



# Debt Arrangement and Attachment (Scotland) Act 2002

2002 asp 17

## PART 2

### ATTACHMENT

#### *Auction of attached articles*

#### **27 Notice of public auction**

- (1) The auction of attached articles shall, subject to subsections (2) and (3) below, be by public auction held in an auction room.
- (2) If it is impractical to hold the auction of an attached article in an auction room the auction may be held at such other place (other than the debtor's dwellinghouse) as the officer considers appropriate.
- (3) The auction of other articles which have been attached together with an article which is to be auctioned at a place other than an auction room may, if the officer considers it appropriate (having had regard, in particular, to the expenses which are likely to be incurred in connection with the auction), also be held at that other place.
- (4) The officer <sup>F1</sup>... shall give notice to the debtor and to any other person in possession of the attached articles of—
  - (a) the date on which the auction is to be held;
  - (b) the location of the auction room or, as the case may be, the other place at which the auction is to be held; and
  - (c) where sections 15 to 19 above apply in relation to the attached articles, the date arranged for the removal of those attached articles from the place at which they are kept.
- (5) The officer shall advertise the auction by public notice.

*Status: Point in time view as at 30/11/2016.*

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### Textual Amendments

- F1** Words in s. 27(4) repealed (31.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 212\(13\), 227\(3\)](#) (with s. 223); S.S.I. 2007/82, art. 4(b)

## 28 Alteration of arrangements for removal or auction

- (1) Subject to subsection (2) below and without prejudice to section 29(4) below, the creditor or the officer is not, after notice has been given under section 27(4) above to the debtor, entitled to arrange—
- (a) a new date for the auction; or
  - (b) where sections 15 to [F<sup>2</sup>19A] above apply in relation to the attached articles, a new date for the removal of those articles from the place where they are kept.
- (2) Where, for any reason for which neither the creditor nor the officer is responsible, it is not possible—
- (a) for the auction to be held on the date specified in the notice given under section 27(4) above; or
  - (b) for the attached articles to be removed from the place where they are kept on the date so specified,
- the creditor may instruct the officer to arrange a new date for the auction or, as the case may be, a new date for the removal and the officer shall intimate the new date to the debtor and to any other person in possession of the attached articles.
- (3) A new date arranged under subsection (2) above shall not in any case be fewer than 7 days after the date of intimation under that subsection.

### Textual Amendments

- F2** Word in s. 28(1)(b) substituted (31.3.2007 for specified purposes) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), [Sch. 5 para. 30\(7\)](#) (with s. 223); S.S.I. 2007/82, art. 4(e)(i)

## 29 Cancellation of auctions

- (1) The officer may, for the purposes of enabling the sum recoverable to be paid in accordance with an agreement between the creditor and the debtor, cancel arrangements for an auction of attached articles.
- (2) The officer may not cancel the arrangements for such an auction on more than two occasions.
- (3) Where an auction has been cancelled the officer shall—
- (a) make to the sheriff a report of the agreement reached; and
  - (b) arrange for the return of any attached articles which have been removed for auction to the place from which they were removed.
- (4) The sheriff, if satisfied on an application by the creditor that the debtor is in breach of any agreement which has been reported under subsection (3) above, may by order provide—
- (a) if the arrangements for the auction of the attached articles can still be implemented in accordance with the provisions of this Part and Part 3 of

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this Act, that the officer may resume making arrangements for the auction in accordance with those provisions;

- (b) if for any reason for which neither the creditor nor the officer is responsible arrangements for the auction cannot be implemented in accordance with those provisions, that the provisions of this Part and Part 3 of this Act which prevent such implementation are not to apply for the purposes of the attachment and auction of those articles.
- (5) The sheriff shall not make an order under subsection (4) above without first giving the debtor—
- (a) an opportunity to make representations; and
  - (b) if the debtor so wishes, an opportunity to be heard.

### **30 Auction**

- (1) The officer shall attend the auction and maintain a record of the attached articles which are sold.
- (2) Such a record shall specify the amount for which each attached article is sold.
- (3) The officer shall be accompanied at the auction by another person who shall witness the proceedings.
- (4) Any attached article exposed for sale in the auction may be purchased by—
  - (a) any creditor, including the creditor on whose behalf the article was attached;
  - (b) a third party who owns the attached article in common with the debtor.

### **31 Disposal of proceeds of auction**

- (1) The officer shall, subject to section [<sup>F3</sup>24 (further provision as regards the effect of sequestration on diligence) of the Bankruptcy (Scotland) Act 2016] , dispose of the proceeds of the auction by—
  - (a) retaining such amount as necessary to meet the fees and outlays of the officer;
  - (b) paying to the creditor the remainder of the proceeds of auction so far as necessary to meet the sum recoverable; and
  - (c) paying to the debtor any surplus remaining.

[<sup>F4</sup>(1A) Where an article is sold at the auction at a price below the value of the article, the difference between that price and that value shall, prior to the proceeds of the auction being disposed of under subsection (1) above, be credited against the sum recoverable.

(1B) Where—

- (a) an article to which subsection (1A) above applies has been damaged and revalued under section 21(10)(b) above;
- (b) the damage was not caused by the fault of the debtor; and
- (c) no sum has been consigned into court by a third party under section 21(11) above,

the revaluation shall be disregarded for the purposes of subsection (1A) above.]

- (2) Where the sum recoverable is not realised by the proceeds of auction and any article remains unsold after being exposed for auction—
  - (a) ownership of the article shall, without prejudice to the rights of any third party, pass to the creditor; and

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- (b) the value of that article shall be credited against the sum recoverable.
- (3) Where the value of unsold articles exceeds the amount of the sum recoverable which remains outstanding, subsection (2) above shall operate only in relation to such of those articles which have, in aggregate, the value which is nearest to the amount which remains outstanding.
- (4) The references in subsections [F5(1A),] (2)(b) and (3) above to the value of an article are references to the value of the article as fixed under subsection (2) or (3) of section 15 above or, as the case may be, section 51 or 54(1) below.
- (5) Where the creditor does not uplift an article within 3 working days after the day on which the auction is held the ownership of the article shall revert to the person who owned the article before the operation of subsection (2)(a) above.
- (6) For the purposes of this section—
- “proceeds of auction” include any amount—
- (a) consigned in court in pursuance of an order made under section 21(11), 20(1)(b), 22(3) or 50(5) of this Act;
  - (b) received by the officer in respect of a transfer, under section 35(2) below, of the debtor’s interest in any article owned in common by the debtor and a third party,
- but do not include any amount which the officer is required to pay to the debtor in pursuance of an order under section 22(3) above; and
- “working day” means a day which is not—
- (a) a Saturday;
  - (b) a Sunday;
  - (c) New Year’s Day;
  - (d) 2nd January;
  - (e) Good Friday;
  - (f) Easter Monday;
  - (g) Christmas Day;
  - (h) Boxing Day; or
  - (i) any other day which is a public holiday in the area in which the auction is held.

#### Textual Amendments

- F3** Words in s. 31(1) substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\), s. 237\(2\), sch. 8 para. 18\(3\)](#) (with [ss. 232, 234\(3\), 235, 236](#)); S.S.I. 2016/294, reg. 2
- F4** S. 31(1A)(1B) inserted (31.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 212\(14\)\(a\), 227\(3\)](#) (with [s. 223](#)); S.S.I. 2007/82, art. 4(b)
- F5** Word in s. 31(4) inserted (31.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 212\(14\)\(b\), 227\(3\)](#) (with [s. 223](#)); S.S.I. 2007/82, art. 4(b)

## 32 Report of auction

- (1) The officer who arranged the auction shall, within the period of 14 days after the date on which the auction is held, make to the sheriff a report in the form prescribed by Act of Sederunt (a “report of auction”).

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- (2) A report of auction shall—
- (a) specify—
    - (i) any attached articles which have been sold;
    - (ii) the amount for which they have been sold;
    - (iii) any attached articles which remain unsold;
    - [<sup>F6</sup>(iiia) any sums paid by the debtor to account of the sum recoverable;]
    - (iv) any chargeable expenses;
    - (v) any surplus paid to the debtor; and
    - (vi) any balance due by or to the debtor;
  - (b) refer to any article in respect of which—
    - (i) an attachment has, under section 34(1) below or in pursuance of an order made under section 35(3) below, ceased to have effect;
    - (ii) the debtor's interest has, under section 35(2) below, transferred to a third party;
  - (c) contain a declaration by the officer that all the information contained within it is, to the best of the officer's knowledge, true; and
  - (d) be signed by the officer and the witness who attended the auction.
- (3) If the officer—
- (a) without reasonable excuse makes a report of auction after the expiry of the period mentioned in subsection (1) above; or
  - (b) wilfully refuses to make, or delays making, a report of auction after the expiry of that period,
- the sheriff may make an order providing that the officer is liable for the chargeable expenses, either in whole or in part.
- (4) An order made under subsection (3) above does not prejudice the right of the sheriff to report the matter to the Court of Session or the sheriff principal under section 79(1) (b) (investigation of alleged misconduct by a messenger-at-arms or sheriff officer) of the Debtors (Scotland) Act 1987 (c.18).

#### Textual Amendments

- F6** S. 32(2)(a)(iiia) inserted (31.3.2007 for specified purposes) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), [Sch. 5 para. 30\(8\)\(a\)](#) (with s. 223); S.S.I. 2007/82, art. 4(e) (i)

### 33 Audit of report of auction

- (1) The sheriff shall remit the report of auction to the auditor of court who shall—
- (a) tax the chargeable expenses;
  - (b) certify the balance due by or to the debtor following the auction; and
  - (c) make a report to the sheriff.
- (2) The auditor of court shall not alter the report of auction without first providing all interested persons an opportunity to make representations.
- (3) The auditor of court shall not charge a fee in respect of the report made under subsection (1)(c) above.

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- (4) On receipt of a report made under subsection (1)(c) above the sheriff shall make an order—
- (a) declaring the balance due by or to the debtor, as certified by the auditor of court;
  - (b) declaring such a balance after making modifications to the balance so certified; or
  - (c) where the sheriff is satisfied that there has been a substantial irregularity in the execution of the attachment (other than the timing of the report of auction), declaring the attachment and auction to be void.
- (5) An order made under subsection (4)(c) above may make such consequential provision as the sheriff thinks fit.
- (6) An order made under subsection (4)(c) above shall not affect the title of a person to any article acquired by that person at the auction, or subsequently, in good faith.
- (7) The sheriff may not make an order under subsection (4)(b) or (c) above without first
- [<sup>F7</sup>(a) giving—
    - (i) the debtor;
    - (ii) the creditor; and
    - (iii) any third party who claims ownership (whether alone or in common with the debtor) of any attached article,
 

an opportunity to make representations; or
  - (b) holding a hearing.]
- (8) The sheriff clerk shall intimate the sheriff's order under subsection (4) above to the [<sup>F8</sup>persons mentioned in subsection (7)(a) above.].

#### Textual Amendments

**F7** S. 33(7)(a)(b) substituted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **Sch. 5 para. 30(9)(a)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), Sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))

**F8** Words in s. 33(8) substituted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), s. 227(3), **Sch. 5 para. 30(9)(b)** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), Sch. 1 (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))

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