



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 8

### ATTACHMENT OF MONEY

#### *Release of money attached*

#### **183 Creditor's application for payment order**

- (1) This section applies where—
  - (a) money has been attached by [<sup>F1</sup>an officer of court] in execution of a money attachment; and
  - (b) that money (or part of it) has not been released by virtue of section 182(6)(b), 185(3), 186 or 188(1) of this Act.
- (2) The creditor may apply to the sheriff for an order (in this Part, a “payment order”) authorising payment to the creditor out of the money attached of a sum not exceeding the sum recoverable by the money attachment.
- (3) An application under subsection (2) above must be—
  - (a) in (or as nearly as may be in) the form prescribed by Act of Sederunt;
  - (b) made before the expiry of the period of 14 days beginning with the day on which the report of money attachment is made.
- (4) On making the application, the creditor must send a copy of it to—
  - (a) the debtor;
  - (b) the [<sup>F2</sup>officer of court]; and
  - (c) any person such as is mentioned in section 182(3)(d) of this Act.
- (5) Subject to subsections (10) and (12) below, where there is no opposition to the application, the sheriff must make a payment order.

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*Changes to legislation: There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, Section 183. (See end of Document for details)*

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- (6) The debtor or a third party who claims ownership (whether solely or in common with the debtor) of any of the money attached may oppose the application under subsection (2) above.
- (7) An opposition under subsection (6) above must be—
- (a) in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
  - (b) made before the expiry of the period of 14 days beginning with the day on which the application is made.
- (8) Where there is opposition, the sheriff may not make a payment order without first—
- (a) giving—
    - (i) the creditor;
    - (ii) the debtor; and
    - (iii) any third party who opposes the application,
 an opportunity to make representations; or
  - (b) holding a hearing.
- (9) Where the debtor or, as the case may be a third party, opposes the application on the ground that money attached is not owned by the debtor, it is for the debtor or the third party to prove that fact.
- (10) Where the sheriff is satisfied, after considering any opposition or on the sheriff's own initiative, that there has been a material irregularity in the execution of the money attachment, the sheriff must make an order such as is mentioned in subsection (11) below.
- (11) That order is an order—
- (a) declaring that the money attachment ceases to have effect; and
  - (b) requiring the [<sup>F3</sup>officer of court] to return the money attached or, where the value of any such money has been realised, a sum equivalent to that value, to the debtor or, as the case may be, the person whose money it is.
- (12) Where the sheriff is satisfied after considering any opposition or on the sheriff's own initiative, that any money attached is not owned by the debtor—
- (a) the sheriff must make an order such as is mentioned in subsection (11) above restricted to that money; and
  - (b) after the order is made, the [<sup>F4</sup>officer of court] may attach other money owned by the debtor and kept at the place at which the original money attachment was executed.

#### Textual Amendments

- F1** Words in s. 183(1)(a) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 25\(a\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F2** Words in s. 183(4)(b) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F3** Words in s. 183(11)(b) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F4** Words in s. 183(12)(b) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 24\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

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**Changes to legislation:** There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, Section 183. (See end of Document for details)

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#### **Commencement Information**

- II** S. 183 wholly in force at 23.11.2009; s. 183 not in force at Royal Assent see s. 227; s. 182(3)(a)(7)(a) in force for certain purposes at 1.4.2008 by [S.S.I. 2008/115](#), [art. 3\(4\)](#), [Sch. 3](#) (with [arts. 4-6, 10](#)); s. 183 in force at 23.11.2009 in so far as not already in force by [S.S.I. 2009/369](#), [art. 3](#) (with transitional modifications in [art. 4](#))

**Changes to legislation:**

There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, Section 183.