

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 4 – Land Attachment and Residual Attachment

Chapter 2 – Attachment of land

Preparations for sale of attached land

Section 107 – Consequences of giving notice under section 106(1)

323. **Section 107** governs the consequences of serving notice under section 106.
324. Subsection (1) provides that, from the date the creditor serves notice under section 106, the creditor has the rights and obligations of a heritable creditor in lawful possession of the land. This is similar to section 20(5) of the Conveyancing and Feudal Reform (Scotland) Act 1970, which applies where a creditor under a standard security has obtained lawful possession of the security subjects on the default of the debtor. Subsection (2) provides that the rights and obligations in subsection (1) include any right the debtor, or other person whose right to occupy has been terminated under section 106, has to receive rent from a tenant. The creditor has that right only in relation to rent due on or after the date on which the creditor notifies the tenant of the termination of the debtor's (or other person's) rights, either in writing or by electronic means (see subsections (3) and (6)). The creditor also has right to any lease, and any permission or right of occupancy. The creditor does not, however, have power to grant a lease.
325. Subsection (4) gives the creditor power to apply to the sheriff for an order authorising reconstruction, alteration or improvement works if they are required to maintain the market value of the land. The creditor may also bring an action of ejection against the debtor and will have title to bring any action of removing, intrusion or ejection which the debtor might have brought in respect of the land. The costs of works needed to maintain the market value of the land and of any action brought under subsection (4) will be expenses of the land attachment recoverable from the debtor (see subsection (5))