



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 8

### ATTACHMENT OF MONEY

#### *Release of money attached*

#### **183 Creditor's application for payment order**

- (1) This section applies where—
  - (a) money has been attached by a judicial officer in execution of a money attachment; and
  - (b) that money (or part of it) has not been released by virtue of section 182(6)(b), 185(3), 186 or 188(1) of this Act.
- (2) The creditor may apply to the sheriff for an order (in this Part, a “payment order”) authorising payment to the creditor out of the money attached of a sum not exceeding the sum recoverable by the money attachment.
- (3) An application under subsection (2) above must be—
  - (a) in (or as nearly as may be in) the form prescribed by Act of Sederunt;
  - (b) made before the expiry of the period of 14 days beginning with the day on which the report of money attachment is made.
- (4) On making the application, the creditor must send a copy of it to—
  - (a) the debtor;
  - (b) the judicial officer; and
  - (c) any person such as is mentioned in section 182(3)(d) of this Act.
- (5) Subject to subsections (10) and (12) below, where there is no opposition to the application, the sheriff must make a payment order.

- (6) The debtor or a third party who claims ownership (whether solely or in common with the debtor) of any of the money attached may oppose the application under subsection (2) above.
- (7) An opposition under subsection (6) above must be—
- (a) in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
  - (b) made before the expiry of the period of 14 days beginning with the day on which the application is made.
- (8) Where there is opposition, the sheriff may not make a payment order without first—
- (a) giving—
    - (i) the creditor;
    - (ii) the debtor; and
    - (iii) any third party who opposes the application,an opportunity to make representations; or
  - (b) holding a hearing.
- (9) Where the debtor or, as the case may be a third party, opposes the application on the ground that money attached is not owned by the debtor, it is for the debtor or the third party to prove that fact.
- (10) Where the sheriff is satisfied, after considering any opposition or on the sheriff's own initiative, that there has been a material irregularity in the execution of the money attachment, the sheriff must make an order such as is mentioned in subsection (11) below.
- (11) That order is an order—
- (a) declaring that the money attachment ceases to have effect; and
  - (b) requiring the judicial officer to return the money attached or, where the value of any such money has been realised, a sum equivalent to that value, to the debtor or, as the case may be, the person whose money it is.
- (12) Where the sheriff is satisfied after considering any opposition or on the sheriff's own initiative, that any money attached is not owned by the debtor—
- (a) the sheriff must make an order such as is mentioned in subsection (11) above restricted to that money; and
  - (b) after the order is made, the judicial officer may attach other money owned by the debtor and kept at the place at which the original money attachment was executed.

## **184 Effect of payment order**

- (1) A payment order authorises the judicial officer—
- (a) to realise the value of money attached; and
  - (b) subject to section 37 of the 1985 Act (effect of sequestration on diligence), to dispose of the proceeds of the money attachment by—
    - (i) retaining such amount as necessary to meet the fees and outlays of the officer;
    - (ii) paying to the creditor the remainder of those proceeds so far as necessary to meet the sum recoverable by the money attachment; and
    - (iii) paying to the debtor any surplus remaining.

- (2) For the purposes of subsection (1) above, the payment order authorises the judicial officer—
  - (a) to act as the irrevocable agent of the debtor in relation to any banking instrument attached; and
  - (b) to take any of the steps mentioned in subsection (3) below.
- (3) Those steps are—
  - (a) presenting the instrument for payment;
  - (b) if instructed by the creditor to do so, raising any action for payment that would have been open to the debtor to raise against any person liable to honour the instrument;
  - (c) except where the instrument is not negotiable, negotiating the instrument—
    - (i) for value; or
    - (ii) to the creditor for value credited against the sum recoverable by the money attachment;
  - (d) any other steps the debtor could have taken in relation to the instrument before the money attachment was executed.
- (4) The judicial officer must, in taking any of the steps referred to in subsection (3) above, obtain the highest amount for the instrument as is reasonably practicable.
- (5) In subsection (1)(b) above, “proceeds of the money attachment” includes any amount—
  - (a) deposited in a bank account by virtue of section 181(6) or 185(4)(b)(iii) of this Act;
  - (b) obtained as a result of taking any of the steps mentioned in subsection (3) above; and
  - (c) received by the judicial officer by virtue of section 191(2)(c) of this Act.

## **185 Release of money where attachment unduly harsh**

- (1) The debtor may, before—
  - (a) a payment order is made; or
  - (b) the money attachment ceases to have effect,apply to the sheriff for an order such as is mentioned in subsection (2) below.
- (2) That order is one—
  - (a) providing that the money attachment ceases to have effect in relation to—
    - (i) the money attached; or
    - (ii) so much of it as the sheriff specifies; and
  - (b) requiring the judicial officer to return that money or, where the value of the money has been realised, a sum equivalent to that value, to the debtor.
- (3) Where the sheriff is satisfied that, in the circumstances, the money attachment is unduly harsh to the debtor, the sheriff must, subject to subsection (4) below, make an order such as is mentioned in subsection (2) above.
- (4) Where the value of the money attached exceeds £1,000 or such other amount as the Scottish Ministers may by regulations prescribe, the sheriff—
  - (a) may not specify money the value of which exceeds that amount; and

- (b) may, where the money attached includes or comprises a banking instrument, authorise the judicial officer to—
  - (i) realise the value of the instrument;
  - (ii) pay to the debtor from the money and, as the case may be, proceeds of that realisation the sum specified; and
  - (iii) deposit any surplus remaining in a bank account.
- (5) In a case to which subsection (4)(b) above applies, the order under subsection (3) above authorises the judicial officer—
  - (a) to act as the irrevocable agent of the debtor in relation to the instrument; and
  - (b) to take any of the steps mentioned in section 184(3) of this Act.
- (6) Subsection (4) of section 184 of this Act applies to any steps taken by virtue of subsection (5) above.
- (7) Where the amount realised under subsection (4)(b)(i) above is less than the amount specified, the order is to be deemed to have required the judicial officer to pay the amount realised only.

## **186      Invalidity and cessation of money attachment**

- (1) Where, at any time before a payment order is made or the money attachment ceases to have effect, the sheriff is satisfied that there has been a material irregularity in the execution of the money attachment, the sheriff must make an order such as is mentioned in subsection (2) below.
- (2) That order is an order—
  - (a) declaring that the money attachment ceases to have effect; and
  - (b) requiring the judicial officer to return the money attached or, where the value of any such money has been realised, a sum equivalent to that value, to the debtor or, as the case may be, the person whose money it is.
- (3) Where, at any time before a payment order is made or the money attachment ceases to have effect, the sheriff is satisfied that any money attached is not owned by the debtor—
  - (a) the sheriff must make an order such as is mentioned in subsection (2) above restricted to that money; and
  - (b) after the order is made, the judicial officer may attach other money owned by the debtor and kept at the place at which the original money attachment was executed.
- (4) An order under this section may be made—
  - (a) on the application of—
    - (i) the debtor; or
    - (ii) a third party claiming an interest; or
  - (b) on the sheriff's own initiative.
- (5) Where such an order is made on the sheriff's own initiative, the sheriff clerk must intimate the order to—
  - (a) the debtor;
  - (b) the creditor;
  - (c) the judicial officer; and

- (d) any other person the sheriff thinks has an interest.
- (6) The sheriff may not make an order under this section without first—
  - (a) giving—
    - (i) the debtor;
    - (ii) the creditor; and
    - (iii) any other person the sheriff thinks has an interest, an opportunity to make representations; or
  - (b) holding a hearing.
- (7) The sheriff must give reasons for making, or refusing to make, an order under this section.

### **187 Termination of money attachment**

- (1) A money attachment ceases to have effect on the expiry of the period of 14 days beginning with the day on which the report of money attachment is made unless, within that period, the creditor—
  - (a) applies for a payment order; and
  - (b) sends a copy of the application to the judicial officer under section 183(4)(b) of this Act.
- (2) A money attachment ceases to have effect if the sum recoverable by the money attachment is—
  - (a) paid to—
    - (i) the creditor;
    - (ii) the judicial officer; or
    - (iii) any other person who has authority to receive payment on behalf of the creditor; or
  - (b) tendered to any of those persons and the tender is not accepted within a reasonable time.
- (3) Where a money attachment ceases to have effect by virtue of subsection (1) or (2) above, the judicial officer must return money attached or, where the value of any such money has been realised, a sum equivalent to that value, to the debtor.

### **188 Redemption of banking instrument**

- (1) The debtor may, before the expiry of the period of 14 days beginning with the date on which the report of money attachment is made, redeem a banking instrument attached by the money attachment.
- (2) The debtor may not redeem an instrument in relation to which an order under section 181(3) of this Act has been made.
- (3) The amount for which such an instrument may be redeemed is the value of the instrument specified in the report of money attachment.
- (4) The judicial officer must, on receiving payment from the debtor for the redemption of an attached instrument—
  - (a) grant a receipt in (or as nearly as may be in) the form prescribed by Act of Sederunt to the debtor; and

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*Status: This is the original version (as it was originally enacted).*

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- (b) report the redemption to the sheriff as soon as is reasonably practicable.
- (5) The money attachment ceases, on the grant of such a receipt, to have effect in relation to the redeemed instrument.