

## SCHEDULE

Paragraph 2

### **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.

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(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.