

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 8 – Attachment of Money

Release of money attached

Section 183 – Creditor’s application for payment order

609. This section permits the creditor to apply to the sheriff for an order (a “payment order”) permitting the creditor to receive payment of the sum recoverable out of the attached money. A payment order can be applied for only in relation to attached money not already released.
610. The creditor must apply for a payment order within 14 days of the date on which the report of the money attachment is made (subsection (3)), otherwise the money attachment ceases to have effect (see section 187(1)). The application is to be in the form prescribed in rules of court. The creditor must send a copy of the application to the debtor, the judicial officer and any other interested party (subsection (4)). The debtor or any person claiming ownership of the attached money may oppose the application (subsection (6)). An opposition to the order must be made in the form prescribed in court rules, within 14 days of the application for a payment order (subsection (7)). The sheriff must allow the creditor, debtor and any third party who opposes the order to make representations or alternatively the sheriff can hold a hearing (subsection (8)). If the opposition is on the grounds that the money attached is not owned by the debtor, the burden of proving that falls on the debtor or the third party claiming ownership (subsection (9)).
611. Under subsection (5), the sheriff must make a payment order unless—
- there has been a material irregularity in the execution of the money attachment (subsection (10)), for example that the money attachment has been executed on a Sunday without authority from the sheriff;
 - the sheriff is satisfied that the money is not owned by the debtor (subsection (12));
 - there is an opposition to the payment order being made (subsection (6)).
612. If there is a material irregularity or an opposition is upheld, the money attachment ceases to have effect and the money must be returned to the original owner (either the debtor or a third party who correctly claimed ownership). If the opposition was only in relation to some of the money attached then the attachment only ceases in relation to that money and only that money is returned.

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

613. Subsection (12) provides that the sheriff may make an order declaring that the money attachment ceases to have effect if the sheriff is satisfied that any money attached is not owned by the debtor. After such an order is made a judicial officer may attach other money which the debtor owns and which is kept at the same place where the original money attachment was carried out.