

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 4 – Land Attachment and Residual Attachment

Chapter 2 – Attachment of land

Land attachment

Section 81 – Land attachment

240. **Section 81** creates a new diligence over land to be known as land attachment.
241. Subsection (2) provides that land attachment is competent only if the debt is established by a decree or document of debt, the debtor has been charged to pay the debt and the period for payment has expired without payment being made. It also provides that, where the debtor is an individual, the creditor must provide the debtor with the debt advice and information package within the 12 weeks before registering the notice of land attachment. “Decree” and “document of debt” are defined in section 128. The debt advice and information package is the same package required, in the case of attachment of moveables, by section 10 of the 2002 Act (see subsection (8)).
242. Subsection (3) provides that a land attachment is created over land at the beginning of the day which falls 28 days after the last day on which a notice of land attachment is registered. The reference to the “last day” is necessary because the notice must be registered in both the property register and the personal register and may therefore be registered in one before being registered in the other. The period between registration of the notice and creation of the land attachment gives third parties notice that the attachment, which may affect a deed granted by the debtor, is pending. It covers a “registration gap”, similar to that discussed in respect of sequestration in paragraph 70 above, when a notice of land attachment has been sent for registration but a person dealing with the debtor will not be aware of it because it has yet to appear on any register.
243. Subsection (3) should be read together with the provision in sections 83(6) and 121(1). Under section 83(6), the notice of land attachment is void and no land attachment will be created if the creditor does not register a certificate of service of the notice within the 28-day period. Section 121(1) provides that the notice of land attachment ceases to have effect and, accordingly, no land attachment will be created if the debt is paid, or tendered to, the creditor or others on the creditor’s behalf within that period.
244. Subsection (4) provides for the effect of a notice of land attachment during the period after it is registered and before the land attachment is created. The notice has effect as

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

if it were an inhibition registered against the debtor in the Register of Inhibitions but restricted to the land described in the notice.

245. Subsection (5) provides for the effect of a land attachment. It gives the creditor a subordinate real right over the land described in the notice of land attachment as security for the “sum recoverable by the land attachment”. That sum is the sum (principal and accrued interest) for payment of which the charge was served together with any interest which may be accrued before the debt is paid plus all expenses of the land attachment which are chargeable against the debtor.
246. Subsection (7) gives the Scottish Ministers power, by regulations, to change the 28-day period. This power extends to amending any Act in which that period is mentioned (see, for instance, new section 13A being inserted into the Conveyancing and Feudal Reform (Scotland) Act 1970 by section 85). Any such regulations will be subject to negative resolution procedure (see section 224(3)).