

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 8 – Attachment of Money

Money attachment

Section 176 – When money attachment not competent

591. Subsections (1) and (2) of section 176 provide that money attachment cannot be carried out on a Sunday, a public holiday in the area in which the attachment is to be carried out or on any other day designated by rules of court. An attachment must not begin before 8 a.m. or after 8 p.m. and cannot continue after 8 p.m. if it is in progress. A judicial officer can, however, apply to the sheriff for authority to commence a money attachment or to continue to carry it out outwith these times.
592. Subsection (3) provides that a second money attachment cannot be executed in the same place as a money attachment has already been executed if the second attachment is to enforce the same debt unless other money has been brought to that place after the first money attachment has taken place. The words “or is purported to be attached” make it clear that even if the first money attachment turns out to be invalid a second money attachment at the same place is not permitted because of this provision. This, however, is subject to certain exceptions (contained in sections 183(12)(b), 186(3)(b) and 191(4)). A second attachment at the same place will be allowed where, for instance, attached money has been released because it was not owned by the debtor. The judicial officer can therefore attach other money owned by the debtor.
593. Subsection (4) provides that money can be attached only once to enforce a particular debt. If money is attached and the money attachment ceases to have effect, the money is released back to the debtor. It cannot be re-attached for the same debt.