

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 4 – Land Attachment and Residual Attachment

Chapter 3 – Residual attachment

Application for residual attachment order

Section 130 – Application for residual attachment order

379. This section provides for the first stage of the residual attachment process. The creditor must obtain a residual attachment order (under section 132) before then obtaining a satisfaction order (under section 136).
380. This section governs the application by a creditor for a residual attachment order. The creditor may apply only where the debt is established by a decree or a 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 a debt and information package within the 12 weeks before the application is made.
381. “Decree” and “document of debt” are defined in section 145 (as read with section 221) of the Act. 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 section 221(1)).
382. An application for residual attachment must be in the form prescribed in rules of court, must specify the property to be attached and must set out how the creditor intends to realise the value of the property which the creditor proposes to attach. The debtor and any person having an interest in the property must be notified of the application. A person notified of the application may lodge objections to the application before the 14 day period for doing so has expired (see subsection (3)).

Section 131 – Effect of application for residual attachment order

383. This section sets out the effects on the debtor and other persons where the creditor makes an application for a residual attachment order. The debtor must not, from the date the application was served until the court either makes a residual attachment order or dismisses the application, take any of the steps set out in subsection (3). Those steps are transferring or otherwise disposing of the property, burdening the property, granting any licence in relation to the property or entering into any agreement to do any of these steps. Subsection (4) provides that any such steps are void and subsection (5) provides that a breach of this section by the debtor or any other person may be dealt with as

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

a contempt of court. Contempt of court is punishable by any of, or a combination of, admonition, fine and, in extreme cases, imprisonment or detention.