



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 4

LAND ATTACHMENT AND RESIDUAL ATTACHMENT

CHAPTER 3

RESIDUAL ATTACHMENT

Application for residual attachment order

130 Application for residual attachment order

- (1) A creditor may apply to the court for a residual attachment order but only if—
- (a) the debt is constituted by a decree or document of debt;
 - (b) the debtor has been charged to pay the debt;
 - (c) the period for payment specified in the charge has expired without payment being made; and
 - (d) where the debtor is an individual, the creditor has, no earlier than 12 weeks before applying for the residual attachment order, provided the debtor with a debt advice and information package.
- (2) An application for a residual attachment order, must—
- (a) be in (or nearly as may be in) the form prescribed by Act of Sederunt;
 - (b) specify the property which it is sought to attach;
 - (c) state—
 - (i) how, were a satisfaction order made, the value of that property would be realised; and
 - (ii) that doing so would result in the sum mentioned in section 134(3) of this Act being paid off or reduced; and
 - (d) be intimated to—

Status: This version of this cross heading contains provisions that are prospective.

Changes to legislation: Bankruptcy and Diligence etc. (Scotland) Act 2007, Cross Heading: Application for residual attachment order is up to date with all changes known to be in force on or before 28 January 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (i) the debtor; and
 - (ii) any other person having an interest.
- (3) A person who receives intimation of the application may, before the expiry of the period of 14 days beginning with the day on which that intimation is made, lodge objections to the application.

Annotations:

Commencement Information

- II** S. 130 partly in force; s. 130 not in force at Royal Assent see s. 227; s. 130(2)(a) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, art. 3(4), Sch. 3 (with arts. 4-6, 10)

PROSPECTIVE

131 Effect of application for residual attachment order

- (1) Where an application for a residual attachment order is intimated to a debtor, the debtor must not, during the period mentioned in subsection (2) below, take any of the steps mentioned in subsection (3) below in relation to the property specified in the application.
- (2) The period referred to in subsection (1) above is the period—
 - (a) beginning with the day on which the application is intimated to the debtor; and
 - (b) ending with the day on which the court—
 - (i) makes a residual attachment order; or
 - (ii) dismisses the application.
- (3) The steps referred to in subsection (1) above are—
 - (a) transferring or otherwise disposing of the property;
 - (b) burdening the property;
 - (c) granting any licence or sub-licence in relation to the property; or
 - (d) entering into any agreement to do anything mentioned in paragraph (a), (b) or (c) above in relation to the property.
- (4) Any step mentioned in subsection (3) above which is taken in breach of subsection (1) above is void.
- (5) Breach by the debtor or any other person of subsection (1) above may be dealt with as a contempt of court.

Status:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2018/1125 reg. 8](#)