



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 8

### ATTACHMENT OF MONEY

#### *Money attachment*

#### **174 Money attachment**

- (1) There is to be a form of diligence over money owned by a debtor to be known as money attachment.
- (2) Money attachment is competent to enforce payment of a debt but only if—
  - (a) the debt is constituted by a decree or document of debt;
  - (b) the debtor has been charged to pay the debt;
  - (c) the period for payment specified in the charge has expired without payment being made; and
  - (d) where the debtor is an individual, the creditor has, no earlier than 12 weeks before executing the money attachment, provided the debtor with a debt advice and information package.
- (3) Money attachment is not competent in relation to money—
  - (a) kept within a dwellinghouse; or
  - (b) in relation to which arrestment is competent.

#### **175 Meaning of “money” and related expressions**

- (1) In this Part—
  - “cash” means coins and banknotes in any currency;
  - “banking instrument” means—
    - (a) cheques and other instruments to which section 4 of the Cheques Act 1957 (c. 36) applies;

- (b) any document (other than one mentioned in section 4(2)(c) of that Act) issued by a public officer which is intended to enable a person to obtain payment from a government department of the sum mentioned in it;
- (c) promissory notes (other than banknotes);
- (d) other negotiable instruments; and
- (e) money orders and postal orders; and

“money” means cash and banking instruments but does not include any cash or instrument which has an intrinsic value greater than any value it may have as a medium of exchange; and any reference to the value of money is, unless the context otherwise requires, a reference to—

- (a) the amount of cash;
- (b) where that cash is in a currency other than sterling, the amount in sterling which that cash would realise on its conversion under section 177(3) of this Act;
- (c) the amount in cash which would be obtained were the value of a banking instrument realised; and
- (d) in the case where money comprises both cash and instruments, the aggregate of the amounts referred to in, as the case may be, paragraphs (a) to (c) above.

- (2) In the definition of “banking instrument” in subsection (1) above, “government department” includes—
  - (a) any Minister of the Crown;
  - (b) any part of the Scottish Administration;
  - (c) the National Assembly for Wales;
  - (d) the Northern Ireland Assembly, any Northern Ireland Minister or Northern Ireland junior Minister and any Northern Ireland department.
- (3) The Scottish Ministers may by order modify the definition of “banking instrument” in subsection (1) above so as to—
  - (a) add or remove types of instrument to or, as the case may be, from those referred to in that definition; or
  - (b) vary the descriptions of the types of instrument so referred to.

## **176 When money attachment not competent**

- (1) It is not competent to execute a money attachment on—
  - (a) a Sunday;
  - (b) a day which is a public holiday in the area in which the attachment is to be executed; or
  - (c) such other day as may be prescribed by Act of Sederunt.
- (2) The execution of a money attachment must not—
  - (a) begin before 8 a.m. or after 8 p.m.; or
  - (b) be continued after 8 p.m.,
 unless the judicial officer has obtained prior authority from the sheriff for such commencement or continuation.
- (3) Subject to section 183(12)(b), 186(3)(b) or 191(4) of this Act, where money is attached (or is purported to be attached) at any place, it is not competent to attach other money

kept at that place to enforce the same debt unless that other money is brought to that place after execution of the first money attachment.

- (4) Money which has been attached by a money attachment may not, if that money attachment ceases to have effect in relation to that money, be attached again for the same debt.