



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 17

### GENERAL AND MISCELLANEOUS

#### 221 Interpretation

In this Act—

the “1985 Act” means the Bankruptcy (Scotland) Act 1985 (c. 66);

the “1987 Act” means the Debtors (Scotland) Act 1987 (c. 18);

the “2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17);

“certified electronic signature” is to be read in accordance with section 7(2) and (3) of the Electronic Communications Act 2000 (c. 7);

the “Commission” means the Scottish Civil Enforcement Commission;

“debt advice and information package” has the meaning given by section 81(8) of this Act;

“decree” means—

- (a) a decree of the Court of Session, of the High Court of Justiciary or of the sheriff;
- (b) a decree of the Court of Teinds;
- (c) a summary warrant;
- (d) a civil judgement granted outside Scotland by a court, tribunal or arbiter which, by virtue of any enactment or rule of law, is enforceable in Scotland;
- (e) an order or determination which, by virtue of any enactment, is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution granted by the sheriff;
- (f) a warrant granted in criminal proceedings for enforcement by civil diligence;
- (g) an order under section 114 of the Companies Clauses Consolidation (Scotland) Act 1845 (c. 17);

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- (h) a determination under section 46 of the Harbours, Docks and Piers Clauses Act 1847 (c. 27); or
- (i) a liability order within the meaning of section 33(2) of the Child Support Act 1991 (c. 48);

“document of debt” means—

- (a) a document registered for execution in the Books of Council and Session or in the sheriff court books;
- (b) a bill protested for non-payment by a notary public; or
- (c) a document or settlement which, by virtue of an Order in Council made under section 13 of the Civil Jurisdiction and Judgments Act 1982 (c. 27), is enforceable in Scotland;

“electronic communication” has the meaning given by section 15(1) of the Electronic Communications Act 2000 (c. 7);

“judicial officer” shall be construed in accordance with section 57(1) of this Act; and

“professional association” shall be construed in accordance with section 63(1)(a) of this Act.

#### *Execution of diligence: electronic standard securities*

## **222 Registration and execution of electronic standard securities**

- (1) The Requirements of Writing (Scotland) Act 1995 (c. 7) is amended as follows.
- (2) In section 6(1) of that Act (recording and registration of documents), after “subsection (3) below” insert “and section 6A of this Act”.
- (3) After section 6 of that Act insert—

### **“6A Registration for preservation and execution of electronic standard securities**

- (1) This section applies where an electronic document, which creates a standard security over a real right in land, is presumed under section 3A of this Act to have been authenticated by the granter.
- (2) An office copy of the electronic document may be registered for preservation and execution in the Books of Council and Session or in the sheriff court books.
- (3) An office copy so registered is to be treated for the purposes of executing any diligence (including, for the avoidance of doubt, for the purposes of sections 1 and 2 of the Writs Execution (Scotland) Act 1877 (c. 40)) as if—
  - (a) the standard security were created by a document to which section 6(2) of this Act applies; and
  - (b) the office copy were that document.”

## General

### 223 Crown application

- (1) Subject to subsection (2) below, this Act binds the Crown acting in its capacity as a creditor.
- (2) An amendment or other modification by this Act of an enactment binds the Crown to the same extent as the enactment being amended or modified.

### 224 Orders and regulations

- (1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations is exercisable by statutory instrument.
- (2) Any power conferred by this Act on the Scottish Ministers to make orders or regulations—
  - (a) may be exercised so as to make different provision for different cases or descriptions of case or for different purposes; and
  - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers think fit.
- (3) A statutory instrument containing an order or regulations made under this Act (other than an order under section 227(3) of this Act) is, subject to subsections (4) and (5) below, subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) No statutory instrument—
  - (a) containing an order which makes provision such as is mentioned in section 225(2) of this Act; or
  - (b) containing—
    - (i) regulations made under section 50(4), 83(3), 92(2) or (3), 97(7)(b) or 98(6) of this Act; or
    - (ii) the first regulations made under section 220(1) of this Act,may be made unless a draft of it has been laid before, and approved by a resolution of, the Scottish Parliament.
- (5) Subsection (3) above does not apply to a statutory instrument containing further regulations made under section 220(1) of this Act where a draft of it has been laid before, and approved by a resolution of, the Scottish Parliament.

### 225 Ancillary provision

- (1) The Scottish Ministers may, by order made by statutory instrument, make such incidental, supplemental, consequential, transitory, transitional or saving provision which they consider necessary or expedient for the purposes of this Act or in consequence of any provision made by or under this Act.
- (2) An order under subsection (1) above may modify any enactment (including this Act) or instrument.

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**226 Minor and consequential amendments and repeals**

- (1) Schedule 5 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, has effect.
- (2) The enactments mentioned in the first column of Part 1 of schedule 6 to this Act are repealed to the extent specified in the second column of that schedule.
- (3) The enactment mentioned in the first column of Part 2 of schedule 6 to this Act is revoked to the extent specified in the second column of that schedule.

**227 Short title and commencement**

- (1) This Act may be cited as the Bankruptcy and Diligence etc. (Scotland) Act 2007.
- (2) Section 222 of this Act comes into force on the day after Royal Assent.
- (3) The remaining provisions of this Act, except this section and sections 224 and 225, come into force on such day as the Scottish Ministers may, by order, appoint.
- (4) Different days may, under subsection (3) above, be appointed for different purposes.