

**2009 No. 382**

**COURT OF SESSION**

**SHERIFF COURT**

**Act of Sederunt (Money Attachment Rules) 2009**

*Made* - - - - - *2nd November 2009*

*Coming into force* - - - - - *23rd November 2009*

The Lords of Council and Session, under and by virtue of the powers conferred by sections 179(2), 182(2), 183(3) and (7), 188(4) and 189(3) of the Bankruptcy and Diligence etc. (Scotland) Act 2007(a), section 5 of the Court of Session Act 1988(b) and section 32 of the Sheriff Courts (Scotland) Act 1971(c) and under and by virtue of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Money Attachment Rules) 2009 and comes into force on 23rd November 2009.

(2) This Act of Sederunt is to be inserted in the Books of Sederunt.

**Money attachment rules**

2. The Schedule to this Act of Sederunt provides rules for applications under Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (attachment of money).

*A.C. HAMILTON*  
Lord President  
I.P.D.

Edinburgh  
2nd November 2009

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- (a) 2007 asp 3.  
(b) 1988 c.36: section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3), the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45, the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1) and the Judiciary and Courts (Scotland) Act 2008 (asp 3), section 46(3).  
(c) 1971 c.58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4) (“the 2000 asp”), Schedule 5, paragraph 13, the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43, the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2), the Consumer Credit Act 2006 (c.14), section 16(4) and the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3), section 33 and was extended by the Debtors (Scotland) Act 1987 (c.18), section 97, the Child Support Act 1991 (c.48), sections 39(2) and 49 and by section 2(4) of the 2000 asp.

**Citation and interpretation**

- 1.—(1) These Rules may be cited as the Money Attachment Rules 2009.
- (2) Any reference in these Rules—
  - (a) to a section is to be construed as the section bearing that number in the Bankruptcy and Diligence etc. (Scotland) Act 2007;
  - (b) to a numbered form means the form so numbered in the Appendix to these Rules, or a form of substantially the same effect with such variation as circumstances may require.

**Power of sheriff to make orders**

2. The sheriff may make such order as the sheriff thinks fit for the expeditious progress of an application under Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 in so far as it is not inconsistent with the provisions of these Rules.

**Dispensing power of sheriff**

3.—(1) The sheriff may relieve any party from the consequences of any failure to comply with the provisions of these Rules which is shown to be due to mistake, oversight or other excusable cause, on such conditions as the sheriff thinks fit.

(2) Where the sheriff so relieves a party the sheriff may make such order as the sheriff thinks fit to enable the application to proceed as if the failure to comply had not taken place.

**Application for extension of hours of money attachment**

4.—(1) An application by an officer of court under section 176(2) (application for extension of hours of money attachment) shall be made by minute, which may be endorsed on the decree or document of debt (or extract decree or document of debt) upon which the money attachment has proceeded.

(2) A minute under paragraph (1) must specify—

- (a) the extension sought; and
- (b) the reason for the extension.

(3) A minute under paragraph (1) need not be intimated to any party and the sheriff may grant or refuse it without a hearing.

**Schedule of money attachment**

5. A schedule of money attachment under section 179 shall be in Form 1.

**Application for realisation of money likely to deteriorate in value**

6.—(1) An application under section 181(1) (order for realisation of money likely to deteriorate in value) shall be in Form 2.

(2) On the lodging of such an application the sheriff may—

- (a) fix a date for a hearing; and
- (b) order the applicant to intimate the date of the hearing to the persons mentioned in section 181(1) who would otherwise be entitled to apply.

(3) Where a hearing is fixed under paragraph (2), the officer of court who executed the money attachment shall lodge with the sheriff clerk a copy of the schedule of money attachment before the date fixed for the hearing.

### **Report of money attachment**

7.—(1) A report of money attachment under section 182 shall be in Form 3.

(2) The sheriff clerk shall retain the report of money attachment.

(3) An application by an officer of court under section 182(1) (application for extension of period for making report of money attachment) shall be made by minute stating the reasons for seeking the extension, which may be endorsed on the decree or document of debt (or extract decree or document of debt) upon which the money attachment has proceeded.

(4) The terms of the sheriff's decision on any application shall be endorsed on the decree or document of debt (or extract decree or document of debt), and may be authenticated by the sheriff clerk.

### **Application for payment order**

8.—(1) An application under section 183(2) (creditor's application for payment order) shall be in Form 4.

(2) An opposition under section 183(6) (opposition by debtor or third party claiming ownership of money attached) shall be in Form 5.

(3) On the lodging of an opposition under section 183(6) the sheriff must—

(a) order representations to be lodged by the persons mentioned in section 183(8) within such period as the sheriff considers appropriate; or

(b) fix a date for a hearing.

(4) The sheriff clerk shall intimate any order of the sheriff under paragraph (3) to the persons mentioned in section 183(8)(a).

### **Application for release of money where attachment unduly harsh**

9.—(1) An application under section 185(1) (release of money where attachment unduly harsh) shall be in Form 6.

(2) On the lodging of an application under paragraph (1) the sheriff must—

(a) fix a date for a hearing; and

(b) order the applicant to intimate that date to such persons as the sheriff considers appropriate.

### **Invalidity and cessation of money attachment**

10.—(1) An application under section 186(4)(a) (application for order declaring that money attachment ceases to have effect) shall be in Form 7.

(2) Before making an order under section 186 the sheriff must—

(a) order representations to be lodged by the persons mentioned in section 186(6)(a) within such period as the sheriff considers appropriate; or

(b) fix a date for a hearing.

(3) The sheriff clerk shall intimate any order of the sheriff under paragraph (2) to the persons mentioned in section 186(6)(a) and to the officer of court who executed the money attachment.

### **Redemption of banking instrument**

11. A receipt under section 188(4) (receipt for redemption of an attached banking instrument) shall be in Form 8.

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

**12.**—(1) A statement under section 189(1) (final statement of money attachment) shall be in Form 9.

(2) Where the sheriff is considering making an order under section 190(4)(b) or (c) he must—

- (a) order representations to be lodged by the persons mentioned in section 190(7)(a) within such period as the sheriff considers appropriate; or
- (b) fix a date for a hearing.

(3) The sheriff clerk shall intimate any order of the sheriff under paragraph (2) to the persons mentioned in section 190(7)(a) and to the officer of court who executed the money attachment.

### **Applications in relation to money owed in common**

**13.**—(1) An application under section 191(2)(b)(ii) (application by third party for order that claim is valid) shall be in Form 10.

(2) An application under section 191(3) (application by third party for order that money attachment is to cease to have effect in relation to money owned in common) shall be in Form 11.

(3) An application under section 192(1)(e)(ii) (application by third party where money owned in common is disposed of) shall be in Form 12.

(4) On the lodging of an application under paragraph (1), (2) or (3) the sheriff must—

- (a) fix a date for a hearing; and
- (b) order the applicant to intimate the application and the date of the hearing to such persons as the sheriff considers appropriate.

### **Appeals**

**14.**—(1) An application under section 194(1) for leave to appeal against a decision of the sheriff shall—

- (a) be made in writing to the sheriff clerk within 7 days of the making of the decision; and
- (b) specify the point of law on which the appeal is to proceed.

(2) The sheriff may consider such an application without hearing parties unless it appears to the sheriff to be necessary to hold a hearing and, if so, the sheriff clerk shall intimate the date, place and time of the hearing to the parties.

(3) Where leave to appeal has been granted, an appeal shall be made within 7 days after the date when leave was granted.

Appendix  
FORMS

Schedule, Rule 1(2)(b)

Rule 5

Form 1

**Bankruptcy and Diligence etc. (Scotland) Act 2007, section 179**

Court of Session

Sheriff Court .....

SCHEDULE OF MONEY ATTACHMENT

To: *(name and address of debtor)*

On *(date)* a decree was granted in the Court of Session/Sheriff Court at *(court details)* in an action by *(creditor's details)* **CREDITOR** against *(debtor's details)* **DEBTOR** in which the debtor(s) was (were) ordered to pay to the creditor(s) *(specify amounts)*

*(or give details of other document upon which attachment proceeds)*

On *(date of charge)* a charge for payment of these sums (under deduction of £ *(amount paid)* paid to account since the date of decree) was served on the said *(name of debtor(s))*.

\*A debt advice and information package was provided to the debtor on *(date)*.

\**delete as appropriate*

The sum now due by the debtor is:-

Principal Sum	£	0.00	(Further interest may accrue if the debt is not paid immediately)
Interest	£	0.00	
Expenses	£	0.00	
Less Paid to Account	£	<u>-0.00</u>	
SUB-TOTAL	£	0.00	
Agent's Fee	£	0.00	
Charge Fee	£	0.00	
Attachment Fee	£	0.00	

Additional copy schedule of attachment	£	0.00
Reporting the attachment	£	0.00
Other Outlays	£	<u>0.00</u>
<b>TOTAL SUM DUE</b>	<b>£</b>	<b>0.00</b>

**If this sum is not paid the creditor will apply for a Payment Order.**

Payments should be made to (*name and address*)

I, (*name and address of officer*) Officer of Court, on the instructions of the said (*creditor(s)*) attach at (*address*) the money belonging to you specified in the list(s) attached.

You (*the debtor*) have the right to apply to the sheriff for an order that arrangements be made for the immediate realisation of the money attached (or any part of it) if it is likely to deteriorate substantially and rapidly in value.

You (*the debtor*) have the right to redeem any banking instrument attached within 14 days of the date on which the report of money attachment is made on payment to me of the value specified in the report of money attachment.

You (*the debtor or person claiming an interest*) have the right to apply to the sheriff for an order for the return of the money where the attachment is unduly harsh.

You (*the debtor or person claiming an interest*) have the right to apply to the sheriff for an order for the return of the money attached where there has been a material irregularity in the execution of the money attachment.

Any person claiming to own money in common with the debtor has the right to apply to the sheriff for an order that his or her claim to own the money in common with the debtor is valid and, if an order is made, the debtor's interest will be transferred to that person on payment to me of a sum equal to the value of the debtor's interest in the money.

Any person claiming to own money in common with the debtor has the right to apply to the sheriff for an order that the money attachment is to cease to have effect where the disposal of the money would be unduly harsh to that person.

You (*the debtor*) should note that you are acting in breach of the money attachment if you now—

1. realise the value of any attached banking instrument;
2. relinquish ownership of such an instrument;
3. obtain, or attempt to obtain, by fraud or other dishonest means, a banking instrument in place of such an instrument.

Anyone who assists the debtor to do anything mentioned above is acting in breach of the money attachment. A breach of the money attachment may be dealt with as a contempt of court.

This attachment is carried out by me today, (*date*) and is witnessed by (*name and address*).

I deliver/leave this attachment schedule to/for you (*name*) today at:- (*address*)

**WITNESS**

(*address*)

(*date*)

**OFFICER OF COURT**

(*address*)

(*date*)

**MONEY ATTACHED**

**Sterling (cash)**

100.00 (Notes)	
50.00 (Notes)	
20.00 (Notes)	
10.00 (Notes)	
5.00 (Notes)	
1.00 (Notes)	
1.00/2.00 (Coins)	
Silver	
Bronze	
Other	
<b>TOTAL</b>	

**List Other Currency (cash) and Banking Instruments as Necessary**

**Other  
Currency  
(cash)**

Denomination	Total amount	Notes

**Banking  
instruments**

Account No	Drawer	Financial institution	Amount	Payee	Instrument number
<b>TOTAL</b>					

**WITNESS**

*(address)*

*(date)*

**OFFICER OF COURT**

*(address)*

*(date)*

**IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR**



Rule 6(1)

Form 2

**Bankruptcy and Diligence etc. (Scotland) Act 2007, section 181**

Sheriff Court (name)

Court Ref. No. (date)

<b>APPLICATION FOR AN ORDER FOR REALISATION OF MONEY LIKELY TO DETERIORATE IN VALUE</b>		(1) <b>APPLICANT</b>
	<b>A</b>	<b>The applicant is the creditor/officer of court/debtor</b> <i>(delete as appropriate)</i>
<i>(1) Insert name and address</i>	<b>B</b>	<b>Other persons having an interest</b> <b>The creditor/officer of court/debtor</b> (1) <i>(delete as appropriate)</i>
	<b>C</b>	<b>Decree was granted in an action by the creditor in the Court of Session/Sheriff Court at</b> <b>on</b> <i>(date)</i> <b>against the debtor</b> <i>(or give details of other document or summary warrant on which the attachment proceeded)</i>
	<b>D</b>	<b>A money attachment was executed on</b> <i>(date)</i> <b>at</b> <i>(place)</i>
<i>*Give details of the money attachment and valuation by Officer of Court</i>  <i>**Give reasons for application</i>	<b>E</b>	<b>The following money was attached*:-</b>  £  <b>The value of that money [or part of it] (specify part) should be realised immediately as it is likely to deteriorate substantially and rapidly in value for the following reasons**:</b>

		<p><b>The applicant asks the court:-</b></p> <p><b>1 To fix a Hearing</b></p> <p><b>2 To order intimation of the date of the hearing to the creditor/officer of court who executed the attachment/debtor (delete as appropriate)</b></p> <p><b>3 To order the realisation of the value of the money specified because it is likely to deteriorate substantially and rapidly in value</b></p> <p><i>(Signed)</i></p> <p><i>(Date)</i></p>
<p>IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR</p>		

**FORM OF INTERLOCUTOR**

There being no opposition to the application by *(insert name, designation and address of applicant [ ])* under section 181(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 to make an order authorising the creditor *[or the officer of court]* to make arrangements for the immediate realisation of the money attached *[or the value of the sum of (words and figures [ ])* out of the money attached] as reported in the schedule of money attachment, a copy of which is annexed hereto, and the period for opposition having expired, the sheriff makes the order sought.

*(signed)*

Sheriff

Date:

OR

The application by (*insert name, designation and address of applicant*) [ ] under section 181(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 to make an order authorising the creditor [*or the officer of court*] to make arrangements for the immediate realisation of the value of the money attached [*or of the sum of (words and figures [ ]) out of the money attached*] as reported in the schedule of money attachment a copy of which is annexed hereto being opposed, the sheriff having heard (*insert details of parties who attended the hearing [ ]*)\*:

- \*1. makes the order sought;
- \*2. makes the order sought in respect of (*here detail, under reference to the description of the money in the schedule of money attachment, the money concerned*);
- \*3. refuses the application.

(*signed*)

Sheriff

Date:

*\*delete as appropriate*

Rule 7(1)

Form 3

**Bankruptcy and Diligence etc. (Scotland) Act 2007, section 182(2)**

Sheriff Court .....

Court Ref. No. ....

REPORT OF MONEY ATTACHMENT

Date of execution of attachment: *(date)*

On *(date)* a decree was granted in the Court of Session/Sheriff Court at *(court details)* in an action by *(creditor's details)* **CREDITOR** against *(debtor's details)* **DEBTOR** in which the debtor(s) was (were) ordered to pay to the creditor(s) *(specify amounts)*

*(or give details of other document upon which attachment proceeds)*

On *(date of charge)* a charge for payment of these sums (under deduction of £ *(amount paid)* paid to account since the date of decree) was served on the said *(name of debtor(s))*.

\*On *(date)* a debt advice and information package was provided to the debtor(s).

\**delete as appropriate*

I, *(name)* Officer of Court *(address)*, attended at *(address)* along with the witness, *(name and address)*, on the instructions of the creditor(s); showed the warrant to attach with certificate of execution of charge to every person present and demanded payment of the sum due from the debtor/a person who in the debtor's absence appeared authorised to act for him/her.

The sum now due by the debtor is:-

Principal Sum	£	0.00	(Further interest may accrue if the debt is not paid immediately)
Interest	£	0.00	
Expenses	£	0.00	
Less Paid to Account	£	<u>-0.00</u>	
SUB-TOTAL	£	0.00	
Agent's Fee	£	0.00	
Charge Fee	£	0.00	
Attachment Fee	£	0.00	

Additional copy schedule of attachment	£	0.00
Reporting the attachment	£	0.00
Other Outlays	£	<u>0.00</u>
<b>TOTAL SUM DUE</b>	<b>£</b>	<b>0.00</b>

The sum due not being paid, and having made enquiry of those present as to the ownership of the money I proposed to attach, and in particular whether there were any persons who owned any of the money in common with the debtor, I attached the money belonging to the said (*name*) specified in the list attached at the valuation shown.

I delivered a money attachment schedule signed by myself and the witness to the attachment to (*name*) at (*address*) on (*date*).

*\*(Insert name)* has asserted that the money attached (*or specify part of money attached*) is *\*not* owned by the debtor/owned by the debtor in common with a third party (*give details*).

*\*The value of the money attached (or specify part of money attached)* has been realised under section 181 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (*give details*).

*\*The money attached (or specify part of money attached)* has been released by virtue of section *\*185(3)/186/188(1)* of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (*give details*).

*\* delete as appropriate*

**WITNESS**

**(*address*)**

**(*date*)**

**OFFICER OF COURT**

**(*address*)**

**(*date*)**

Sheriff Court .....

Court Ref. No. ....

**MONEY ATTACHED**

**Sterling (cash)**

100.00 (Notes)	
50.00 (Notes)	
20.00 (Notes)	
10.00 (Notes)	
5.00 (Notes)	
1.00 (Notes)	
1.00/2.00 (Coins)	
Silver	
Bronze	
Other	
<b>TOTAL</b>	

**List Other Currency (cash) and Banking Instruments as Necessary**

<b>Other Currency (cash)</b>	Denomination	Total amount	Notes

<b>Banking instruments</b>	Account No	Drawer	Financial institution	Amount	Payee	Instrument number
<b>TOTAL</b>						

<b>Exchange rate used in converting foreign currency to sterling</b>				
<b>Commission incurred</b>				
<b>TOTAL (Sterling)</b>				

**WITNESS**  
*(address)*  
*(date)*

**OFFICER OF COURT**  
*(address)*  
*(date)*

Rule 8(1)

Form 4

**Bankruptcy and Diligence etc. (Scotland) Act 2007, section 183(2)**

**Sheriff Court** (name)

**Court Ref. No.** (date)

<b>APPLICATION FOR A PAYMENT ORDER</b>		(1) <b>APPLICANT</b>
	<b>A</b>	<b>The applicant is the creditor</b>
(1) <i>Insert name and address</i>	<b>B</b>	<b>Other persons having an interest</b> <b>The debtor (1)</b>  <b>The officer of court (1)</b>  <b>Any person who has asserted that the money attached is not owned by the debtor (or is owned in common by the debtor and a third party) (1)</b>
	<b>C</b>	<b>Decree was granted in an action by the creditor in the Court of Session/Sheriff Court at</b> <b>on (date) against the debtor</b> <i>(or give details of other document or summary warrant on which the attachment proceeded)</i>
	<b>D</b>	<b>A money attachment was executed on (date) at (place)</b> <b>A report of money attachment was made to the sheriff on (date).</b> <b>A copy of the report is attached hereto.</b>



	<b>E</b>	<p><b>The applicant has intimated a copy of this application to</b></p> <p><b>The debtor</b> (date)</p> <p><b>The officer of court</b> (date)</p> <p><b>Any person who has asserted that the money attached is not owned by the debtor (or is owned in common by the debtor and a third party)</b></p> <p>(date)</p>
		<p><b>The applicant asks the court:-</b></p> <p><b>To make an order authorising payment to the creditor of the sum of (words and figures) out of the money attached as reported in the report of money attachment, a copy of which is annexed hereto</b></p> <p>(Signed)</p> <p>(Date)</p>
<p>IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR</p>		

**FORM OF INTERLOCUTOR**

There being no opposition to the application by (*insert name, designation and address of creditor* [ ]) under section 183(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 to make an order authorising payment to that person of the sum of (*words and figures* [ ]) out of the money attached as reported in the report of money attachment, a copy of which is annexed hereto, and the period for opposition having expired, the sheriff makes the order sought.

(signed)

Sheriff

Date

OR

The application by (*insert name, designation and address of creditor* [ ]) under section 183(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 to make an order authorising payment to that person of the sum of (*words and figures* [ ]) out of the money attached as reported in the report of money attachment a copy of which is annexed hereto being opposed, the sheriff having given the persons mentioned in section 183(8)(a)(i) to (iii) of the 2007 Act an opportunity to make representations and having received representations from (*insert details of parties who made representations* [ ]) [*or having heard (insert details of parties who attended the hearing* [ ])], the sheriff:

- \*1. makes the order sought [*or makes the order sought in respect of (here detail, under reference to the description of the money in the report of money attachment, the money concerned)*];
- \*2. under reference to section 183(10), makes an order under section 183(11) of the 2007 Act in respect of the money attached declaring that the money attachment ceases to have effect and requiring the 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;
- \*3. under reference to section 183(12), makes an order under section 183(11) of the 2007 Act in respect of [*here detail, under reference to the description of the money in the report of money attachment, the money concerned which is not owned by the debtor*] [ ] declaring that the money attachment ceases to have effect in relation to that money and requiring the officer of court to return that money attached or, where the value of any such money has been realised, a sum equivalent to that value to the debtor [*or (specify)* ] and otherwise makes the order sought.

(signed)

Sheriff

Date:

*\*delete as appropriate*

## Bankruptcy and Diligence etc. (Scotland) Act 2007, section 183(6)

Sheriff Court (name)

Court Ref. No. (date)

<b>OPPOSITION TO APPLICATION FOR A PAYMENT ORDER</b>		(1) <b>APPLICANT</b>
	<b>A</b>	The applicant is the debtor/third party ( <i>delete as appropriate</i> )
(1) <i>Insert name and address</i>	<b>B</b>	<b>Other persons having an interest</b> <b>The creditor (1)</b>  <b>The debtor/third party (1) (<i>delete as appropriate</i>)</b>  <b>The officer of court (1)</b>
	<b>C</b>	<b>Decree was granted in an action by the creditor in the Court of Session/Sheriff Court at</b> <b>on (date) against the debtor</b> <i>(or give details of other document or summary warrant on which the attachment proceeded)</i>
	<b>D</b>	<b>A money attachment was executed on (date) at (place)</b>

<p>*Give details of the money attachment by Officer of Court</p>	<p><b>E</b></p>	<p><b>*The following money was attached:-</b></p> <p style="text-align: center;"><b>£</b></p> <p><b>The creditor applied for a payment order under section 183(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 on (date)</b></p> <p><b>The debtor/third party (<i>insert as appropriate</i>) opposes the application made by the creditor for a payment order on (date)</b></p> <p><i>(give reasons for opposition)</i></p>
		<p><i>(Signed)</i></p> <p><i>(Date)</i></p>
<p>IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR</p>		

Rule 9(1)

Form 6

**Bankruptcy and Diligence etc. (Scotland) Act 2007, section 185(1)**

Sheriff Court

(name)

Court Ref. No.

(date)

<b>APPLICATION FOR RELEASE OF MONEY WHERE ATTACHMENT UNDULY HARSH</b>		(1)  <b>APPLICANT</b>
	<b>A</b>	<b>The applicant is the debtor</b>
(1) <i>Insert name and address</i>	<b>B</b>	<b>Other persons having an interest</b>  <b>The creditor (1)</b>  <b>The officer of court (1)</b>
(2) <i>Insert name</i>  (3) <i>Insert address</i>	<b>C</b>	<b>A money attachment order was executed by</b>  (2)  <b>officer of court on the instructions of the creditor</b>  <b>on (date) at (3)</b>  (or give details of other document or summary warrant on which the attachment proceeded)
<i>*Give reasons for application</i>	<b>D</b>	<b>The following money was attached:-</b>  <b>£</b>  <b>The attachment of this money is unduly harsh for the following reasons*:-</b>

		<p><b>The applicant asks the court:-</b></p> <p><b>1            To fix a Hearing</b></p> <p><b>2            To order intimation of this application and the date of the hearing to those persons stated above as having an interest</b></p> <p><b>3            To order that the money attachment shall cease to have effect</b></p> <p><b>4            To order the officer of court to return the money or a sum equivalent to the value of the money to the applicant</b></p> <p><i>(Signed)</i></p> <p><i>(Date)</i></p>
<p>IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR</p>		

**FORM OF INTERLOCUTOR**

There being no opposition to the application by *(insert name, designation and address of applicant)* [            ] under section 185(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 to make an order providing that the money attachment ceases to have effect in relation to the money attached [*or part of the money attached*] and authorising payment to that person of the sum of *(words and figures)* [            ] out of the money attached as reported in the report of money attachment a copy of which is annexed hereto, and the period for opposition having expired, the sheriff makes the order sought [*or the sheriff makes an order that the money attachment ceases to have effect in relation to the amount of (words and figures)* [            ] and authorises payment to the applicant of that sum].

*(signed)*

Sheriff

Date:

OR

The application by (*insert name, designation and address of applicant*) [ ] under section 185(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 to make an order providing that the money attachment ceases to have effect in relation to the money attached [*or part of the money attached*] and authorising payment to that person of the sum of (*words and figures*) [ ] out of the money attached as reported in the report of money attachment a copy of which is annexed hereto being opposed, the sheriff having heard (*insert details of parties who attended the hearing*) [ ]\*:

- \*1. makes the order sought;
- \*2. makes an order providing that the money attachment ceases to have effect in relation to (*here detail, under reference to the description of the money in the report of money attachment, the money concerned*) [ ] and requiring the Officer of Court to return the money attached [*or (specify part thereof)*] or, where the value of any such money has been realised or the money includes or comprises a banking instrument, a sum equivalent to that value to the applicant and that any surplus remaining be deposited in a bank account;
- \*3. refuses the application.

(*signed*)

Sheriff

Date:

*\*delete as appropriate*

Rule 10(1)

Form 7

**Bankruptcy and Diligence etc. (Scotland) Act 2007, section 186(4)(a)**

Sheriff Court (name)

Court Ref. No. (date)

<b>APPLICATION FOR AN ORDER DECLARING THAT MONEY ATTACHMENT CEASES TO HAVE EFFECT WHERE MATERIAL IRREGULARITY IN EXECUTION OR MONEY NOT OWNED BY DEBTOR</b>		(1) <b>APPLICANT</b>
	<b>A</b>	<b>The applicant is the debtor/third party</b> <i>(delete as appropriate)</i>
<i>(1) Insert name and address</i>	<b>B</b>	<b>Other persons having an interest</b> <b>The debtor/third party/creditor</b> <i>(1) (delete as appropriate)</i> <b>The Officer of Court</b> <i>(1)</i>
	<b>C</b>	<b>Decree was granted in an action by the creditor in the Court of Session/Sheriff Court at</b> <b>on (date) against the debtor</b> <i>(or give details of other document or summary warrant on which the attachment proceeded)</i>
<i>(2) Insert name</i> <i>(3) Insert address</i>	<b>D</b>	<b>A money attachment was executed by (2) officer of court on the instructions of the creditor on (date) at (3)</b>



<p><i>*delete as appropriate</i></p> <p><i>**Give reasons for application</i></p>	<p><b>E</b></p>	<p><b>The application is made on the following grounds:-</b></p> <p><b>*there was a material irregularity in the execution of the money attachment **</b></p> <p><b>*the money attached is not owned by the debtor**</b></p>
		<p><b>The applicant asks the court:-</b></p> <p><b>1            To order that the money attachment shall cease to have effect</b></p> <p><b>2            To order the officer of court to return the money attached (or a sum equivalent to the value of that money) to the applicant</b></p> <p><i>(Signed)</i></p> <p><i>(Date)</i></p>
<p>IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR</p>		

**Rule 11**

Form 8

Court Ref. no.....

**Bankruptcy and Diligence etc. (Scotland) Act 2007, section 188(4)**

**RECEIPT FOR REDEMPTION OF ATTACHED BANKING INSTRUMENT**

In respect of the attachment carried out at (*place*) on ..... at the instance of  
(*name and address*) **CREDITOR** against (*name and address*) **DEBTOR**

Received the sum of £ ..... in redemption of the following banking instrument(s):

(*specify*)

Date .....

Officer of Court .....

*Note: Copy to be retained for purpose of report to Court*

**Bankruptcy and Diligence etc. (Scotland) Act 2007, section 189(1)**

Sheriff Court .....

Court Ref. No.....

**STATEMENT OF MONEY ATTACHMENT**

**Details of parties and prior steps in diligence**

- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. The creditor</li> <li>2. The debtor</li> <li>[3. Third party (<i>or</i> parties)]</li> <li>4. Date of decree etc</li> <li>5. Prior steps of diligence</li> </ol> | Decree* granted:<br>Decree* extracted:<br>Charge served:<br>Attachment executed:<br>Attachment reported: |
| <ol style="list-style-type: none"> <li>6. Date money [<i>or</i> last part of money] paid to creditor [<i>or</i> returned to debtor [<i>or</i> third party]]</li> </ol>                                     |  |

\*Extract decree or other document(s) on which money attachment proceeded

**STATEMENT OF DEBT AND EXPENSES**

**Sums in decree etc**

Principal Sum	£	
Expenses (in accordance with attached account)	£	
Interest	£	
<b>Total</b>		£

**Diligence Expenses**

Agents Fees	£	
Charge Fee	£	
Money Attachment Fee (including reporting)	£	
Application for Payment Order	£	
Expenses of realising Banking Instrument(s)	£	
Reporting Statement of Money Attachment	£	
<b>Total Expenses</b>		£

Paid to Account	£
Value of each Banking Instruments Realised	£
(specify each value)	£
	£
	£

Proceeds of Payment Order	£
<b>Total Money Received</b>	£
<b>Paid to Creditor</b>	£
<b>Surplus paid or instruments returned to debtor/third party</b>	£
<b>Balance due to/by debtor</b>	£

This statement is made by me (*name*), Officer of Court (*address*) to the Sheriff at (*court*) on (*date*)

and I declare that the information contained within it is, to the best of my knowledge, true.

(Signed) .....

Officer of Court  
(*address*)

Rule 13(1)

Form 10

**Bankruptcy and Diligence etc. (Scotland) Act 2007, section 191(2)(b)(ii)**

Sheriff Court (name)

Court Ref. No. (date)

<b>APPLICATION BY THIRD PARTY IN RELATION TO MONEY OWNED IN COMMON</b>		(1) <b>APPLICANT</b>
	<b>A</b>	<b>The applicant is a person claiming ownership of attached money [or part of attached money] (specify part) in common with the debtor</b>
(1) Insert name and address	<b>B</b>	<b>Other persons having an interest</b> <b>The creditor (1)</b> <b>The debtor (1)</b> <b>The Officer of Court (1)</b>
	<b>C</b>	<b>Decree was granted in an action by the creditor in the Court of Session/Sheriff Court at on (date) against the debtor</b> <i>(or give details of other document or summary warrant on which the attachment proceeded)</i>
(2) Insert name (3) Insert address	<b>D</b>	<b>An attachment was executed by (2) officer of court on the instructions of the creditor on (date) at (3)</b>

<p><i>(give details of ownership including extent)</i></p>	<p><b>E</b></p>	<p><b>The following money was attached:-</b></p> <p><b>£</b></p> <p><b>The applicant owns the money [or specify part of money] in common with the debtor</b></p>
		<p><b>The applicant asks the court:-</b></p> <ol style="list-style-type: none"> <li><b>1 To fix a Hearing</b></li> <li><b>2 To order intimation of this application and the date of the hearing to those persons stated above as having an interest</b></li> <li><b>3 To order that the applicant's claim to the money is valid</b></li> </ol> <p><i>(Signed)</i></p> <p><i>(Date)</i></p>
<p><b>IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR</b></p>		

## Bankruptcy and Diligence etc. (Scotland) Act 2007, section 191(3)

Sheriff Court *(name)*

Court Ref. No. *(date)*

<b>APPLICATION BY THIRD PARTY FOR ORDER THAT MONEY ATTACHMENT IS TO CEASE TO HAVE EFFECT IN RELATION TO MONEY OWNED IN COMMON WITH THE DEBTOR</b>		<p><i>(1)</i></p> <p><b>APPLICANT</b></p>
	<b>A</b>	<p><b>The applicant is a person claiming ownership of attached money [or part of attached money] <i>(specify part)</i> in common with the debtor</b></p>
<i>(1) Insert name and address</i>	<b>B</b>	<p><b>Other persons having an interest</b></p> <p><b>The creditor <i>(1)</i></b></p> <p><b>The debtor <i>(1)</i></b></p> <p><b>The Officer of Court <i>(1)</i></b></p>
	<b>C</b>	<p><b>Decree was granted in an action by the creditor in the Court of Session/Sheriff Court at</b></p> <p><b>on <i>(date)</i> against the debtor</b></p> <p><i>(or give details of other document or summary warrant on which the attachment proceeded)</i></p>
<p><i>(2) Insert name</i></p> <p><i>(3) Insert address</i></p>	<b>D</b>	<p><b>An attachment was executed by <i>(2)</i></b></p> <p><b>officer of court on the instructions of the creditor</b></p> <p><b>on <i>(date)</i> at <i>(3)</i></b></p>

<p><i>(give details of ownership including extent)</i></p> <p><i>(give reasons for application)</i></p>	<p><b>E</b></p>	<p><b>The following money was attached:-</b></p> <p><b>The applicant owns the money [or specify part of money] in common with the debtor</b></p> <p><b>The disposal of the money would be unduly harsh to the applicant (reasons)</b></p>
		<p><b>The applicant asks the court:-</b></p> <ol style="list-style-type: none"> <li><b>1 To fix a Hearing</b></li> <li><b>2 To order the intimation of this application and the date of the hearing to those persons stated above as having an interest</b></li> <li><b>3 To make an order stating that the money attachment is to cease to have effect in relation to the money owned in common with the debtor</b></li> </ol> <p><i>(Signed)</i></p> <p><i>(Date)</i></p>
<p><b>IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR</b></p>		



**Bankruptcy and Diligence etc. (Scotland) Act 2007, section 192(1)(e)(ii)**

Sheriff Court (name)

Court Ref. No. (date)

<b>APPLICATION BY THIRD PARTY WHERE MONEY OWNED IN COMMON IS DISPOSED OF</b>		(1) <b>APPLICANT</b>
	<b>A</b>	<b>The applicant is a person claiming ownership of attached money [or part of attached money] (specify part) in common with the debtor</b>
(1) Insert name and address	<b>B</b>	<b>Other persons having an interest</b>  <b>The creditor (1)</b>  <b>The debtor (1)</b>  <b>The Officer of Court (1)</b>
(if known by applicant)	<b>C</b>	<b>Decree was granted in an action by the creditor in the Court of Session/Sheriff Court at</b>  <b>on (date) against the debtor</b>  <i>(or give details of other document or summary warrant on which the attachment proceeded)</i>
(if known by applicant) (2) Insert name (3) Insert address	<b>D</b>	<b>An attachment was executed by (2) officer of court on the instructions of the creditor on (date) at (3)</b>

<p><i>(4) Insert date</i></p> <p><i>(give details of ownership including extent)</i></p> <p><i>(Give details)</i></p> <p><i>*delete as appropriate</i></p>	<p><b>E</b></p>	<p><b>The following money was attached:-</b></p> <p><b>The attached money was disposed of on (4)</b></p> <p><b>The applicant claimed before the attached money was disposed of, to own the money [or specify part of money] in common with the debtor</b></p> <p><b>The debtor's interest in the money has not transferred to the applicant under section 191(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007</b></p> <p><b>The money attachment has not, by virtue of section 191(3) of that Act, ceased to have effect in relation to that money</b></p> <p><b>*The applicant's interest in the money has, on disposal, been (i) transferred to another person; or (ii) extinguished by virtue of the disposal</b></p>
		<p><b>The applicant asks the court:-</b></p> <ol style="list-style-type: none"> <li><b>1 To fix a Hearing</b></li> <li><b>2 To order the intimation of this application and the date of the hearing to those persons stated above as having an interest</b></li> <li><b>3 To order that the applicant's claim to the money is valid</b></li> </ol> <p><i>(Signed)</i></p> <p><i>(Date)</i></p>
<p><b>IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR</b></p>		

## EXPLANATORY NOTE

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt provides rules for applications under Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (attachment of money). The rules are set out in the Schedule.

The rules provide various forms in relation to money attachment, including for the following: an application to the sheriff to extend the hours during which a money attachment can be executed (rule 4); a form of schedule of money attachment (rule 5); an application for an order for realisation of money that is likely to deteriorate in value (rule 6); a form of report of money attachment (rule 7); an application for a payment order (rule 8); an application by the debtor for release of money where the attachment is unduly harsh (rule 9); an application for an order declaring that a money attachment is invalid and ceases to have effect due to a material irregularity in execution (rule 10); a receipt for redemption of a banking instrument (rule 11); a final statement of money attachment (rule 12); and various applications in relation to money owned in common (rule 13).

The rules generally provide for hearings to be fixed to consider such applications.

Rule 14 provides that an application for leave to appeal against any decision of the sheriff is to be made within 7 days of the decision and, where leave is granted, an appeal shall be made within 7 days of the date leave is granted.

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