



Debtors (Scotland) Act 1987

1987 CHAPTER 18

PART II

POINDINGS AND WARRANT SALES

Poining

16 Articles exempt from poining

- (1) The following articles belonging to a debtor shall be exempt from poining at the instance of a creditor in respect of a debt due to him by the debtor—
 - (a) clothing reasonably required for the use of the debtor or any member of his household;
 - (b) implements, tools of trade, books or other equipment reasonably required for the use of the debtor or any member of his household in the practice of the debtor's or such member's profession, trade or business, not exceeding in aggregate value £500 or such amount as may be prescribed in regulations made by the Lord Advocate;
 - (c) medical aids or medical equipment reasonably required for the use of the debtor or any member of his household;
 - (d) books or other articles reasonably required for the education or training of the debtor or any member of his household not exceeding in aggregate value £500 or such amount as may be prescribed in regulations made by the Lord Advocate;
 - (e) toys for the use of any child who is a member of the debtor's household;
 - (f) articles reasonably required for the care or upbringing of a child who is a member of the debtor's household.
- (2) The following articles belonging to a debtor shall be exempt from poining if they are at the time of the poining in a dwellinghouse and are reasonably required for the use in the dwellinghouse of the person residing there or a member of his household—
 - (a) beds or bedding;
 - (b) household linen;

Status: This is the original version (as it was originally enacted).

- (c) chairs or settees;
 - (d) tables;
 - (e) food;
 - (f) lights or light fittings;
 - (g) heating appliances;
 - (h) curtains;
 - (j) floor coverings;
 - (k) furniture, equipment or utensils used for cooking, storing or eating food;
 - (l) refrigerators;
 - (m) articles used for cleaning, mending, or pressing clothes;
 - (n) articles used for cleaning the dwellinghouse;
 - (o) furniture used for storing—
 - (i) clothing, bedding or household linen;
 - (ii) articles used for cleaning the dwellinghouse; or
 - (iii) utensils used for cooking or eating food;
 - (p) articles used for safety in the dwellinghouse;
 - (q) tools used for maintenance or repair of the dwellinghouse or of household articles.
- (3) The Lord Advocate may by regulations add to the list set out in subsection (2) above, or delete or vary any of the items contained in that list.
- (4) If, on an application made within 14 days after the date of the execution of the pouncing—
- (a) by the debtor or any person who owns a pointed article in common with the debtor; or
 - (b) by any person in possession of a pointed article,
- the sheriff is satisfied that the article is exempt from pouncing under this section, he shall make an order releasing the article from the pouncing.

17 Restrictions on times when pouncing may be executed

- (1) No pouncing shall be executed on Sunday, Christmas Day, New Year's Day, Good Friday or such other day as may be prescribed by Act of Sederunt.
- (2) The execution of a pouncing shall not—
- (a) be commenced before 8 a.m. or after 8 p.m.; or
 - (b) be continued after 8 p.m.,
- unless the officer of court has obtained prior authority from the sheriff for such commencement or continuation; and any rule of law which prohibits pouncings outwith the hours of daylight shall cease to have effect.

18 Power of entry for execution of pouncing

- (1) Subject to subsection (2) below, notwithstanding any warrant authorising him to open shut and lockfast places, an officer of court shall not enter a dwellinghouse to execute a pouncing if, at the time of his intended entry, there appears to him to be nobody, or only children under the age of 16 years, present there unless, at least 4 days before the date of his intended entry, he has served notice on the debtor specifying that date.

- (2) If it appears to the sheriff, on an application made to him by the officer of court (which shall not require to be intimated to the debtor), that the requirement of service under this section would be likely to prejudice the execution of the poinding he may dispense with such service.

19 Value of articles which may be poinded and presumption as to ownership

- (1) The officer of court shall be entitled to poind articles only to the extent necessary to ensure that the sum recoverable at the time of the sale would be realised if they were sold at the values fixed under section 20(4) of this Act.
- (2) In executing a poinding, an officer of court shall be entitled to proceed on the assumption that any article in the possession of the debtor is owned by him unless the officer of court knows or ought to know that the contrary is the case.
- (3) The officer of court shall not be precluded from relying on the assumption mentioned in subsection (2) above by reason only of one or both of the following circumstances—
- (a) that the article belongs to a class which is commonly held under a hire, hire-purchase or conditional sale agreement or on some other limited title of possession;
 - (b) that an assertion has been made that the article is not owned by the debtor.

20 Poinding procedure

- (1) The procedure in a poinding shall be in accordance with this section and section 21 of this Act.
- (2) Before executing the poinding, the officer of court shall—
- (a) exhibit to any person present the warrant to poind and the certificate of execution of the charge relating thereto;
 - (b) demand payment of the sum recoverable from the debtor, if he is present, or any person present appearing to the officer of court to be authorised to act for the debtor; and
 - (c) make enquiry of any person present as to the ownership of the articles proposed to be poinded, and in particular whether there are any persons who own any articles in common with the debtor,
- but it shall not be necessary for the officer of court to make public proclamation of the poinding or to read publicly the extract decree containing the warrant to poind and the execution of the charge relating thereto.
- (3) The officer of court shall be accompanied at the poinding by one witness.
- (4) The poinded articles shall be valued by the officer of court according to the price which they would be likely to fetch if sold on the open market unless he considers that the articles are such that a valuation by a professional valuer or other suitably skilled person is advisable, in which case he may arrange for such a valuation.
- (5) The officer of court shall prepare a schedule (referred to in this Part of this Act as "the poinding schedule"), in the form prescribed by Act of Sederunt, which shall specify—
- (a) the identity of the creditor and of the debtor;
 - (b) the articles poinded, and their respective values;
 - (c) the sum recoverable; and

Status: This is the original version (as it was originally enacted).

- (d) the place where the poinding was executed.
- (6) On completion of the valuation the officer of court shall—
 - (a) along with the witness sign the poinding schedule;
 - (b) deliver the poinding schedule to any person in possession of the articles or—
 - (i) where the poinding was executed in a dwellinghouse or other premises, leave it in the premises; or
 - (ii) in any other case, deliver it to premises occupied by that person;
 - (c) if the person in possession of the articles is not the debtor and it is reasonably practicable, serve a copy of it by post on the debtor;
 - (d) inform the debtor (if present) of his right to redeem poinded articles under section 21(4) of this Act;
 - (e) inform any person present who owns any poinded article in common with the debtor of his right to redeem poinded articles under section 41(2) and (3)(a) of this Act; and
 - (f) inform the debtor (if present) and any person present who owns any poinded article in common with the debtor, or who is in possession of any poinded article, of his right to apply for an order releasing articles from poinding under section 16(4), 23(1) or 41(3)(b) of this Act.
- (7) The officer of court shall leave poinded articles at the place where they were poinded, except that where that place is not a dwellinghouse or other premises, if he considers it necessary for their security or the preservation of their value and there is insufficient time to obtain an order under section 21(1)(a) of this Act, he shall remove them at the creditor's expense—
 - (a) to the nearest convenient premises belonging to the debtor or to the person in possession of the articles; or
 - (b) if no such premises are available, to the nearest suitable secure premises.

21 Poinding procedure—further provisions

- (1) The sheriff, on an application by the creditor, the officer of court or the debtor intimated in accordance with subsection (2) below, may at any time after the execution of a poinding make an order—
 - (a) for the security of any of the poinded articles; or
 - (b) in relation to any of the articles which are of a perishable nature or which are likely to deteriorate substantially and rapidly in condition or value, for their immediate disposal and, in the event of their disposal by sale, for payment of the proceeds of sale to the creditor or for consignment of the proceeds in court until the diligence is completed or otherwise ceases to have effect,
 and a decision of the sheriff under paragraph (b) above for the immediate disposal of articles shall not be subject to appeal.
- (2) An application for an order under subsection (1)(b) above—
 - (a) by the creditor or the officer of court, shall be intimated by him to the debtor;
 - (b) by the debtor, shall be intimated to the creditor or the officer of court, at the time when it is made.
- (3) It shall not be competent for an officer of court in executing a poinding to examine a person on oath as to the ownership of any article.

- (4) Subject to subsection (1)(b) above, the debtor shall be entitled, within 14 days after the date of execution of the poinding, to redeem any poinded article at the value fixed under section 20(4) of this Act; and the officer of court shall mention any such redemption in his report under section 22 of this Act or, if he has already made that report, shall report the redemption as soon as is reasonably practicable to the sheriff.
- (5) The officer of court shall, on receiving payment from the debtor for the redemption under subsection (4) above of a poinded article, 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.
- (6) Subject to section 29(2)(b) of this Act, the revaluation in the same poinding of an article which has been valued under section 20(4) of this Act shall not be competent.
- (7) A poinding shall be deemed to have been executed on the date when the poinding schedule has been delivered, or left on the premises, in pursuance of section 20(6)(b) of this Act.
- (8) Subject to subsection (9) below, at any time before the execution of a poinding on behalf of a creditor, an officer of court shall, if requested to do so by any other creditor who has delivered to him a warrant to poind, conjoin that creditor in the poinding.
- (9) It shall not be competent for an officer of court to conjoin a creditor in a poinding in respect of a debt for which the creditor holds a summary warrant.

22 Report of execution of poinding

- (1) The officer of court shall, within a period of 14 days after the date of execution of the poinding (or such longer period as the sheriff on cause shown may allow on an application by the officer of court) make to the sheriff in the form prescribed by Act of Sederunt a report of the execution of the poinding which shall be signed by the officer of court and the witness who attended the poinding.
- (2) The officer of court shall note in the report under subsection (1) above any assertion made before the submission of the report that any poinded article does not belong to the debtor.
- (3) The sheriff may refuse to receive a report on the ground that it has not been made and signed in accordance with subsection (1) above, and if the sheriff refuses to receive a report on that ground the poinding shall cease to have effect.
- (4) The sheriff clerk shall intimate a refusal under subsection (3) above—
 - (a) to the debtor; and
 - (b) if he is a different person from the debtor, to the person in possession of the poinded articles.
- (5) Any rule of law whereby the sheriff may refuse to receive a report of the execution of a poinding on a ground other than one specified in subsection (3) above shall cease to have effect.

23 Release of poinded article on ground of undue harshness

- (1) The sheriff may, on an application made within 14 days after the date of execution of a poinding by the debtor or any person in possession of a poinded article, make an

Status: This is the original version (as it was originally enacted).

order releasing an article from the pouncing if it appears to the sheriff that its continued inclusion in the pouncing or its sale under warrant of sale would be unduly harsh in the circumstances.

- (2) Where the sheriff has made an order under subsection (1) above he may, notwithstanding section 25 of this Act, on an application by the creditor or by an officer of court on his behalf, authorise the pouncing of other articles belonging to the debtor on the same premises.

24 Invalidity, cessation and recall of pouncing

- (1) If, at any time before the sale of the pounced articles, the sheriff is satisfied that the pouncing is invalid or has ceased to have effect he shall, on his own initiative or on an application by the debtor, make an order declaring that to be the case, and may make such consequential order as appears to him to be necessary in the circumstances.
- (2) Without prejudice to section 16(4) of this Act, it shall not be competent for the sheriff to make an order under subsection (1) above on the ground that any pounced article is exempt from pouncing under that section.
- (3) At any time before an application is made under section 30 of this Act for a warrant of sale, the sheriff may, on an application by the debtor, recall a pouncing on any of the following grounds—
- (a) that it would be unduly harsh in the circumstances for a warrant of sale of the pounced articles to be granted;
 - (b) that the aggregate of the values of the pounced articles fixed under section 20(4) of this Act was substantially below the aggregate of the prices which they would have been likely to fetch if sold on the open market; or
 - (c) that the likely aggregate proceeds of sale of the pounced articles would not exceed the expenses likely to be incurred in the application for warrant of sale and in any steps required to be taken under this Part of this Act in execution of such a warrant, on the assumption that that application and such steps are unopposed.
- (4) The sheriff shall not grant an application on the ground mentioned in subsection (3) (c) above if an order for further pouncing of articles belonging to the debtor has been authorised under section 23(2), 28(6) or 29(2), or has become competent by reason of section 9(12), 28(2), 40(5) or 41(6), of this Act.
- (5) The sheriff shall not make an order under subsection (1) above, recall a pouncing or refuse an application under this section without first giving the debtor and the creditor—
- (a) an opportunity to make representations; and
 - (b) if either party wishes to be heard, an opportunity to be heard.
- (6) The sheriff clerk shall intimate to the debtor any order made under subsection (1) above by the sheriff on his own initiative.

25 Second pouncing in same premises

Subject to sections 9(12), 23(2), 28(2) and (6), 29(2), 40(5) and 41(6) of this Act, where articles are pounced in any premises (whether or not the pouncing is valid), another pouncing in those premises to enforce the same debt shall not be competent

except in relation to articles which have been brought on to the premises since the execution of the first poinding.

26 Sist of proceedings in poinding of mobile homes

- (1) Where a caravan, houseboat or other moveable structure which is the only or principal residence of the debtor or another person has been poinded the sheriff, on an application by the debtor or that other person made at any time after the execution of the poinding and before the granting of a warrant of sale, may order that for such period as he shall specify no further steps shall be taken in the poinding.
- (2) In calculating under section 27(1) or (2) of this Act the period during which a poinding in respect of which an order has been made under subsection (1) above shall remain effective, there shall be disregarded the period specified in the order.

27 Duration of poinding

- (1) Subject to subsections (2), (3) and (5)(a) below, a poinding shall cease to have effect on the expiry of a period of one year after the date of execution of the poinding, unless before such expiry an application has been made under section 30(1) of this Act for a warrant of sale in relation to the poinded articles.
- (2) The sheriff, on an application by the creditor or by an officer of court on his behalf made before the expiry of the period mentioned in subsection (1) above and before an application has been made under section 30(1) of this Act, may extend that period—
 - (a) where he considers that, if the said period is extended, the debtor is likely to comply with an agreement between the creditor and the debtor for the payment of the sum recoverable by instalments or otherwise; or
 - (b) to enable further proceedings to be taken in the diligence where the termination of the poinding would prejudice the creditor and the creditor cannot be held responsible for the circumstances giving rise to the need for the extension,for such further period as he considers reasonable in the circumstances.
- (3) The sheriff may grant further extensions under subsection (2) above, on application being made to him before the expiry of the previously extended period.
- (4) The decision of the sheriff under subsection (2) above shall not be subject to appeal, and shall be intimated to the debtor by the sheriff clerk.
- (5) Where, within the period mentioned in subsection (1) above or within that period as extended under subsection (2) above, an application is made—
 - (a) under subsection (2) above—
 - (i) if the application is made on the ground referred to in paragraph (a) of that subsection, the poinding shall, if the date of disposal of the application is later than 14 days before the poinding is due to expire, continue to have effect until 14 days after that disposal;
 - (ii) in any other case, the poinding shall continue to have effect until the disposal of the application;
 - (b) under section 30 of this Act for a warrant of sale, the poinding shall, if the sheriff refuses to grant a warrant of sale, continue to have effect—
 - (i) until the period for leave to appeal has expired without an application for leave having been made;

Status: This is the original version (as it was originally enacted).

- (ii) where an application for leave to appeal is made, until leave has been refused or the application has been abandoned;
 - (iii) where leave to appeal has been granted, until the period for an appeal has expired without an appeal being made; or
 - (iv) where an appeal against the decision is made, until the matter has been finally determined or the appeal has been abandoned; or
 - (c) under section 30 of this Act for a warrant of sale, the poinding shall, if the sheriff grants a warrant of sale, continue to have effect—
 - (i) if the articles are sold, or ownership passes to the creditor under section 37(6) of this Act, until the date of such sale or such ownership passing; or
 - (ii) if the articles are not sold, or ownership does not pass to the creditor, until the expiry of the period specified for the warrant sale in the warrant of sale.
- (6) Without prejudice to subsection (7) below, if a report has been made to the sheriff under section 36(2) of this Act, the poinding shall continue to have effect for a period of 6 months after the date when the latest such report was made.
- (7) Where, within the period specified for the warrant sale in the warrant of sale, or within the period mentioned in subsection (6) above, an application is made under section 35 of this Act for a variation of the warrant of sale, the poinding shall cease to have effect—
 - (a) if the sheriff refuses to grant a variation—
 - (i) when the period for leave to appeal has expired without an application for leave having been made;
 - (ii) where an application for leave to appeal is made, when leave has been refused or the application has been abandoned;
 - (iii) where leave to appeal has been granted, when the period for an appeal has expired without an appeal being made; or
 - (iv) where an appeal against the decision is made, when the matter has been finally determined in favour of the sheriff's decision or the appeal has been abandoned,or on such later date as the sheriff may direct;
 - (b) if the sheriff grants a variation—
 - (i) where the articles are sold, or ownership passes to the creditor under section 37(6) of this Act in the period specified for the warrant sale in the warrant of sale as so varied, on the date of the warrant sale or of ownership so passing;
 - (ii) where the articles are not sold and ownership does not pass to the creditor within that period, on the expiry of that period.