

These notes relate to the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) which received Royal Assent on 15 January 2007

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 2 – Floating Charges

Registration and creation etc.

Section 40 – Ranking of floating charges

122. This section is concerned with the ranking of a floating charge both with other floating charges and with fixed securities affecting all or part of the same property as that covered by the floating charge. Subsections (1), (2) and (3) set out the leading principle that ranking proceeds on the basis of date of creation which, in the case of fixed securities is the date upon which the security was constituted as a real right. Where the floating charge is created on the same day as another floating charge or fixed security, the rule is that the respective securities rank equally.
123. Subsection (4) is concerned with a competition between a floating charge and a fixed security arising by operation of law – such as lien or a landlord's hypothec. It continues the existing rule that such fixed securities arising by operation of law have priority over any floating charge.
124. Subsections (5) and (6) continue an existing provision whereby the holder of the second, later floating charge may protect the value of the security by giving notice to the holder of the earlier floating charge. In that event, the priority of ranking of the earlier floating charge is restricted to the amount of the debt then outstanding plus any further advances which the holder of that earlier floating charge is contractually obliged to make. In view of the change in the ranking rule, the same facility is extended to the holder of a subsequent fixed security. The priority of debts is preserved by subsection (7).