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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 382**

**COURT OF SESSION  
SHERIFF COURT**

**Act of Sederunt (Money Attachment Rules) 2009**

*Made* - - - - *2nd November 2009*

*Coming into force* - - *23rd November 2009*

The Lords of Council and Session, under and by virtue of the powers conferred by sections 179(2), 182(2), 183(3) and (7), 188(4) and 189(3) of the Bankruptcy and Diligence etc. (Scotland) Act 2007(1), section 5 of the Court of Session Act 1988(2) and section 32 of the Sheriff Courts (Scotland) Act 1971(3) and under and by virtue of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Money Attachment Rules) 2009 and comes into force on 23rd November 2009.

(2) This Act of Sederunt is to be inserted in the Books of Sederunt.

**Money attachment rules**

2. The Schedule to this Act of Sederunt provides rules for applications under Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (attachment of money).

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(1) 2007 asp 3.

(2) 1988 c.36: section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3), the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45, the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1) and the Judiciary and Courts (Scotland) Act 2008 (asp 3), section 46(3).

(3) 1971 c.58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4) (“the 2000 asp”), Schedule 5, paragraph 13, the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43, the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2), the Consumer Credit Act 2006 (c.14), section 16(4) and the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3), section 33 and was extended by the Debtors (Scotland) Act 1987 (c.18), section 97, the Child Support Act 1991 (c.48), sections 39(2) and 49 and by section 2(4) of the 2000 asp.

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Edinburgh  
2nd November 2009

A.C. HAMILTON  
Lord President  
I.P.D.

## 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.

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## EXPLANATORY NOTE

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt provides rules for applications under Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (attachment of money). The rules are set out in the Schedule.

The rules provide various forms in relation to money attachment, including for the following: an application to the sheriff to extend the hours during which a money attachment can be executed (rule 4); a form of schedule of money attachment (rule 5); an application for an order for realisation of money that is likely to deteriorate in value (rule 6); a form of report of money attachment (rule 7); an application for a payment order (rule 8); an application by the debtor for release of money where the attachment is unduly harsh (rule 9); an application for an order declaring that a money attachment is invalid and ceases to have effect due to a material irregularity in execution (rule 10); a receipt for redemption of a banking instrument (rule 11); a final statement of money attachment (rule 12); and various applications in relation to money owned in common (rule 13).

The rules generally provide for hearings to be fixed to consider such applications.

Rule 14 provides that an application for leave to appeal against any decision of the sheriff is to be made within 7 days of the decision and, where leave is granted, an appeal shall be made within 7 days of the date leave is granted.