

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

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary*

#### **Part 2 – Floating Charges**

#### **Related further provision**

#### *Section 48 – Formalities as to documents*

146. The Requirements of Writing (Scotland) Act 1995 provides for a form of subscription of documents whereby the document has an evidential presumption of having been validly subscribed by the signatory. The 1995 Act provides that only documents having such “presumed authenticity” may be registered in *inter alia* the Register of Sasines. In practice, the same requirement is asked of documents presented to the Land Register. Section 48(1) applies the equivalent rule in the case of the Register of Floating Charges, which will facilitate a uniform treatment of applications to the Registers of Scotland when electronic conveyancing is introduced. Although not dealt with in this Act, section 222 (registration and execution of electronic standard securities) represents part of that electronic conveyancing system (see paragraph 842842 below.)
147. Subsections (2) and (3) are necessary to deal with the following situations: (a) where a document registered in the Register of Floating Charges has been annulled as a result of an application to the court for a decree of reduction; and (b) where something has been inaccurately expressed in a document registered in the Register of Floating Charges and, on application, the court has granted an order rectifying the defect. Although both may happen rarely, it is important that, as is already the law in relation to standard securities, a third party such as a person to whom a floating charge is being assigned should be able to rely on the Register. Accordingly, the effect of these provisions is that the decree of reduction or order of rectification will not affect the rights of the third party unless it has been duly registered in the Register of Floating Charges.