



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 15

### ACTIONS FOR REMOVING FROM HERITABLE PROPERTY

#### 214 Expressions used in this Part

(1) In this Part—

“a decree for removing from heritable property” means—

- (a) a decree or warrant such as is mentioned in subsection (2) below; or
- (b) a document such as is mentioned in subsection (3) below; and

“an action for removing from heritable property” means, in the case of a decree or warrant, the proceedings in which such a decree or warrant is obtained.

(2) The decrees and warrants referred to in subsection (1) above are—

- (a) a decree of removing and warrant of ejection obtained in an action of removing;
- (b) a decree and warrant of ejection obtained in an action of ejection;
- (c) a summary warrant of ejection obtained by virtue of section 36 of the Sheriff Courts (Scotland) Act 1907 (c. 51) (in this section, the “1907 Act”);
- (d) a warrant for summary ejection obtained by virtue of section 37 of the 1907 Act;
- (e) a decree obtained by virtue of a summary application for removing under section 38 of the 1907 Act;
- (f) a decree for recovery of possession of heritable property obtained by virtue of a summary cause under section 35(1)(c) of the Sheriff Courts (Scotland) Act 1971 (c. 58);
- (g) an order for possession (within the meaning of section 115(1) of the Rent (Scotland) Act 1984 (c. 58)) obtained by virtue of the Housing (Scotland) Act 1987 (c. 26) or the Housing (Scotland) Act 1988 (c. 43);
- (h) a warrant for ejection of a crofter granted under section 22(3) of the Crofters (Scotland) Act 1993 (c. 44);

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*Status: This is the original version (as it was originally enacted).*

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- (i) an order of removal or ejection made under section 84(1)(e) of the Agricultural Holdings (Scotland) Act 2003 (asp 11); and
- (j) a warrant of ejection obtained by virtue of a summary application under section 38(1) of, or paragraph 3(1) of schedule 5 to, the Housing (Scotland) Act 2006 (asp 1),

being decrees or warrants which, or extracts of which, authorise the removing or ejection of persons from subjects or premises.

- (3) The documents referred to in subsection (1) above are—
  - (a) a lease, or an extract of a lease, having, by virtue of section 34 of the 1907 Act, the same force and effect as an extract decree of removing; and
  - (b) a letter of removal having, by virtue of section 35 of the 1907 Act, the same force and effect as an extract decree of removing.
- (4) The Scottish Ministers may by order modify subsections (2) and (3) above by—
  - (a) adding types of decree, warrant or document to;
  - (b) removing types of decree, warrant or document from; or
  - (c) varying the description of,
 the types of decree, warrant or document referred to in those subsections.

## **215 Procedure for execution of removing**

The procedure and practice to be followed in the execution of any decree for removing from heritable property may be regulated and prescribed by Act of Sederunt and, without prejudice to that generality, such Act may, in particular—

- (a) prescribe the form of any notices or certificates to be used in or for the purposes of any such execution; and
- (b) prescribe the procedure for removal from subjects or premises of any property in or on those subjects or premises.

## **216 Service of charge before removing**

- (1) A defender and any effects of the defender may, by virtue of a decree for removing from heritable property, be removed from subjects or premises but only if—
  - (a) the defender has been charged to remove from those subjects or premises within 14 days after the giving of the charge; and
  - (b) the period of charge has expired without the defender so removing.
- (2) Where—
  - (a) the subjects or premises are occupied by an occupant deriving right or having permission from the defender;
  - (b) the defender has been charged, under subsection (1) above, to remove from those subjects or premises; and
  - (c) the period of charge has expired without the occupant so removing,
 that occupant and any effects of that occupant may be removed from the subjects or premises.
- (3) The judicial officer removing the defender, any other occupant and any effects of such a defender or occupant from the subjects or premises—
  - (a) may, if necessary for the purposes of such removing, open shut and lockfast places; and

- (b) must make an inventory of any effects removed.
- (4) Where the decree for removing from heritable property is granted by a court, the court may, on cause shown, dispense with or vary the period of charge.
- (5) It is no longer necessary to obtain from the Court of Session letters of ejection before removing a person by virtue of subsection (1) or (2) above.
- (6) The Scottish Ministers may, by regulations, prescribe the form of charge under subsection (1) above.

### **217 When removing not competent**

- (1) It is not competent to execute a decree for removing from heritable property on—
  - (a) a Sunday;
  - (b) a day which is a public holiday in the area in which the decree is to be executed; or
  - (c) such other day as may be prescribed by Act of Sederunt.
- (2) The execution of such a decree must not—
  - (a) begin before 8 a.m. or after 8 p.m.; or
  - (b) be continued after 8 p.m.,unless the judicial officer has obtained prior authority from the sheriff for the district in which the subjects or premises are situated for such commencement or continuation.

### **218 Preservation of property left in premises**

- (1) A court, when granting decree for removing from heritable property, may direct that the pursuer takes such steps as the court considers appropriate for the preservation of any effects removed from the subjects or premises.
- (2) The court may, when making a direction under subsection (1) above, order that the defender is to be liable for any costs incurred in taking such steps as are specified by virtue of that subsection.

### **219 Caution for pecuniary claims**

- (1) In an action for removing from heritable property, the court may, on cause shown, order the defender to find caution for any payment claimed (other than by way of expenses) by the pursuer for loss arising from the occupation of the subjects or premises by the defender or any other occupant deriving right or having permission from the defender.
- (2) Notwithstanding subsection (1) above, it is no longer competent to order a defender to find caution for violent profits.
- (3) Where an order is made under subsection (1) above, the defender may provide caution—
  - (a) by means of a bond of caution or other guarantee; or
  - (b) by consigning an appropriate sum in court.
- (4) For the avoidance of doubt, the loss referred to in subsection (1) above includes loss arising from the lawful occupation of the subjects or premises by the defender or such other occupant.