



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 15

### ACTIONS FOR REMOVING FROM HERITABLE PROPERTY

#### 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—
- the defender has been charged to remove from those subjects or premises within [<sup>F1</sup>the appropriate period] after the giving of the charge; and
  - the period of charge has expired without the defender so removing.

[<sup>F2</sup>(1A) In subsection (1)(a), “the appropriate period” means—

- in the case of a decree for removing from heritable property of the type mentioned in paragraph (1) of section 214(2), 28 days,
- in the case of a decree for removing from heritable property of the type mentioned in any other paragraph of that section, 14 days.]

(2) Where—

- the subjects or premises are occupied by an occupant deriving right or having permission from the defender;
- the defender has been charged, under subsection (1) above, to remove from those subjects or premises; and
- 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.

[<sup>F3</sup>(2A) Subsection (2) does not apply to an occupant with an assured tenancy [<sup>F4</sup>or private residential tenancy]<sup>F5</sup>... or any effects of that occupant where the decree for removing from heritable property was granted on an application—

- to which section 5A of the Heritable Securities (Scotland) Act 1894 (c.44) applies; or

*Changes to legislation: There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, Section 216. (See end of Document for details)*

- (b) under section 24(1B) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35).]

[<sup>F6</sup>(2B) In subsection (2A)—

“assured tenancy” has the same meaning as in Part 2 of the Housing (Scotland) Act 1988,

“private residential tenancy” has the same meaning as in the Private Housing (Tenancies) (Scotland) Act 2016.]

- (3) The [<sup>F7</sup>officer of court] 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 [<sup>F8</sup>or order] for removing from heritable property is granted by a court [<sup>F9</sup>or the First-tier Tribunal], the court [<sup>F9</sup>or the First-tier Tribunal] 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.

#### Textual Amendments

- F1** Words in s. 216(1)(a) substituted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), **Sch. 5 para. 92(a)**; S.I. 2018/78, reg. 5(1)(g)
- F2** S. 216(1A) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), **Sch. 5 para. 92(b)**; S.I. 2018/78, reg. 5(1)(g)
- F3** S. 216(2A) inserted (4.4.2011) by [Housing \(Scotland\) Act 2010 \(asp 17\)](#), **ss. 152(3)**, 166(2); S.S.I. 2011/96, art. 2, Sch.
- F4** Words in s. 216(2A) inserted (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\)](#), s. 79(2), **sch. 4 para. 10(3)(a)(i)**; S.S.I. 2017/346, reg. 2, sch.
- F5** Words in s. 216(2A) repealed (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\)](#), s. 79(2), **sch. 4 para. 10(3)(a)(ii)**; S.S.I. 2017/346, reg. 2, sch.
- F6** S. 216(2B) inserted (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\)](#), s. 79(2), **sch. 4 para. 10(3)(b)**; S.S.I. 2017/346, reg. 2, sch.
- F7** Words in s. 216(3) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), **Sch. 4 para. 24(2)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F8** Words in s. 216(4) inserted (6.3.2019) by [The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019 \(S.S.I. 2019/51\)](#), regs. 1, **6(4)(a)**
- F9** Words in s. 216(4) inserted (6.3.2019) by [The First-tier Tribunal for Scotland Housing and Property Chamber \(Incidental Provisions\) Regulations 2019 \(S.S.I. 2019/51\)](#), regs. 1, **6(4)(b)**

#### Commencement Information

- I1** S. 216 partly in force; s. 216 not in force at Royal Assent see s. 227; s. 216(6) 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)
- I2** S. 216(1)-(5) in force at 4.4.2011 by [S.S.I. 2011/179](#), **art. 3(a)** (with art. 4)
- I3** S. 216(6) in force at 4.4.2011 in so far as not already in force by [S.S.I. 2011/179](#), **art. 3(a)** (with art. 4)

**Changes to legislation:**

There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, Section 216.