Debt Arrangement and Attachment (Scotland) Act 2002

2002 asp 17

PART 2

ATTACHMENT

Auction of attached articles

31 Disposal of proceeds of auction

(1) The officer shall, subject to section **[**[F1]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.

[[F2](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

(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 **[**[F3](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

F1 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

F2 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)

F3 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)

Changes to legislation:
There are currently no known outstanding effects for the Debt Arrangement and Attachment (Scotland) Act 2002, Section 31.