

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 6 – Diligence on the Dependence

Section 169 – Diligence on the dependence

Application for diligence on the dependence

New section 15D – Application for diligence on the dependence

464. Section 15D(1) provides that at any time before a final decision has been taken in a court action, the “creditor” may apply for warrant for diligence on the dependence. In the scheme of the 1987 Act, “creditor” in this new Part means the person seeking to do diligence, and “debtor” means the person against whom that diligence is sought. Those terms are used throughout this Part. Section 15D should also be read with section 15G, which makes it clear that warrant for diligence on the dependence can be applied for, granted and executed before service of the summons in the action.
465. Subsection (2) requires the application for the warrant: (a) to be in the form, or nearly as may be in the form specified in rules in court; (b) to be intimated to the debtor and any other interested party; (c) to state where an immediate warrant is being sought before a hearing on the application; and (d) to include any other information which the Scottish Ministers require such applications to contain. That power is exercisable by regulations which (by virtue of section 104(1) of the 1987 Act) are subject to negative resolution procedure.
466. Subsection (3) provides that, where an immediate warrant is sought before a hearing of the application under section 15F, the application for warrant for diligence on the dependence need not be intimated.
467. Subject to section 15E, which enables the court to grant warrant without an initial hearing, subsection (4) requires the court to fix a date for a hearing on the application and to order the creditor to intimate that date to the debtor and any other person the court thinks has an interest.