

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 16 – Disclosure of Information

Section 220 – Information disclosure

837. **Section 220** deals with the disclosure of information. Subsection (1) gives the Scottish Ministers a power to provide by regulations for the obtaining of information by creditors about debtors by making an application to the sheriff. These regulations may provide for the disclosure of that information to creditors to assist diligence and enforcement of payment of debts due under decrees and document of debts. Subsection (2) sets out some of the things that regulations under subsection (1) could cover. For example, regulations could provide for the circumstances in which applications could be made, the powers and duties of the court in relation to such applications, the types of information about the debtor which may be obtained and from whom and for unauthorised use or disclosure of any information obtained to be an offence.
838. Subsection (3) states that the regulations cannot provide for the debtor to be ordered to disclose information. However, a bank with which a debtor has an account, or an employer of the debtor, could be required to provide information. Subsections (4) and (5) provide for penalties to be applied when an offence is provided for by regulations and set out the maximum levels of penalties which the regulations may impose. Subsection (6) makes it clear that any regulations under subsection (1) do not affect (and do not override) any existing legislation or common law about the power to disclose or use information, or to order its disclosure or use.
839. Subsection (7) states that the disclosure or use of information under the regulations is not to be regarded as a breach of any restriction on the disclosure or use of such information.
840. Subsection (8) details the powers the Scottish Ministers have to vary the definitions of “decree” and “document of debt”.
841. By virtue of section 224(4)(b), the first set of regulations made under section 220(1) are to be subject to the affirmative resolution procedure of the Scottish Parliament. Subsequent sets of regulations may be subject either to affirmative or negative procedure in the Scottish Parliament, depending on which procedure the Scottish Ministers consider appropriate, by virtue of section 224(5) read with section 224(3).