

*Status: This version of this provision is prospective.*

*Changes to legislation: Bankruptcy and Diligence etc. (Scotland) Act 2007, Section 40 is up to date with all changes known to be in force on or before 20 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 2

### FLOATING CHARGES

*Registration and creation etc.*

PROSPECTIVE

#### **40 Ranking of floating charges**

- (1) Subject to subsections (4) and (5) below, a floating charge—
  - (a) created on or after the coming into force of this section; and
  - (b) which has attached to all or any part of the property of a company, ranks as described in subsection (2) below.
- (2) The floating charge referred to in subsection (1) above—
  - (a) ranks with—
    - (i) any other floating charge which has attached to that property or any part of it; or
    - (ii) any fixed security over that property or any part of it, according to date of creation; and
  - (b) ranks equally with any floating charge or fixed security referred to in paragraph (a) above which was created on the same date as the floating charge referred to in subsection (1) above.
- (3) For the purposes of subsection (2) above—
  - (a) the date of creation of a fixed security is the date on which the right to the security was constituted as a real right; and
  - (b) the date of creation of a floating charge subsisting before the coming into force of this section is the date on which the instrument creating the charge was executed by the company granting the charge.

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- (4) Where all or any part of the property of a company is subject to both—
- (a) a floating charge; and
  - (b) a fixed security arising by operation of law,
- the fixed security has priority over the floating charge.
- (5) Where the holder of a floating charge over all or any part of the property of a company has received intimation in writing of the subsequent creation of—
- (a) another floating charge over the same property or any part of it; or
  - (b) a fixed security over the same property or any part of it,
- the priority of ranking of the first-mentioned charge is restricted to security for the matters referred to in subsection (6) below.
- (6) Those matters are—
- (a) the present debt incurred (whenever payable);
  - (b) any future debt which, under the contract to which the charge relates, the holder is required to allow the debtor to incur;
  - (c) any interest due or to become due on the debts referred to in paragraphs (a) and (b) above;
  - (d) any expenses or outlays which may be reasonably incurred by the holder; and
  - (e) in the case of a floating charge to secure a contingent liability (other than a liability arising under any further debts incurred from time to time), the maximum sum to which the contingent liability is capable of amounting, whether or not it is contractually limited.
- (7) Subsections (1) to (6) above, and any provision made under section 41(1) of this Act, are subject to sections 175 and 176A (provision for preferential debts and share of assets) of the Insolvency Act 1986 (c. 45).

**Modifications etc. (not altering text)**

- C1** S. 40(1)-(3) applied (prosp.) by 1967 c. 48, s. 3(2) (as inserted by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp. 3\), ss. 49\(1\), 227](#) (with s. 223))
- C2** S. 40(1)-(3) applied (prosp.) by 1967 c. 48, s. 3(2) (as inserted by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp. 3\), ss. 49\(1\), 227](#) (with s. 223))
- C3** S. 40(1)-(3) applied (prosp.) by 1967 c. 48, s. 3(2) (as inserted by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp. 3\), ss. 49\(1\), 227](#) (with s. 223))

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**Changes and effects yet to be applied to :**

- s. 40(1)-(3) modified by 1967 c. 48 s. 3(2) (as inserted) by [2007 asp 3 s. 49\(1\)](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied (with modifications) by [S.I. 2018/1125 reg. 8](#) (This amendment not applied to [legislation.gov.uk](#). S.I. 2018/1125, reg. 8 omitted (31.12.2020) by virtue of Private International Law (Implementation of Agreements) Act 2020 (c. 24), s. 4(3), Sch. 5 para. 4(4))