



Debtors (Scotland) Act 1987

1987 CHAPTER 18

PART II

POINDINGS AND WARRANT SALES

Articles belonging to third parties or in common ownership

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—
 - (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.

Status: This is the original version (as it was originally enacted).

- (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.