

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 13 – Amendments of the Debt Arrangement and Attachment (Scotland) Act 2002

Section 212 – Further amendments of the Debt Arrangement and Attachment (Scotland) Act 2002

757. **Section 212** makes further amendments of the 2002 Act.
758. Subsection (2) repeals the requirement that a debtor signs an application for a debt payment programme. Subsection (4) repeals the requirement that a debtor or creditor, as appropriate, signs an application for a variation of a debt payment programme. Subsection (3) provides that the requirements set out in sections 3(1) and (2) of the 2002 Act in relation to an application for the approval or the variation of a debt payment programme, which include the requirement for the debtor to obtain the advice of a money adviser, may be changed by regulations made under section 7(1). This amendment is linked to the amendments of section 7 contained in subsection (5).
759. That subsection amends section 7(2) to enable regulations to provide about the circumstances in which some or all of the duties of a money adviser may be carried out instead by an approved intermediary. Subsection (6) clarifies that an approved intermediary is a person (other than a money adviser) who has been approved by the Scottish Ministers as a person who may give a debtor money advice for the purposes of section 3(1) of the 2002 Act. Subsection (5) amends section 7(2) to provide that regulations under section 7(1) may cover the class of person who may act as an approved intermediary and the functions of an approved intermediary.
760. Subsection (5) also amends section 7(2) to allow regulations under section 7(1) to provide about—
- the circumstances in which a debtor can make an application for the approval or variation of a debt payment programme where the debtor has not obtained money advice (whether from a money adviser or an approved intermediary) under section 3(1) of the 2002 Act; and
 - the way in which seeking creditors' consent to applications for approval of debt payment programmes or the making of such applications affects the rights and remedies of creditors or other third parties.
761. Subsection (7) amends the definition of “debt advice and information package” to give the Scottish Civil Enforcement Commission, established under section 50 of this Act,

the power to determine the content of that package of documents and removing the power of the Scottish Ministers to do so.

762. Subsections (8) and (10) to (13) make a number of amendments of the 2002 Act to facilitate certain aspects of the attachment process which are required to be carried out by judicial officers. It was unclear under the 2002 Act as originally enacted whether the same judicial officer has to be used for certain stages of the attachment process or whether a different officer could be used at each stage. The amendments make it clear that each step in the attachment process can be carried out by any judicial officer.
763. Subsection (9) inserts new section 19A into the 2002 Act.

New section 19A – Urgent removal of attached articles

764. New section 19A gives judicial officers power in relation to the urgent removal of attached articles. Subsection (1) provides that a judicial officer may remove an attached article without notice if it is considered necessary to secure the article (e.g. because there is a risk it may be damaged or destroyed) or to preserve its value and there is no time to obtain an order from a sheriff under section 20(1)(a) of the 2002 Act (which allows such removal). In these circumstances an article will be taken to the nearest convenient premises of the debtor or the person in possession of the item but if the debtor or person does not have any premises which are convenient or the judicial officer thinks those premises are unsuitable for storing the article the officer can take the articles to other secure premises (see subsection (2)). By virtue of subsection (3) (which applies section 19(4)), the judicial officer may open shut and lockfast places in order to remove the attached articles.
765. Subsection (14) inserts new subsections (1A) and (1B) into section 31 of the 2002 Act. Subsection (1A) provides that where an article is sold at auction at less than the value assigned to it when it was attached, the difference between that price and the value will be credited against the sum owed. In other words the debtor benefits from having the debt reduced by the amount the item was valued at even if it does not actually sell for that value at auction. Subsection (1B) provides that where an article has been damaged and revalued and the damage was not caused by the fault of the debtor and no sum has been consigned into the court by a third party to compensate for the damage, the revaluation is disregarded for the purposes of subsection (1A) and the original value is the value that is credited against the debt after the sale even if the sale price of the item was less than that.
766. Subsection (15) inserts new section 60A into the 2002 Act.

New section 60A – Electronic signatures

767. This section makes provision for electronic signatures where any document that requires to be signed under the 2002 Act is submitted in electronic form (regulations or rules of court made under the Act may permit certain documents to be submitted electronically). The signature has to be a certified electronic signature which complies with the requirements of the [Electronic Communications Act 2000 \(c.7\)](#).
768. Subsection (16)(a) inserts sub-paragraph (oa) into paragraph 1 of schedule 1 to the 2002 Act which provides for the expenses of serving a notice on the debtor setting out the date when an officer intends to enter a dwellinghouse to execute an exceptional attachment order to be chargeable against the debtor.
769. Subsection (16)(b) inserts new paragraph 1A into schedule 1 to the 2002 Act which provides that the expenses of removing attached articles, opening shut and lockfast places for the purposes of removing the articles and storing those articles cannot be charged against the debtor if the articles are removed under the urgent removal provisions of new section 19A(1).