



# Debtors (Scotland) Act 1987

## 1987 CHAPTER 18

### PART II

#### POINDINGS AND WARRANT SALES

##### *Poining*

#### **16 Articles exempt from poining.**

- (1) The following articles belonging to a debtor shall be exempt from poining at the instance of a creditor in respect of a debt due to him by the debtor—
  - (a) clothing reasonably required for the use of the debtor or any member of his household;
  - (b) implements, tools of trade, books or other equipment reasonably required for the use of the debtor or any member of his household in the practice of the debtor's or such member's profession, trade or business, not exceeding in aggregate value £500 or such amount as may be prescribed in regulations made by the Lord Advocate;
  - (c) medical aids or medical equipment reasonably required for the use of the debtor or any member of his household;
  - (d) books or other articles reasonably required for the education or training of the debtor or any member of his household not exceeding in aggregate value £500 or such amount as may be prescribed in regulations made by the Lord Advocate;
  - (e) toys for the use of any child who is a member of the debtor's household;
  - (f) articles reasonably required for the care or upbringing of a child who is a member of the debtor's household.
- (2) The following articles belonging to a debtor shall be exempt from poining if they are at the time of the poining in a dwellinghouse and are reasonably required for the use in the dwellinghouse of the person residing there or a member of his household—
  - (a) beds or bedding;
  - (b) household linen;

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- (c) chairs or settees;
  - (d) tables;
  - (e) food;
  - (f) lights or light fittings;
  - (g) heating appliances;
  - (h) curtains;
  - (j) floor coverings;
  - (k) furniture, equipment or utensils used for cooking, storing or eating food;
  - (l) refrigerators;
  - (m) articles used for cleaning, mending, or pressing clothes;
  - (n) articles used for cleaning the dwellinghouse;
  - (o) furniture used for storing—
    - (i) clothing, bedding or household linen;
    - (ii) articles used for cleaning the dwellinghouse; or
    - (iii) utensils used for cooking or eating food;
  - (p) articles used for safety in the dwellinghouse;
  - (q) tools used for maintenance or repair of the dwellinghouse or of household articles.
- (3) The Lord Advocate may by regulations add to the list set out in subsection (2) above, or delete or vary any of the items contained in that list.
- (4) If, on an application made within 14 days after the date of the execution of the pouncing—
- (a) by the debtor or any person who owns a pointed article in common with the debtor; or
  - (b) by any person in possession of a pointed article,
- the sheriff is satisfied that the article is exempt from pouncing under this section, he shall make an order releasing the article from the pouncing.

## **17 Restrictions on times when pouncing may be executed.**

- (1) No pouncing shall be executed on Sunday, Christmas Day, New Year's Day, Good Friday or such other day as may be prescribed by Act of Sederunt.
- (2) The execution of a pouncing shall not—
  - (a) be commenced before 8 a.m. or after 8 p.m.; or
  - (b) be continued after 8 p.m.,
 unless the officer of court has obtained prior authority from the sheriff for such commencement or continuation; and any rule of law which prohibits pouncings outwith the hours of daylight shall cease to have effect.

## **18 Power of entry for execution of pouncing.**

- (1) Subject to subsection (2) below, notwithstanding any warrant authorising him to open shut and lockfast places, an officer of court shall not enter a dwellinghouse to execute a pouncing if, at the time of his intended entry, there appears to him to be nobody, or only children under the age of 16 years, present there unless, at least 4 days before the date of his intended entry, he has served notice on the debtor specifying that date.

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- (2) If it appears to the sheriff, on an application made to him by the officer of court (which shall not require to be intimated to the debtor), that the requirement of service under this section would be likely to prejudice the execution of the poinding he may dispense with such service.

## **19 Value of articles which may be poinded and presumption as to ownership.**

- (1) The officer of court shall be entitled to poind articles only to the extent necessary to ensure that the sum recoverable at the time of the sale would be realised if they were sold at the values fixed under section 20(4) of this Act.
- (2) In executing a poinding, an officer of court shall be entitled to proceed on the assumption that any article in the possession of the debtor is owned by him unless the officer of court knows or ought to know that the contrary is the case.
- (3) The officer of court shall not be precluded from relying on the assumption mentioned in subsection (2) above by reason only of one or both of the following circumstances—
  - (a) that the article belongs to a class which is commonly held under a hire, hire-purchase or conditional sale agreement or on some other limited title of possession;
  - (b) that an assertion has been made that the article is not owned by the debtor.

## **20 Poinding procedure.**

- (1) The procedure in a poinding shall be in accordance with this section and section 21 of this Act.
- (2) Before executing the poinding, the officer of court shall—
  - (a) exhibit to any person present the warrant to poind and the certificate of execution of the charge relating thereto;
  - (b) demand payment of the sum recoverable from the debtor, if he is present, or any person present appearing to the officer of court to be authorised to act for the debtor; and
  - (c) make enquiry of any person present as to the ownership of the articles proposed to be poinded, and in particular whether there are any persons who own any articles in common with the debtor,but it shall not be necessary for the officer of court to make public proclamation of the poinding or to read publicly the extract decree containing the warrant to poind and the execution of the charge relating thereto.
- (3) The officer of court shall be accompanied at the poinding by one witness.
- (4) The poinded articles shall be valued by the officer of court according to the price which they would be likely to fetch if sold on the open market unless he considers that the articles are such that a valuation by a professional valuer or other suitably skilled person is advisable, in which case he may arrange for such a valuation.
- (5) The officer of court shall prepare a schedule (referred to in this Part of this Act as “the poinding schedule”), in the form prescribed by Act of Sederunt, which shall specify—
  - (a) the identity of the creditor and of the debtor;
  - (b) the articles poinded, and their respective values;
  - (c) the sum recoverable; and

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- (d) the place where the poinding was executed.
- (6) On completion of the valuation the officer of court shall—
  - (a) along with the witness sign the poinding schedule;
  - (b) deliver the poinding schedule to any person in possession of the articles or—
    - (i) where the poinding was executed in a dwellinghouse or other premises, leave it in the premises; or
    - (ii) in any other case, deliver it to premises occupied by that person;
  - (c) if the person in possession of the articles is not the debtor and it is reasonably practicable, serve a copy of it by post on the debtor;
  - (d) inform the debtor (if present) of his right to redeem poinded articles under section 21(4) of this Act;
  - (e) inform any person present who owns any poinded article in common with the debtor of his right to redeem poinded articles under section 41(2) and (3)(a) of this Act; and
  - (f) inform the debtor (if present) and any person present who owns any poinded article in common with the debtor, or who is in possession of any poinded article, of his right to apply for an order releasing articles from poinding under section 16(4), 23(1) or 41(3)(b) of this Act.
- (7) The officer of court shall leave poinded articles at the place where they were poinded, except that where that place is not a dwellinghouse or other premises, if he considers it necessary for their security or the preservation of their value and there is insufficient time to obtain an order under section 21(1)(a) of this Act, he shall remove them at the creditor's expense—
  - (a) to the nearest convenient premises belonging to the debtor or to the person in possession of the articles; or
  - (b) if no such premises are available, to the nearest suitable secure premises.

## **21 Poinding procedure - further provisions.**

- (1) The sheriff, on an application by the creditor, the officer of court or the debtor intimated in accordance with subsection (2) below, may at any time after the execution of a poinding make an order—
  - (a) for the security of any of the poinded articles; or
  - (b) in relation to any of the articles which are of a perishable nature or which are likely to deteriorate substantially and rapidly in condition or value, for their immediate disposal and, in the event of their disposal by sale, for payment of the proceeds of sale to the creditor or for consignment of the proceeds in court until the diligence is completed or otherwise ceases to have effect,
 and a decision of the sheriff under paragraph (b) above for the immediate disposal of articles shall not be subject to appeal.
- (2) An application for an order under subsection (1)(b) above—
  - (a) by the creditor or the officer of court, shall be intimated by him to the debtor;
  - (b) by the debtor, shall be intimated to the creditor or the officer of court, at the time when it is made.
- (3) It shall not be competent for an officer of court in executing a poinding to examine a person on oath as to the ownership of any article.

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- (4) Subject to subsection (1)(b) above, the debtor shall be entitled, within 14 days after the date of execution of the poinding, to redeem any poinded article at the value fixed under section 20(4) of this Act; and the officer of court shall mention any such redemption in his report under section 22 of this Act or, if he has already made that report, shall report the redemption as soon as is reasonably practicable to the sheriff.
- (5) The officer of court shall, on receiving payment from the debtor for the redemption under subsection (4) above of a poinded article, grant a receipt in the form prescribed by Act of Sederunt to the debtor; and the receipt shall operate as a release of the article from the poinding.
- (6) Subject to section 29(2)(b) of this Act, the revaluation in the same poinding of an article which has been valued under section 20(4) of this Act shall not be competent.
- (7) A poinding shall be deemed to have been executed on the date when the poinding schedule has been delivered, or left on the premises, in pursuance of section 20(6)(b) of this Act.
- (8) Subject to subsection (9) below, at any time before the execution of a poinding on behalf of a creditor, an officer of court shall, if requested to do so by any other creditor who has delivered to him a warrant to poind, conjoin that creditor in the poinding.
- (9) It shall not be competent for an officer of court to conjoin a creditor in a poinding in respect of a debt for which the creditor holds a summary warrant.

## **22 Report of execution of poinding.**

- (1) The officer of court shall, within a period of 14 days after the date of execution of the poinding (or such longer period as the sheriff on cause shown may allow on an application by the officer of court) make to the sheriff in the form prescribed by Act of Sederunt a report of the execution of the poinding which shall be signed by the officer of court and the witness who attended the poinding.
- (2) The officer of court shall note in the report under subsection (1) above any assertion made before the submission of the report that any poinded article does not belong to the debtor.
- (3) The sheriff may refuse to receive a report on the ground that it has not been made and signed in accordance with subsection (1) above, and if the sheriff refuses to receive a report on that ground the poinding shall cease to have effect.
- (4) The sheriff clerk shall intimate a refusal under subsection (3) above—
  - (a) to the debtor; and
  - (b) if he is a different person from the debtor, to the person in possession of the poinded articles.
- (5) Any rule of law whereby the sheriff may refuse to receive a report of the execution of a poinding on a ground other than one specified in subsection (3) above shall cease to have effect.

## **23 Release of poinded article on ground of undue harshness.**

- (1) The sheriff may, on an application made within 14 days after the date of execution of a poinding by the debtor or any person in possession of a poinded article, make an

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order releasing an article from the poinding if it appears to the sheriff that its continued inclusion in the poinding or its sale under warrant of sale would be unduly harsh in the circumstances.

- (2) Where the sheriff has made an order under subsection (1) above he may, notwithstanding section 25 of this Act, on an application by the creditor or by an officer of court on his behalf, authorise the poinding of other articles belonging to the debtor on the same premises.

## **24 Invalidity, cessation and recall of poinding.**

- (1) If, at any time before the sale of the poinded articles, the sheriff is satisfied that the poinding is invalid or has ceased to have effect he shall, on his own initiative or on an application by the debtor, make an order declaring that to be the case, and may make such consequential order as appears to him to be necessary in the circumstances.
- (2) Without prejudice to section 16(4) of this Act, it shall not be competent for the sheriff to make an order under subsection (1) above on the ground that any poinded article is exempt from poinding under that section.
- (3) At any time before an application is made under section 30 of this Act for a warrant of sale, the sheriff may, on an application by the debtor, recall a poinding on any of the following grounds—
- (a) that it would be unduly harsh in the circumstances for a warrant of sale of the poinded articles to be granted;
  - (b) that the aggregate of the values of the poinded articles fixed under section 20(4) of this Act was substantially below the aggregate of the prices which they would have been likely to fetch if sold on the open market; or
  - (c) that the likely aggregate proceeds of sale of the poinded articles would not exceed the expenses likely to be incurred in the application for warrant of sale and in any steps required to be taken under this Part of this Act in execution of such a warrant, on the assumption that that application and such steps are unopposed.
- (4) The sheriff shall not grant an application on the ground mentioned in subsection (3) (c) above if an order for further poinding of articles belonging to the debtor has been authorised under section 23(2), 28(6) or 29(2), or has become competent by reason of section 9(12), 28(2), 40(5) or 41(6), of this Act.
- (5) The sheriff shall not make an order under subsection (1) above, recall a poinding or refuse an application under this section without first giving the debtor and the creditor—
- (a) an opportunity to make representations; and
  - (b) if either party wishes to be heard, an opportunity to be heard.
- (6) The sheriff clerk shall intimate to the debtor any order made under subsection (1) above by the sheriff on his own initiative.

## **25 Second poinding in same premises.**

Subject to sections 9(12), 23(2), 28(2) and (6), 29(2), 40(5) and 41(6) of this Act, where articles are poinded in any premises (whether or not the poinding is valid), another poinding in those premises to enforce the same debt shall not be competent

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except in relation to articles which have been brought on to the premises since the execution of the first poinding.

## **26 Sist of proceedings in poinding of mobile homes.**

- (1) Where a caravan, houseboat or other moveable structure which is the only or principal residence of the debtor or another person has been poinded the sheriff, on an application by the debtor or that other person made at any time after the execution of the poinding and before the granting of a warrant of sale, may order that for such period as he shall specify no further steps shall be taken in the poinding.
- (2) In calculating under section 27(1) or (2) of this Act the period during which a poinding in respect of which an order has been made under subsection (1) above shall remain effective, there shall be disregarded the period specified in the order.

## **27 Duration of poinding.**

- (1) Subject to subsections (2), (3) and (5)(a) below, a poinding shall cease to have effect on the expiry of a period of one year after the date of execution of the poinding, unless before such expiry an application has been made under section 30(1) of this Act for a warrant of sale in relation to the poinded articles.
- (2) The sheriff, on an application by the creditor or by an officer of court on his behalf made before the expiry of the period mentioned in subsection (1) above and before an application has been made under section 30(1) of this Act, may extend that period—
  - (a) where he considers that, if the said period is extended, the debtor is likely to comply with an agreement between the creditor and the debtor for the payment of the sum recoverable by instalments or otherwise; or
  - (b) to enable further proceedings to be taken in the diligence where the termination of the poinding would prejudice the creditor and the creditor cannot be held responsible for the circumstances giving rise to the need for the extension,for such further period as he considers reasonable in the circumstances.
- (3) The sheriff may grant further extensions under subsection (2) above, on application being made to him before the expiry of the previously extended period.
- (4) The decision of the sheriff under subsection (2) above shall not be subject to appeal, and shall be intimated to the debtor by the sheriff clerk.
- (5) Where, within the period mentioned in subsection (1) above or within that period as extended under subsection (2) above, an application is made—
  - (a) under subsection (2) above—
    - (i) if the application is made on the ground referred to in paragraph (a) of that subsection, the poinding shall, if the date of disposal of the application is later than 14 days before the poinding is due to expire, continue to have effect until 14 days after that disposal;
    - (ii) in any other case, the poinding shall continue to have effect until the disposal of the application;
  - (b) under section 30 of this Act for a warrant of sale, the poinding shall, if the sheriff refuses to grant a warrant of sale, continue to have effect—
    - (i) until the period for leave to appeal has expired without an application for leave having been made;

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- (ii) where an application for leave to appeal is made, until leave has been refused or the application has been abandoned;
- (iii) where leave to appeal has been granted, until the period for an appeal has expired without an appeal being made; or
- (iv) where an appeal against the decision is made, until the matter has been finally determined or the appeal has been abandoned; or
- (c) under section 30 of this Act for a warrant of sale, the poinding shall, if the sheriff grants a warrant of sale, continue to have effect—
  - (i) if the articles are sold, or ownership passes to the creditor under section 37(6) of this Act, until the date of such sale or such ownership passing; or
  - (ii) if the articles are not sold, or ownership does not pass to the creditor, until the expiry of the period specified for the warrant sale in the warrant of sale.
- (6) Without prejudice to subsection (7) below, if a report has been made to the sheriff under section 36(2) of this Act, the poinding shall continue to have effect for a period of 6 months after the date when the latest such report was made.
- (7) Where, within the period specified for the warrant sale in the warrant of sale, or within the period mentioned in subsection (6) above, an application is made under section 35 of this Act for a variation of the warrant of sale, the poinding shall cease to have effect—
  - (a) if the sheriff refuses to grant a variation—
    - (i) when the period for leave to appeal has expired without an application for leave having been made;
    - (ii) where an application for leave to appeal is made, when leave has been refused or the application has been abandoned;
    - (iii) where leave to appeal has been granted, when the period for an appeal has expired without an appeal being made; or
    - (iv) where an appeal against the decision is made, when the matter has been finally determined in favour of the sheriff's decision or the appeal has been abandoned,
 or on such later date as the sheriff may direct;
  - (b) if the sheriff grants a variation—
    - (i) where the articles are sold, or ownership passes to the creditor under section 37(6) of this Act in the period specified for the warrant sale in the warrant of sale as so varied, on the date of the warrant sale or of ownership so passing;
    - (ii) where the articles are not sold and ownership does not pass to the creditor within that period, on the expiry of that period.

*Removal, damage or destruction of poinded articles*

**28 Removal of poinded articles.**

- (1) The debtor or the person in possession of poinded articles may move them to another location if—
  - (a) the creditor or an officer of court on behalf of the creditor has consented in writing to their removal; or



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- (b) the sheriff, on an application by the debtor or the person in possession, has authorised their removal.
- (2) Where poinded articles have been removed under subsection (1) above, an officer of court may, under the same warrant to poind, again poind any of the articles so removed and, notwithstanding section 25 of this Act, any articles which were not so removed, whether or not they were previously poinded; and, on the execution of any such further poinding, the original poinding shall be deemed to have been abandoned.
- (3) The removal, except in accordance with this Part of this Act, from any premises of poinded articles by—
  - (a) the debtor; or
  - (b) any person, other than the creditor or an officer of court, who knows that the articles have been poinded,shall be a breach of the poinding and may be dealt with as a contempt of court.
- (4) Where articles have been removed from premises otherwise than in accordance with this Part of this Act, the sheriff, on an application by the creditor—
  - (a) may, subject to subsection (5) below, make an order requiring the person in possession of the articles to restore them to the premises from which they were removed within a period specified in the order; and
  - (b) if an order under paragraph (a) above is not complied with, and it appears to the sheriff that the articles are likely to be found in premises specified in the application, may grant a warrant to officers of court—
    - (i) to search for the articles in those premises; and
    - (ii) to restore the articles to the premises from which they were removed or to make such other arrangements for their security as the sheriff may direct,and such a warrant shall be authority to open shut and lockfast places for the purpose of its execution.
- (5) Where it appears to the sheriff, on an application made to him by any person having an interest, that any article which has been removed from premises otherwise than in accordance with this Part of this Act has been acquired for value and without knowledge of the poinding, he shall—
  - (a) refuse an order under subsection (4)(a) above relating to that article;
  - (b) recall any such order which he has already made; and
  - (c) make an order releasing the article from the poinding.
- (6) Where articles have been removed from premises otherwise than in accordance with this Part of this Act in circumstances in which the debtor is at fault the sheriff, on an application by the creditor or by an officer of court on his behalf, may, notwithstanding section 25 of this Act, authorise the poinding of other articles belonging to the debtor in the same premises.
- (7) The removal of poinded articles to another location shall not have the effect of releasing the articles from the poinding.

## **29 Unlawful acts relating to poinded articles.**

- (1) The wilful damage or destruction of poinded articles by—
  - (a) the debtor; or

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- (b) any person, other than the creditor or an officer of court, who knows that the articles have been poinded,  
shall be a breach of the poinding and may be dealt with as a contempt of court.
- (2) Where poinded articles have been damaged or destroyed the sheriff, on an application by the creditor or by the officer of court on his behalf, may—
- (a) where the debtor has been at fault, authorise the poinding of other articles belonging to the debtor in the premises in which the original poinding took place; and
- (b) in any case, authorise the revaluation of any damaged article in accordance with section 20(4) of this Act.
- (3) Where a third party, knowing that an article has been poinded—
- (a) wilfully damages or destroys it; or
- (b) removes it from premises in breach of a poinding, and—
- (i) it is damaged, destroyed, lost or stolen; or
- (ii) it is acquired from or through him by another person without knowledge of the poinding and for value,
- the sheriff may order the third party to consign the sum mentioned in subsection (4) below in court until the completion of the sale or until the poinding otherwise ceases to have effect.
- (4) The sum to be consigned in court under subsection (3) above shall be—
- (a) where the article has been damaged but not so damaged as to make it worthless, a sum equal to the difference between the value of the article fixed under section 20(4) of this Act and the value of the article as so damaged;
- (b) in any other case, a sum equal to the value fixed under that section.
- (5) Any sum consigned in court under subsection (3) above shall, on the completion of the sale or on the poinding otherwise ceasing to have effect, be paid to the creditor to the extent necessary to meet the sum recoverable, any surplus thereof being paid to the debtor.

### *Warrant sales*

## **30 Application for warrant of sale.**

- (1) A creditor shall not be entitled to sell articles poinded by him unless, on an application by him or by an officer of court on his behalf, the sheriff has granted a warrant under this section (referred to in this Act as a “warrant of sale”).
- (2) The sheriff may refuse to grant a warrant of sale—
- (a) on his own initiative or on an objection by the debtor—
- (i) on the ground that the poinding is invalid or has ceased to have effect;
- (ii) on a ground mentioned in section 24(3)(b) or (c) of this Act;
- (b) on an objection by the debtor, on the ground that the granting of the application would be unduly harsh in the circumstances.
- (3) The creditor or officer of court, when making an application under subsection (1) above, shall serve a copy thereof on the debtor together with a notice in the form prescribed by Act of Sederunt informing him—

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- (a) that he may object to the application within 14 days after the date when it was made; and
  - (b) of his right to redeem poinded articles under section 33(2) of this Act.
- (4) The sheriff shall not—
- (a) refuse to grant a warrant of sale on his own initiative; or
  - (b) dispose of an application under subsection (1) above where the debtor has objected thereto in accordance with subsection (3)(a) above,
- without first giving the parties an opportunity to be heard.
- (5) It shall not be competent for the sheriff to refuse to grant a warrant of sale on the ground that any poinded article is exempt from poinding under section 16 of this Act.
- (6) Where the sheriff refuses to grant a warrant of sale, the sheriff clerk shall intimate that refusal to the debtor and, if he is a different person from the debtor, to the person in possession of the poinded articles.
- (7) A sale under a warrant of sale shall be known as a “warrant sale”.

### **31 Provisions of warrant of sale.**

- (1) Every warrant of sale shall provide that the warrant sale shall be by public auction and shall specify the location of the sale in accordance with section 32 of this Act.
- (2) A warrant of sale shall—
- (a) appoint an officer of court to make arrangements for the warrant sale in accordance with the warrant;
  - (b) specify a period within which the warrant sale shall take place; and
  - (c) empower the officer of court to open shut and lockfast places for the purpose of executing the warrant.
- (3) Where the warrant of sale provides for the sale to be held in premises other than an auction room, it shall appoint to conduct the warrant sale—
- (a) if the aggregate of the values of the poinded articles fixed under section 20(4) of this Act exceeds £1,000 or such other sum as may be prescribed by Act of Sederunt and a person who carries on business as an auctioneer is available, that person;
  - (b) in any other case, the officer of court appointed under subsection (2) above or another suitable person.
- (4) A warrant of sale which provides for the warrant sale to be held in premises other than where the poinded articles are situated shall also empower the officer of court appointed by the warrant to remove the poinded articles to such premises for the sale.

### **32 Location of sale.**

- (1) The warrant of sale shall not provide for the warrant sale to be held in a dwellinghouse except with the consent in writing, in a form to be prescribed by Act of Sederunt, of the occupier thereof and, if he is not the occupier, of the debtor.
- (2) Subject to subsection (3) below, where articles are poinded in a dwellinghouse and any consent required under subsection (1) above is not given, the warrant of sale shall provide for the warrant sale to be held in an auction room specified in the warrant.

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(3) Where—

- (a) articles are poinded in a dwellinghouse and any consent required under subsection (1) above is not given; and
- (b) it appears to the sheriff that, if the sale were to be held in an auction room, the likely proceeds of the warrant sale would not exceed the expenses of the application for warrant of sale and the expenses likely to be incurred in any steps required to be taken under this Part of this Act in the execution of the warrant on the assumption that that application and any such steps are unopposed,

if the creditor is able to offer suitable premises in which the warrant sale could be held, the warrant of sale shall, subject to subsection (1) above and subsections (4) and (5) below, provide for the sale to be held in those premises, but otherwise the sheriff shall refuse to grant a warrant of sale.

- (4) Subject to subsection (5) below, the warrant of sale shall not provide for the sale to be held in premises (other than a dwellinghouse or an auction room) which are occupied by a person other than the debtor or the creditor except with the consent in writing, in a form to be prescribed by Act of Sederunt, of the occupier thereof.
- (5) Where the occupier of premises (other than a dwellinghouse or an auction room) where poinded articles are situated does not give his consent under subsection (4) above to the holding of the warrant sale in those premises, the warrant of sale may, if the sheriff considers that it would be unduly costly to require the removal of the poinded articles to other premises for sale, nevertheless provide that the warrant sale shall be held in the premises where they are situated.
- (6) In this section “occupier”, in relation to premises where there are 2 or more occupiers, means each of them.

**33 Release or redemption of poinded articles after warrant.**

- (1) Where a warrant sale is to be held in premises other than where the poinded articles are situated, the officer of court may, in pursuance of section 31(4) of this Act, remove to those premises only such poinded articles as, if sold at their values fixed under section 20(4) of this Act, would realise in total the sum recoverable at the time of the sale; and shall release the remaining poinded articles from the poinding.
- (2) Subject to section 21(1) of this Act, the debtor may, within 7 days after the date when a copy of an application for warrant of sale has been served on him, redeem any poinded article by paying to the officer of court a sum equal to its value fixed under section 20(4) of this Act.
- (3) The officer of court shall, on receiving payment from the debtor under subsection (2) above, grant a receipt in the form prescribed by Act of Sederunt to the debtor; and the receipt shall operate as a release of the article from the poinding.
- (4) The creditor and the debtor may by agreement release articles from the poinding.
- (5) Any release or redemption of poinded articles under this section—
  - (a) shall be mentioned in the next subsequent application (if any) which is made for warrant of sale or for variation of warrant of sale; or

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- (b) if it takes place after an application for warrant of sale (or variation thereof) has been made and before it has been disposed of, shall be reported as soon as is reasonably practicable by the officer of court to the sheriff; or
- (c) in any other case, shall be mentioned in any report of sale.

### **34 Intimation and publication of sale.**

- (1) The officer of court appointed under section 31(2)(a) of this Act to make arrangements for the warrant sale shall—
  - (a) as soon as is reasonably practicable intimate to the debtor and, if the person in possession of the poinded articles is not the debtor, to that person, the date arranged for the warrant sale; and
  - (b) not later than the date of intimation under paragraph (a) above, serve a copy of the warrant of sale on the debtor and any such person.
- (2) Where the warrant sale is not to be held in the premises where the poinded articles are situated, the officer of court referred to in subsection (1) above shall, not less than 7 days before the date arranged for the removal of the poinded articles from those premises, intimate to the debtor and, if he is not the debtor, to the person in possession of the poinded articles—
  - (a) the place where the sale is to be held; and
  - (b) the date arranged for the removal.
- (3) The sheriff clerk shall arrange for such particulars of the warrant of sale as are prescribed by Act of Sederunt to be displayed on the walls of court.
- (4) The warrant sale shall be advertised by public notice and, where the sale is to be held otherwise than in an auction room, the public notice shall be as directed by the warrant of sale.
- (5) Where the warrant sale is to be held in premises not belonging to the debtor, the public notice under subsection (4) above shall not name him or disclose that the articles for sale are poinded articles.
- (6) Where the warrant sale is to be held in premises other than the debtor's premises or an auction room, any public notice of the sale shall state that the articles to be sold do not belong to the occupier of the premises where the sale is to be held.

### **35 Alteration of arrangements for sale.**

- (1) Where, for any reason for which neither the creditor nor the officer of court is responsible, the arrangements made for the warrant sale cannot be implemented in accordance with the provisions of the warrant of sale, the sheriff may, on an application by the creditor or by the officer of court on his behalf, grant a variation of the warrant of sale.
- (2) Subject to subsection (3) below, the sheriff may, on his own initiative or on an objection by the debtor, refuse to grant an application under subsection (1) above on the ground that—
  - (a) the poinding is invalid or has ceased to have effect; or
  - (b) the proposed variation is unsuitable.

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- (3) It shall not be competent for the sheriff to refuse to grant an application under subsection (1) above on the ground that any poinded article is exempt from poinding under section 16 of this Act.
- (4) Section 32 of this Act shall apply to a warrant of sale as varied under this section.
- (5) A creditor or officer of court who makes an application under subsection (1) above shall at the same time—
  - (a) serve on the debtor a copy thereof together with a notice in the form prescribed by Act of Sederunt, informing him that he may object to the application within 7 days after the date of such service; and
  - (b) serve on any other person in possession of the poinded articles a copy of the application.
- (6) The sheriff shall not—
  - (a) refuse to grant a variation under subsection (1) above on his own initiative; or
  - (b) dispose of an application under that subsection where the debtor has objected thereto in accordance with subsection (5) above,without first giving the parties an opportunity to be heard.
- (7) On granting a variation under subsection (1) above, the sheriff may make such consequential orders as he thinks fit including, where appropriate—
  - (a) an order requiring service on the debtor, and on any other person in possession of the poinded articles, of the warrant of sale as varied;
  - (b) the retaking of any steps in the diligence which have already been taken.
- (8) Where the sheriff refuses to grant a variation under subsection (1) above, the sheriff clerk shall intimate that refusal to the debtor and to any other person in possession of the poinded articles.
- (9) Subject to subsection (10) below and without prejudice to section 36(3) of this Act, after intimation has been given under section 34 of this Act to the debtor of the date arranged for the warrant sale or for the removal for sale of the poinded articles from the premises where they are situated, the creditor or officer of court shall not be entitled to arrange a new date for the sale or for such removal.
- (10) Where, for any reason for which neither the creditor nor the officer of court is responsible, it is not possible for the warrant sale or, as the case may be, the removal for sale of the poinded articles from the premises where they are situated, to take place on the date arranged for it, the creditor may instruct the officer of court to arrange a new date in accordance with subsection (11) below, and the officer of court shall intimate the new date to the debtor and to any other person in possession of the poinded articles.
- (11) The new date arranged under subsection (10) above—
  - (a) shall not in any case be less than 7 days after the date of intimation under that subsection; and
  - (b) in the case of a new date arranged for a warrant sale, shall be a date within the period specified in the warrant of sale as the period within which the sale is required to be held.

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### **36 Payment agreements after warrant of sale.**

- (1) Without prejudice to section 35(1) and (10) of this Act, in order to enable the sum recoverable to be paid by instalments or otherwise in accordance with an agreement between the creditor and the debtor, the creditor may, after the granting of a warrant of sale, cancel the arrangements for the warrant sale on not more than 2 occasions.
- (2) The creditor or the officer of court on his behalf shall as soon as is reasonably practicable after any agreement of the kind referred to in subsection (1) above has been entered into make a report of the agreement to the sheriff.
- (3) Where, following cancellation of the warrant sale in pursuance of subsection (1) above, the debtor is in breach of the agreement—
  - (a) if the provisions of the original warrant of sale still allow, the creditor may instruct the officer of court to make arrangements for the warrant sale in accordance with those provisions;
  - (b) if, for any reason for which neither the creditor nor the officer of court is responsible, arrangements for the warrant sale cannot be implemented in accordance with the provisions of the original warrant of sale, the sheriff may, on an application by the creditor or by the officer of court on his behalf made within 6 months after the date when the report was made under subsection (2) above, grant a variation of the warrant of sale under section 35(1) of this Act.
- (4) For the purposes of subsection (3) above, the original warrant of sale shall be deemed to have specified that the sale is required to be held within the period of 6 months after the date when the latest report was made under subsection (2) above.

### **37 The warrant sale.**

- (1) Where the warrant of sale does not appoint as auctioneer the officer of court appointed under section 31(2)(a) of this Act to conduct the warrant sale, that officer—
  - (a) shall attend the sale and keep a record of any articles which are sold and the amount for which they are sold and of any articles whose ownership passes to the creditor under subsection (6) below; and
  - (b) if the sale is to be held in premises other than an auction room, shall supervise the sale.
- (2) Where the officer of court appointed under section 31(2)(a) of this Act is appointed as auctioneer to conduct the sale, he shall be attended at the sale by one witness.
- (3) In the warrant sale there shall be no reserve price unless the creditor chooses to have one and, if he does so choose, it shall not exceed the value of the article fixed under section 20(4) of this Act.
- (4) The value of a poinded article fixed under section 20(4) of this Act and the reserve price, if any, fixed by the creditor under subsection (3) above need not be disclosed to any person bidding for the article.
- (5) In the warrant sale any poinded article exposed for sale may be purchased by—
  - (a) any creditor, including the creditor on whose behalf the poinding was executed; or
  - (b) a person who owns the article in common with the debtor.
- (6) Subject to subsection (7) below and without prejudice to the rights of any third party, where the sum recoverable has not been realised by the warrant sale, ownership of

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a poinded article which remains unsold after being exposed for sale shall pass to the creditor.

(7) Without prejudice to the rights of any third party, where the warrant sale is held in premises belonging to the debtor, the ownership of a poinded article which has passed to the creditor under subsection (6) above shall revert to the debtor unless the creditor uplifts the article by 8 p.m. (or such other time as may be prescribed by Act of Sederunt)—

(a) if the premises are a dwellinghouse in which the debtor is residing, on the day when the sale is completed;

(b) in any other case, on the third working day following that day,

and the officer of court may remain on or re-enter any premises (whether open, shut or lockfast) for the purpose of enabling the creditor to uplift any such article.

(8) For the purposes of subsection (7) above “working day” means a day which is not—

Saturday;

Sunday;

1st or 2nd January;

Good Friday;

Easter Monday;

25th or 26th December;

a public holiday in the area in which the premises are situated.

(9) Subject to subsection (10) below, where at the warrant sale any article is unsold or is sold at a price below the value fixed under section 20(4) of this Act, the debtor shall be credited with an amount equal to that valuation.

(10) Where—

(a) any damaged article has been revalued under section 20(4) of this Act on the authority of the sheriff given under section 29(2) of this Act;

(b) the damage was not caused by the fault of the debtor; and

(c) no order has been made under section 29(3) of this Act requiring a third party to consign a sum in respect of the article, or such an order has been made but has not been complied with,

the amount credited to the debtor under subsection (9) above shall be an amount equal to the original valuation and not the revaluation referred to in paragraph (a) above.

### **38 Disposal of proceeds of sale.**

The officer of court appointed under section 31(2)(a) of this Act shall dispose of the proceeds of the warrant sale—

(a) by paying to the creditor the proceeds so far as necessary to meet the sum recoverable (subject to any agreement between the officer of court and the creditor relating to the fees or outlays of the officer of court) or, if the sheriff so directs, by consigning such proceeds in court; and

(b) by paying to the debtor any surplus remaining after the sum recoverable has been paid or, if the debtor cannot be found, by consigning such surplus in court.



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### **39 Report of warrant sale.**

- (1) The officer of court appointed under section 31(2)(a) of this Act shall within a period of 14 days after the date of completion of the warrant sale make to the sheriff a report in the form prescribed by Act of Sederunt (referred to in this Part of this Act as “the report of sale”) setting out—
  - (a) any articles which have been sold and the amount for which they have been sold;
  - (b) any articles which remain unsold;
  - (c) the expenses chargeable against the debtor under Schedule 1 to this Act;
  - (d) any surplus paid to the debtor; and
  - (e) any balance due by or to the debtor.
- (2) The report of sale shall be signed by the officer of court and, if a witness was required to attend at the sale under section 37(2) of this Act, by that witness.
- (3) If an officer of court—
  - (a) without reasonable excuse makes a report of sale after the expiry of the period mentioned in subsection (1) above; or
  - (b) wilfully refuses or delays to make a report of sale after the expiry of that period,the sheriff may, without prejudice to his right to report the matter to the Court of Session or the sheriff principal under section 79(1)(b) of this Act, make an order that the officer of court shall be liable for the expenses chargeable against the debtor under Schedule 1 to this Act, either in whole or in part.
- (4) The report of sale shall be remitted by the sheriff to the auditor of court who shall—
  - (a) tax the expenses chargeable against the debtor under Schedule 1 to this Act;
  - (b) certify the balance due by or to the debtor following the poinding and sale; and
  - (c) make a report to the sheriff,but shall not alter the amount of the expenses or of the balance referred to in paragraph (b) above without first giving all interested persons an opportunity to make representations.
- (5) On receipt of the auditor’s report, the sheriff may make an order—
  - (a) declaring the balance due by or to the debtor, as certified by the auditor;
  - (b) declaring such a balance after making modifications to the balance as so certified; or
  - (c) if he is satisfied that there has been a substantial irregularity in the poinding and sale (other than the making of the report of sale after the expiry of the period mentioned in subsection (1) above), declaring the poinding and sale to be void, in which case (subject to subsection (9) below) he may make such consequential order as appears to him to be necessary in the circumstances, and the sheriff clerk shall intimate the sheriff’s order under this subsection to the debtor.
- (6) The sheriff shall not make an order under subsection (5)(b) or (c) above without first giving all interested persons an opportunity to be heard.
- (7) The auditor of court shall not be entitled to charge a fee in respect of his report.
- (8) The report of sale and the auditor’s report shall be retained by the sheriff clerk for the period prescribed by Act of Sederunt and during that period they shall be open for

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inspection in the sheriff clerk's office by any interested person on payment of such fee as may be prescribed in an order made under section 2 of the <sup>M1</sup>Courts of Law Fees (Scotland) Act 1895.

- (9) An order under subsection (5)(c) above shall not affect the title of a person to any article acquired by him at the warrant sale, or subsequently, in good faith and for value.
- (10) Any rule of law whereby the sheriff may refuse to receive the report of sale shall cease to have effect.

**Marginal Citations**

**M1** 1895 c. 14.

*Articles belonging to third parties or in common ownership*

**40 Release from poinding of articles belonging to third party.**

- (1) An officer of court may, at any time after the execution of a poinding and before the warrant sale, release an article from the poinding if—
  - (a) he is satisfied that the article belongs to a third party; and
  - (b) the debtor or other person in possession of the article does not deny that it belongs to the third party.
- (2) Where, on an application made to him by a third party, at any time after the execution of a poinding and before the warrant sale, the sheriff is satisfied that a poinded article belongs to that third party, he shall make an order releasing it from the poinding.
- (3) The making of an application under subsection (2) above shall not prejudice the taking of any other proceedings by the third party for the recovery of a poinded article belonging to him, and an order of the sheriff under that subsection shall not be binding in any other proceedings.
- (4) The release of a poinded article under subsection (1) above—
  - (a) shall be mentioned in the next subsequent application (if any) which is made for warrant of sale or for variation of warrant of sale; or
  - (b) if it takes place after an application for warrant of sale (or variation thereof) has been made and before it has been disposed of, shall be reported as soon as is reasonably practicable by the officer of court to the sheriff; or
  - (c) in any other case, shall be mentioned in any report of sale.
- (5) Where an article has been released from a poinding under this section, an officer of court may, notwithstanding section 25 of this Act, poind other articles belonging to the debtor in the same premises.

**41 Poinding and sale of articles in common ownership.**

- (1) Articles which are owned in common by a debtor and a third party may be poinded and disposed of in accordance with this Part of this Act in satisfaction of the debts of that debtor.
- (2) Where, at any time after the execution of a poinding and before the warrant sale, a third party—

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- (a) claims that a poinded article is owned in common by the debtor and himself; and
  - (b) pays to the officer of court a sum equal to the value of the debtor's interest in the article,

the officer of court may, unless the debtor (or the person in possession of the article, if not the debtor) denies the claim, release the article from the poinding.
- (3) If, on an application made by a third party, at any time after the execution of a poinding and before the warrant sale, the sheriff is satisfied that a poinded article is owned in common by the debtor and that third party and either—
  - (a) the third party undertakes to pay to the officer of court a sum equal to the value of the debtor's interest in the article; or
  - (b) the sheriff is satisfied that the continued poinding of that article or its sale under warrant of sale would be unduly harsh to the third party in the circumstances,he shall make an order releasing the article from the poinding.
- (4) A release under subsection (2) above or where subsection (3)(a) above applies shall not become effective until the granting by the officer of court of a receipt for payment in accordance therewith, when the debtor's interest in the released article shall be transferred to the third party.
- (5) A release of a poinded article under subsection (2) above—
  - (a) shall be mentioned in the next subsequent application (if any) which is made for warrant of sale or for variation of warrant of sale; or
  - (b) if it takes place after an application for warrant of sale (or variation thereof) has been made and before it has been disposed of, shall be reported as soon as is reasonably practicable by the officer of court to the sheriff; or
  - (c) in any other case, shall be mentioned in any report of sale.
- (6) Where an article is released in pursuance of subsection (3)(b) above from a poinding, an officer of court may, notwithstanding section 25 of this Act, poind other articles belonging to the debtor in the same premises.
- (7) This subsection applies where, at any time after the execution of a poinding, a third party claims that any of the poinded articles is owned in common by the debtor and himself but does not seek release of the article from the poinding, and either—
  - (a) the claim is admitted by the creditor and the debtor; or
  - (b) the claim is not admitted by both the creditor and the debtor, but the sheriff, on an application made to him, is satisfied that the claim is valid.
- (8) Where subsection (7) above applies, the creditor shall pay to the third party—
  - (a) if the article is sold, the fraction of the proceeds of sale (or of the value of that article fixed under section 20(4) of this Act, whichever is the greater) which corresponds to the third party's interest in the article;
  - (b) if ownership of the article passes to the creditor in default of sale, the fraction of the value of the article fixed under section 20(4) of this Act which corresponds to the third party's interest in the article.

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### *Supplementary*

#### **42 Certain proceedings under Part II to postpone further steps in the diligence.**

- (1) Where an application under any of the provisions of this Act listed in subsection (3) below has been made, it shall be not be competent during a relevant period to grant a warrant of sale in respect of the poinded articles, to remove them for sale or to hold a warrant sale.
- (2) Where subsection (1) above applies, a relevant period shall be disregarded in calculating—
  - (a) the period within which a warrant sale is required to be held under section 31(2)(b) of this Act; or
  - (b) the period on the expiry of which the poinding ceases to have effect under section 27 of this Act.
- (3) The provisions referred to in subsection (1) above are—
  - (a) section 16(4), 23(1), 40(2) or 41(3) (release of poinded articles);
  - (b) section 24(1) or (3) (invalidity, cessation or recall of poinding);
  - (c) section 26(1) (sist of proceedings in poinding of mobile homes);
  - (d) section 28(4) (restoration of articles removed without consent or authority);
  - (e) section 28(5) (recall of order under section 28(4)).
- (4) In subsections (1) and (2) above “a relevant period” means—
  - (a) the period while the application is pending;
  - (b) where the application has been disposed of by the sheriff—
    - (i) the period during which an application for leave to appeal may be made;
    - (ii) where an application for leave to appeal is made, the period until leave has been refused or the application has been abandoned;
    - (iii) where leave to appeal has been granted, the period during which an appeal may be made; or
    - (iv) where an appeal against the decision is made, the period until the matter has been finally determined or the appeal has been abandoned.

#### **43 Conjoining of further poinding with original poinding.**

- (1) Subject to subsection (2) below, where a report of a further poinding by the same creditor to enforce the same debt executed in pursuance of section 9(12), 23(2), 28(2) or (6), 29(2), 40(5) or 41(6) of this Act has been received under section 22 of this Act, the sheriff shall, on an application made to him by the creditor or by an officer of court on his behalf, make an order conjoining the further poinding with the original poinding.
- (2) It shall not be competent for the sheriff to make an order under subsection (1) above—
  - (a) where a warrant of sale has been granted in respect of the original poinding or the further poinding;
  - (b) until 14 days after the date of execution of the further poinding; or
  - (c) while an application under this Part of this Act in relation to the further poinding is pending or, where such an application has been disposed of by the sheriff—

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- (i) until the period for leave to appeal has expired without an application for leave having been made;
  - (ii) where an application for leave to appeal is made, until leave has been refused or the application has been abandoned;
  - (iii) where leave to appeal has been granted, until the period for an appeal has expired without an appeal being made; or
  - (iv) where an appeal against the decision is made, until the matter has been finally determined or the appeal has been abandoned.
- (3) Where the sheriff makes an order under subsection (1) above, it shall not thereafter be competent for him to grant any application for warrant of sale relating to the original poinding which is pending when the order is made.
- (4) The effect of an order under subsection (1) above shall be that thereafter the further poinding shall be treated for all purposes as if it were part of the original poinding, except that the references to a poinding being invalid or having ceased to have effect in sections 24(1), 30(2)(a)(i) and 35(2)(a) of this Act shall be construed as references to either poinding being invalid or having ceased to have effect.
- (5) The decision of the sheriff under subsection (1) above shall not be subject to appeal.

#### **44 Expenses of poinding and sale.**

Schedule 1 to this Act shall have effect for the purposes of determining the liability, as between the creditor and the debtor, for expenses incurred in serving a charge and in the process of poinding and warrant sale.

#### **45 Interpretation of Part II.**

In this Part of this Act—

“dwellinghouse” includes a caravan, a houseboat and any structure adapted for use as a residence;

“the poinding schedule” means the schedule provided for in section 20(5) of this Act;

“the report of sale” means the report provided for in section 39(1) of this Act;

“the sum recoverable” means the total of—

- (a) the amount outstanding of the sum due by the debtor under the decree or other document on which the diligence proceeds (including any interest thereon and any expenses decerned for);
- (b) any sum due under section 93(5) of this Act; and
- (c) any expenses which have been incurred in serving a charge and in the process of poinding and sale which are chargeable against the debtor under Schedule 1 to this Act.

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