



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 4

LAND ATTACHMENT AND RESIDUAL ATTACHMENT

CHAPTER 3

RESIDUAL ATTACHMENT

Satisfaction order

135 Application for satisfaction order

- (1) The creditor may, where a residual attachment is in effect, apply to the court for a satisfaction order authorising the satisfaction of the sum recoverable by the residual attachment out of the attached property.
- (2) An application under subsection (1) above must—
 - (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt;
 - (b) specify the attached property (or part of it) in relation to which the application is made;
 - (c) state—
 - (i) how, were a satisfaction order made, the value of that property would be realised; and
 - (ii) that doing so would result in the sum recoverable by the residual attachment being paid off or reduced; and
 - (d) be accompanied by—
 - (i) a copy of the schedule of residual attachment; and
 - (ii) any other document prescribed by Act of Sederunt.
- (3) An application under subsection (1) above must be intimated to—
 - (a) the debtor;

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- (b) any person to whom the residual attachment order was intimated; and
 - (c) any other person having an interest.
- (4) A person who receives intimation under subsection (3) above may, before the expiry of the period of 14 days beginning with the day on which intimation is made, lodge objections to the application.
- (5) Where provision is made by virtue of this Chapter or by any other enactment permitting the application under subsection (1) above to be an electronic communication, the requirement in paragraph (d) of subsection (2) above that the application be accompanied by the documents mentioned in that paragraph is satisfied by the provision of electronic communications.

Commencement Information

- II** S. 135 partly in force; s. 135 not in force at Royal Assent see s. 227; s. 135(2)(a)(d)(ii) 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)

PROSPECTIVE

136 Satisfaction order

- (1) At the hearing on an application under section 135(1) of this Act, the court must not make any order without first giving any person who has lodged objections under subsection (4) of that section an opportunity to be heard.
- (2) Subject to subsection (6) below, the court may, if satisfied that the application is in order, make—
- (a) a satisfaction order authorising the satisfaction of the sum recoverable by the residual attachment out of the attached property (or part of it) specified in the order; and
 - (b) any other order which the court thinks fit in consequence of the satisfaction order.
- (3) A satisfaction order must—
- (a) specify the attached property to which it applies; and
 - (b) require the creditor to intimate the order to—
 - (i) the debtor; and
 - (ii) any other person the court specifies.
- (4) Without prejudice to the generality of subsection (2) above, a satisfaction order may authorise—
- (a) the creditor to sell the attached property;
 - (b) the transfer of ownership of the property to the creditor;
 - (c) the transfer of income derived from the property to the creditor; or
 - (d) the creditor to lease or licence the property.
- (5) Where the court makes a satisfaction order—
- (a) authorising the sale of attached property, it must—

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- (i) appoint a suitably qualified person (in this Chapter, the “appointed person”) who is willing to execute the order; and
 - (ii) specify in the order the period within which the attached property is to be sold;
 - (b) it may appoint a suitably qualified person to report on the market value of the attached property.
- (6) The court must make an order refusing the application for a satisfaction order if satisfied that any of the grounds mentioned in subsection (7) below apply.
- (7) The grounds referred to in subsection (6) above are—
- (a) the residual attachment is invalid;
 - (b) the residual attachment has ceased to have effect; or
 - (c) that—
 - (i) were the satisfaction order proposed in the application made, it would not result in the value of that property being realised; or
 - (ii) were that order made and the value of that property realised, it would not result in the sum recoverable by the residual attachment being paid off or reduced.
- (8) The court may, if satisfied that making a satisfaction order would be unduly harsh to the debtor or any other person having an interest—
- (a) make a satisfaction order but suspend its effect for a period not exceeding 1 year beginning with the day on which the order is made; or
 - (b) make an order refusing the application.

PROSPECTIVE

137 Intimation of court's decision

- (1) Where a satisfaction order is made, the creditor must, as soon as is reasonably practicable, send a copy of the order to—
- (a) the debtor;
 - (b) where the satisfaction order authorises the sale of the attached property, the appointed person; and
 - (c) any other person the court specifies in the order.
- (2) Where the court refuses to make a satisfaction order, the court must, as soon as is reasonably practicable, send a copy of the order to the debtor and to any other person appearing to the court to have an interest.

PROSPECTIVE

138 Effect of certain refusals of application for satisfaction order

Where, under section 136(6) of this Act, an order is made refusing an application for a satisfaction order by virtue of the ground mentioned in paragraph (c) of subsection (7) of that section—

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- (a) the residual attachment does not, by reason only of that refusal, cease to have effect; and
- (b) it is competent for the creditor to make a further application under section 135(1) of this Act.

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