



# 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*

#### **97 Full hearing on application for warrant for sale**

- (1) At the hearing on an application under section 92(1) of this Act, the sheriff must not make any order without first giving any person who has lodged objections under section 92(6) of this Act an opportunity to be heard.
- (2) Subject to subsections (3) and (5) below and to sections 98, 99 and 102 of this Act, the sheriff may, if satisfied that the application is in order, make an order—
  - (a) subject to subsection (4) below, granting a warrant for sale of the attached land; and
  - (b) authorising the solicitor specified in the application (or such other solicitor the sheriff specifies) to execute that warrant (in this Chapter, that solicitor being referred to as the “appointed person”).
- (3) The sheriff may, if satisfied that granting a warrant for sale would be unduly harsh to the debtor or any other person having an interest—
  - (a) make an order under subsection (2) above but suspend its effect for a period not exceeding 1 year beginning with the date on which the order is made; or
  - (b) make an order refusing to grant such a warrant.
- (4) The sheriff—

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*Status: This is the original version (as it was originally enacted).*

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- (a) must specify in the warrant granted the period within which the attached land is to be sold; and
  - (b) may grant warrant—
    - (i) to sell only part of the attached land;
    - (ii) to sell the attached land by lots.
- (5) The sheriff must make an order refusing the application for a warrant for sale if satisfied that any of the grounds mentioned in subsection (6) below apply.
- (6) The grounds referred to in subsection (5) above are that—
- (a) the land attachment is invalid;
  - (b) the land attachment has ceased to have effect;
  - (c) the attached land (or any part of it) is not capable of being sold;
  - (d) the sum recoverable by the land attachment does not exceed the prescribed sum;
  - (e) a warrant for sale of the attached land (or any part of it) has been granted to another creditor of the debtor;
  - (f) a heritable creditor of the debtor is exercising that creditor’s right to sell the attached land (or any part of it) under the security;
  - (g) if the attached land (or any part of it) were sold, the likely net proceeds of the sale would not exceed the sum mentioned in subsection (7) below.
- (7) The sum referred to in subsection (6)(g) above is the aggregate of—
- (a) the expenses of the land attachment chargeable against the debtor; and
  - (b) whichever is the lesser of—
    - (i) the sum of £1,000; and
    - (ii) the sum equal to 10 per cent of the sum mentioned in section 81(6)(a) of this Act or so much of that sum as is outstanding,or such other sum or percentage as may be prescribed by the Scottish Ministers by regulations.
- (8) In subsection (6)(g) above, “likely net proceeds” means the sum likely to be raised by the sale of the attached land less any sums that would be due to a creditor holding a security or diligence over the attached land which ranks prior to or *pari passu* with the land attachment.