

# **BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary*

#### **Part 7 – Interim Attachment**

#### **Section 173 – Interim attachment**

#### **Recall etc. of interim attachment**

New section 9M – Recall or restriction of interim attachment

558. Where warrant for interim attachment has been granted, the debtor or any other person having an interest can apply to the court for any order set out in section 9M(2). Those orders are an order recalling or restricting the warrant granted, if the warrant has been executed, an order recalling or restricting any interim attachment so executed, an order determining any question as to the validity, effect or operation of the warrant or an order ancillary to any other order sought.
559. Subsection (3) provides that any application under subsection (2) must be in the form set out in rules of court. The application must be sent to the creditor and any other person with an interest. Subsection (4) provides that at the hearing about an application made under subsection (2), all interested parties will be able to be heard by the court before any order is made.
560. Subsection (5) provides that, where the court is satisfied the warrant is invalid, it is under a duty to make an order recalling the warrant and any interim attachment which has been executed under it (the court can also make an ancillary order).
561. Subsection (6) imposes a duty on the court to recall the interim attachment if the court is satisfied that an interim attachment executed in pursuance of a warrant is incompetent. Again, the court can make any orders ancillary to such a recall as it thinks fit.
562. By virtue of subsection (7), where the court decides the warrant is valid it may still make an order recalling or restricting the warrant or interim attachment done under it (and any other order mentioned in subsection (2)) if it considers that an interim attachment executed in pursuance of the warrant is irregular or ineffective or if it is reasonable in all the circumstances, including the effect granting warrant may have had on any person having an interest, to do so. The power in subsection (7) is subject to subsections (8) and (11).
563. Subsection (8) imposes a duty on the court to make an order recalling the warrant and any interim attachment executed in pursuance of it and gives the court power to make an ancillary order, where it is no longer satisfied as to the matters set out in subsection (9). Those matters mirror the considerations which the court must take into account when determining whether to grant a warrant (see section 9E(3)).

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

564. Subsection (10) places the onus on the creditor to satisfy the court that a recall or restriction order should not be made.
565. Subsection (11) prevents the court from making an order under subsection (7) where, by virtue of section 9L(1)(a), the interim attachment continues to have effect after the creditor obtains a final interlocutor for payment and the relevant 6-month period has not expired.
566. Subsections (12) and (13) enable the court to impose any conditions it thinks fit when making an order which may include requiring the debtor to consign money into court, to find caution or to give some other kind of security as the court thinks fit. The court will order the debtor to inform the creditor and any other interested party about the order (subsection (14)).