



# Debtors (Scotland) Act 1987

## 1987 CHAPTER 18

### PART II

#### POINDINGS AND WARRANT SALES

##### *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
  - (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—

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- (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
  - (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

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- (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.