

These notes relate to the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) which received Royal Assent on 15 January 2007

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 8 – Attachment of Money

Execution of money attachment

Section 178 – Presumption of ownership

597. [Section 178\(1\)](#) provides that a judicial officer carrying out a money attachment can assume that any money found in the premises where the attachment is being carried out is owned wholly or in part by the debtor. But, before attaching any money, the officer must ask anyone present about the ownership of the money and particularly ask whether the money is owned by the debtor in common with someone else (subsection (2)).
598. Subsections (3) and (4) provide that an officer cannot presume that money is owned wholly or in part by the debtor if the officer knows or ought to know that this is not the case. But a simple assertion by a person that the money is not owned by the debtor is not enough to override the presumption that the debtor owns the money. The officer would need to be presented with more information or evidence that the money was not the debtor's before the officer would be precluded from relying on the normal assumption.