

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 6 – Diligence on the Dependence

Section 169 – Diligence on the dependence

Restriction on property attached

New section 15H – Sum attached by arrestment on dependence

484. This section and section 15J change the effect of diligence on the dependence. Currently, there is no monetary or other limit of value placed on a warrant for diligence on the dependence. This means that where an arrestment on the dependence is served the whole funds owed to the debtor by the arrestee are frozen, not just the amount sued for. Similarly an inhibition upon the dependence of an action affects all heritable property of the debtor even if it is worth far more than the amount sued for.
485. Subsections (1) and (2) provide that the court, when granting warrant for arrestment on the dependence, may limit the warrant by specifying an amount, which must not exceed a maximum amount calculated by reference to the formula set out in subsection (2). The maximum limit is calculated as being the aggregate of—
- the principal sum claimed;
 - a sum of up to 20% of the principal sum (or such other percentage as the Scottish Ministers prescribe by regulations, subject to negative resolution procedure);
 - interest at the judicial rate on the principal sum which would be accrued in 1 year;
 - any sum which the Scottish Ministers prescribe by virtue of their power under subsection (3), being a sum which they think reasonably represents the likely expenses of an arrestment incurred by a creditor and chargeable against a debtor (the power being exercisable by regulations subject to negative procedure).
486. Subsection (4) provides that section 73F of the 1987 Act (which is inserted into that Act by section 206 of this Act) applies to arrestment on the dependence. The court, under section 15H, may restrict the total sum which may be arrested. But section 73F will operate whenever a creditor seeks to arrest a bank account to protect a minimum balance in that account. This paragraph should therefore be read with paragraphs 688 to 692 below.