

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Schedule 4 – Modifications of Enactments Relating to Admiralty Actions and the Arrestment of Ships (Introduced by Section 213)

Arrestment on the dependence

781. Paragraph 7(2) makes amendments to section 47(1) of the 1956 Act which provide that arrestment on the dependence of a ship, or other maritime property which is not cargo, is competent only if, when the ship in question is the ship with which the action is concerned, the defender is the owner of the ship or a share in the ship, or is the demise charterer of the ship, at the time when the arrestment is executed. It continues to be competent to arrest another ship on the dependence providing the defender owns all the shares in that ship.
782. Note that the restrictions imposed by section 47(1) do not apply to the arrestment of cargo which is specifically excluded from this provision by the amendment in paragraph 7(2)(a).
783. Paragraph 7(3) inserts new subsections (1A) and (1B) into section 47 of the 1956 Act. These subsections provide that when a ship has been arrested on the dependence of an action, a warrant cannot be granted to arrest on the dependence of the same action the same ship or any other ship which the defender owns at least a share in unless the pursuer can demonstrate good cause for the second arrestment. This is consistent with the wording in article 3(1) of the leading international convention on the arrestment of ships (the Brussels Arrest Convention of 1952).
784. Paragraph 7(4) amends section 47(3) of the 1956 Act (which provides for the arrestment of a ship to enforce a claim specified in paragraphs (p) to (s) of the section 47(2) list) making it clear that an arrestment to which this provision applies may arrest a share in a ship rather than the whole ship.