

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 4 – Land Attachment and Residual Attachment

Chapter 3 – Residual attachment

Residual attachment order

Section 132 – Residual attachment order

384. This section provides for the making and effects of a residual attachment order.
385. Subsection (1) provides that at the hearing on the application for a residual attachment, the court must allow any person who has lodged an objection a chance to be heard.
386. Subsection (2) provides that the court may, if satisfied that the application is in order, make a residual attachment order which (in terms of subsection (3)) must specify the property to be attached. The order must be intimated by the creditor to the debtor and any other person the court specifies. The order must also specify the persons on whom the schedule of residual attachment (see section 133) must be served. When making a residual attachment order, the court may make any other order the court considers appropriate. Subsection (5) makes further provision about the kinds of ancillary orders the court may make.
387. Under subsection (4), the court must refuse the application if either the property specified in it cannot be attached by residual attachment or the creditor's proposals for realising the value of the property would be ineffective (either in realising any value or, where the value was realised, in realising a sum which would be too small to result in the debt being paid off or reduced).

Section 133 – Schedule of residual attachment

388. This section provides for the necessary step which the creditor must take if that creditor wants to create a residual attachment (see section 134). Where the court grants a residual attachment order, the creditor may serve a schedule of residual attachment.

Section 134 – Creation and effect of residual attachment

389. This section provides a residual attachment is created at the beginning of the day after the schedule of residual attachment is served on the debtor. Subsection (2) provides for the effects of a residual attachment. The residual attachment gives the creditor a security over the attached property for the "sum recoverable by the residual attachment". That sum is the sum (principal and accrued interest) for payment of which the charge was

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

served together with any interest which may be accrued before the debt is paid and all expenses of the residual attachment which are chargeable against the debtor.