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Judicial auctions

Scotland

The following section details the provisions in Scotland relating to the seizure of property as a means of recovering money owed.

In Scotland, property may be seized as a means of recovering money owed where that debt has been recognised by the courts, and in some other circumstances, including where authorised in certain formal "documents of debt". The processes used to seize property are known as **arrestment** (used to freeze property which belongs to the debtor but held by a third party); **attachment** (used to seize property owned by the debtor and which is in their possession); and **exceptional attachment** (used to seize non-essential property kept within a dwelling house). In some cases the relevant procedures allow the debtor's property to be auctioned under judicial oversight.

Part 2 of the **Debt Arrangement and Attachment (Scotland) Act 2002** (the 2002 Act) sets out the process to be followed when attaching goods. Within 14 days of carrying out the attachment, the sheriff officer must make a report to the Sheriff Court. Once the report has been received, the sheriff officer can arrange to remove the attached items and sell them at a public auction, which the sheriff officer must attend to record, which, if any, items are sold and the price they are sold for. Money obtained at auction may be used to pay the sheriff officer's fees and expenses, then pay the creditor. Any surplus is returned to the debtor. If the items do not sell, ownership of the goods passes to the creditor. Whilst the auction of any attached goods is usually held in an auction room, if it is impractical to do so there is provision in the 2002 Act for the auction to be held elsewhere, other than the debtor's dwelling house.

Where goods have been arrested, and the debtor has not signed a mandate allowing the goods to be released to the creditor, to obtain the property, the creditor must raise an **action of furthcoming** with the court. An action of furthcoming is an application to the court to authorise the release of goods to the creditor who can then sell them to recover all or part of what they are owed.

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