

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 4 – Land Attachment and Residual Attachment

Chapter 3 – Residual attachment

Satisfaction order

Section 135 – Application for satisfaction order

390. Where a creditor has created a residual attachment over property of a debtor, and the debtor does not pay off the debt, the next step will be an application to the court for a satisfaction order.
391. **Section 135** makes provision for applications for satisfaction orders and is in similar terms to section 130 (application for residual attachment order). The application must, among other things, be accompanied by a copy of the schedule of residual attachment and any other document prescribed by rules of court. Provision is made that the application, schedule and any other document can be sent electronically. Any person wishing to object to the application must do so within 14 days of the intimation of the application to that person.

Section 136 – Satisfaction order

392. This section provides for the making and effects of a satisfaction order.
393. Subsection (1) provides that, at the hearing on the application, under section 135(1), for the satisfaction order, the court must allow those who have lodged objections an opportunity to be heard.
394. Subsection (2) provides for when the court can make a satisfaction order. The court may make a satisfaction order if it is satisfied the application is in order and provided it is not obliged by subsection (6) to refuse the application. Subsection (3) provides that a satisfaction order must specify the property to which it applies and must require the creditor to intimate it to the debtor and other persons the court specifies.
395. Under subsection (4), a satisfaction order may authorise the sale of the attached property, the transfer of the property to the creditor, the transfer of income derived from the property to the creditor or the granting by the creditor of leases or licences of the property. The types of order listed in subsection (4) are not exclusive. In addition, section 129(7)(d) envisages that the Scottish Ministers may make provision for the types of satisfaction orders that may be made in respect of particular types of property.

396. Where a satisfaction order is made which authorises sale of the property, the court must appoint a qualified person to carry out the sale and specify a period within which that should happen (the “appointed person” – see subsection (5)(a)). In the case of any kind of satisfaction order, the court may appoint a suitably qualified person to provide a report to the court on the market value of the property (subsection (5)(b)).
397. Subsections (6) and (7) determine when the court must refuse an application for a satisfaction order. The grounds in subsection (7) partially mirror those in section 132(4) (grounds for refusing application for residual attachment order).
398. Subsection (8) gives the court power, if it thinks that making a satisfaction order would be unduly harsh to the debtor or a third party, to either refuse the application or make one but suspend it for a year.

Section 137 – Intimation of court’s decision

399. **Section 137(1)** provides that, where a satisfaction order is made under section 136(2), the creditor must send a copy of the order to the debtor, the appointed person and any other person the court specifies.
400. Subsection (2) provides that, where an application is refused, the court must send a copy of the order to the debtor and to any other person the court considers has an interest.

Section 138 – Effect of certain refusals of application for satisfaction order

401. This section provides that the refusal of an application for a satisfaction order on the ground mentioned in section 136(7)(c) (that is, the implementation of the satisfaction order sought would not result in the debt being paid off or reduced, either because the value of the property attached would not be realised at all or the value realised would be too small) does not lift the residual attachment. In other words the creditor still has the protection of the security over the attached property – which could give that creditor priority if the debtor is sequestrated. In addition, the creditor can make another application for a satisfaction order at a later date, perhaps with a different proposal as to how the value of the attached property might be realised.