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

Money attachment

Section 175 – Meaning of "money" and related expressions

586. This section deals with what is meant by "money" and so clarifies what can be attached by the new diligence.

587. "Money" means cash and banking instruments but excludes any cash or instrument which has an intrinsic value greater than any value it may have as a medium of exchange (which, in simple cases such as coins and notes, will be the face value). An example would be a collectable coin which has a greater value as a collectable coin than it has as a medium of exchange. Such money, whilst excluded from money attachment, will instead be attachable by the diligence of attachment.

588. "Cash" is defined as coins and banknotes in any currency. "Banking instrument" is defined as meaning—

- cheques and other instruments to which section 4 of the Cheques Act 1957 (c.36) applies. Section 4 covers—
    - cheques;
    - other documents issued by a customer of a bank which permit a person to receive payment from the bank of the sum stated in the document;
    - documents which enable a person to obtain payment from the Paymaster General or the Queen's and Lord Treasurer's Remembrancer (often referred to as government cheques); and
    - bankers drafts;
- any document issued by a public officer which entitles a person to payment of a sum from a government department (these are effectively another form of government cheque). Subsection (2) clarifies what the reference to "government department" includes. This term is wide and encapsulates Ministers and departments from all administrations. Documents under section 4(2)(c) of the Cheques Act 1957 are excluded from this part of the definition not because they aren't covered but simply because the reference to "cheques and other instruments" already covers them;

- promissory notes (other than banknotes). A promissory note is an unconditional promise in writing and made by one party to another engaging to pay, on demand or at a fixed determinable future time, a sum certain in money to, or to the order of, a specified person, or to a bearer. The most common example is banknotes. However, these are already defined to mean "cash" for the purposes of money attachment and so are expressly excluded from the definition of "promissory note";
- other negotiable instruments. This covers other negotiable instruments which are not already expressly defined such as dividend warrants; and
- money orders and postal orders. It is necessary to expressly include this category of instrument as they are not negotiable instruments.

589. Subsection (1) also makes it clear that references to "the value of money" in the sections relating to money attachment, unless the context otherwise requires, is a reference to—

- the amount of cash (coins and banknotes);
- in the case of currency other than sterling, the equivalent sterling amount; and
- in the case of a banking instrument, the amount of cash that would be obtained by realising the value of the instrument (for example, the amount credited to a bank account when a cheque is banked).

590. Subsection (3) gives the Scottish Ministers power to modify the definition of "banking instrument" by order made by statutory instrument subject to the negative resolution procedure of the Scottish Parliament. This power could be used where either a type of banking instrument referred to in this section becomes obsolete or if a new type of instrument were created in the future.