



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 8

ATTACHMENT OF MONEY

Execution of money attachment

177 Removal of money attached

- (1) The judicial officer 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 judicial officer must, as soon as reasonably practicable after attaching it, convert that cash into sterling.
- (4) The judicial officer must take all reasonable steps to obtain the highest amount for such cash as is practicable.
- (5) The judicial officer must deposit any cash attached and any proceeds of converting cash in a currency other than sterling in a bank account.
- (6) The judicial officer—
 - (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 judicial officer 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 judicial officer 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.

178 Presumption of ownership

- (1) A judicial officer 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 judicial officer 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 judicial officer 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 judicial officer 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.

179 Schedule of money attachment

- (1) The judicial officer 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—
 - (i) in (or as nearly as may be in) the form prescribed by Act of Sederunt;
 - (ii) signed by the judicial officer; and
 - (b) must specify—
 - (i) the money attached; and
 - (ii) the value of that money, so far as ascertainable.
- (3) The judicial officer 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 judicial officer complies with subsection (3) above.

180 Valuation of banking instruments

- (1) Where the judicial officer 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.

181 Order for realisation of money likely to deteriorate in value

- (1) The—
 - (a) creditor;
 - (b) judicial officer; or
 - (c) debtor,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 judicial officer—
 - (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.

182 Report of money attachment

- (1) The judicial officer 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 judicial officer.
- (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

Status: This is the original version (as it was originally enacted).

- (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
 - (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 judicial officer 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 judicial officer 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.