

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 5 – Inhibition

Termination

Section 156 – Termination of effect of inhibition

432. This section repeals the second reference to “inhibitions” in section 44(3)(a) of the Conveyancing (Scotland) Act 1924 and inserts section 44(3)(aa). Both amendments have the effect of clarifying that all inhibitions will cease to have effect after 5 years have expired from the date on which they come into force. They are not, therefore, subject to the 5-year negative prescription period nor to the rules on interruption or extension of that period.

Section 157 – Inhibition terminated by payment of full amount owing

433. This section applies where an inhibition is executed to enforce payment of a debt and a sum is paid in respect of that debt to the creditor, a judicial officer or any other person who has authority to receive payment on behalf of the creditor. Where the sum paid amounts to the total debt plus interest, the inhibition expenses and the expenses of discharging the inhibition, the inhibition will cease to have effect. This replaces the common law rule that payment or the tendering of payment of the debt alone (excluding expenses) brought the inhibition to an end (see subsection (3)). But this section does not apply to inhibition on the dependence (see subsection (4)).

Section 158 – Inhibition terminated by compliance with obligation to perform

434. This section provides that where a decree for the performance of a particular act (a decree *ad factum praestandum*) is complied with, any inhibition executed to enforce that decree ceases to have effect.

Section 159 – Termination of inhibition when property acquired by third party

435. **Section 159(1)** provides that, despite the fact that the conveyance or granting of a right in property affected by an inhibition is a breach of the inhibition (see section 160), an inhibition ceases to affect the property if the conveyance or granting of the right is for value and is made to a person acquiring the property or right who acts in good faith. In other words, the person acting in good faith acquires the property or right free of the encumbrance of the inhibition. This applies regardless of whether the person acquiring the property does so from the inhibited debtor or from another person who themselves had acquired from the debtor (or who acquired from such a person etc.) (see

*These notes relate to the Bankruptcy and Diligence etc. (Scotland)
Act 2007 (asp 3) which received Royal Assent on 15 January 2007*

subsection (3)). Only the person acquiring the property or right needs to act in good faith for the inhibition to cease to affect that property.

436. Subsection (2) is in similar terms to section 137(3) and provides that, for the purposes of subsection (1), a person acquires property or a right in it when the deed conveying the property or granting the right is delivered to that person.
437. Subsection (4) provides that a person is assumed to act in good faith if the person does not know about the inhibition and has taken all reasonable steps to find out whether or not an inhibition exists affecting the property in question. An example of taking all reasonable steps might be where a buyer of a house instructs a search taken up to the date of completion of the sale (or whatever date close to that is reasonable according to current practice) in the Register of Inhibitions against the seller and any previous owner against whom an inhibition could be in force affecting the house and the search fails to disclose the existence of the inhibition.