

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 6 – Diligence on the Dependence

Section 170 – Prescription of arrestment

503. This section inserts a new section 95A into the 1987 Act as a replacement for section 22 of the Debtors (Scotland) Act 1838 (which is repealed by schedule 6). This section applies to arrestments on the dependence and to arrestments in execution.

New section 95A – Prescription of arrestment

504. Section 95A(1)(a) provides that, where an arrestment on the dependence of an action is not insisted in, for example where no action is taken on it, then it prescribes (and cannot be enforced) after the expiry of 3 years from the date on which a final interlocutor is obtained by the creditor for payment of all or part of the principal sum which was sought in the action.

505. Subsection (1)(b) provides that, where an arrestment in execution of an extract decree or other extract registered document relating to a debt which is due (so not a future or contingent debt) is not insisted in, it prescribes (and cannot be enforced) after the expiry of 3 years from the date on which the arrestment was executed.

506. Subsection (2) provides that an arrestment securing or enforcing a future or contingent debt, if not insisted in, prescribes after the expiry of 3 years from the date the debt became due.

507. Subsection (3) provides that any time during which a time to pay direction, an interim order under section 6(3) of the 1987 Act or a time to pay order is in effect is to be disregarded when determining the date the arrestment will expire.

508. Subsection (4) excludes earnings arrestments, current maintenance arrestments and conjoined arrestment orders from the application of this section.

509. Subsection (5) provides that this section will apply irrespective of whether warrant for the arrestment is obtained, or the arrestment is executed, before this section comes into force.

510. Subsection (6) defines “final interlocutor” for the purposes of subsection (1)(a).