- Power to regulate procedure - Sections 103 (2) (a) & section 104 (2) (a)
<https://www.legislation.gov.uk/asp/2014/18/part/4/crossheading/procedure>
 - Power to regulate fees - Sections 105 (1) (b) & section 106 (1) (b)
<https://www.legislation.gov.uk/asp/2014/18/part/4/crossheading/fees-of-solicitors-etc>
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Legislation – for ‘electronic transmission’ & the ‘duty of disclosure’

Debtors (Scotland) Act 1987

PART III – Diligence against earnings (s46 to s73T)

PART VI – Messengers at arms and sheriff officers (s75 to s86A)

<https://www.legislation.gov.uk/ukpga/1987/18/contents>

Bankruptcy and Diligence (Scotland) Act 2024

Section 14 - Service of documents and arrestee’s duty of disclosure:

Section 16 - Service of documents and employers’ etc. duty of disclosure

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

Existing Rules – for court procedure:

Ordinary Cause Rules (OCR):

- Rule 6.1

Rules of the Court of Session (RCS)

- Rule 16.1, 16.3 & 16.4
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Existing rules – for diligence procedure:

Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (S) Act 1987) 1988

<https://www.legislation.gov.uk/uksi/1988/2013/contents/made>

Note:

1. Annex 5 lists all subsequent amending orders made

BIBLIOGRAPHY...continued

Judgements:

Cabot Financial v Bell [2023] CSIH 43 (10 pages)
Postal service under Simple Procedure - requires proof of sending, rather than evidence of delivery
https://www.bailii.org/scot/cases/ScotCS/2023/2023_CSIH_43.html

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/>

Books:

MacPhail - Sheriff Court Practice – 4th edition

- Para. 1.35 to 1.37 – Sheriff Officers
- Para. 6.24 to 6.29 - Citation by officer of court
- Para. 6.30 to 6.33 – Citation furth of Scotland

ANNEX 1 – SERVING DOCUMENTS BY ‘ELECTRONIC TRANSMISSION’

In the Bankruptcy and Diligence (Scotland) Act 2024 ([SSI 2024/9](#)) the subsections that anticipate the Electronic Transmission of Schedules of Arrestment in future are:

Section 14 - Service of documents and arrestee’s duty of disclosure:

Subsection 2 inserts a new section 73CA into the Debtors (Scotland) Act 1987 which reads:

- (1) In relation to the service of documents for the purposes of sections 73B and 73C, the documents must be served on the arrestee either—*
- (a) by being sent to the proper address of the arrestee—*
 - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or*
 - (ii) by a postal service which provides for the delivery of the document to be recorded, or*
 - (b) by being transmitted to the arrestee electronically.***

Section 16 - Service of documents and employers’ etc. duty of disclosure

Subsection 2 amends section 70 (3) (b) of the Debtors (Scotland) Act 1987 to read

- (3) An earnings arrestment schedule or a current maintenance arrestment schedule must be served on an employer either—*
- (a) by being sent to the proper address of the employer—*
 - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or*
 - (ii) by a postal service which provides for the delivery of the document to be recorded, or*
 - (b) by being transmitted to the employer electronically.***

ANNEX 2 – EXPANDING THE DUTY OF DISCLOSURE

In the Bankruptcy and Diligence (Scotland) Act 2024 ([SSI 2024/9](#)) the subsections that expand the duty of disclosure to include the reasons for an arrestment being unsuccessful are:

Section 14 - Service of documents and arrestee's duty of disclosure:

Subsection 3 amends section 73G (4) of the Debtors (Scotland) Act 1987 to read:

- (3) *In section 73G (4) (arrestee's duty of disclosure)—*
- (a) *in paragraph (a), the word "and" after sub-paragraph (ii) is repealed,*
 - (b) *after paragraph (b), insert—*
*"(c) **where no property is attached, the reason why** (for example, the arrestee does not hold funds standing to the credit of the debtor, or does hold such funds but the sum held is less than sum mentioned in section 73F(3)(a))."*

Section 16 - Service of documents and employers' etc. duty of disclosure

Subsection 3 amends section 70A of the Debtors (Scotland) Act 1987 to read:

- (3) *In section 70A (employer's duty to provide information)—*
- (a) *in subsection (1)—*
 - (i) *for "Where an employer" substitute "This section applies where a person",*
 - (ii) *the words from "the employer shall" to the end of the subsection are repealed,*
 - (b) *for subsection (2) substitute—*
*"(1A) **If—***
 - (a) ***the debtor is not employed** by the person who received the schedule or order, or*
 - (b) *the debtor is employed by that person but, because of the net earnings of the debtor, **the sum to be deducted on any pay-day under this Part of this Act is, or is expected to be, nil,****the person must, within 21 days of the order or schedule being served, **send to the relevant person the information mentioned** in paragraph (a) or (b) (as appropriate) in (or as nearly as may be in) such form as may be prescribed.*

ANNEX 3 – DILIGENCE RULE 65A**Rule 65A - Application where employer fails to give notice under section 70A (5) of the Act**

- (1) An application by a creditor under section 70B of the Act shall be in **Form 59a**.
- (2) An application to which paragraph (1) of this rule applies shall specify–
- (a) the name and address of the applicant, the debtor, the employer and the officer of court who served the arrestment schedule in respect of the debt due to the applicant; and
 - (b) the date of service of the applicant's earnings arrestment schedule, current maintenance arrestment schedule or conjoined arrestment order.
- (3) On the lodging of such an application the sheriff clerk shall–
- (a) fix a date for a hearing;
 - (b) obtain from the sheriff a warrant for intimation;
 - (c) intimate the application and warrant to the applicant and the employer; and
 - (d) complete a certificate of intimation.
- (4) The sheriff clerk shall intimate the sheriff's decision on such an application to the employer if the employer was not present when the application was determined.

Notes

1 Rule 65A of the "Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987 1988" ([UKSI 1998/2013](#))

2 Section 70B of the 1987 Act was inserted by section 203 of the Bankruptcy and Diligence (Scotland) Act 2007

ANNEX 4 – DILIGENCE FORM 59a**Rule 65A**

FORM 59a

The Debtors (Scotland) Act 1987, section 70B

Sheriff Court:.....

(Court Ref No.)

APPLICATION UNDER SECTION 70B OF THE ACT

APPLICANT:

- A. The applicant is:
- B. The employer is:
- C. The debtor is:
- D. The *earnings arrestment/current maintenance assessment schedule/conjoined arrestment order** was served on the employer by *[insert name] sheriff officer / messenger-at-arms** on the instructions of the applicant on *[insert date]*.
- E. The employer has ceased to be the employer of the debtor but has failed to give notice under section 70A(5) of the Debtors (Scotland) Act 1987 of that fact and of the name and address of any new employer of the debtor.
This application is made under section 70B(1) of the Debtors (Scotland) Act 1987.
- F. The applicant asks the court—
 - 1. to fix a hearing;
 - 2. to order the sheriff clerk to intimate this application and the date of the hearing to the applicant and the employer;
 - 3. to make an order under section 70B(1) in respect of the employer; and
 - 4. to award expenses (if competent).

Date

(Signed)

Applicant

Notes1. Form 59a was inserted by the Act of Sederunt (Sheriff Court Rules Amendment) (Diligence) 2008 ([SSI 2008/121](#))

ANNEX 5 – HISTORY OF THE RULE CHANGES MADE

The initial 'diligence procedures' and forms (1 instrument / 129 pages)

Count	Pages	SI	Description	Summary
1	129	UKSI 1988/2013	Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988	Rules 1 to 75 enacted (34 pages) Forms 1 to 60 (95 pages)

The amendments" made by Act of Sederunt (8 instruments / 117 pages)

Count	Pages	SI	Description	Summary of changes
1	7	UKSI 1991/1920	Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) (Amendment) 1991	Substitute - rule 45 Substitute - forms 35, 61, 62 & 63
2	3	UKSI 1992/2964	Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) (Amendment) 1992	Makes provision for enforcement action for non-payment of council tax, council water charge or penalties by summary warrant procedure.
3	3	UKSI 1994/3086	Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) (Amendment) 1994	Makes provision for recovery of insurance premium tax by summary warrant procedure Add - new form 63A
4	3	UKSI 1995/1876	Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) (Amendment) 1995	Provides for diligence by way of earnings arrestment and arrestment and action offorthcoming and sale, as well as poinding and sale Amend - form 63 Omit - form 63A
5	4	UKSI 1996/2709	Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) (Amendment) 1996	Revokes previous 4 amending orders from 1991, 1992, 1994 & 1995. Makes general provision for enforcement action for non-payment of monies by summary warrant procedure rather than separate provision dependent on the legislative basis of such recovery Amend - rule 68 Substitute - forms 61 & 62 Omit - form 63
6	69	SSI 2002/560	Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988	Updates rules on arrestment following the abolition of poindings & warrant sales: Omit - Part III of the rules Omit - forms 4 to 29
7	3	SSI 2007/465	Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) Amendment (vulnerable witnesses)2007	Amend - rule 71 (powers of the sheriff)
8	25	SSI 2008/121	Act of Sederunt (Sheriff Court Rules Amendment) (Diligence) 2008	Add - new rule 65A Add - new form 59a Amend - forms 30, 34 and 45.
	117 pages			