

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 6 – Diligence on the Dependence

Section 169 – Diligence on the dependence

General and miscellaneous

New section 15M – Expenses of diligence on the dependence

497. Section 15M(1) provides that a creditor will generally be entitled to the expenses incurred in obtaining a warrant for diligence on the dependence and the costs in executing an arrestment or inhibition. This is subject to subsection (3)(a) which provides that the court may modify or refuse those expenses where it finds that the creditor was acting unreasonably in applying for the warrant or considers the modification or refusal to be reasonable in all the circumstances, including how the action was decided.
498. Subsection (2) entitles the debtor to claim the expenses incurred in opposing the warrant where the warrant was granted and the court is satisfied that the creditor was acting unreasonably in applying for the warrant. This section is subject to subsection (3)(b) which gives the court a power to modify or refuse those expenses where it is satisfied that it is reasonable in all the circumstances of the case, including the outcome of the case, to do so.
499. Subsection (4) provides that, apart from the matters covered by subsections (1) to (3), the court retains its discretion to deal with expenses as it thinks fit.
500. Subsection (5) provides that expenses incurred in obtaining or opposing warrant for diligence on the dependence are expenses of process.
501. Subsection (6) preserves existing rules in legislation or common law on the recovery of expenses chargeable against a debtor as are incurred in executing an arrestment or inhibition on the dependence of an action. In particular, section 93 of the 1987 Act applies to the recovery of expenses incurred in executing arrestments.