



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 8

### ATTACHMENT OF MONEY

#### *General and miscellaneous*

#### **191 Money in common ownership**

- (1) Money which is owned in common by a debtor and a third party may be attached in satisfaction of the debts of the debtor.
- (2) Where at any time before the disposal of attached money—
  - (a) a third party claims to own the money in common with the debtor;
  - (b) either—
    - (i) the judicial officer is satisfied that the claim is valid; or
    - (ii) the sheriff, on the third party's application, makes an order stating that the sheriff is so satisfied; and
  - (c) the third party pays to the officer a sum equal to the value of the debtor's interest in the money,the debtor's interest in the money is transferred to the third party.
- (3) Where the sheriff is satisfied—
  - (a) that money attached is owned in common by the debtor and a third party; and
  - (b) that the disposal of the money would in the circumstances be unduly harsh to the third party,the sheriff may, on the third party's application made before the money's disposal, order that the money attachment is to cease to have effect in relation to that money.
- (4) Where—
  - (a) the debtor's interest in money owned in common by the debtor and a third party is, under subsection (2) above, transferred to the third party; or

(b) the money attachment ceases, in pursuance of an order made under subsection (3) above, to have effect in relation to that money, the judicial officer may attach other money owned by the debtor and kept at the place at which the original money attachment was executed.

(5) In this section and in section 192 of this Act, references to the “disposal” of attached money (and to cognate expressions) are to be construed as references to the value of that money being realised by virtue of—

(a) an order under section 181 of this Act; or

(b) a payment order.

## **192 Procedure where money owned in common is disposed of**

(1) This section applies where—

(a) a third party claimed, before attached money was disposed of, to own the money in common with the debtor;

(b) the debtor’s interest in the money has not transferred to the third party under section 191(2) of this Act;

(c) the money attachment has not, by virtue of an order under section 191(3) of this Act, ceased to have effect in relation to that money;

(d) the third party’s interest in the money has, on the disposal of the money, been—

(i) transferred to another person; or

(ii) extinguished by virtue of the disposal; and

(e) either—

(i) the third party’s claim is, after that disposal, admitted by the creditor and the debtor; or

(ii) where the third party’s claim is not so admitted, the sheriff, on an application by the third party after that disposal, is satisfied that the claim is valid.

(2) The creditor must pay to the third party a sum equal to the fraction of the value of the money which corresponded to the third party’s interest in it.

## **193 Unlawful acts after money attachment**

(1) This section applies where—

(a) a money attachment has been executed; and

(b) the debtor—

(i) realises (or purports to realise) the value of an attached banking instrument;

(ii) otherwise relinquishes ownership of such an instrument; or

(iii) obtains (or attempts to obtain), by fraud or other dishonest means, a banking instrument in place of such an instrument.

(2) The debtor is acting in breach of the money attachment.

(3) A person who—

(a) assists a debtor to do anything mentioned in subsection (1)(b) above; and

- (b) knows (or ought reasonably to know) that a money attachment has been executed against the debtor,  
is acting in breach of the money attachment.
- (4) A breach of the money attachment under subsection (2) or (3) above may be dealt with as a contempt of court.

#### **194 Appeals**

- (1) Subject to subsection (2) below, an appeal against any decision of the sheriff made under this Part of this Act may be made only—
  - (a) to the sheriff principal;
  - (b) with the leave of the sheriff; and
  - (c) on a point of law.
- (2) This section does not apply to decisions made under section 181(3) of this Act.
- (3) The decision of the sheriff principal on such an appeal is final.

#### **195 Recovery from debtor of expenses of money attachment**

- (1) Expenses which, in accordance with schedule 3 to this Act, are chargeable against the debtor are to be recoverable from the debtor by the money attachment but not by any other legal process.
- (2) Where any expenses such as are mentioned in subsection (1) above have not been recovered by the time the proceeds of the money attachment are disposed of under a payment order, or the money attachment otherwise ceases to have effect, they cease to be chargeable against the debtor.
- (3) The sheriff must grant decree for payment of any expenses awarded by the sheriff against the debtor in favour of the creditor under paragraph 4 of schedule 3 to this Act.
- (4) Subsection (5) below applies where a money attachment is—
  - (a) in effect immediately before the date of sequestration (within the meaning of the 1985 Act) of the debtor's estate;
  - (b) in effect immediately before the appointment of an administrator under Part II of the Insolvency Act 1986 (c. 45), in relation to the debtor;
  - (c) in effect against property of the debtor immediately before a floating charge attaches to all or part of that property under section 53(7) (attachment on appointment of receiver by holder of charge) or 54(6) (attachment on appointment of receiver by court) of that Act of 1986;
  - (d) in effect immediately before the commencement of the winding up, under Part IV or V of that Act of 1986, of the debtor; or
  - (e) rendered unenforceable by virtue of the creditor entering into a composition contract or acceding to a trust deed for creditors or by virtue of the subsistence of a protected trust deed within the meaning of Schedule 5 to the 1985 Act.
- (5) Where this subsection applies—
  - (a) the expenses of the money attachment which were chargeable against the debtor remain so chargeable; and
  - (b) if the debtor's obligation to pay the expenses is not discharged under or by virtue of the sequestration, administration order, receivership, winding up,

composition contract or trust deed, those expenses are recoverable by further money attachment.

### **196 Liability for expenses of money attachment**

- (1) Schedule 3 to this Act has effect for the purposes of determining the liability, as between the creditor and the debtor, for expenses incurred in serving a charge and in the process of money attachment.
- (2) The Scottish Ministers may by order modify that schedule so as to—
  - (a) add or remove types of expenses to or, as the case may be, from those referred to in that schedule; or
  - (b) vary any of the descriptions of the types of expenses referred to in it.

### **197 Ascription**

- (1) This section applies where any sums are—
  - (a) attached by a money attachment; or
  - (b) paid to account of the sum recoverable by that attachment while it is in effect.
- (2) Such sums are to be ascribed to the following in the order in which they are mentioned—
  - (a) the expenses which are chargeable against the debtor incurred in the money attachment;
  - (b) any interest which has accrued, at the day on which the money attachment was executed, on the sum for payment for which the charge was served;
  - (c) any sum for payment of which that charge was served together with such interest as has accrued after the day the money attachment was executed.

### **198 Interpretation**

- (1) In this Part—
  - “decree” has the meaning given by section 221 of this Act, being a decree which, or an extract of which, authorises money attachment;
  - “document of debt” has the meaning given by section 221 of this Act, being a document which, or an extract of which, authorises money attachment;
  - “dwellinghouse” has the same meaning as in section 45 of the 2002 Act;
  - “judicial officer” means the judicial officer appointed by the creditor;
  - “money” has the meaning given by section 175 of this Act;
  - “payment order” has the meaning given by section 183(2) of this Act;
  - “schedule of money attachment” has the meaning given by section 179(1) of this Act; and
  - “sum recoverable by the money attachment” has the meaning given by section 177(1) of this Act.
- (2) The Scottish Ministers may by order modify the definitions of “decree” and “document of debt” in subsection (1) above by—
  - (a) adding types of decree or document to;
  - (b) removing types of decree or document from; or
  - (c) varying the description of,

the types of decree or document to which those definitions apply.

(3) Where—

- (a) a schedule, report or statement under this Part of this Act requires to be signed;  
and
- (b) provision is made by virtue of this Part of this Act or by any other enactment permitting the schedule, report or statement to be an electronic communication,

the requirement is satisfied by a certified electronic signature.