

DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002

EXPLANATORY NOTES

THE ACT

Part 2 – Attachment

Auction of attached articles

Section 27 – Notice of public auction.

61. **Section 27** provides that an auction of attached articles must be held by public auction in an auction room unless it is impractical to do so in which event the auction may be held in an alternative location that the officer considers appropriate other than in a debtor's dwellinghouse. Section 27(3) allows other articles, attached along with those which it is impractical to auction in an auction house, to also be auctioned at the alternative location in order to prevent the cost of having two auctions.
62. Intimation of the date and place of the auction, and the date of removal of attached articles kept outside dwellinghouses, must be given to the debtor and to any third party in possession of the attached articles, and details advertised by public notice.

Section 28 – Alteration of arrangements for removal or auction

63. **Section 28(1)** prohibits the date of auction or removal from being varied, unless due to circumstances beyond the creditor's or officer's control. Any new date must be intimated to the debtor and to any other person in possession of the attached articles. Section 28(3) requires the new date to be at least seven days after intimation.

Section 29– Cancellation of auctions

64. This section allows an auction to be cancelled to enable the debtor to repay the debt in the event of an agreement having been reached with the creditor but restricts the cancellation to no more than two occasions. Section 29(4) allows for any necessary subsequent resumption of the auction should the debtor default on an agreement made with the creditor, provided that the sheriff, on an application by the creditor, is satisfied that the debtor has defaulted. Section 29(5) makes provision for the debtor to be given an opportunity to respond to an allegation that he/she has breached the agreement, including a right to be heard, before the sheriff makes an order allowing the resumption of the auction.

Section 30 – Auction

65. **Section 30(1) to (3)** provides for the auction to be attended by the officer and a witness and for a record to be made of the articles sold specifying the amount which each achieved.

66. [Section 30\(4\)](#) permits any article to be bought by any creditor or by a third party who owns the article in common with the debtor.

Section 31 – Disposal of proceeds of auction

67. [Section 31\(1\)](#) provides for the proceeds of the auction to be applied firstly to meet the expenses of the procedure and then to the creditor to meet the debt with any surplus payable to the debtor. [Section 31\(2\)](#) provides that, where the sum due is not realised, ownership of any unsold articles will pass to the creditor, in which case their value will be credited against the debt due.
68. [Section 31\(6\)](#) specifies that the proceeds of auction are to include any sum consigned in court and any sum received from a third party for purchase of the debtor's share in joint property.

Section 32 – Report of auction

69. [Section 32\(1\)](#) requires a report to be made to the sheriff within 14 days of the date of auction.
70. [Section 32\(2\)](#) specifies the content of the report of auction, including details of articles sold and remaining unsold, price achieved, expenses, any surplus paid to the debtor and any balance due to or by the debtor.
71. [Section 32\(3\)](#) provides for the sheriff to order that the chargeable expenses, in whole or in part, be charged against the officer responsible for the report in the event of the report being made late without reasonable excuse or the officer's refusal or delay in making the report. [Section 31\(4\)](#) allows the sheriff to treat any such failure as misconduct.

Section 33 – Audit of report of auction

72. [Section 33](#) requires the sheriff to remit the report of the auction to the auditor of court for him to tax the expenses charged, certify the balance due to or by the debtor and make a report to the sheriff.
73. [Section 33\(4\)](#) requires the sheriff to make an order declaring what sum remains due to or by the debtor. In the event of an irregularity in the procedure, the sheriff may declare the auction void and make any other provision considered necessary as a result. However, any such order will not affect a purchaser's title to property bought in good faith.