

1973 No. 1860 (S.149)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Appeals against Poinding) 1973

Made - - - 7th November 1973

Coming into Operation 1st January 1974

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(a), and of all other powers enabling them in that behalf, and after consultation with the Sheriff Court Rules Council, do hereby enact and declare as follows:—

1. This Act of Sederunt may be cited as the Act of Sederunt (Appeals against Poinding) 1973 and shall come into operation on 1st January 1974.

2.—(1) In this Act of Sederunt, unless the context otherwise requires—“the Act” means the Law Reform (Diligence) (Scotland) Act 1973(b); “appeal” means an appeal under section 1(4) of the Act; “Sheriff Clerk” includes Sheriff Clerk Depute.

(2) The Interpretation Act 1889(c) shall apply to the interpretation of this Act of Sederunt as it applies to the interpretation of an Act of Parliament.

3. On the execution of a poinding in a dwellinghouse the poinding Sheriff Officer or Messenger-at-Arms shall deliver to the possessor of the pointed effects a notice in the Form A in the Schedule hereto.

4. Appeals shall be made by lodging with the Sheriff Clerk a form in, or as nearly as it practicable in, the Form B in the Schedule hereto.

5. On the lodging of an appeal the Sheriff shall grant warrant for intimation and shall fix a date for hearing the appeal not sooner than the seventh day after such intimation, which warrant may be in the Form C in the Schedule hereto.

6. On the granting of a warrant for intimation the Sheriff Clerk shall forthwith intimate the appeal to the respondent and to the poinding Sheriff Officer or Messenger-at-Arms by transmitting a copy of the appeal and warrant, duly certified by him, by registered post or by recorded delivery first class service to each of the said respondent and Sheriff Officer or Messenger-at-Arms at the address or addresses stated in the Appeal. A certificate of execution of intimation may be in the Form D in the Schedule hereto.

(a) 1971 c. 58.
(c) 1889 c. 63.

(b) 1973 c. 22.

7. All appeals shall be entered in a book to be kept for the purpose and such entries shall set forth the names and designations of the appellant, respondent, and pointing officer, the date of the pointing, the articles in respect of which the appeal is taken and the several deliverances and the dates thereof, which book shall be signed by the Sheriff. The determinations and deliverances of the Sheriff may be written on the principal appeal or separately, shall be signed by the Sheriff Clerk and shall have the force and effect of extract.

SCHEDULE

Form A.

Notice to the possessor of pointed effects.

The Law Reform (Diligence) (Scotland) Act, 1973 provides that an article shall not be liable to be pointed at the instance of a creditor in respect of a debt due to him by a debtor if it is an article to which the Act applies and, being at the time of the pointing in a dwellinghouse in which the debtor is residing, it is reasonably necessary to enable him and any other person living in family with him in that dwellinghouse to continue to reside there without undue hardship. The Act at present applies to beds or bedding material, chairs, tables, furniture or furnishings providing facilities for cooking, eating or storing food, and furniture or furnishings providing facilities for heating.

Where any article is pointed in respect of a debt, then, without prejudice to any other remedy available to him, a debtor may within seven days from the date of the pointing appeal to the Sheriff on the ground that, by virtue of the provisions of the Act, the said article is not liable to be pointed.

Any enquiry relating to the making of such an appeal may be directed to the Sheriff Clerk's Office at

Form B.

In the Sheriff Court at _____ Appeal under section 1(4)
of the Law Reform (Diligence) (Scotland) Act 1973.

Appeal by
Applicant
in the pointing at the
instance of
Respondent

1. The Appellant is the defender in an action at the instance of _____
the respondent in _____ (Court) in
which decree was granted on _____ (date) _____
for payment of (or as the case may be) _____ against the Appellant
2. _____ (name), Sheriff Officer, _____ (Address),
on the instructions of the respondent executed a pointing of the appellant's
effects on _____ (date) _____ at the dwellinghouse at
_____ (address)

Included amongst the effects pointed were the following articles:---

- (a)
- (b)

3. These articles are reasonably necessary to enable the appellant and the persons living in family with him in that dwellinghouse to continue to reside there without undue hardship.
4. This appeal is made under section 1(4) of the Law Reform (Diligence) (Scotland) Act 1973.

THEREFORE the Appellant craves the Court--

- (a) To find that the articles referred to are articles to which section 1 of the Law Reform (Diligence) (Scotland) Act 1973 applies and are not liable to be poided.
- (b) To order that said articles be released from the poiding.
- (c) To deal with the expenses of this Appeal as the Court may think fit.
- (d) To sist meantime all further execution in respect of said articles.

Appellant
or
Appellant's Solicitors.

Form C.

Grants Warrant to intimate the foregoing Appeal and this warrant to the respondent and the therein designed Sheriff Officer/Messenger-at-Arms and Appoints them, if they intend to oppose the Appeal, to answer within the Sheriff Court at _____ on the _____ day of _____ at _____ o'clock noon. Further Appoints the said Sheriff Officer/Messenger-at-Arms to lodge a copy of the schedule of poided effects in the hands of the clerk of court. Meantime, Grants interim sist of execution as craved.

Form D.

I, _____, Sheriff Clerk (Depute), did lawfully intimate the foregoing Appeal to the respondent and to the poiding Sheriff Officer/Messenger-at-Arms by posting a certified copy of the Appeal and warrant in a registered letter (or through the recorded delivery service) to each of them. The Post Office receipt for the said registered (or recorded delivery) letters are attached hereto.

Signed Sheriff Clerk or Sheriff Clerk Depute.

And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt.

G. C. Emslie,
I.P.D.

Edinburgh,

7th November, 1973.

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt makes provision for the notice to be delivered by the poiding Sheriff Officer, and for the procedure to be followed for appeals to the Sheriff, under the Law Reform (Diligence) (Scotland) Act 1973.

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