

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 8 – Attachment of Money

Release of money attached

Section 185 – Release of money where attachment unduly harsh

617. This section provides the sheriff with power, on the application of the a debtor before a payment order is made or a money attachment ceases, to order the release of the money attached (or a portion of it) up to £1,000, or other sum set by the Scottish Ministers in regulations, on the grounds that the attachment is unduly harsh to the debtor.
618. It is for the sheriff to decide whether, in all the circumstances, the attachment is unduly harsh. This is likely to require a balancing exercise by the sheriff as to the impact of the money attachment on the debtor (and possibly any relevant third parties such as dependents or employees) as compared with the detrimental effect to the creditor of releasing up to £1,000 of the money attached.
619. Where the attached money includes a banking instrument the judicial officer is authorised by any order under this section to realise the value of the instrument, to pay the debtor the amount set out in the order and to deposit any remaining money in a bank account. Again, the judicial officer is entitled to act as irrevocable agent of the debtor when doing so.
620. Subsection (7) provides that where a judicial officer has realised the value of an instrument so as to pay a sum back to the debtor as required by an order under this section, and the amount realised is less than the amount specified in the order, the order is deemed to have specified that lesser amount and the officer need pay only that amount to the debtor.