



# Debtors (Scotland) Act 1987

## 1987 CHAPTER 18

### PART II

#### POINDINGS AND WARRANT SALES

##### *Supplementary*

#### **42 Certain proceedings under Part II to postpone further steps in the diligence**

- (1) Where an application under any of the provisions of this Act listed in subsection (3) below has been made, it shall be not be competent during a relevant period to grant a warrant of sale in respect of the poinded articles, to remove them for sale or to hold a warrant sale.
- (2) Where subsection (1) above applies, a relevant period shall be disregarded in calculating—
  - (a) the period within which a warrant sale is required to be held under section 31(2)(b) of this Act; or
  - (b) the period on the expiry of which the poinding ceases to have effect under section 27 of this Act.
- (3) The provisions referred to in subsection (1) above are—
  - (a) section 16(4), 23(1), 40(2) or 41(3) (release of poinded articles);
  - (b) section 24(1) or (3) (invalidity, cessation or recall of poinding);
  - (c) section 26(1) (sist of proceedings in poinding of mobile homes);
  - (d) section 28(4) (restoration of articles removed without consent or authority);
  - (e) section 28(5) (recall of order under section 28(4)).
- (4) In subsections (1) and (2) above "a relevant period" means—
  - (a) the period while the application is pending;
  - (b) where the application has been disposed of by the sheriff—
    - (i) the" period during which an application for leave to appeal may be made;

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*Status: This is the original version (as it was originally enacted).*

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- (ii) where an application for leave to appeal is made, the period until leave has been refused or the application has been abandoned;
- (iii) where leave to appeal has been granted, the period during which an appeal may be made; or
- (iv) where an appeal against the decision is made, the period until the matter has been finally determined or the appeal has been abandoned.

#### **43 Conjoining of further poinding with original poinding**

- (1) Subject to subsection (2) below, where a report of a further poinding by the same creditor to enforce the same debt executed in pursuance of section 9(12), 23(2), 28(2) or (6), 29(2), 40(5) or 41(6) of this Act has been received under section 22 of this Act, the sheriff shall, on an application made to him by the creditor or by an officer of court on his behalf, make an order conjoining the further poinding with the original poinding.
- (2) It shall not be competent for the sheriff to make an order under subsection (1) above—
  - (a) where a warrant of sale has been granted in respect of the original poinding or the further poinding;
  - (b) until 14 days after the date of execution of the further poinding; or
  - (c) while an application under this Part of this Act in relation to the further poinding is pending or, where such an application has been disposed of by the sheriff—
    - (i) until 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, 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..
- (3) Where the sheriff makes an order under subsection (1) above, it shall not thereafter be competent for him to grant any application for warrant of sale relating to the original poinding which is pending when the order is made.
- (4) The effect of an order under subsection (1) above shall be that thereafter the further poinding shall be treated for all purposes as if it were part of the original poinding, except that the references to a poinding being invalid or having ceased to have effect in sections 24(1), 30(2)(a)(i) and 35(2)(a) of this Act shall be construed as references to either poinding being invalid or having ceased to have effect.
- (5) The decision of the sheriff under subsection (1) above shall not be subject to appeal.

#### **44 Expenses of poinding and sale**

Schedule 1 to this Act shall have effect for the purposes of determining the liability, as between the creditor and the debtor, for expenses incurred in serving a charge and in the process of poinding and warrant sale.

## **45 Interpretation of Part II**

In this Part of this Act—

"dwellinghouse" includes a caravan, a houseboat and any structure adapted for use as a residence;

"the poinding schedule" means the schedule provided for in section 20(5) of this Act;

"the report of sale" means the report provided for in section 39(1) of this Act;

"the sum recoverable" means the total of—

- (a) the amount outstanding of the sum due by the debtor under the decree or other document on which the diligence proceeds (including any interest thereon and any expenses decerned for);
- (b) any sum due under section 93(5) of this Act; and
- (c) any expenses which have been incurred in serving a charge and in the process of poinding and sale which are chargeable against the debtor under Schedule 1 to this Act.