

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 2 – Floating Charges

Registration and creation etc.

Section 46 – Repeals, savings and transitional arrangements

141. **Section 46(1)** repeals Part XVIII of the Companies Act 1985 which is replaced by the new provisions on floating charges as set out in this Part. However, so that the new rules do not have retrospective effect, it is necessary to regard Part XVIII as still having effect in respect of all floating charges subsisting before the coming into force of these new rules (see subsections (2) and (3)). This will enable all matters relating to pre-commencement floating charges, such as the alteration of them, to be dealt with under the relevant pre-commencement provisions.
142. The new rules on creation of floating charges and ranking by date of creation will not disturb the priority of ranking of existing securities, whether fixed or floating, since they have all been created prior to the coming into force of the new rules. Holders of such securities will not be adversely affected by the creation of any new floating charge. In the interest of clarity, subsection (4) is intended to make plain that, for existing security rights, the pre-commencement rules of ranking continue in force.
143. Subsection (5) is consequential on the repeal of Part XVIII. Although it repeals section 140 of the Companies Act 1989, that section is to be treated as having effect for the purposes of subsections (3) and (4).
144. It should be noted that section 893 of the Companies Act 2006 provides the Secretary of State with a power to make provision for the effect of registration in the Register of Floating Charges and other similar registers.