

These notes relate to the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) which received Royal Assent on 15 January 2007

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 8 – Attachment of Money

Release of money attached

Section 184 – Effect of payment order

614. *Section 184(1)* provides that a payment order authorises a judicial officer to realise the value of money attached and pay the creditor the sum recoverable (with any surplus to the debtor) whilst first retaining an amount to meet the officer's fees and outlays. By virtue of amendments in paragraph 13(3) of schedule 5 to this Act, the disposal of the money is subject to section 37 of the 1985 Act. This has the effect of equalising diligences executed within 60 days before the sequestration of a debtor with the sequestration itself. In those circumstances, the sum to be disposed of becomes part of the debtor's sequestrated estate and is distributed accordingly.
615. Subsections (2) and (3) authorise the officer to act as the irrevocable agent of the debtor in relation to attached cheques and negotiable instruments and to do anything the debtor could have done to realise the value of the instrument, for example, presenting a cheque for payment.
616. Subsection (4) imposes a duty on the officer to obtain the highest amount as is reasonably practicable for any instrument being realised.