

Dealing with debt finding your feet

Advice for you if you are in debt



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▶ Help yourself deal with your debt

Even though it may seem that there is little you can do to help yourself, in fact there is more than you probably think.

- Firstly, don't panic.
- Secondly, **get in touch with free money advice services or a solicitor.**

Either phone an advice agency for an appointment or phone National Debtline or Consumer Credit Counselling Service to speak to a trained money adviser who will talk you through your problems and work with you to try to improve your situation. Money Advice Scotland can put you in touch with a local agency. You can also get details of your local citizens advice bureau through Citizens Advice Scotland. Contact details are listed on the back cover of this booklet.

You can also consult a solicitor. The solicitor may charge a fee but, if your circumstances allow, you may be able to get legal aid or the solicitor may provide an initial interview free of charge.

- Thirdly, and most importantly, **don't ignore the situation** - it can only get worse. With help, you should be able to improve things in both the short and long term.

▶ How to use this booklet

In this booklet we give information about:

- self-help if you are unable to pay your debts
- **free money advice services.**

The **flow chart** shows you where you are in the debt recovery process. Look out any recent **letters** from your **creditors** (the people you owe money to) as these may tell you what action is being taken against you.

An example: if you know your creditors are planning to arrest your wages, look for 'wage arrestments' on the flow chart. The chart will point you to the right chapter in this booklet (chapters 5 and 6a for wage arrestments).

Phone numbers for agencies that give **free, independent, impartial, confidential money advice** run along the bottom of each page. Also, there is a sheet that accompanies this booklet giving the phone numbers for free money advice in **your own area.**

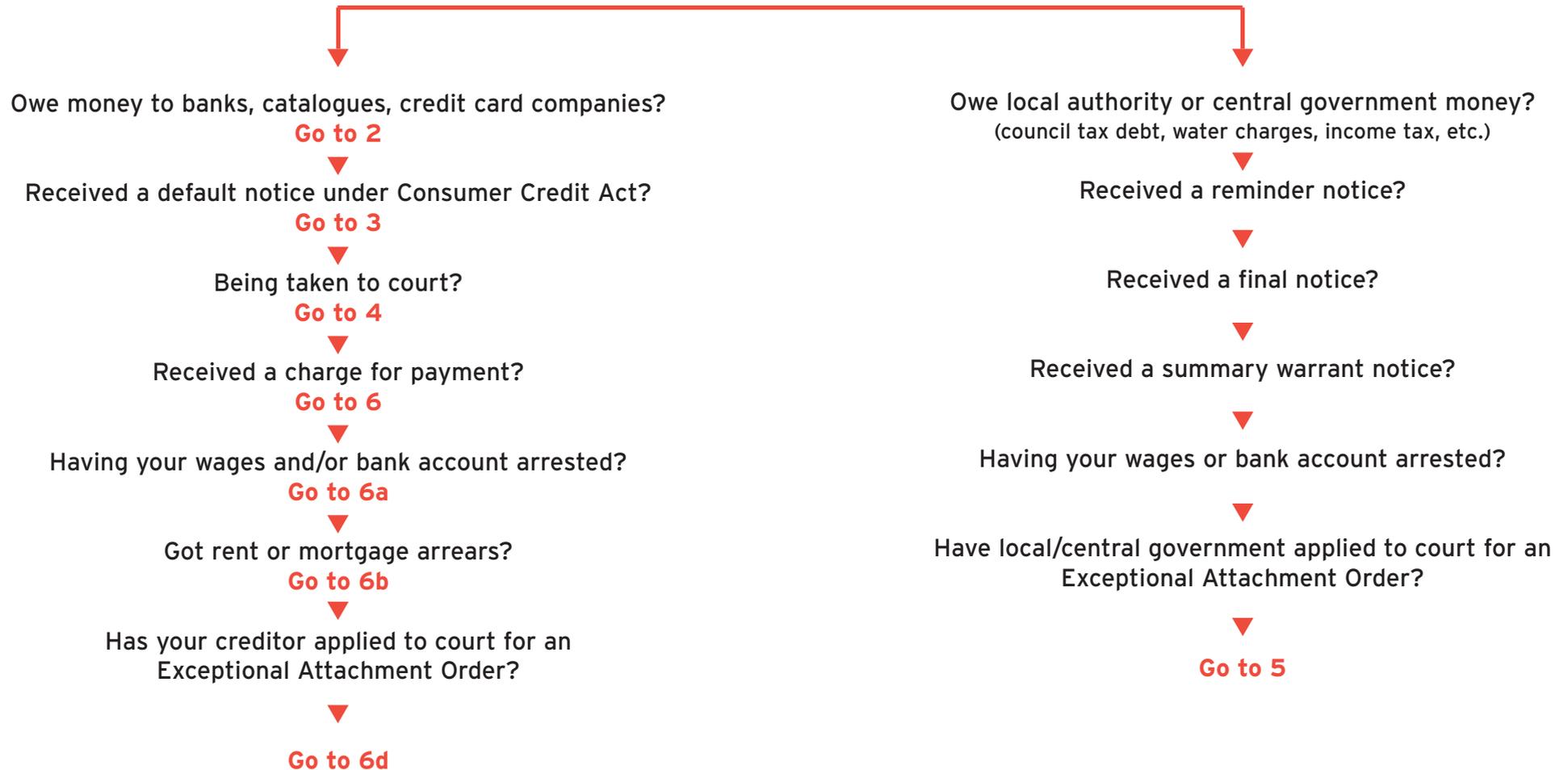
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1 Flowchart - pointing you in the right direction

In debt?



▶ **2 Having problems meeting your debts?**

Many people have problems with their debts. Try not to worry - you do not have to deal with it on your own.

This booklet is designed to help you to work out what you can do about your debts, what choices you may have, and where you can go if you want to talk to someone about them. It is not, however, a detailed statement of the law. Instead it should be seen as sign-posting you to possible solutions.

▶ **Are you are worried because you owe money and can't keep up your payments?**

The first thing to remember - you are not alone. You can get expert advice.

Whether you only have a few debts, or whether you owe money to lots of people or companies, it is important that you think about everyone you owe money to and to try and list them.

Your debts might include credit cards, catalogues, rent/mortgage arrears, council tax arrears, bank loans.

▶ **Reasons for getting into debt**

There are lots of reasons why people find it hard to pay their debts. It could be because of an unexpected change in

circumstances or an unplanned increase in your outgoings because of:

- illness
- onset of a disability
- unemployment
- bereavement
- a new baby in the family
- or you may have borrowed too much.

It is important to understand why you are in debt, but it is more important for you to understand how to help yourself, or get a money adviser to help you and work through your difficulties with you. **There are details in the sheet that comes with this pack about where to find a local money adviser.**

► **Take action now!**

It is best to deal with your debt problems at an early stage, as the longer you leave it the worse things become. And, remember you don't have to do this on your own, as there are advisers in your area to help. Free, independent, impartial, and confidential money advice is out there for you from the money advice agencies listed at the back of this booklet.

A money adviser will look at all your debts, help you decide whether you are able to make any payments to your creditors and, if so, which creditor should be paid first. They can also negotiate with your creditors and deal with emergencies such as:

- gas or electricity being disconnected
- your wages being arrested.

Money advisers will also look at how your income can be maximised. They may suggest you could try applying for state benefits. For example:

- income support
- tax credits
- council tax or housing benefits or rebates.

A money adviser will help you look at your overall debt situation, and help you cope better. They will not make your decisions for you, but will give advice and information, so that you can make informed choices.

Do you know?

The following are some of the choices you may have in order to deal with your debt.

- **Debt management programme** - this allows you to pay off your debts over an extended period of time with agreement from your creditors.

You need to be aware of a couple of things when entering into a debt management programme. It is an informal arrangement with your creditors who can, at any time, decide they no longer wish to accept the payments you offer. But normally they will continue to accept payments as long as your circumstances don't change.

However, they will not always agree to freeze interest charges, and in some instances may also apply an administration charge if the account is not up to date.

You can get help with setting up a debt management programme by approaching a money adviser, or one of the telephone helplines, such as National Debtline, or Scottish Debtline (run by the Consumer Credit Counselling Service).

▶ *Go to the back cover for money adviser and helpline details.*

- **Debt arrangement scheme (DAS)** - this has been introduced to help and protect debtors who owe money to several creditors and who have surplus income from which payments can be made on a regular basis.

DAS works like a debt management plan, but gives you, as a debtor, more protection. Under DAS, a single regular payment is made to an approved payments distributor who sends the money to your creditors. If you are applying for a debt payment programme (DPP) under DAS or if you already

have a DPP and keep to the agreed payments, your creditors cannot carry out enforcement action against you or make you bankrupt. Also, interest is frozen when you have a DPP.

You **must** have a money adviser if you want to apply for a DPP. He or she will advise you on whether DAS is suitable for you and, if you wish to proceed, will ask your creditors to agree a DPP. The DPP will allow you to pay off your debts at a lower rate over a longer period of time. It can be for any amount of money or for any length of time. The regular payments can be quite low if necessary.

If all your creditors consent (or are considered to have consented because they do not respond), the DPP is approved automatically. Creditors will then be bound by it as long as you stick to the payments.

If creditors do not agree, or object, then the DAS administrator can still approve the DPP if it is fair and reasonable.

If your circumstances change, the programme can be varied to take account of this so long as the DAS administrator decides it is fair and reasonable.

DAS contact - phone the DAS administrator helpline 0845 612 6425 for details of DAS. You can also find out more from the website at www.moneyscotland.gov.uk.

- **Bankruptcy** - it may be that you have to consider bankruptcy. This is a serious step which passes control of all your assets to a trustee (often a chartered accountant). Bankruptcy carries severe legal consequences and may place long-lasting restrictions on you.
- **Trust Deed** - this is an informal alternative to bankruptcy, but still has serious legal consequences. It does not involve the court, but all your assets will still be in the hands of your trustee. The legal consequences of a trust deed are usually thought to be less harsh than in full bankruptcy. A trust deed is only suitable if you have some assets that can be sold, or you have enough money left over when you have paid your bills to make a reasonable regular contribution. If the trust deed becomes 'protected' because a sufficient number of your creditors agree to it, it becomes binding on all your creditors.

Bankruptcy, either through the courts or a protected trust deed, can lead to loss of your family home, savings and insurance policies. So never take a decision about either of these without first seeking advice.

- ▶ *You can find the phone and contact numbers of local money advice agencies on the sheet that accompanies this booklet.*

▶ 3 Had a default notice from creditors?

A default notice is usually the first step which creditors must take before they take you to court. In other words, a creditor must tell you in writing that you haven't paid your debt. You must also be given the opportunity to make payments to bring your account up to date. But some debts are treated differently, for example, council tax.

▶ *Go to chapter 5 for further details on council tax debts.*

A default notice may be the first formal document you receive about the debt. It should say (across the top) that it is a default notice under the **Consumer Credit Act 1974**, and that you will be given time to make a payment to bring the account up-to-date. If you do so, the creditor can't take further action. But, if you cannot make the payment, further action may be taken against you. If that is the case, try to see a money adviser who will look at all your debts.

Depending on the level of the debt (under £25,000) you may also be able to apply to the court for a **time to pay order** to give you longer to pay your debt. A money adviser should be able to help you apply, and will include details of your income and outgoings as part of the application which will enable the sheriff to make an assessment about whether you can repay the debt.

If you do nothing, your creditor is likely to raise a court action against you, and, depending on the amount of your debt, you will have to repay the debt you owe with added interest and usually you will have to pay the creditor's expenses as well.

Remember: unless you tell your creditors you are having difficulties, they won't know, and they will be unable to assist you. **If you seek advice** at the very earliest opportunity, you will have a better chance of sorting out your debt problems.

▶ *You can find the telephone and contact numbers of local money advice agencies on the sheet that comes with this booklet.*

Do you know?

- You **can't be sent to prison** for non-payment of debts, such as credit cards, bank loans, and council tax. You can only go to prison for non-payment in very few circumstances, like deliberate refusal to pay alimony (money for the support of an individual or children).
- Creditors (with a few exceptions) must send you a default notice to give you a chance to pay your debt.
- There are agencies that can give **free, independent, impartial, confidential money advice**. They may well be able to assist you to improve your situation.

▶ *Go to the back cover for these agencies' numbers.*

▶ 4 Being taken to court?

If you have not paid your debts, your creditor can take you to court. This can happen if you haven't paid the whole amount that you owe, or if you haven't made the payments that are due.

How do I know if I am being taken to court?

You will know that court action is being taken if you receive a **summons** or an **initial writ**.

- If you owe £750 or less you will receive a **small claims summons**.
- If you owe more than £750 and up to £1,500 you will receive a **summary cause summons**.
- If you owe more than £1,500 then you will receive an **initial writ**.

The summons or initial writ should tell you **who** is taking you to court, **how much** they think you owe them, and how they have worked out that amount. It should also tell you what court the action is being taken in and **what they want the sheriff to do**.

- ▶ *Information on summary cause and small claims is available from the court on request at www.scotcourts.gov.uk*

▶ What can the sheriff be asked to do?

Usually, the creditor taking you to court will ask the sheriff **to order you to pay the amount you owe**. If the money that you owe is rent or mortgage payments that you haven't paid on time, the sheriff might be asked to **order you to leave your home**. If the money that you owe is for a car or something else that you have bought on credit or hire purchase, they might also ask the sheriff to **order you to give the goods back**.

▶ What should I do if I am being taken to court?

It is very important that you **get help and advice**.

- ▶ *Go to the back cover for free advice agency numbers.*
- ▶ *You can also consult a solicitor. The solicitor may charge a fee, but if your circumstances allow, you may be able to get legal aid or the solicitor may provide an initial interview free of charge.*

The papers that you will get with the summons or initial writ will ask you to reply to the court. There will be a date by which you have to do that. **Do not ignore this date.**

You will usually be able to do one of three things:

- 1 You can **defend the claim** if you don't agree that the money is due to the creditor taking you to court. This may be because you don't owe them anything, or because you

think they have made a mistake about how much you owe. If you do this then there will be a **hearing** to allow the sheriff to find out more about the claim.

- 2 You can **admit the claim** if you agree the money is due to the creditor. If you do this, normally the sheriff will grant an order requiring you to pay the whole amount which is owed usually with interest, or to give back something which you have bought on credit or hire purchase, or to leave your home. You will generally also have to pay the creditor's expenses.
- 3 You can **admit the claim but ask for time to pay** if you agree the money is due to the creditor. You should get a form with the summons or initial writ that you must fill in if you want time to pay. You must say **how much** you are able to pay and whether you want to make payments **weekly, fortnightly, or monthly** or some other way.

Your creditor can choose to accept or reject your offer under option 3. If it is accepted then the sheriff will order you to make the payments you have offered. If it is rejected then there will be a hearing and you can attend this to explain to the sheriff why you need time to pay. Again you will usually have to pay interest and the creditor's expenses. **It is up to you to find out from the court if your offer has been accepted or rejected.**

You should get help and advice particularly if you are not sure how to answer the summons or initial writ.

Do you know?

- You can't be taken to court unless a summons or an initial writ has been sent to you in the post or delivered to you personally.
- An action for payment of money is not a criminal charge and doesn't give you a criminal record unless it's for non-payment of fines imposed by a court.
- If you want to defend the claim you don't need to have a lawyer and you can appear at the court hearing yourself. Some courts have special advisers to help people who do choose to go to court without a lawyer.

▶ 5 Council tax debt/water charges and other local government debts

Council tax is collected by local authorities to enable them to provide services for their community. Charges owed to Scottish Water for water and sewerage are collected by local authorities in a similar way.

It is very important to remember that if you fall into arrears for a previous year's council tax, and water, **you will have to pay back arrears as well as all of the present year's council tax.**

The council will send an annual bill explaining what you are due to pay them. Some councils allow you to pay by instalments, by direct debit, or by making payments at a Paypoint terminal. If you do not make the payments on time,

the council will write to you and give you the opportunity to bring your payments up to date.

If you **miss a payment** you will be sent a notice, giving you **seven** days to make the payment. If you don't pay before seven days are up you lose any right to pay by instalments, and the whole sum for the year becomes due. You will have a further **seven** days, to make the full payment. If it isn't paid then the council can apply to the sheriff for a **summary warrant**. This includes a surcharge of 10% on top of the amount of the arrears. You cannot ask the sheriff to grant you time to pay your debt.

If you are in debt to your local council, they will possibly pass the collection of your debt to a recovery agent, or to a sheriff officer, depending on whether a **summary warrant** has been granted.

EXAMPLE

Mr Angus has a bill for unpaid council tax of **£1,000** payable over 10 months.

1 April	£100 due nothing paid
1 May	£100 due nothing paid
17 May	Reminder/Final notice - must pay in seven days
24 May	If nothing paid Mr Angus loses right to pay by instalments
31 May	£1,000 to be paid - if not paid a summary warrant can be obtained within a short space of time and Mr Angus's debt is now £1,100 to be paid in a lump sum!

A summary warrant differs from a warrant granted after a normal debt action. The council, in seeking to collect and enforce council tax, will have had to give you notice on a number of occasions.

If you do nothing like Mr Angus above in response to the final notice then the council will be able to go to the sheriff (after first giving notice) and ask for a summary warrant. This will then allow the council to enforce the debt.

The granting of a summary warrant is a very serious matter. The council will collect their debts through wage arrestments, bank arrestments or possible sale of your goods. Unlike other forms of diligence, **you cannot at present apply to the court for time to pay your debt.**

You can, however, try to negotiate some settlement with the council or an agent acting on their behalf. If the council has been granted a summary warrant for your debt you should take immediate action by:

- making an arrangement with the council for payment; or
- contacting a money adviser or a solicitor for advice.

▶ *Go to the back cover for advice agency numbers.*

Do you know?

- You cannot be sent to prison for non-payment of council tax.
- Most councils will try to negotiate a settlement. They would rather not take you to court. Even if you are taken to court, there is still an opportunity to try to pay your debt, at a rate you can afford.
- You (or someone else in your household) may be entitled to a reduction in your payments for council tax.
- A money adviser will be able to help you deal with your local council, and may be able to negotiate a settlement that you can afford.

▶ 6 What can happen to you if you don't pay your debts?

If you can't pay your debts your creditor can take you to court to try to get back the money you owe them. What they can do will depend on how much money you owe, what kind of debt it is and your own personal circumstances.

The enforcement of debt, usually following court action, is called 'diligence' in Scotland. There are a number of diligences - commonly used ones being earnings arrestment, bank arrestment, and attachment.

Time to pay

In most cases you can ask the court for time to pay, **even after the court has granted a decree for the debt and diligence has started.**

You can apply for time to pay a single debt before the court grants a decree by offering to pay by instalments or as a lump sum. If your offer is accepted, you will start to pay your creditor under the terms set out in a **time to pay direction** (see page 16 for more details).

You can also apply after the decree for time to pay a single debt, for example if your wages have been arrested. If accepted you will start to pay your creditor under the terms set out in a **time to pay order.**

In both cases the sheriff will look at your circumstances should your creditor be unwilling to accept your offer before deciding whether to grant the order. Once time to pay has been granted, diligences and bankruptcy stop.

To qualify for time to pay a single debt you must be an ordinary individual debtor and your debt must be less than £25,000. The type of debt is important. Broadly speaking time to pay is not allowed for maintenance or capital sum payments on divorce or for debts relating to central or local government taxes.

You can also apply for time to pay more than one debt. See page 9 for more information about the **debt arrangement scheme**.

Once time to pay has been approved, diligences and bankruptcy are stopped. You can get help with applying for time to pay by approaching a money adviser.

Remember that you can get help and advice if action is taken against you by a creditor. Some advice agencies can help represent you in court. You should check to see if your local advice centre offers this service.

▶ *Go to the sheet that comes with this booklet which details local advice centre numbers.*

▶ **6a When can money be taken from my wages, salary or bank account?**

Earnings arrestment

If you are working, the money you owe can be taken from your wages or your salary by an earnings arrestment. But before this can happen your creditor will have taken you to court and got a court decree.

In most cases you will have been sent a **charge for payment** (a warning that unless you pay what you owe within 14 days they are going to take action). After the 14 days, they can then use an earnings arrestment.

▶ How does an earnings arrestment work?

Your creditor will send the earnings arrestment to your employer. Your employer **must** then make deductions from your wages or salary. The deductions are made every pay day in the same way that tax is taken off your wages or salary. Your employer sends the money to the creditor who served the earnings arrestment and can charge you £1 to do this.

You will usually get a copy of the earnings arrestment schedule. If not, you may ask your employer for a copy.

▶ How much money can be taken out of my wages or salary?

There is a limit on how much money can be taken from your wages or salary. That limit depends on how much you earn and whether you are paid weekly or monthly or in some other way. The limit is fixed by law and your employer should have a note of how much may be taken from your wages or salary.

Remember that you can get help and advice, especially if you think the amount that is being taken from your earnings is wrong.

Bank arrestment

If you have money in a bank or building society account or with a credit union, the money you owe can be taken from your bank, building society or credit union account.

Your creditor sends the arrestment to your bank, building society or credit union. When the arrestment is served, the money, which you have in your account, is frozen and you cannot withdraw that money or use it to make other payments such as standing order or direct debit payments.

All the money in your account is frozen, even if it is more than the total amount which you owe.

Your creditor doesn't get the money that has been frozen right away. They have to go to court to force your bank or building society or credit union to release the money. The court will order your bank or building society or credit union to pay the amount that you actually owe. The court may also order you to pay the costs of doing this court action.

If you want to avoid paying the costs of this court action you can give permission to your bank or building society or credit union to release the amount that you owe.

Do you know?

- Your creditor can use an earnings arrestment and a bank arrestment at the same time. This could cause you severe difficulty and you can apply to the court for time to pay your debt.

A money adviser can help to explain how wages and bank arrestments work and can help to make sure that only the amount which should be deducted is taken by your creditor - go to the back cover for helpline details.

Child support

If you do not pay child support payments which you have been ordered by a court to pay or which the Child Support Agency has asked you to pay then deductions can be made from your wages or salary to meet these payments.

Do you know?

- A creditor can use more than one method to try to get their money back.
- A creditor can't usually take action against you unless they have first taken you to court.
- Your employer can charge you a fee of £1 every time a deduction has to be made under an earnings arrestment.

▶ 6b Rent and mortgage arrears

If you have fallen behind with your rent or mortgage payments (or any repayments of a loan which is 'secured' on your home) then you should take action as soon as possible. Falling behind with these sorts of payments can lead to repossession of your home or eviction by your landlord.

What action you should take if you have fallen behind will depend on a large number of factors including whether you have a mortgage or pay rent and what type of mortgage or lease you have. It will also depend on whether you have other debts that you need to repay.

If you have mortgage or rent arrears you should try to speak to a money adviser or solicitor as soon as possible. They will help you to find out what options you have and how to deal with your bank, building society or landlord.

▶ *Go to the back cover for free advice agency numbers.*

Remember that there are laws protecting homeowners and tenants who fall behind with mortgage and rent payments. Try to get expert advice from a money adviser or solicitor if you think a creditor is taking action to repossess your home or evict you.

▶ *Go to the back cover for free advice agency numbers.*

▶ **6c Attachment**

If your creditor has not been able to get back the money you owe them, then they may be able to 'attach' your property (tangible assets). These attached assets can then be sold to pay your debts. Only in exceptional

circumstances can property which is in your, or someone else's, home - be sold.

▶ *Go to 6d for details of exceptional circumstances.*

▶ **What is attachment?**

Attachment can be used to try to recover payment from you by attaching articles of value owned by you but held outside the living area of your home, for instance, in your garage or driveway or in buildings used for business.

Before your creditor can go ahead with attachment he or she will normally have taken you to court to legally establish that you are liable to pay the debt. The creditor will, in most cases, serve you with a charge for payment that tells you that unless you pay what you owe within 14 days they are going to take action to get the money that you owe them.

Your creditor also has to send you a copy of this booklet.

If you have not paid up in 14 days an officer of court can enter any premises (**other than your home**) where your goods are kept and attach and value them. The officer of court must send a report of the valuation to the court. After that has been done your creditor may arrange for your goods to be auctioned to help repay your debt.

There are detailed rules about the kinds of goods that can be attached, when attachments can be carried out and how to stop goods being auctioned after they have been attached.

- ▶ Remember that a money adviser can help to explain these rules. If you need help try to contact a money adviser right away - go to the back cover for helpline numbers.

▶ 6d Exceptional attachment orders

An exceptional attachment order (EAO) is a court order that allows the attachment of goods inside the home in exceptional circumstances. The sheriff will only grant an EAO if satisfied that the creditor has taken some steps to consider other options for recovering the debt.

▶ When can an EAO be used?

Before this can happen the person to whom you owe money will normally have taken you to court. You will be served with a **charge for payment** in most cases. After you receive the charge, and unless you pay what you owe within 14 days, your creditor can take action to get the money that you owe them. So, after 14 days they can then apply to court for an EAO.

They then have to:

- show the sheriff that they have sent you this **booklet**
- prove to the sheriff that they **tried to come to an agreement** with you about how you can pay your debt

including money advice. For details of your nearest CAB use the number provided) . . .

- show that they have a court decree or its equivalent that already proves the amount you owe them.

An EAO will be granted by the sheriff for goods **in** the home **only when** reasonable steps have taken place to find out more about your position to repay. The creditor must have made a reasonable attempt to get their money back using an **earnings** and a **bank arrestment**. You must have been given this booklet and a creditor must have tried to find out from you about your financial position and to negotiate repayment.

The creditor must satisfy the sheriff that:

- the creditor has made a reasonable attempt to negotiate settlement of the debt
- certain other types of diligence have been considered first
- there is reason to think that selling certain of your goods would be worthwhile in terms of reducing the amount of debt due.

The sheriff has to be satisfied, taking all the known facts into account, that you have non-essential assets in your home that could reasonably be sold to recover a significant part of the debt.

Where any of the above conditions are not satisfied, **the order may not be granted**. Even if the creditor can show all these things the sheriff may still refuse an EAO.

You will have the opportunity to make a voluntary declaration to the court to explain your circumstances. The sheriff can ask for a money adviser to visit you in your home. The purpose of this visit would be to give you money advice.

You may be suitable for the debt arrangement scheme, or the money adviser may be able to tell you about some other way to negotiate repayment or the writing off of the debt.

If the sheriff does grant an EAO, your creditor can make arrangements to auction items of your property to pay off your debt to them. An officer of court will come to your home to value and immediately remove the items which are to be auctioned.

An EAO only affects 'non-essential' goods. By law, many items **cannot** be removed from your home under an EAO. These include things like bedding, chairs, sofas, tables, laundry and kitchen equipment, telephones, televisions, computers and radios.

- ▶ *Remember that you can get help and advice about whether any item of property can be sold or redeemed under an EAO - go to the back cover for free helpline numbers.*

▶ 7 Your rights if a creditor goes too far

Your creditors must stay within the law when trying to recover the money you owe them. The law of wrongful diligence governs situations where diligence has been carried out without proper authority or where properly authorised diligence has been executed has been carried out in the wrong way.

If you think that you have been subject to wrongful diligence, contact a money adviser or a solicitor.

- ▶ *Go to the back cover for free advice agency numbers.*
- ▶ *You can also consult a solicitor. The solicitor may charge a fee, but if your circumstances allow, you may be able to get legal aid or the solicitor may provide an initial interview free of charge.*

Need Help? Call Money Advice Scotland on 01234 567890

National Contact Details:

Citizens Advice Scotland

Phone: 0845 450 0351

www.cas.org.uk

(Citizens advice bureaux provide free, confidential and impartial advice on a range of matters including money advice. For details of your nearest CAB use the above contacts)

Federation of Information and Advice Centres

Phone: 020 7407 4070

www.adviceuk.org.uk

Money Advice Scotland

Phone: 0141 572 0237

www.moneyadvicescotland.org.uk

(Use the above contacts for details of the nearest Money Advice Agency in your area)

Scottish Debtline (CCCS)

Telephone Number: 0800 138 3328

www.scottishdebtline.co.uk

The National Debtline

0808 808 4000

www.nationaldebtline.co.uk

Alternative formats and community language versions of this booklet are available on request from the Scottish Executive, Civil and International Justice Directorate, St Andrew's House, Edinburgh EH1 3DG Phone: 0131 244 4835.

Please note this number is purely for accessing further supplies of this booklet. This is not an advice line.

This booklet can also be viewed on the Scottish Executive website at www.scotland.gov.uk

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ISBN 978 0 7559 5439 1

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RR Donnelley B50835 06/07

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