



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 8

ATTACHMENT OF MONEY

Statement of money attachment

189 Final statement of money attachment

- (1) The [^{F1}officer of court] must, before the expiry of the period of 14 days beginning with the day mentioned in subsection (2) below, give a statement to the sheriff.
- (2) The day referred to in subsection (1) above is the day on which—
 - (a) the [^{F2}officer of court] made payment to the creditor under a payment order; or
 - (b) the money attached (or the last part of it) was returned to the debtor or, as the case may be, a third party by virtue of section 182(6), 183(11), 185(3), 186, 187 or 188 of this Act,whichever is the later.
- (3) The statement mentioned in subsection (1) above must be—
 - (a) in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
 - (b) signed by the [^{F3}officer of court].
- (4) The statement must specify—
 - (a) any banking instruments, the values of which have been realised;
 - (b) the value realised in respect of each such instrument;
 - (c) any sums paid by the debtor to account of the sum recoverable by the money attachment;
 - (d) any chargeable expenses;
 - (e) any sums paid to the creditor;
 - (f) any surplus paid or instruments returned to the debtor or, as the case may be, a third party; and
 - (g) any balance due by or to the debtor.

Changes to legislation: Bankruptcy and Diligence etc. (Scotland) Act 2007, Cross Heading: Statement of money attachment is up to date with all changes known to be in force on or before 16 February 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) The statement must contain a declaration by the [^{F4}officer of court] that all the information contained within it is, to the best of the officer's knowledge, true.
- (6) If the [^{F5}officer of court]—
- (a) without reasonable excuse gives the statement after the expiry of the period mentioned in subsection (1) above; or
 - (b) wilfully refuses to make, or delays making, the statement after the expiry of that period,
- the sheriff may make an order providing that the officer is liable for the chargeable expenses, either in whole or in part.
- ^{F6}(7)

Annotations:

Amendments (Textual)

- F1** Words in s. 189(1) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F2** Words in s. 189(2)(a) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F3** Words in s. 189(3)(b) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F4** Words in s. 189(5) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F5** Words in s. 189(6) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F6** S. 189(7) repealed (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 Pt. 2](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

Commencement Information

- I1** S. 189 wholly in force at 23.11.2009; s. 189 not in force at Royal Assent see s. 227; s. 189(3)(a) in force for certain purposes at 1.4.2008 by [S.S.I. 2008/115](#), [art. 3\(4\)](#), [Sch. 3](#) (with [arts. 4-6, 10](#)); s. 189 in force at 23.11.2009 in so far as not already in force by [S.S.I. 2009/369](#), [art. 3](#) (with transitional modifications in [art. 4](#))

190 Audit of final statement under section 189(1)

- (1) The sheriff must remit the statement under section 189(1) to the auditor of court who must—
- (a) tax the chargeable expenses;
 - (b) certify any balance due by or to the debtor; and
 - (c) make a report to the sheriff.
- (2) The auditor of court must not alter the statement without first giving all interested persons an opportunity to make representations.
- (3) The auditor of court must not charge a fee in respect of the report made under subsection (1)(c) above.
- (4) On receipt of a report made under subsection (1)(c) above the sheriff must make an order—

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- (a) declaring the balance due by or to the debtor, as certified by the auditor of court;
 - (b) declaring such a balance after making modifications to the balance so certified; or
 - (c) where the sheriff is satisfied that there has been a material irregularity in the execution of the money attachment (other than the timing of the statement under section 189(1) of this Act), declaring the attachment void.
- (5) An order under subsection (4)(c) above may make such consequential provision as the sheriff thinks fit.
- (6) An order under subsection (4)(c) above does not affect the title of a person to any money acquired by that person in good faith.
- (7) The sheriff may not make an order under subsection (4)(b) or (c) above without first—
- (a) giving—
 - (i) the debtor;
 - (ii) the creditor; and
 - (iii) any third party who claims ownership (whether alone or in common with the debtor or any other person) of any money attached, an opportunity to make representations; or
 - (b) holding a hearing.
- (8) The sheriff clerk must intimate the sheriff's order under subsection (4) above to the persons mentioned in subsection (7)(a) above.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2018/1125 reg. 8](#)