



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 4

### LAND ATTACHMENT AND RESIDUAL ATTACHMENT

#### CHAPTER 2

##### ATTACHMENT OF LAND

###### *Preparations for sale of attached land*

### **98 Application for warrant for sale of sole or main residence**

- (1) This section applies where—
- (a) the creditor applies under section 92(1) of this Act for a warrant for sale of attached land which comprises or includes a dwellinghouse; and
  - (b) that dwellinghouse is the sole or main residence of—
    - (i) the debtor;
    - (ii) where the owner of the dwellinghouse is not the debtor, that owner; or
    - (iii) any person mentioned in subsection (2) below.
- (2) Those persons are—
- (a) a non-entitled spouse of the debtor or the owner;
  - (b) a person living together with the debtor or the owner as husband and wife;
  - (c) a civil partner of the debtor or the owner;
  - (d) a person living together with the debtor in a relationship which has the characteristics of the relationship between a husband and wife except that the person and the debtor or the owner are of the same sex;
  - (e) a person to whom subsection (3) below applies.
- (3) This subsection applies to a person where—
- (a) the debtor or the owner does not reside in the dwellinghouse;

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**Changes to legislation:** There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, Section 98. (See end of Document for details)

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- (b) a child of the debtor or the owner, who is also a child of the person, does so reside; and
  - (c) the person has lived together with the debtor or the owner as is mentioned in paragraph (b) or (d) of subsection (2) above throughout the period of 6 months ending with the day on which the debtor or the owner ceased to so reside.
- (4) Before making, under section 97(2) of this Act, an order granting a warrant for sale, the sheriff must have regard to the matters mentioned in subsection (5) below.
- (5) Subject to subsection (6) below, those matters are—
- (a) the nature of and reasons for the debt secured by the land attachment;
  - (b) the debtor's ability to pay, if the effect of the warrant for sale were suspended by an order under subsection (7) below, the debt outstanding (including any interest and expenses chargeable against the debtor);
  - (c) any action taken by the creditor to assist the debtor in paying that debt;
  - (d) the ability of those occupying the dwellinghouse as their sole or main residence to secure reasonable alternative accommodation.
- (6) The Scottish Ministers may by regulations modify subsection (5) above to—
- (a) add to;
  - (b) remove from; or
  - (c) vary,
- the matters mentioned there.
- (7) Where the sheriff makes, under section 97(2) of this Act, an order granting a warrant for sale, the sheriff may suspend the effect of the warrant for a period not exceeding 1 year beginning with the day on which the order is made.
- (8) For the purposes of subsection (1) above, a dwellinghouse may be a sole or main residence irrespective of whether it is used, to any extent, by the debtor or a person mentioned in subsection (2) above for the purposes of any profession, trade or business.
- (9) In this section—
- “child” means—
    - (a) a child under the age of 16 years; and
    - (b) includes—
      - (i) a stepchild; and
      - (ii) any child brought up or treated by any person to whom subsection (3) above applies or by the debtor or the owner as a child of that person, of the debtor or of the owner;
  - “dwellinghouse” includes any yard, garden, outbuilding or other pertinents; and
  - “non-entitled spouse” is to be construed in accordance with section 1(1) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59).

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#### Commencement Information

- II** S. 98 partly in force; s. 98 not in force at Royal Assent see s. 227; s. 98(6) 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)

**Changes to legislation:**

There are currently no known outstanding effects for the Bankruptcy and Diligence etc. (Scotland) Act 2007, Section 98.