



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 8

### ATTACHMENT OF MONEY

#### *Statement of money attachment*

#### **189 Final statement of money attachment**

- (1) The judicial officer must, before the expiry of the period of 14 days beginning with the day mentioned in subsection (2) below, give a statement to the sheriff.
- (2) The day referred to in subsection (1) above is the day on which—
  - (a) the judicial officer made payment to the creditor under a payment order; or
  - (b) the money attached (or the last part of it) was returned to the debtor or, as the case may be, a third party by virtue of section 182(6), 183(11), 185(3), 186, 187 or 188 of this Act,whichever is the later.
- (3) The statement mentioned in subsection (1) above must be—
  - (a) in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
  - (b) signed by the judicial officer.
- (4) The statement must specify—
  - (a) any banking instruments, the values of which have been realised;
  - (b) the value realised in respect of each such instrument;
  - (c) any sums paid by the debtor to account of the sum recoverable by the money attachment;
  - (d) any chargeable expenses;
  - (e) any sums paid to the creditor;
  - (f) any surplus paid or instruments returned to the debtor or, as the case may be, a third party; and
  - (g) any balance due by or to the debtor.

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*Status: This is the original version (as it was originally enacted).*

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- (5) The statement must contain a declaration by the judicial officer that all the information contained within it is, to the best of the officer's knowledge, true.
- (6) If the judicial officer—
  - (a) without reasonable excuse gives the statement after the expiry of the period mentioned in subsection (1) above; or
  - (b) wilfully refuses to make, or delays making, the statement after the expiry of that period,the sheriff may make an order providing that the officer is liable for the chargeable expenses, either in whole or in part.
- (7) An order under subsection (6) above does not prejudice the right of the sheriff to report the matter to the Commission by virtue of section 67(1)(b) of this Act (investigation into alleged misconduct by judicial officers).

## **190      Audit of final statement under section 189(1)**

- (1) The sheriff must remit the statement under section 189(1) to the auditor of court who must—
  - (a) tax the chargeable expenses;
  - (b) certify any balance due by or to the debtor; and
  - (c) make a report to the sheriff.
- (2) The auditor of court must not alter the statement without first giving all interested persons an opportunity to make representations.
- (3) The auditor of court must not charge a fee in respect of the report made under subsection (1)(c) above.
- (4) On receipt of a report made under subsection (1)(c) above the sheriff must make an order—
  - (a) declaring the balance due by or to the debtor, as certified by the auditor of court;
  - (b) declaring such a balance after making modifications to the balance so certified; or
  - (c) where the sheriff is satisfied that there has been a material irregularity in the execution of the money attachment (other than the timing of the statement under section 189(1) of this Act), declaring the attachment void.
- (5) An order under subsection (4)(c) above may make such consequential provision as the sheriff thinks fit.
- (6) An order under subsection (4)(c) above does not affect the title of a person to any money acquired by that person in good faith.
- (7) The sheriff may not make an order under subsection (4)(b) or (c) above without first—
  - (a) giving—
    - (i) the debtor;
    - (ii) the creditor; and
    - (iii) any third party who claims ownership (whether alone or in common with the debtor or any other person) of any money attached, an opportunity to make representations; or

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- (b) holding a hearing.
- (8) The sheriff clerk must intimate the sheriff's order under subsection (4) above to the persons mentioned in subsection (7)(a) above.