

*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**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary*

#### **Part 8 – Attachment of Money**

#### **Statement of money attachment**

#### *Section 190 – Audit of final statement under section 189(1)*

631. *Section 190(1)* provides that the sheriff must send the final statement of money attachment to the auditor of court who must check the expenses and fix the amount of expenses chargeable, confirm any balance due by or to the debtor and make a report to the sheriff. Under subsection (2), the auditor of court must not alter the statement without first giving all interested parties an opportunity to make representations. The auditor is not entitled to a fee for making the report to the sheriff (subsection (3)).
632. Subsection (4) provides that once the report from the auditor of court has been received, the sheriff must certify the balance due by or to the debtor but may make modifications to the balance confirmed by the auditor of court. If the sheriff is satisfied that there has been a material irregularity in carrying out the money attachment (other than the timing of the judicial officer's final statement), the sheriff can declare the attachment void. A consequence of that would be that the creditor would not be entitled to any sums paid under, for example, section 188, and these would have to be paid back to the debtor (or a third party, if a third party claimed ownership of the attached money). But even if the money attachment is declared void a person who, in good faith, has purchased or otherwise obtained money that was attached can keep the money in question and remains the lawful owner (subsection (6)).