



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 8

### ATTACHMENT OF MONEY

#### *Money attachment*

#### **174 Money attachment**

- (1) There is to be a form of diligence over money owned by a debtor to be known as money attachment.
- (2) Money attachment is competent to enforce payment of a debt but only if—
  - (a) the debt is constituted by a decree or document of debt;
  - (b) the debtor has been charged to pay the debt;
  - (c) the period for payment specified in the charge has expired without payment being made; and
  - (d) where the debtor is an individual, the creditor has, no earlier than 12 weeks before executing the money attachment, provided the debtor with a debt advice and information package.
- (3) Money attachment is not competent in relation to money—
  - (a) kept within a dwellinghouse; or
  - (b) in relation to which arrestment is competent.

#### **175 Meaning of “money” and related expressions**

- (1) In this Part—
  - “cash” means coins and banknotes in any currency;
  - “banking instrument” means—
    - (a) cheques and other instruments to which section 4 of the Cheques Act 1957 (c. 36) applies;

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- (b) any document (other than one mentioned in section 4(2)(c) of that Act) issued by a public officer which is intended to enable a person to obtain payment from a government department of the sum mentioned in it;
- (c) promissory notes (other than banknotes);
- (d) other negotiable instruments; and
- (e) money orders and postal orders; and

“money” means cash and banking instruments but does not include any cash or instrument which has an intrinsic value greater than any value it may have as a medium of exchange; and any reference to the value of money is, unless the context otherwise requires, a reference to—

- (a) the amount of cash;
- (b) where that cash is in a currency other than sterling, the amount in sterling which that cash would realise on its conversion under section 177(3) of this Act;
- (c) the amount in cash which would be obtained were the value of a banking instrument realised; and
- (d) in the case where money comprises both cash and instruments, the aggregate of the amounts referred to in, as the case may be, paragraphs (a) to (c) above.

- (2) In the definition of “banking instrument” in subsection (1) above, “government department” includes—
  - (a) any Minister of the Crown;
  - (b) any part of the Scottish Administration;
  - (c) the National Assembly for Wales;
  - (d) the Northern Ireland Assembly, any Northern Ireland Minister or Northern Ireland junior Minister and any Northern Ireland department.
- (3) The Scottish Ministers may by order modify the definition of “banking instrument” in subsection (1) above so as to—
  - (a) add or remove types of instrument to or, as the case may be, from those referred to in that definition; or
  - (b) vary the descriptions of the types of instrument so referred to.

#### Commencement Information

- II** S. 175 wholly in force at 23.11.2009; s. 175 not in force at Royal Assent see s. 227; s. 175(3) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, art. 3(4), Sch. 3 (with arts. 4-6, 10); s. 175 in force at 23.11.2009 in so far as not already in force by S.S.I. 2009/369, art. 3 (with transitional modifications in art. 4)

## 176 When money attachment not competent

- (1) It is not competent to execute a money attachment on—
  - (a) a Sunday;
  - (b) a day which is a public holiday in the area in which the attachment is to be executed; or
  - (c) such other day as may be prescribed by Act of Sederunt.
- (2) The execution of a money attachment must not—

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- (a) begin before 8 a.m. or after 8 p.m.; or
  - (b) be continued after 8 p.m.,
- unless the [F<sup>1</sup>officer of court] has obtained prior authority from the sheriff for such commencement or continuation.
- (3) Subject to section 183(12)(b), 186(3)(b) or 191(4) of this Act, where money is attached (or is purported to be attached) at any place, it is not competent to attach other money kept at that place to enforce the same debt unless that other money is brought to that place after execution of the first money attachment.
  - (4) Money which has been attached by a money attachment may not, if that money attachment ceases to have effect in relation to that money, be attached again for the same debt.

#### Textual Amendments

**F1** Words in s. 176(2) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

#### Commencement Information

**I2** S. 176 wholly in force at 23.11.2009; s. 176 not in force at Royal Assent see s. 227; s. 176(1)(c) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, **art. 3(4)**, **Sch. 3** (with arts. 4-6, 10); s. 176 in force at 23.11.2009 in so far as not already in force by S.S.I. 2009/369, **art. 3** (with transitional modifications in **art. 4**)

### *Execution of money attachment*

#### **177 Removal of money attached**

- (1) The [F<sup>2</sup>officer of court] must attach and remove, from the place in which it is found, such money, the value of which in the opinion of the officer does not exceed a sum equal to the sum mentioned in subsection (2) below (in this Part, the “sum recoverable by the money attachment”).
- (2) That sum is—
  - (a) the sum for the payment of which the charge was served, together with any interest accruing after such service and before the money attachment ceases to have effect; and
  - (b) all expenses which are chargeable against the debtor by virtue of the money attachment.
- (3) Where cash in a currency other than sterling is attached, the [F<sup>3</sup>officer of court] must, as soon as reasonably practicable after attaching it, convert that cash into sterling.
- (4) The [F<sup>3</sup>officer of court] must take all reasonable steps to obtain the highest amount for such cash as is practicable.
- (5) The [F<sup>3</sup>officer of court] must deposit any cash attached and any proceeds of converting cash in a currency other than sterling in a bank account.
- (6) The [F<sup>3</sup>officer of court]—

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- (a) need not attach any banking instruments other than cheques unless instructed to do so by the creditor; and
  - (b) is not liable to the creditor for any loss caused by the failure to attach any such instruments unless so instructed.
- (7) The [F3 officer of court] must, subject to section 180(1) of this Act, value any instruments attached at the price which they are likely to fetch on the open market.
- (8) Where any instruments are attached, the [F3 officer of court] must ensure that they are kept in a secure place.
- (9) In this Part, any reference to money being attached includes a reference to it being removed under subsection (1) above.

#### Textual Amendments

- F2** Words in s. 177(1) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F3** Words in s. 177(3)-(8) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

### 178 Presumption of ownership

- (1) [F4 An officer of court] may, when executing a money attachment, assume that the debtor owns, solely or in common with a third party, any money found in the place where the attachment is executed.
- (2) The [F5 officer of court] must, before attaching any money, make enquiries of any person present at the place in which it is found as to the ownership of it (and in particular must enquire as to whether there is any person who owns it in common with the debtor).
- (3) The [F5 officer of court] may not make the assumption mentioned in subsection (1) above where the officer knows or ought to know that the contrary is the case.
- (4) The [F5 officer of court] is not precluded from relying on that assumption by reason only that an assertion has been made that the money is not owned by the debtor.

#### Textual Amendments

- F4** Words in s. 178(1) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 28](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F5** Words in s. 178(2)-(4) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

### 179 Schedule of money attachment

- (1) The [F6 officer of court] must, immediately after executing a money attachment, complete a schedule such as is mentioned in subsection (2) below (in this Part, the “schedule of money attachment”).
- (2) A schedule of money attachment—
- (a) must be—

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- (i) in (or as nearly as may be in) the form prescribed by Act of Sederunt;
  - (ii) signed by the [F<sup>6</sup>officer of court]; and
- (b) must specify—
  - (i) the money attached; and
  - (ii) the value of that money, so far as ascertainable.
- (3) The [F<sup>6</sup>officer of court] must—
  - (a) give a copy of the schedule to the debtor; or
  - (b) where it is not practicable to do so—
    - (i) give a copy of the schedule to a person present at the place where the money attachment was executed; or
    - (ii) where there is no such person, leave a copy of the schedule at that place.
- (4) In this Part, any reference to the day on which a money attachment is executed is a reference to the day on which the [F<sup>6</sup>officer of court] complies with subsection (3) above.

#### Textual Amendments

**F6** Words in s. 179(1)-(4) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

#### Commencement Information

**I3** S. 179 wholly in force at 23.11.2009; s. 179 not in force at Royal Assent see s. 227; s. 179(2)(a)(i) in force for certain purposes at 1.4.2008 by [S.S.I. 2008/115](#), [art. 3\(4\)](#), [Sch. 3](#) (with [arts. 4-6, 10](#)); s. 179 in force at 23.11.2009 in so far as not already in force by [S.S.I. 2009/369](#), [art. 3](#) (with transitional modifications in [art. 4](#))

## 180 Valuation of banking instruments

- (1) Where the [F<sup>7</sup>officer of court] considers that a banking instrument attached in execution of a money attachment is such that it is appropriate for valuation of the price the instrument is likely to fetch on the open market to be carried out by a professional valuer or other suitably skilled person, the officer must arrange for such a valuation.
- (2) The creditor is liable for the valuer's reasonable remuneration and outlays incurred by virtue of subsection (1) above.

#### Textual Amendments

**F7** Words in s. 180(1) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

## 181 Order for realisation of money likely to deteriorate in value

- (1) The—
  - (a) creditor;
  - (b) [F<sup>8</sup>officer of court]; or
  - (c) debtor,

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may, at any time after money has been attached, apply to the sheriff for an order that the creditor or, as the case may be, the officer make arrangements for the immediate realisation of the value of that money (or any part of it).

- (2) A person applying under subsection (1) above must at the same time intimate the application to the persons mentioned in that subsection who would otherwise be entitled to apply.
- (3) The sheriff may, if satisfied that the money is likely to deteriorate substantially and rapidly in value, make an order such as is mentioned in subsection (1) above.
- (4) An order under subsection (3) above authorises the [<sup>F9</sup>officer of court]—
  - (a) to act as the irrevocable agent of the debtor in relation to the money; and
  - (b) to take any of the steps mentioned in section 184(3) of this Act.
- (5) Subsection (4) of section 184 of this Act applies to any steps taken by virtue of subsection (4) above.
- (6) Any sum realised by virtue of an order under subsection (3) above must be deposited in a bank account.
- (7) The sheriff's decision under subsection (3) above is final.

#### Textual Amendments

- F8** Words in s. 181(1)(b) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F9** Words in s. 181(4) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

## 182 Report of money attachment

- (1) The [<sup>F10</sup>officer of court] must, before the expiry of the period of 14 days beginning with the day on which the money attachment is executed (or such longer period as the sheriff on cause shown may, on the application of the officer, allow), make a report to the sheriff.
- (2) A report under subsection (1) above must be—
  - (a) in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
  - (b) signed by the [<sup>F11</sup>officer of court].
- (3) The report must specify—
  - (a) the money attached;
  - (b) the value of that money;
  - (c) whether any cash in a currency other than sterling was attached and, if so—
    - (i) the exchange rate used; and
    - (ii) any commission incurred,
 in converting it into sterling;
  - (d) whether any person has asserted that any money attached is not owned by the debtor (or is owned in common by the debtor and a third party);
  - (e) whether the value of any money has been realised under section 181 of this Act; and

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- (f) whether any money attached has been released by virtue of section 185(3), 186 or 188(1) of this Act.
- (4) On making the report, the [F12 officer of court] must send a copy of it to—
- (a) the debtor;
  - (b) the creditor; and
  - (c) any person such as is mentioned in subsection (3)(d) above.
- (5) The sheriff may refuse to receive a report on the ground that it has not been made and signed in accordance with subsections (1) and (2) above.
- (6) If the sheriff so refuses—
- (a) the money attachment ceases to have effect;
  - (b) the sheriff must require the [F13 officer of court] to return the money attached or, where the value of any such money has been realised, a sum equivalent to that value, to the debtor; and
  - (c) the sheriff clerk must intimate the refusal to—
    - (i) the debtor;
    - (ii) the officer;
    - (iii) the creditor; and
    - (iv) any person the sheriff thinks has an interest.
- (7) In this Part, any reference to the day on which the report of money attachment is made is a reference to the day on which the sheriff receives the report under subsection (1) above.

#### Textual Amendments

- F10** Words in s. 182(1) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F11** Words in s. 182(2)(b) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F12** Words in s. 182(4) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F13** Words in s. 182(6)(b) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

#### Commencement Information

- I4** S. 182 wholly in force at 23.11.2009; s. 182 not in force at Royal Assent see s. 227; s. 182(2)(a) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, **art. 3(4)**, Sch. 3 (with arts. 4-6, 10); s. 182 in force at 23.11.2009 in so far as not already in force by S.S.I. 2009/369, **art. 3** (with transitional modifications in art. 4)

### *Release of money attached*

## **183 Creditor's application for payment order**

- (1) This section applies where—
- (a) money has been attached by [F14 an officer of court] in execution of a money attachment; and

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- (b) that money (or part of it) has not been released by virtue of section 182(6)(b), 185(3), 186 or 188(1) of this Act.
- (2) The creditor may apply to the sheriff for an order (in this Part, a “payment order”) authorising payment to the creditor out of the money attached of a sum not exceeding the sum recoverable by the money attachment.
  - (3) An application under subsection (2) above must be—
    - (a) in (or as nearly as may be in) the form prescribed by Act of Sederunt;
    - (b) made before the expiry of the period of 14 days beginning with the day on which the report of money attachment is made.
  - (4) On making the application, the creditor must send a copy of it to—
    - (a) the debtor;
    - (b) the [<sup>F15</sup>officer of court]; and
    - (c) any person such as is mentioned in section 182(3)(d) of this Act.
  - (5) Subject to subsections (10) and (12) below, where there is no opposition to the application, the sheriff must make a payment order.
  - (6) The debtor or a third party who claims ownership (whether solely or in common with the debtor) of any of the money attached may oppose the application under subsection (2) above.
  - (7) An opposition under subsection (6) above must be—
    - (a) in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
    - (b) made before the expiry of the period of 14 days beginning with the day on which the application is made.
  - (8) Where there is opposition, the sheriff may not make a payment order without first—
    - (a) giving—
      - (i) the creditor;
      - (ii) the debtor; and
      - (iii) any third party who opposes the application, an opportunity to make representations; or
    - (b) holding a hearing.
  - (9) Where the debtor or, as the case may be a third party, opposes the application on the ground that money attached is not owned by the debtor, it is for the debtor or the third party to prove that fact.
  - (10) Where the sheriff is satisfied, after considering any opposition or on the sheriff's own initiative, that there has been a material irregularity in the execution of the money attachment, the sheriff must make an order such as is mentioned in subsection (11) below.
  - (11) That order is an order—
    - (a) declaring that the money attachment ceases to have effect; and
    - (b) requiring the [<sup>F16</sup>officer of court] to return the money attached or, where the value of any such money has been realised, a sum equivalent to that value, to the debtor or, as the case may be, the person whose money it is.
  - (12) Where the sheriff is satisfied after considering any opposition or on the sheriff's own initiative, that any money attached is not owned by the debtor—



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- (a) the sheriff must make an order such as is mentioned in subsection (11) above restricted to that money; and
- (b) after the order is made, the [<sup>F17</sup>officer of court] may attach other money owned by the debtor and kept at the place at which the original money attachment was executed.

#### Textual Amendments

- F14** Words in s. 183(1)(a) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 25(a)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F15** Words in s. 183(4)(b) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F16** Words in s. 183(11)(b) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F17** Words in s. 183(12)(b) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

#### Commencement Information

- I5** S. 183 wholly in force at 23.11.2009; s. 183 not in force at Royal Assent see s. 227; s. 182(3)(a)(7)(a) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, **art. 3(4)**, **Sch. 3** (with arts. 4-6, 10); s. 183 in force at 23.11.2009 in so far as not already in force by S.S.I. 2009/369, **art. 3** (with transitional modifications in **art. 4**)

## 184 Effect of payment order

- (1) A payment order authorises the [<sup>F18</sup>officer of court]—
  - (a) to realise the value of money attached; and
  - (b) subject to section 37 of the 1985 Act (effect of sequestration on diligence), to dispose of the proceeds of the money attachment by—
    - (i) retaining such amount as necessary to meet the fees and outlays of the officer;
    - (ii) paying to the creditor the remainder of those proceeds so far as necessary to meet the sum recoverable by the money attachment; and
    - (iii) paying to the debtor any surplus remaining.
- (2) For the purposes of subsection (1) above, the payment order authorises the [<sup>F19</sup>officer of court]—
  - (a) to act as the irrevocable agent of the debtor in relation to any banking instrument attached; and
  - (b) to take any of the steps mentioned in subsection (3) below.
- (3) Those steps are—
  - (a) presenting the instrument for payment;
  - (b) if instructed by the creditor to do so, raising any action for payment that would have been open to the debtor to raise against any person liable to honour the instrument;
  - (c) except where the instrument is not negotiable, negotiating the instrument—
    - (i) for value; or
    - (ii) to the creditor for value credited against the sum recoverable by the money attachment;

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- (d) any other steps the debtor could have taken in relation to the instrument before the money attachment was executed.
- (4) The [<sup>F20</sup>officer of court] must, in taking any of the steps referred to in subsection (3) above, obtain the highest amount for the instrument as is reasonably practicable.
- (5) In subsection (1)(b) above, “proceeds of the money attachment” includes any amount—
  - (a) deposited in a bank account by virtue of section 181(6) or 185(4)(b)(iii) of this Act;
  - (b) obtained as a result of taking any of the steps mentioned in subsection (3) above; and
  - (c) received by the [<sup>F21</sup>officer of court] by virtue of section 191(2)(c) of this Act.

#### Textual Amendments

- F18** Words in s. 184(1) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F19** Words in s. 184(2) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F20** Words in s. 184(4) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F21** Words in s. 184(5)(c) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

### 185 Release of money where attachment unduly harsh

- (1) The debtor may, before—
  - (a) a payment order is made; or
  - (b) the money attachment ceases to have effect,
 apply to the sheriff for an order such as is mentioned in subsection (2) below.
- (2) That order is one—
  - (a) providing that the money attachment ceases to have effect in relation to—
    - (i) the money attached; or
    - (ii) so much of it as the sheriff specifies; and
  - (b) requiring the [<sup>F22</sup>officer of court] to return that money or, where the value of the money has been realised, a sum equivalent to that value, to the debtor.
- (3) Where the sheriff is satisfied that, in the circumstances, the money attachment is unduly harsh to the debtor, the sheriff must, subject to subsection (4) below, make an order such as is mentioned in subsection (2) above.
- (4) Where the value of the money attached exceeds £1,000 or such other amount as the Scottish Ministers may by regulations prescribe, the sheriff—
  - (a) may not specify money the value of which exceeds that amount; and
  - (b) may, where the money attached includes or comprises a banking instrument, authorise the [<sup>F23</sup>officer of court] to—
    - (i) realise the value of the instrument;
    - (ii) pay to the debtor from the money and, as the case may be, proceeds of that realisation the sum specified; and

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- (iii) deposit any surplus remaining in a bank account.
- (5) In a case to which subsection (4)(b) above applies, the order under subsection (3) above authorises the [<sup>F24</sup>officer of court]—
- (a) to act as the irrevocable agent of the debtor in relation to the instrument; and
  - (b) to take any of the steps mentioned in section 184(3) of this Act.
- (6) Subsection (4) of section 184 of this Act applies to any steps taken by virtue of subsection (5) above.
- (7) Where the amount realised under subsection (4)(b)(i) above is less than the amount specified, the order is to be deemed to have required the [<sup>F25</sup>officer of court] to pay the amount realised only.

#### Textual Amendments

- F22** Words in s. 185(2)(b) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F23** Words in s. 185(4)(b) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F24** Words in s. 185(5) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F25** Words in s. 185(7) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

#### Commencement Information

- I6** S. 185 wholly in force at 23.11.2009; s. 185 not in force at Royal Assent see s. 227; s. 185(4) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, **art. 3(4)**, **Sch. 3** (with arts. 4-6, 10); s. 185 in force at 23.11.2009 in so far as not already in force by S.S.I. 2009/369, **art. 3** (with transitional modifications in **art. 4**)

## 186 Invalidity and cessation of money attachment

- (1) Where, at any time before a payment order is made or the money attachment ceases to have effect, the sheriff is satisfied that there has been a material irregularity in the execution of the money attachment, the sheriff must make an order such as is mentioned in subsection (2) below.
- (2) That order is an order—
- (a) declaring that the money attachment ceases to have effect; and
  - (b) requiring the [<sup>F26</sup>officer of court] to return the money attached or, where the value of any such money has been realised, a sum equivalent to that value, to the debtor or, as the case may be, the person whose money it is.
- (3) Where, at any time before a payment order is made or the money attachment ceases to have effect, the sheriff is satisfied that any money attached is not owned by the debtor—
- (a) the sheriff must make an order such as is mentioned in subsection (2) above restricted to that money; and
  - (b) after the order is made, the [<sup>F27</sup>officer of court] may attach other money owned by the debtor and kept at the place at which the original money attachment was executed.

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- (4) An order under this section may be made—
- (a) on the application of—
    - (i) the debtor; or
    - (ii) a third party claiming an interest; or
  - (b) on the sheriff's own initiative.
- (5) Where such an order is made on the sheriff's own initiative, the sheriff clerk must intimate the order to—
- (a) the debtor;
  - (b) the creditor;
  - (c) the [<sup>F28</sup>officer of court]; and
  - (d) any other person the sheriff thinks has an interest.
- (6) The sheriff may not make an order under this section without first—
- (a) giving—
    - (i) the debtor;
    - (ii) the creditor; and
    - (iii) any other person the sheriff thinks has an interest,
 an opportunity to make representations; or
  - (b) holding a hearing.
- (7) The sheriff must give reasons for making, or refusing to make, an order under this section.

#### Textual Amendments

- F26** Words in s. 186(2)(b) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F27** Words in s. 186(3)(b) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F28** Words in s. 186(5)(c) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

## 187 Termination of money attachment

- (1) A money attachment ceases to have effect on the expiry of the period of 14 days beginning with the day on which the report of money attachment is made unless, within that period, the creditor—
- (a) applies for a payment order; and
  - (b) sends a copy of the application to the [<sup>F29</sup>officer of court] under section 183(4)(b) of this Act.
- (2) A money attachment ceases to have effect if the sum recoverable by the money attachment is—
- (a) paid to—
    - (i) the creditor;
    - (ii) the [<sup>F30</sup>officer of court]; or
    - (iii) any other person who has authority to receive payment on behalf of the creditor; or

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- (b) tendered to any of those persons and the tender is not accepted within a reasonable time.
- (3) Where a money attachment ceases to have effect by virtue of subsection (1) or (2) above, the [F31 officer of court] must return money attached or, where the value of any such money has been realised, a sum equivalent to that value, to the debtor.

#### Textual Amendments

- F29** Words in s. 187(1)(b) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F30** Words in s. 187(2)(a)(ii) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F31** Words in s. 187(3) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

## 188 Redemption of banking instrument

- (1) The debtor may, before the expiry of the period of 14 days beginning with the date on which the report of money attachment is made, redeem a banking instrument attached by the money attachment.
- (2) The debtor may not redeem an instrument in relation to which an order under section 181(3) of this Act has been made.
- (3) The amount for which such an instrument may be redeemed is the value of the instrument specified in the report of money attachment.
- (4) The [F32 officer of court] must, on receiving payment from the debtor for the redemption of an attached instrument—
- (a) grant a receipt in (or as nearly as may be in) the form prescribed by Act of Sederunt to the debtor; and
  - (b) report the redemption to the sheriff as soon as is reasonably practicable.
- (5) The money attachment ceases, on the grant of such a receipt, to have effect in relation to the redeemed instrument.

#### Textual Amendments

- F32** Words in s. 188(4) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

#### Commencement Information

- I7** S. 188 wholly in force at 23.11.2009; s. 188 not in force at Royal Assent see s. 227; s. 188(4)(a) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, **art. 3(4)**, **Sch. 3** (with arts. 4-6, 10); s. 188 in force at 23.11.2009 in so far as not already in force by S.S.I. 2009/369, **art. 3** (with transitional modifications in **art. 4**)

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### *Statement of money attachment*

#### **189 Final statement of money attachment**

- (1) The [<sup>F33</sup>officer of court] must, before the expiry of the period of 14 days beginning with the day mentioned in subsection (2) below, give a statement to the sheriff.
- (2) The day referred to in subsection (1) above is the day on which—
- (a) the [<sup>F34</sup>officer of court] made payment to the creditor under a payment order; or
  - (b) the money attached (or the last part of it) was returned to the debtor or, as the case may be, a third party by virtue of section 182(6), 183(11), 185(3), 186, 187 or 188 of this Act,
- whichever is the later.
- (3) The statement mentioned in subsection (1) above must be—
- (a) in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
  - (b) signed by the [<sup>F35</sup>officer of court].
- (4) The statement must specify—
- (a) any banking instruments, the values of which have been realised;
  - (b) the value realised in respect of each such instrument;
  - (c) any sums paid by the debtor to account of the sum recoverable by the money attachment;
  - (d) any chargeable expenses;
  - (e) any sums paid to the creditor;
  - (f) any surplus paid or instruments returned to the debtor or, as the case may be, a third party; and
  - (g) any balance due by or to the debtor.
- (5) The statement must contain a declaration by the [<sup>F36</sup>officer of court] that all the information contained within it is, to the best of the officer's knowledge, true.
- (6) If the [<sup>F37</sup>officer of court]—
- (a) without reasonable excuse gives the statement after the expiry of the period mentioned in subsection (1) above; or
  - (b) wilfully refuses to make, or delays making, the statement after the expiry of that period,
- the sheriff may make an order providing that the officer is liable for the chargeable expenses, either in whole or in part.

<sup>F38</sup>(7) .....

#### **Textual Amendments**

**F33** Words in s. 189(1) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

**F34** Words in s. 189(2)(a) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

**F35** Words in s. 189(3)(b) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

**Changes to legislation:** There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, Part 8. (See end of Document for details)

- F36** Words in s. 189(5) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F37** Words in s. 189(6) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F38** S. 189(7) repealed (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 Pt. 2**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

#### Commencement Information

- I8** S. 189 wholly in force at 23.11.2009; s. 189 not in force at Royal Assent see s. 227; s. 189(3)(a) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, **art. 3(4)**, **Sch. 3** (with arts. 4-6, 10); s. 189 in force at 23.11.2009 in so far as not already in force by S.S.I. 2009/369, **art. 3** (with transitional modifications in **art. 4**)

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

- (1) The sheriff must remit the statement under section 189(1) to the auditor of court who must—
  - (a) tax the chargeable expenses;
  - (b) certify any balance due by or to the debtor; and
  - (c) make a report to the sheriff.
- (2) The auditor of court must not alter the statement without first giving all interested persons an opportunity to make representations.
- (3) The auditor of court must not charge a fee in respect of the report made under subsection (1)(c) above.
- (4) On receipt of a report made under subsection (1)(c) above the sheriff must make an order—
  - (a) declaring the balance due by or to the debtor, as certified by the auditor of court;
  - (b) declaring such a balance after making modifications to the balance so certified; or
  - (c) where the sheriff is satisfied that there has been a material irregularity in the execution of the money attachment (other than the timing of the statement under section 189(1) of this Act), declaring the attachment void.
- (5) An order under subsection (4)(c) above may make such consequential provision as the sheriff thinks fit.
- (6) An order under subsection (4)(c) above does not affect the title of a person to any money acquired by that person in good faith.
- (7) The sheriff may not make an order under subsection (4)(b) or (c) above without first—
  - (a) giving—
    - (i) the debtor;
    - (ii) the creditor; and
    - (iii) any third party who claims ownership (whether alone or in common with the debtor or any other person) of any money attached, an opportunity to make representations; or
  - (b) holding a hearing.

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- (8) The sheriff clerk must intimate the sheriff's order under subsection (4) above to the persons mentioned in subsection (7)(a) above.

*General and miscellaneous*

**191 Money in common ownership**

- (1) Money which is owned in common by a debtor and a third party may be attached in satisfaction of the debts of the debtor.
- (2) Where at any time before the disposal of attached money—
- (a) a third party claims to own the money in common with the debtor;
  - (b) either—
    - (i) the [F39 officer of court] is satisfied that the claim is valid; or
    - (ii) the sheriff, on the third party's application, makes an order stating that the sheriff is so satisfied; and
  - (c) the third party pays to the officer a sum equal to the value of the debtor's interest in the money,
- the debtor's interest in the money is transferred to the third party.
- (3) Where the sheriff is satisfied—
- (a) that money attached is owned in common by the debtor and a third party; and
  - (b) that the disposal of the money would in the circumstances be unduly harsh to the third party,
- the sheriff may, on the third party's application made before the money's disposal, order that the money attachment is to cease to have effect in relation to that money.
- (4) Where—
- (a) the debtor's interest in money owned in common by the debtor and a third party is, under subsection (2) above, transferred to the third party; or
  - (b) the money attachment ceases, in pursuance of an order made under subsection (3) above, to have effect in relation to that money,
- the [F40 officer of court] may attach other money owned by the debtor and kept at the place at which the original money attachment was executed.
- (5) In this section and in section 192 of this Act, references to the “disposal” of attached money (and to cognate expressions) are to be construed as references to the value of that money being realised by virtue of—
- (a) an order under section 181 of this Act; or
  - (b) a payment order.

**Textual Amendments**

**F39** Words in s. 191(2)(b)(i) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

**F40** Words in s. 191(4) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1



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*Changes to legislation:* There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, Part 8. (See end of Document for details)

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## **192 Procedure where money owned in common is disposed of**

- (1) This section applies where—
  - (a) a third party claimed, before attached money was disposed of, to own the money in common with the debtor;
  - (b) the debtor's interest in the money has not transferred to the third party under section 191(2) of this Act;
  - (c) the money attachment has not, by virtue of an order under section 191(3) of this Act, ceased to have effect in relation to that money;
  - (d) the third party's interest in the money has, on the disposal of the money, been—
    - (i) transferred to another person; or
    - (ii) extinguished by virtue of the disposal; and
  - (e) either—
    - (i) the third party's claim is, after that disposal, admitted by the creditor and the debtor; or
    - (ii) where the third party's claim is not so admitted, the sheriff, on an application by the third party after that disposal, is satisfied that the claim is valid.
- (2) The creditor must pay to the third party a sum equal to the fraction of the value of the money which corresponded to the third party's interest in it.

## **193 Unlawful acts after money attachment**

- (1) This section applies where—
  - (a) a money attachment has been executed; and
  - (b) the debtor—
    - (i) realises (or purports to realise) the value of an attached banking instrument;
    - (ii) otherwise relinquishes ownership of such an instrument; or
    - (iii) obtains (or attempts to obtain), by fraud or other dishonest means, a banking instrument in place of such an instrument.
- (2) The debtor is acting in breach of the money attachment.
- (3) A person who—
  - (a) assists a debtor to do anything mentioned in subsection (1)(b) above; and
  - (b) knows (or ought reasonably to know) that a money attachment has been executed against the debtor,is acting in breach of the money attachment.
- (4) A breach of the money attachment under subsection (2) or (3) above may be dealt with as a contempt of court.

## **194 Appeals**

- (1) Subject to subsection (2) below, an appeal against any decision of the sheriff made under this Part of this Act may be made only—
  - (a) to the sheriff principal;
  - (b) with the leave of the sheriff; and
  - (c) on a point of law.

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- (2) This section does not apply to decisions made under section 181(3) of this Act.
- (3) The decision of the sheriff principal on such an appeal is final.

## 195 Recovery from debtor of expenses of money attachment

- (1) Expenses which, in accordance with schedule 3 to this Act, are chargeable against the debtor are to be recoverable from the debtor by the money attachment but not by any other legal process.
- (2) Where any expenses such as are mentioned in subsection (1) above have not been recovered by the time the proceeds of the money attachment are disposed of under a payment order, or the money attachment otherwise ceases to have effect, they cease to be chargeable against the debtor.
- (3) The sheriff must grant decree for payment of any expenses awarded by the sheriff against the debtor in favour of the creditor under paragraph 4 of schedule 3 to this Act.
- (4) Subsection (5) below applies where a money attachment is—
  - (a) in effect immediately before the date of sequestration (within the meaning of the <sup>F41</sup>Bankruptcy (Scotland) Act 2016] of the debtor's estate;
  - (b) in effect immediately before the appointment of an administrator under Part II of the Insolvency Act 1986 (c. 45), in relation to the debtor;
  - (c) in effect against property of the debtor immediately before a floating charge attaches to all or part of that property under section 53(7) (attachment on appointment of receiver by holder of charge) or 54(6) (attachment on appointment of receiver by court) of that Act of 1986;
  - (d) in effect immediately before the commencement of the winding up, under Part IV or V of that Act of 1986, of the debtor; or
  - (e) rendered unenforceable by virtue of the creditor entering into a composition contract or acceding to a trust deed for creditors or by virtue of the subsistence of a protected trust deed within the meaning of Schedule 5 to <sup>F42</sup>that Act of 2016].
- (5) Where this subsection applies—
  - (a) the expenses of the money attachment which were chargeable against the debtor remain so chargeable; and
  - (b) if the debtor's obligation to pay the expenses is not discharged under or by virtue of the sequestration, administration order, receivership, winding up, composition contract or trust deed, those expenses are recoverable by further money attachment.

### Textual Amendments

- F41** Words in s. 195(4)(a) substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), [sch. 8 para. 24\(3\)\(a\)](#) (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2
- F42** Words in s. 195(4)(e) substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), [sch. 8 para. 24\(3\)\(b\)](#) (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2

**Changes to legislation:** There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, Part 8. (See end of Document for details)

## 196 Liability for expenses of money attachment

- (1) Schedule 3 to this Act has effect for the purposes of determining the liability, as between the creditor and the debtor, for expenses incurred in serving a charge and in the process of money attachment.
- (2) The Scottish Ministers may by order modify that schedule so as to—
  - (a) add or remove types of expenses to or, as the case may be, from those referred to in that schedule; or
  - (b) vary any of the descriptions of the types of expenses referred to in it.

### Commencement Information

- 19** S. 196 wholly in force at 23.11.2009; s. 196 not in force at Royal Assent see s. 227; s. 196(2) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, art. 3(4), Sch. 3 (with arts. 4-6, 10); s. 196 in force at 23.11.2009 in so far as not already in force by S.S.I. 2009/369, art. 3 (with transitional modifications in art. 4)

## 197 Ascription

- (1) This section applies where any sums are—
  - (a) attached by a money attachment; or
  - (b) paid to account of the sum recoverable by that attachment while it is in effect.
- (2) Such sums are to be ascribed to the following in the order in which they are mentioned—
  - (a) the expenses which are chargeable against the debtor incurred in the money attachment;
  - (b) any interest which has accrued, at the day on which the money attachment was executed, on the sum for payment for which the charge was served;
  - (c) any sum for payment of which that charge was served together with such interest as has accrued after the day the money attachment was executed.

## 198 Interpretation

- (1) In this Part—
  - “decree” has the meaning given by section 221 of this Act, being a decree which, or an extract of which, authorises money attachment;
  - “document of debt” has the meaning given by section 221 of this Act, being a document which, or an extract of which, authorises money attachment;
  - “dwellinghouse” has the same meaning as in section 45 of the 2002 Act;  
F43 ...
  - “money” has the meaning given by section 175 of this Act;
  - [<sup>F44</sup> “ officer of court ” means the officer of court appointed by the creditor; ]
  - “payment order” has the meaning given by section 183(2) of this Act;
  - “schedule of money attachment” has the meaning given by section 179(1) of this Act; and
  - “sum recoverable by the money attachment” has the meaning given by section 177(1) of this Act.

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**Changes to legislation:** There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, Part 8. (See end of Document for details)

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- (2) The Scottish Ministers may by order modify the definitions of “decree” and “document of debt” in subsection (1) above by—
- (a) adding types of decree or document to;
  - (b) removing types of decree or document from; or
  - (c) varying the description of,
- the types of decree or document to which those definitions apply.
- (3) Where—
- (a) a schedule, report or statement under this Part of this Act requires to be signed; and
  - (b) provision is made by virtue of this Part of this Act or by any other enactment permitting the schedule, report or statement to be an electronic communication,
- the requirement is satisfied by a certified electronic signature.

#### Textual Amendments

**F43** Words in s. 198(1) repealed (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 Pt. 2](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

**F44** Words in s. 198(1) inserted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 29](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

#### Commencement Information

**I10** S. 198 wholly in force at 23.11.2009; s. 198 not in force at Royal Assent see s. 227; s. 198(2) in force for certain purposes at 1.4.2008 by [S.S.I. 2008/115](#), [art. 3\(4\)](#), [Sch. 3](#) (with [arts. 4-6, 10](#)); s. 198 in force at 23.11.2009 in so far as not already in force by [S.S.I. 2009/369](#), [art. 3](#) (with transitional modifications in [art. 4](#))

**Changes to legislation:**

There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, Part 8.