

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 13 – Amendments of the Debt Arrangement and Attachment (Scotland) Act 2002

Section 212 – Further amendments of the Debt Arrangement and Attachment (Scotland) Act 2002

New section 19A – Urgent removal of attached articles

764. New section 19A gives judicial officers power in relation to the urgent removal of attached articles. Subsection (1) provides that a judicial officer may remove an attached article without notice if it is considered necessary to secure the article (e.g. because there is a risk it may be damaged or destroyed) or to preserve its value and there is no time to obtain an order from a sheriff under section 20(1)(a) of the 2002 Act (which allows such removal). In these circumstances an article will be taken to the nearest convenient premises of the debtor or the person in possession of the item but if the debtor or person does not have any premises which are convenient or the judicial officer thinks those premises are unsuitable for storing the article the officer can take the articles to other secure premises (see subsection (2)). By virtue of subsection (3) (which applies section 19(4)), the judicial officer may open shut and lockfast places in order to remove the attached articles.
765. Subsection (14) inserts new subsections (1A) and (1B) into section 31 of the 2002 Act. Subsection (1A) provides that where an article is sold at auction at less than the value assigned to it when it was attached, the difference between that price and the value will be credited against the sum owed. In other words the debtor benefits from having the debt reduced by the amount the item was valued at even if it does not actually sell for that value at auction. Subsection (1B) provides that where an article has been damaged and revalued and the damage was not caused by the fault of the debtor and no sum has been consigned into the court by a third party to compensate for the damage, the revaluation is disregarded for the purposes of subsection (1A) and the original value is the value that is credited against the debt after the sale even if the sale price of the item was less than that.
766. Subsection (15) inserts new section 60A into the 2002 Act.