

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 10 – Arrestment in Execution and Action of Furthcoming

Section 73M – Notice of objection

New section 73Q – Application for release of property where arrestment unduly harsh

716. Section 73Q gives a debtor upon whom an arrestment in execution has been effected (including an arrestment in execution which has started life as an arrestment on the dependence of an action in which the creditor has been successful) and has attached moveable property or funds, the right to apply to the sheriff for an order to be made on the grounds of hardship. This right can be exercised at any time during which the arrestment has effect. For an arrestment of funds to which the automatic release process applies, such an application would require to be made prior to the expiry of the 14 week period for automatic release set out at section 73J(3) or the funds would be automatically released to the creditor.
717. The debtor is able to apply for an order which stops the effect of the arrestment in relation to some or all of the funds and/or property attached and requiring the arrestee to release some or all of the funds and/or property.
718. The application must be in the form prescribed by rules of court and must be copied to persons with an interest, in particular, the creditor and the arrestee.