

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 73N – Hearings following notice of objection

708. Section 73N(1) provides that the sheriff shall, subject to the circumstances set out in subsection (5), hold a hearing where the automatic release of attached funds is objected to by the debtor, the arrestee or a third party claiming to be due the attached funds (whether solely or in common with the debtor). The hearing must be held within 8 weeks of the day the notice of objection was given to the interested parties. Subsection (2) provides that, before the sheriff can make an order, the creditor, the arrestee, the debtor and any interested third party have the right to be heard at the hearing.
709. Under subsection (3), the sheriff can make an order recalling or restricting the arrestment where the sheriff is satisfied that the objection is upheld.
710. The sheriff can reject the application and order the release of funds to the creditor on the expiry of the 14 week period or, where it has already expired, the release as soon as is reasonably practicable after the date on which the order is made (subsection (4)). Even although the court requires to hold a hearing within 8 weeks of the day on which an objection is made, it is possible that the hearing may not conclude prior to the 14 week time limit for automatic release expiring. The court can still deal with the merits of the case if for any reason it is not possible to determine an application within the 14-week period.
711. Subsection (5) provides that where the sheriff is satisfied that it is more appropriate for the matters raised at the objection hearing to be dealt with by an action of multiplepointing or other proceedings, the sheriff may make an order sisting the proceedings on the objection. That means effectively putting the objection hearing proceedings “on hold” pending the outcome of the multiplepointing or other proceedings. The sheriff must also sist the objection proceedings if any multiplepointing or other proceedings are raised, provided they are raised before a decision is made in respect of the objection application.
712. In addition to making an order recalling or restricting the arrestment, an order for release of funds or an order to sist the proceedings, the sheriff is able to make any other order which the sheriff considers appropriate under subsection (6).
713. Subsection (7) provides that the objector (on order of the sheriff) must inform the creditor, arrestee, debtor and any interested third party of the sheriff’s decision on the

*These notes relate to the Bankruptcy and Diligence etc. (Scotland)
Act 2007 (asp 3) which received Royal Assent on 15 January 2007*

application. Subsection (8) provides that any party who objects to the decision of the sheriff is able to appeal to the sheriff principal within 14 days of the decision. The appeal may be on a point of law only and the decision of the sheriff principal is final.

714. Further procedure on hearing objections will be set out in rules of court.