



Debtors (Scotland) Act 1987

1987 CHAPTER 18

PART II

POINDINGS AND WARRANT SALES

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—
 - (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.

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- (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.
- (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
 - (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

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- (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.
- (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—

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- (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.

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

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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 3 1(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 pointed 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 pointed article exposed for sale may be purchased by—
- (a) any creditor, including the creditor on whose behalf the pointing 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 a pointed 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 pointed 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.

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

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- (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 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 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.