

SCHEDULES

SCHEDULE 6

MINOR AND CONSEQUENTIAL AMENDMENTS

General amendment

- 1 Any reference in any enactment to an order being enforceable in like manner as a recorded decree arbitral shall be construed as a reference to such an order being enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

Specific amendments

[The Bank Notes \(Scotland\) Act 1765 \(c. 49.\)](#)

- 2 In section 4 (summary execution on banker's notes), for the words from "letters of horning" to "the other" there shall be substituted the word "the".

[The Debtors \(Scotland\) Act 1838 \(c. 114.\)](#)

- 3 At the end of section 22 (arrestment to prescribe in three years), there shall be added the following subsections—

“(2) In the case of an arrestment which—

- (a) secures a debt which is subject to a time to pay direction or a time to pay order; or
- (b) is subject to an interim order under section 6(3) of the Debtors (Scotland) Act 1987 (order pending disposal of application for time to pay order),

there shall be disregarded, in computing the period at the end of which the arrestment prescribes, the period during which the time to pay direction, time to pay order or interim order is in effect.

(3) Nothing in this section shall apply to an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order.”.

[The Harbours, Docks, and Piers Clauses Act 1847 \(c. 27.\)](#)

- 4 In section 57 (unserviceable vessels to be altogether removed from harbour), for the word "pounding" there shall be substituted the word "arrestment".

[The Lyon King of Arms Act 1867 \(c.17\)](#)

- 5 In section 2 (admittance to office of messengers-at-arms), for the words "according to the present law and practice" there shall be substituted the words "in accordance with Part V of the Debtors (Scotland) Act 1987 and any Act of Sederunt made thereunder".

[The Court of Session Act 1868 \(c. 100\)](#)

- 6 At the end of section 14 (induciae of summonses and other writs passing the signet), there shall be added the following subsection—

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“(2) Nothing in this section shall apply to a charge for payment.”.

[The Titles to Land Consolidation \(Scotland\) Act 1868 \(c. 101\)](#)

- 7 In section 138 (import of short clauses of consent to registration), for the words from "letters of horning" to the end there shall be substituted the words ", upon the issue of an extract containing a warrant for execution, all lawful execution shall pass thereon".

[The Debtors \(Scotland\) Act 1880 \(c. 34\)](#)

- 8 In section 4 (abolition of imprisonment for debt, with certain exceptions), for paragraph 1 there shall be substituted the following paragraph—
- “1 Fines imposed for contempt of court or under section 91 of the Court of Session Act 1868.”.

[The Sea Fisheries Act 1883 \(c. 22.\)](#)

- 9 In section 20(2) (masters of boats liable to fines imposed), for the word "poinding" there shall be substituted the word "arrestment".

[The Merchant Shipping Act 1894 \(c. 60.\)](#)

- 10 In section 693 (sums ordered to be leviabie by poinding and sale of ship), for the word "poinding" there shall be substituted the word "arrestment".

[The Execution of Diligence \(Scotland\) Act 1926 \(c. 16\)](#)

- 11 In section 1 (sheriff officer to have the powers of a messenger-at-arms in certain places), for the word "county" in both places where it occurs there shall be substituted the words "sheriff court district".
- 12 In section 2(1)(b) (execution of arrestment or charge by registered letter in certain cases), for the word "county" there shall be substituted the words "sheriff court district".

[The Sea Fisheries Act 1968 \(c. 77.\)](#)

- 13 In section 12(2)(a) (recovery of fines imposed on master, etc. or crew), for the word "poinding" there shall be substituted the word "arrestment".

[The Prevention of Oil Pollution Act 1971 \(c. 60.\)](#)

- 14 In section 20(1) (enforcement and application of fines), for the word "poinding" there shall be substituted the word "arrestment".

[The Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#)

- 15 In section 267(8) (local inquiries), for the words "a recorded decree arbitral" there shall be substituted the words "an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland".

[The Consumer Credit Act 1974 \(c. 69\)](#)

- 16 After section 93 there shall be inserted the following section—

“93A Summary diligence not competent in Scotland.

Summary diligence shall not be competent in Scotland to enforce payment of a debt due under a regulated agreement or under any security related thereto.”.

- 17 In section 129 (time orders)—
- (a) at the beginning of subsection (1) there shall be added the words "Subject to subsection (3) below,";
- (b) at the end there shall be added the following subsection—

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“(3) Where in Scotland a time to pay direction or a time to pay order has been made in relation to a debt, it shall not thereafter be competent to make a time order in relation to the same debt”.

The Criminal Procedure (Scotland) Act 1975 (c. 21)

18 In section 411 (recovery by civil diligence), in subsection (1) for the words from "the words" to "14 days" there shall be substituted the words

“a warrant for civil diligence in a form prescribed by Act of Adjournal which shall have the effect of authorising—

- (a) the charging of the person who has been fined to pay the fine within the period specified in the charge and, in the event of failure to make such payment within that period, the execution of an earnings arrestment and the pointing of articles belonging to him and, if necessary for the purpose of executing the pointing, the opening of shut and lockfast places;
- (b) an arrestment other than an arrestment of earnings in the hands of his employer;”.

The Crofting Reform (Scotland) Act 1976 (c. 21)

19 In section 17(1) (extension of powers of Land Court), for the words from "as if to "to be enforced" there shall be substituted the words "in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland".

The Patents Act 1977 (c. 37)

20 In section 93(b) and 107(3) (orders for expenses), for the words "a recorded decree arbitral" there shall be substituted the words "an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland."

The Customs and Excise Management Act 1979 (c. 2)

21 In section 117 (execution and diligence against revenue traders), for subsection (9) there shall be substituted the following subsections—

“(9) This section shall apply to Scotland subject to the following modifications—

- (a) in subsection (3) for the words from "issue" to the end there shall be substituted the words "granting of a warrant for the recovery of a sum owing by the revenue trader, those goods shall not be liable to be taken in execution under this section.";
- (b) in subsection (4) for the word "seized" in both places where it occurs there shall be substituted the words "taken in execution";
- (c) subsection (10) below shall apply in place of subsection (5);
- (d) in subsection (6) for the word "distraint" in both places where it occurs there shall be substituted the words "taken into possession";
- (e) in subsection (7) for the words "of the distress and sale" there shall be substituted the words "incurred in the taking into possession and sale of the things under that subsection";
- (f) in subsection (7A) for the words "distress is levied" there shall be substituted the words "things are taken into possession" and for the word "distress" where second occurring there shall be substituted the words "taking into possession".

(10) The sheriff, on an application by the proper officer accompanied by a certificate by him that relevant excise duty payable by a revenue trader

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remains unpaid after the time within which it is payable, may grant a warrant authorising a sheriff officer—

- (a) to take into possession, by force if necessary, anything liable to be taken in execution under this section and for that purpose to open shut and lockfast places; and
- (b) to sell anything so taken into possession by public auction after giving 6 days notice of the sale.”.

The Education (Scotland) Act 1980 (c. 44)

- 22 In paragraph 8 of Schedule 1 (local inquiries), for the words "a recorded decree arbitral" there shall be substituted the words "an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland."

The Betting and Gaming Duties Act 1981 (c.63)

- 23 Section 29 (recovery of duty in Scotland), shall have effect subject to the following modifications—

- (a) for subsection (1) there shall be substituted the following subsection—
 - “(1) The sheriff, on an application by the proper officer accompanied by a certificate by him that a person, on written demand by the proper officer, has refused or neglected to pay any amount recoverable from him by way of general betting duty or bingo duty or by virtue of section 12(1) or 14 above or of Schedule 2 to this Act, may grant a warrant authorising a sheriff officer—
 - (a) to take into possession, by force if necessary, any of that person's corporeal moveables which would not be exempted from pouncing and for that purpose to open shut and lockfast places; and
 - (b) to sell anything so taken into possession by public auction after giving 6 days' notice of the sale.”;
- (b) in subsection (2) for the word "pounded" in both places where it occurs there shall be substituted the words "taken into possession";
- (c) in subsection (3)—
 - (i) for the words "of the pouncing and" there shall be substituted the words "incurred in taking into possession the corporeal moveables and their";
 - (ii) in paragraph (a) for the word "pounded" there shall be substituted the words "taken into possession";
 - (iii) in paragraph (b) for the word "pounded" there shall be substituted the words "when they were taken into possession by the sheriff officer";
- (d) in subsection (4) for the words "pounded" and "pouncing" there shall be substituted respectively the words "taken into possession" and "taking into possession the corporeal moveables".

The British Fishing Boats Act 1983 (c. 8.)

- 24 In section 5(2)(a) (recovery of fines), for the word "pouncing" there shall be substituted the word "arrestment".

The Inshore Fishing (Scotland) Act 1984 (c. 26.)

- 25 In section 8(2)(a) (recovery of fines), for the word "pouncing" there shall be substituted the word "arrestment".

The Rent (Scotland) Act 1984 (c. 58.)

- 26 For section 110 (restriction on diligence), there shall be substituted the following section—

“110 Restriction on sequestration for rent.

At any stage before the grant of a warrant of sale in an action of sequestration for payment, or in security, of rent of any dwelling-house let on a protected tenancy or subject to a statutory tenancy, the sheriff may sist the proceedings or adjourn them for such period or periods as he thinks fit, in order to enable the tenant to pay the rent in such manner as the sheriff may determine (whether by instalments or otherwise).”.

The Bankruptcy (Scotland) Act 1985 (c. 66)

- 27 In section 37 (effect of sequestration on diligence), after subsection (5) there shall be inserted the following subsection—

“(5A) Nothing in subsection (4) or (5) above shall apply to an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order.”.

- 28 In paragraph 24 of Schedule 7 (arrestments and poindings)—

(a) in sub-paragraph (3) after the words "a sale" there shall be inserted the words "or receives payment in respect of a poinded article upon its redemption";

(b) at the end there shall be added the following sub-paragraph—

“(8) Nothing in this paragraph shall apply to an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order.”.