SCOTTISH STATUTORY INSTRUMENTS

2009 No. 383

COURT OF SESSION

Act of Sederunt (Fees of Messengers-at-Arms) (Diligence) 2009

Made - - - -	*2nd November 2009*
Coming into force - -	*23rd November 2009*

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 5 of the Court of Session Act 1988(**a**), and of all other powers enabling them in that behalf, with the concurrence of the Lord Lyon King of Arms, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Fees of Messengers-at-Arms) (Diligence) 2009 and comes into force on 23rd November 2009.

(2) This Act of Sederunt is to be inserted in the Books of Sederunt.

Amendment of fees

2.—(1) Schedule 1 to the Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002(**b**) is amended in accordance with the following subparagraphs.

(2) After regulation 12 insert—

"12A. Where, in relation to a money attachment, a messenger-at-arms is required to realise the value of the money attached and dispose of same under section 184 of the Act of 2007 and deposit cash and proceeds of foreign currency (including conversion of foreign currency) the fee for such work shall be chargeable on a time basis.".

(3) After regulation 13 insert—

"13A.—(1) Where, in a money attachment, the value of the money exceeds the sum recoverable, the fee specified in the Table of Fees shall be calculated in accordance with the sum recoverable and not the value.

(2) Where, in a money attachment, a debtor or other occupier of the premises claims that money is the property of someone other than the debtor but refuses, or is unable to produce evidence to that effect, the messenger-at-arms may attach the money and shall add a note on the schedule of the attachment stating that the debtor claims that the money is the property of someone other than the debtor.".

(4) In regulation 15 after the definition of "the Act of 2002" insert—

""the Act of 2007" means the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3);".

(5) In the Table of Fees—

(**a**) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3), the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45, the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1) and the Judiciary and Courts (Scotland) Act 2008 (asp 3), section 46(3).

(**b**) S.S.I. 2002/566, amended by S.S.I. 2003/536, 2004/515, 2005/582, 2006/540, 2007/532 and 2008/431.

(a) after item 5 (attachment of motor vehicle, heavy plant or machinery) insert—

"5A. *Money attachments under the Act of 2007*

(a)	Arranging attachment and endeavouring but being unable to execute the same for whatever reason	73.45	73.45	73.45
(b)	Arranging and executing attachment, including removal of attached money, where value of money is—			
	(i) £605 or under	86.00	86.00	86.00
	(ii) Over £605 and up to £2,431	133.35	133.35	133.35
	(iii) Over £2,431 and up to £24,493— 10% of the value			
	(iv) Over £24,493 and up to £122,453— 10% of the first £24,493, 5% thereafter			
	(v) Over £122,453— 10% of the first £24,493, 5% thereafter up to £122,453 and 1% thereafter			
(c)	Reporting attachment	8.20	8.20	8.20";

(b) item 6 (sequestration for rent, poinding of the ground) is omitted;

(c) for paragraph (a) of item 13 (miscellaneous), substitute—

"(a) Making any report or application under the Act of 1987, the Act of 2002 or the Act of 2007 with the exception of reporting an attachment or a money attachment".

A.C. HAMILTON
Lord President
I.P.D.

Edinburgh
2nd November 2009

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends Schedule 1 to the Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002 making provision relating to the new diligence of money attachment, which was introduced by the Bankruptcy and Diligence etc. (Scotland) Act 2007.

Paragraph 2(2) inserts a new regulation 12A providing that realisation and disposal of money attached and depositing of cash and foreign currency shall be chargeable on a time basis.

Paragraph 2(3) inserts a new regulation 13A providing that the fees for money attachment specified in the Table of Fees are to be calculated according to the sum recoverable and not the value of the money attached.

Paragraph 2(4) amends regulation 15 to include a reference to the Bankruptcy and Diligence etc. (Scotland) Act 2007.

Paragraph 2(5) amends the Table of Fees by inserting a new item 5A into the Table of Fees setting the fees chargeable for money attachment. It also removes item 6 as sequestration for rent and poinding of the ground as a consequence of abolition of those diligences by the Bankruptcy and Diligence etc. (Scotland) Act 2007.

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