



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 5

INHIBITION

Effect

150 Property affected by inhibition

- (1) Subject to section 153 of this Act, inhibition may affect any heritable property.
- (2) Any enactment or rule of law by virtue of which inhibition may affect other property ceases to have effect.
- (3) For the purposes of subsection (1) above and section 157 of the 1868 Act, a person acquires property at the beginning of the day on which the deed conveying or otherwise granting a real right in the property is delivered to that person.

151 Effect on inhibition to enforce obligation when alternative decree granted

Where—

- (a) an inhibition is executed to enforce a decree such as is mentioned in section 146(2)(a) of this Act; and
- (b) decree is subsequently granted in terms of the alternative conclusion or crave mentioned in that section,

the inhibition continues to have effect for the purposes of enforcing payment of the debt constituted by that subsequent decree.

152 Effect of conversion of limited inhibition on the dependence to inhibition in execution

Where—

- (a) a creditor obtains a decree for payment of all or part of a principal sum concluded or craved for in proceedings on the dependence of which warrant for inhibition was granted; and
 - (b) the warrant was limited to specified property by virtue of section 15J(b) of the 1987 Act (property affected by inhibition on dependence),
- any inhibition in execution of the decree is not limited to that property.

153 Property affected by inhibition to enforce obligation to convey heritable property

Where a decree such as is mentioned in section 146(2)(b) of this Act is granted, any inhibition executed to enforce that decree is limited to the property to which the decree relates.

154 Inhibition not to confer a preference in ranking

- (1) An inhibition does not confer any preference in any—
 - (a) sequestration;
 - (b) insolvency proceedings; or
 - (c) other process in which there is ranking.
- (2) Subsection (1) above does not affect any preference claimed in—
 - (a) a sequestration;
 - (b) insolvency proceedings; or
 - (c) any other process,
 where the inhibition has effect before this section comes into force.
- (3) For the avoidance of doubt, in this section, “other process” includes the process, under section 27(1) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35), of applying the proceeds of sale where a creditor in a standard security has effected a sale of the security subjects.
- (4) In this section, “insolvency proceedings” means—
 - (a) winding up;
 - (b) receivership;
 - (c) administration; and
 - (d) proceedings in relation to a company voluntary arrangement,
 within the meaning of the Insolvency Act 1986 (c. 45).

155 Power of receiver or liquidator in creditors' voluntary winding up to dispose of property affected by inhibition

- (1) The Insolvency Act 1986 (c. 45) is amended as follows.
- (2) After section 61(1) (which sets out the process by which a receiver may dispose of property subject to both the floating charge and to another security, other encumbrance or diligence) insert—
 - “(1A) For the purposes of subsection (1) above, an inhibition which takes effect after the creation of the floating charge by virtue of which the receiver was appointed is not an effectual diligence.”.

(3) After section 166(1) (which applies the provisions of that section to a liquidator nominated by the company in a creditors' voluntary winding up) insert—

“(1A) The exercise by the liquidator of the power specified in paragraph 6 of Schedule 4 to this Act (power to sell any of the company’s property) shall not be challengeable on the ground of any prior inhibition.”.