



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 4

### LAND ATTACHMENT AND RESIDUAL ATTACHMENT

#### CHAPTER 3

##### RESIDUAL ATTACHMENT

###### *General and miscellaneous*

#### **143 Expenses of residual attachment**

- (1) The expenses incurred by the creditor in executing a residual attachment are chargeable against the debtor.
- (2) Expenses which, in accordance with subsection (1) above, are chargeable against the debtor are recoverable from the debtor by the residual attachment but not by any other legal process.
- (3) Where any expenses such as are referred to in subsection (2) above have not been recovered by the time the residual attachment is completed, or otherwise ceases to have effect, they cease to be so recoverable.
- (4) In subsection (2) above, the reference to expenses does not include a reference to expenses of service of a charge.
- (5) The court may, if satisfied that the debtor has objected to an application for a satisfaction order on frivolous grounds, award expenses, not exceeding such amount as may be prescribed by the Scottish Ministers by regulations, against the debtor.

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

*Changes to legislation: Bankruptcy and Diligence etc. (Scotland) Act 2007, Cross Heading: General and miscellaneous is up to date with all changes known to be in force on or before 26 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)*

#### Annotations:

#### Commencement Information

- II** S. 143 partly in force; s. 143 not in force at Royal Assent see s. 227; s. 143(5) 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

#### 144 Ascription

- (1) This section applies where any sums are—
- (a) recovered by a residual attachment; or
  - (b) paid to account of the sum recoverable by the residual attachment while it is in effect.
- (2) Such sums must be ascribed to the following in the order in which they are mentioned—
- (a) the expenses which are chargeable against the debtor incurred in the residual attachment;
  - (b) any interest which has accrued, at the date of the making of the residual attachment order, on the sum for payment for which the charge was served;
  - (c) any sum for payment of which that charge was served together with such interest as has accrued after the day mentioned in paragraph (b) above.

#### 145 Interpretation

- (1) In this Chapter—
- “appointed person” has the meaning given by section 136(5)(a)(i) of this Act;
- “attached property” has the meaning given by section 134(1) of this Act;
- “court” means—
- (a) the Court of Session; or
  - (b) the sheriff,
- and references to applying to the court are references to applying by petition or, as the case may be, by summary application;
- “croft” has the meaning given by section 3 of the Crofters (Scotland) Act 1993 (c. 44);
- “decree” has the meaning given in section 221 of this Act (except that paragraphs (c), (g) and (h) of the definition of “decree” in that section do not apply) being a decree which, or an extract of which, authorises residual attachment;
- “document of debt” has the meaning given in section 221 of this Act, being a document which, or an extract of which, authorises residual attachment;
- “dwellinghouse” includes any yard, garden, outbuilding or other pertinents;
- [<sup>F1</sup> “ officer of court ” means the officer of court appointed by the creditor; ]  
<sup>F2</sup> ...
- “residual attachment order” means an order under section 132(2) of this Act;
- “satisfaction order” means an order under section 136(2) of this Act; and

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“sum recoverable by the residual attachment” has the meaning given by section 134(2)(b) of this Act.

- (2) The Scottish Ministers may by order modify the definitions of “decree” and “document of debt” in subsection (1) above by—
- (a) adding types of decree or document to;
  - (b) removing types of decree or document from; or
  - (c) varying the description of,
- the types of decree or document to which those definitions apply.

**Annotations:**

**Amendments (Textual)**

- F1** Words in s. 145(1) inserted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 27](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F2** Words in s. 145(1) repealed (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 Pt. 2](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

**Commencement Information**

- I2** S. 145 partly in force; s. 145 not in force at Royal Assent see s. 227; s. 145(2) 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)

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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](#)