



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 8

ATTACHMENT OF MONEY

Release of money attached

183 Creditor's application for payment order

- (1) This section applies where—
 - (a) money has been attached by a judicial officer in execution of a money attachment; and
 - (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 judicial officer; 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 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 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—
- (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 judicial officer may attach other money owned by the debtor and kept at the place at which the original money attachment was executed.