



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 4

LAND ATTACHMENT AND RESIDUAL ATTACHMENT

CHAPTER 2

ATTACHMENT OF LAND

General and miscellaneous

PROSPECTIVE

126 Land attachment as heritable security

For the avoidance of doubt, a land attachment is not a heritable security for the purposes of the Heritable Securities (Scotland) Act 1894 (c. 44).

PROSPECTIVE

127 Statement on impact of land attachment

- (1) The Scottish Ministers must, within 15 months of the commencement of this Chapter, prepare, publish and lay before the Scottish Parliament a statement setting out the impact of land attachment on debt recovery and homelessness.
- (2) The statement must specify—
 - (a) the number of land attachments registered;
 - (b) the number of warrants for sale—
 - (i) granted;

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- (ii) refused; or
 - (iii) suspended,
 - under section 97;
 - (c) the number of persons made homeless as a consequence of this Chapter;
 - (d) the mean and median sums recovered by land attachment; and
 - (e) the effect which land attachment appears to have had on debtors' abilities to meet ongoing financial obligations and repay other debts.
- (3) In this section, “homeless” has the meaning given in section 24 of the Housing (Scotland) Act 1987 (c. 26).

[^{F1}127A Amendment of Bankruptcy (Scotland) Act 2016

- (1) The Bankruptcy (Scotland) Act 2016 is amended as follows.
- (2) After section 23 there is inserted—

“Effect of sequestration on land attachment

- (1) No land attachment of the heritable property of a debtor, created within the 6 months before the date of sequestration (whether or not subsisting at that date), is effectual to create a preference for the creditor.
- (2) A creditor who creates a land attachment within the 6 months mentioned in subsection (1) is entitled to payment, out of the attached land or out of the proceeds of sale of it, of the expenses incurred—
 - (a) in obtaining the extract of the decree, or other document, containing the warrant for land attachment, and
 - (b) in serving the charge for payment, registering the notice of land attachment, serving a copy of that notice, and registering certificate of service of that copy.
- (3) A notice of land attachment—
 - (a) registered on or after the date of sequestration against land forming part of the debtor's heritable estate (including any estate vesting under section 86(5) in the trustee in the sequestration) is of no effect,
 - (b) registered before that date and in relation to which, by that date, no land attachment is created is of no effect.
- (4) It is not competent for a creditor to insist in a land attachment—
 - (a) created over the debtor's heritable estate before the beginning of the 6 months mentioned in subsection (1), and
 - (b) which subsists on the date of sequestration.
- (5) But subsection (4) is subject to subsections (6) to (9).
- (6) Where, in execution of a warrant for sale, a contract to sell the land has been concluded—
 - (a) the trustee must concur in and ratify the deed implementing that contract, and
 - (b) the appointed person must account for and pay to the trustee in the sequestration any balance of the proceeds of sale (being the balance

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which would, but for the sequestration, be due to the debtor) after disbursing those proceeds in accordance with section 116 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (disbursement of proceeds of sale of attached land).

- (7) Subsection (6) does not apply where the deed implementing the contract is not registered within 28 days beginning with the day on which—
- (a) the certified copy of the order of the sheriff granting warrant is recorded, under subsection (1)(a) of section 26, in the Register of Inhibitions, or
 - (b) the certified copy of the determination of AiB awarding sequestration is recorded, under subsection (2) of that section, in that register.
- (8) Where a decree of foreclosure has been granted but an extract of it has not been registered, the creditor may proceed to complete title to the land by registering that extract provided that the creditor does so before the expiry of the days mentioned in subsection (7).
- (9) The Scottish Ministers may, as they think fit, prescribe a period in substitution for the days mentioned in subsection (7); and a different period may be prescribed for the purposes of subsection (8) than is prescribed for the purposes of subsection (7).
- (10) Expressions used in this section which also occur in Chapter 2 of Part 4 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 have the same meanings in this section as they have in that Chapter.”
- (3) In section 25 (effect of sequestration on diligence: estate of deceased debtor)—
- (a) in subsection (1), for the words “Section 24 applies” there is substituted “Sections 23A(1) and (2) and 24 apply ” and
 - (b) in subsection (3), the words “to raise or insist in an adjudication against the estate of a debtor (including any estate vesting under section 86(5) or” are omitted.]

Textual Amendments

- F1 S. 127A inserted (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), sch. 8 para. 24(2) (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2

128 Interpretation

- (1) In this Chapter, unless the context otherwise requires—
- “appointed person” has the meaning given by section 97(2)(b) of this Act;
 - “appropriate property register” has the meaning given by section 83(1)(c)(i) of this Act;
 - “attached land” has the meaning given by section 81(5)(a) of this Act;
 - “decree” has the meaning given in section 221 of this Act (except that paragraphs (c), (g) and (h) of the definition of “decree” in that section do not apply) being a decree which, or an extract of which, authorises land attachment;
 - “document of debt” has the meaning given in section 221 of this Act, being a document which, or an extract of which, authorises land attachment;

F2 ...

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“land” has the meaning given by section 82(1) of this Act;
“long lease” has the same meaning as in section [F3]9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 5)];
“notice of land attachment” has the meaning given by section 83(1) of this Act;
[F4 “ officer of court ” means the officer of court appointed by the creditor;]
“prescribed sum” has the meaning given by section 92(1)(c) of this Act;
“property register” means the Land Register of Scotland or, as the case may be, the General Register of Sasines;
“registering”, in relation to any document, means, unless the context otherwise requires, registering an interest in land or information relating to an interest in land (being an interest or information for which that document provides) in the Land Register of Scotland or, as the case may be, recording the document in the Register of Sasines (cognate expressions being construed accordingly);
“sum recoverable by the land attachment” has the meaning given by section 81(5) (b) of this Act; and
“warrant for sale” means a warrant granted under section 97(2) of this Act.

(2) In this Chapter—

- (a) any reference to a purchase, sale, conveyance or disposition is, in a case where the attached land is a lease, to be construed as a reference to an assignment; and
 - (b) any reference to the ownership of land in such a case is to be construed as a reference to the right of lease,
- and cognate expressions are to be construed accordingly.

(3) The Scottish Ministers may by order modify the definitions of “decree” and “document of debt” in subsection (1) above by—

- (a) adding types of decree or document to;
- (b) removing types of decree or document from; or
- (c) varying the description of,

the types of decree or document to which those definitions apply.

Textual Amendments

- F2** Words in s. 128(1) repealed (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 Pt. 2](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F3** Words in s. 128(1) substituted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, [Sch. 5 para. 52\(3\)](#) (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F4** Words in s. 128(1) inserted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 26](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

Commencement Information

- II** S. 128 partly in force; s. 128 not in force at Royal Assent see s. 227; s. 128(3) in force for certain purposes at 1.4.2008 by [S.S.I. 2008/115](#), [art. 3\(4\)](#), [Sch. 3](#) (with [arts. 4-6](#), 10)

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