

These notes relate to the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) which received Royal Assent on 15 January 2007

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 17 – General and Miscellaneous

Execution of diligence: electronic standard securities

Section 222 – Registration and execution of electronic standard securities

842. [Section 222](#) introduces a new section 6A into the Requirements of Writing (Scotland) Act 1995 (the “1995 Act”).

New section 6A – Registration for preservation and execution of electronic standard securities

843. New section 6A permits an office copy of an electronic standard security, which is registered in the Land Register of Scotland, to be registered for preservation and execution in the Books of Council and Session or in the sheriff court books (the “court books”). An office copy is a paper copy issued by the Keeper of the Registers of Scotland under section 6(5) of the Land Registration (Scotland) Act 1979 (the “1979 Act”).

844. Electronic standard securities can be registered in the Land Register as part of the system of electronic conveyancing known as Automated Registration of Title to Land (“ARTL”). The legislative basis of this system is principally found in sections 1(2A) and (2B) and 2A to 2C of the 1995 Act and section 4(2A) to (2C) of the 1979 Act (as inserted by the [Automated Registration of Title to Land \(Electronic Communications\) \(Scotland\) Order 2006 \(SSI 2006/491\)](#)).

845. Registration of a document (such as a standard security) in the court books entitles a creditor to use summary diligence to enforce payment of any money due by the debtor. The court books are paper-based and, without section 6A, the holder of an electronic standard security would lose the ability to register it in them and to enforce it by summary diligence.

846. As it is intended to bring the ARTL system on stream in early 2007, section 222 is brought into force on the day after Royal Assent (see section 227(2)).

General

Section 223 – Crown application

847. [Section 223\(1\)](#) provides that this Act binds the Crown but only in so far as the Crown is a creditor. So duties which are imposed on employers by provisions of this Act do

not bind the Crown. Subsection (2) makes it clear that amendments made by this Act of other Acts (such as the 1987 Act) bind the Crown to the extent which those existing Acts provide. For example, section 105 of the 1987 Act provides that the 1987 Act binds the Crown both as creditor and as employer. New sections inserted into that Act by this Act will also bind the Crown in both capacities (unless express contrary provision is made – see, for example, paragraph 662 above).

Section 224 – Orders and regulations

848. **Section 224** provides for the Parliamentary procedure which is to apply to orders and regulations made by statutory instrument under this Act. It provides for the majority of statutory instruments made under this Act to be subject to the negative resolution procedure of the Scottish Parliament. The exceptions to this are statutory instruments which modify another enactment such as an Act (including this Act), in which case they are subject to the affirmative resolution procedure. In addition, regulations made under sections 50(4), 83(3), 92(2) or (3), 97(7)(b) and 98(6), and the first regulations made under section 220(1), are to be subject to the affirmative resolution procedure. This provision does not apply to statutory instruments made under powers inserted by this Act into other legislation.
849. Subsections (3) and (5) also provide that second and subsequent regulations made under section 220(1) (court-based information disclosure orders) may, at the discretion of the Scottish Ministers, be made subject to either the affirmative or negative resolution procedure.

Section 226 – Minor and consequential amendments and repeals

850. **Section 226** introduces schedules 5 (minor and consequential amendments) and 6 (repeals and revocations).