

*Status: This version of this provision is prospective.*

*Changes to legislation: Bankruptcy and Diligence etc. (Scotland) Act 2007, Section 45 is up to date with all changes known to be in force on or before 13 April 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)*



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 2

### FLOATING CHARGES

*Registration and creation etc.*

PROSPECTIVE

#### **45 Effect of floating charges on winding up**

- (1) Where a company goes into liquidation, a floating charge created over property of the company attaches to the property to which it relates.
- (2) But, in a case mentioned in subsection (7)(a) below, there is no attachment under subsection (1) above until such time as a notice of attachment is registered in the Register of Floating Charges on the application of the holder of the charge.
- (3) The attachment of a floating charge to property under subsection (1) above is subject to the rights of any person who—
  - (a) has effectually executed diligence on the property to which the charge relates or any part of it;
  - (b) holds over that property or any part of it a fixed security ranking in priority to the floating charge; or
  - (c) holds over that property or any part of it another floating charge so ranking.
- (4) Interest accrues in respect of a floating charge which has attached to property until payment is made of any sum due under the charge.
- (5) Part IV, except section 185, of the Insolvency Act 1986 has (subject to subsection (1) above) effect in relation to a floating charge as if the charge were a fixed security over the property to which it has attached in respect of the principal of the debt or obligation to which it relates and any interest due or to become due on it.

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- (6) Subsections (1) to (5) above do not affect the operation of—
- (a) sections 53(7) and 54(6) (attachment of floating charge on appointment of receiver) of the Insolvency Act 1986;
  - (b) sections 175 and 176A of that Act; or
  - (c) paragraph 115(3) of Schedule B1 (attachment of floating charge on delivery of a notice by an administrator) to that Act.
- (7) For the purposes of this section, reference to a company going into liquidation—
- (a) in a case where a court of a member State has under the [<sup>F1</sup>EU insolvency Regulation] jurisdiction as respects the company which granted the relevant floating charge, means the opening of insolvency proceedings in that State;
  - (b) in any other case, is to be construed in accordance with section 247(2) and (3) of the Insolvency Act 1986 (c. 45).
- (8) In subsection (7)(a) above—
- <sup>F2</sup>“the EU insolvency Regulation” is Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings;]
- “court” is to be construed in accordance with [<sup>F3</sup>Article 2(6)] of that Regulation;
- “insolvency proceedings” is to be construed in accordance with [<sup>F4</sup>Article 2(4)] of that Regulation;
- “member State” means a member State of the European Union apart from the United Kingdom.

**Annotations:**

**Amendments (Textual)**

- F1** Words in s. 45(7)(a) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, **3(2)** (with reg. 9)
- F2** Words in s. 45(8) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, **3(3)(a)** (with reg. 9)
- F3** Words in s. 45(8) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, **3(3)(b)** (with reg. 9)
- F4** Words in s. 45(8) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, **3(3)(c)** (with reg. 9)

**Modifications etc. (not altering text)**

- C1** S. 45(3)(c) applied (prosp.) by [1967 c. 48, s. 3\(2\)](#) (as inserted by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp. 3\)](#), **ss. 49(1)**, 227 (with s. 223))

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**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 45(3)(c) modified by 1967 c. 48 s. 3(2) (as inserted) by [2007 asp 3 s. 49\(1\)](#)

**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](#)