

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 4 – Land Attachment and Residual Attachment

Chapter 3 – Residual attachment

Residual attachment

Section 129 – Residual attachment

372. This section introduces a new form of diligence over property of a debtor to be known as residual attachment.
373. Subsection (2) gives the Scottish Ministers power by regulations to specify the kind of property that may be attached by residual attachment. That power is subject to subsections (3) and (4) and is subject to negative resolution procedure (see section 224(3)).
374. Only property which is transferable and which cannot be attached by any other diligence can be specified. In addition, property which is exempt from all diligence or from a particular diligence (such as the property listed in section 11 of the 2002 Act) cannot be specified. Finally, property of which the debtor is the tenant and which is either a dwellinghouse used by the debtor as a sole or main residence or which is a croft cannot be specified.
375. Subsection (5) makes it clear that property of a debtor which is of a kind specified as attachable by residual attachment can be attached even though it is owned in common by the debtor and a third party.
376. Subsections (6) and (7) give further content to the power of the Scottish Ministers to specify property under subsection (2). In particular, subsection (7) envisages that the regulations may make provision for how that particular kind of property can be attached and how its value can be realised in order to pay off the debt secured by the residual attachment.
377. As section 130 makes clear, residual attachment is available only in execution and not on the dependence and it cannot be executed as of right but must be sanctioned by the court.
378. Subsection (8) further expands the power in section 129(2) by enabling regulations to be made about the effect of the making of time to pay directions and time to pay orders on the diligence of residual attachment. It similarly gives power to make provision about the effect of sequestration on residual attachment.