

*These notes relate to the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) which received Royal Assent on 15 January 2007*

# **BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary*

#### **Part 1 – Bankruptcy**

#### **Debtor’s home and other heritable property**

#### *Section 19 – Debtor’s home and other heritable property*

#### **New section 39A – Debtor’s home ceasing to form part of sequestrated estate**

75. Section 39A provides for the ownership or other right in a debtor’s family home, which is part of the sequestrated estate, to be returned to the debtor if the trustee has not taken any action in relation to that property within 3 years of the date of sequestration. If the trustee discovers the interest in the property at a later date, the 3-year period runs from the date the trustee became aware of the property.
76. Subsection (3) of section 39A lists the types of action the trustee may take which would prevent the home being returned to the debtor. The Scottish Ministers may modify that list by regulations.
77. Subsection (8) of section 39A gives the Scottish Ministers power to make regulations setting out circumstances in which the 3-year period may be shortened or where section 39A will not apply or where the sheriff may decide that the section does not apply. The regulations can also make provision for compensation. These regulations are subject to negative resolution procedure.