

## ENFORCING A DECREE

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### *Pre-decree advice on:-*

- \* *Who to sue*
- \* *Prospects of recovery*
- \* *How to raise an action*

### *Post Decree Advice:-*

- \* *Enforcement options*
- \* *Tracing absconded debtors*
- \* *Full debt recovery service*



## FEES

You should be aware that fees are payable to Sheriff Officers at each stage of the enforcement process. You can find details of these fees and a calculator at [www.alex-m-adamson.co.uk/fees.aspx](http://www.alex-m-adamson.co.uk/fees.aspx). Fees are normally paid to the Sheriff Officer in advance. In most cases, these fees are added to the debt to be paid. However we cannot guarantee these fees will be recovered. We are happy to offer advice on the prospects of recovery of these fees.



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### **ALEX M ADAMSON LLP**

SHERIFF OFFICERS & MESSENGERS AT ARMS

## ENFORCING A DECREE PRACTICAL CONSIDERATIONS FOR A CREDITOR

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## WHAT CAN I DO WITH A DECREE FROM THE SHERIFF COURT?

Obtaining a decree ordering a debtor to pay you money is only the first step in the procedure. It is important to note that a decree does not guarantee that you will be paid. The debtor must either have funds that can be arrested or assets that can be attached subject to various debtor protection rules.

The first issue to confirm is that you have sued the right person., e.g. where you sue an individual but the debt is owed by a limited company. There are special rules around this issue and AMA can give appropriate advice both before and after you obtain decree.

The ability to recover your money depends on the debtor being employed, holding funds greater than £460 in a bank account or having assets of one description or another. It is most useful if you know:- place of Employment, Bank details or ownership of assets, e.g. vehicle, stock.

There are no databases where we can simply obtain this information and we do not hold data on every debtor. We can make enquiries to obtain information while enforcing but success is not guaranteed as we have no right to demand such information. Your own personal knowledge is often the best source.

AMA are happy to provide guidance on whether it is worth proceeding with enforcement as there is no point throwing good money after bad.

Assuming you have the necessary information what are your options?

### ENFORCEMENT

Enforcement of a Decree is known as Diligence in Scotland. For most forms of Diligence – with the exception of an arrestment authorised by an ordinary decree – a Charge for Payment requires to be served. A Charge is a written, formal demand to the debtor to pay the full outstanding balance to you within fourteen days and includes a warning that further enforcement will follow after that period. After the 14 days have elapsed you can attempt a selection of diligence.

If you know the debtor's place of employment you can attempt an Earnings Arrestment. Once served the arrestment requires the employer to remit a percentage of the debtor's earnings to you on every pay day. (It should be noted an earnings arrestment cannot be used against someone who operates as a contractor or is self-employed).

Where you know someone is due funds to your debtor you can instruct an Arrestment, most commonly with a Financial Institution like a Bank.

A schedule of Arrestment is served upon the Arrestee. The arrestee freezes the sums held at credit of the account in excess of the protected limit which is currently £460.00. The arrestment applies only to funds in credit of an account at the time it is served. Success depends very much on the debtor having funds in credit at the exact time of service and is also subject to correct action by the Arrestee, which is largely outwith our control. It should be noted that an arrestment is a "one-time" diligence and will not catch any funds paid in after the time of the arrestment.

Any attached funds are automatically released to the creditor after 14 weeks, unless a mandate has been signed authorising release of the arrested sums beforehand or where, due to an arrangement, the arrestment has been withdrawn.

Where the debtor is believed to have significant personal assets you can attempt an Attachment. An attachment involves making an inventory of property belonging to the debtor with a view to selling it at auction. Attachment can only be carried out in relation to articles outside a 'dwelling house' – subject to exception outlined below.

Attachment is competent anywhere other than a dwelling house and this covers a place of business, workshop, office or other commercial premises and includes anything physically outside the house. If the debt remains unpaid, the officer will proceed to arrange for the uplift of the attached articles for sale by public auction.

To execute an attachment within a dwellinghouse, you must apply to the court for an Exceptional Attachment Order. The debtor will have an opportunity to state their case at a court hearing prior to any order being granted.

Before granting the order the sheriff has to consider a number of factors including has there been any payment agreement and whether the debtor has received money advice. he sheriff will also take into account whether other diligences have been attempted and whether sufficient funds will be realised from any attachment and auction to cover all of the expenses and a proportion of the debt itself.