

# **BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary*

#### **Part 15 - Action for Removing from Heritable Property**

##### ***Section 216 – Service of charge before removing***

817. **Section 216(1)** requires a defender to be given 14 days' notice (by way of the service of a charge) before any removing of the defender and of any effects (furniture and so on) can take place.
818. Subsection (2) provides for other occupants of the property who derive right to occupy from the defender to also be removed, and for their effects to be removed, provided the defender has been charged in accordance with subsection (1). Once the period of charge has expired the defender, any other occupants of the property and their belongings can be removed without further warning.
819. Subsection (3) authorises judicial officers to open shut and locked places whilst carrying out the removing, and requires them to make an inventory of any effects removed.
820. Subsection (4) gives the court power to vary the 14-day period or dispense with a charge altogether, on cause shown. This could be used, for example, where the person on whose behalf the removing was being carried out, for example, a landlord, was able to satisfy the court that there was a serious risk of the property being badly damaged during the 14-day period.
821. Subsection (5) simplifies the removings procedure by abolishing any need in Court of Session cases to apply for separate letters of ejection. The warrant in the original application will therefore be enough.
822. Subsection (6) provides that the form of charge may be prescribed by the Scottish Ministers by regulations. Until this power is exercised judicial officers and court rules may provide different forms of charge for different circumstances. Regulations made under this power are subject to the negative resolution procedure.
823. A consequential amendment is made in paragraph 6(3) of schedule 5. It ensures consistency in the period of charge for removings under section 7 of the Sheriff Courts (Scotland) Extracts Act 1892. It does this by amending the period of charge for such removings in section 7(4) of that Act from 48 hours to 14 days.