

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 4 – Land Attachment and Residual Attachment

Chapter 1 – Abolition of adjudication for debt

Section 79 – Abolition of adjudication for debt

236. Adjudication for debt is the diligence which creditors may use against heritable (and some other) property of debtors. A creditor who has, say, decree for payment, and who wants to recover that money by diligence against that kind of property must first raise an action of adjudication. Decree in that action gives the creditor some rights over the debtor's property (such as the ability to remove the debtor from possession and to let the property). However, if the debt is not paid off, a 10-year period (the "legal") must expire before the creditor can take the next step, raising an action for declarator of expiry of the legal. Decree in that action has the effect of transferring ownership of the property to the creditor.
237. This section abolishes adjudication for debt. That abolition does not affect an action raised before the day this section comes into force provided decree is granted no later than 6 months after that day.

Section 80 – Renaming of the Register of Inhibitions and Adjudications

238. This section provides that, following from the abolition of adjudication for debt, the Register of Inhibitions and Adjudication is renamed the Register of Inhibitions. That register has had several titles over the years and various enactments make reference to it by those titles. Subsection (2) provides that all references in those enactments to the Register of Inhibitions and Adjudications, the General Register of Inhibitions or the Register of Adjudication are to be read as references to the Register of Inhibitions.
239. Adjudication in security (which is available to a creditor seeking to enforce a future or contingent debt) is abolished by section 172 of the Act (see paragraph 512512 below).