

SCHEDULES

SCHEDULE 1

Section 44.

EXPENSES OF POINDING AND SALE

Expenses chargeable against the debtor

- 1 (1) Subject to paragraphs 2, 3 and 5 to 7 below, there shall be chargeable against the debtor any expenses incurred—
- (a) subject to section 90(7) of this Act, in serving a charge;
 - (b) in serving a notice under section 18 of this Act before entering a dwellinghouse for the purpose of executing a poinding;
 - (c) in executing a poinding under section 20 of this Act;
 - (d) in making a report under section 21(4) of this Act of the redemption by the debtor of any poinded article;
 - (e) in granting a receipt under section 21(5) of this Act for payment for redemption under subsection (4) of that section;
 - (f) in making a report under section 22 of this Act of the execution of a poinding, but not in applying for an extension of time for the making of such a report;
 - (g) in applying for a warrant of sale under section 30(1) of this Act;
 - (h) in granting a receipt under section 33(3) of this Act for payment for the redemption of any poinded article;
 - (j) in making a report under section 33(5)(b) of this Act of the release or redemption of poinded articles;
 - (k) in making intimation, serving a copy of the warrant of sale and giving public notice under section 34 of this Act;
 - (l) in removing any articles for sale in pursuance of a warrant of sale;
 - (m) in making arrangements for, conducting and supervising a warrant sale;
 - (n) where the arrangements for a sale have been cancelled under section 36(1) of this Act, in returning poinded articles to any premises from which they have been removed for sale;
 - (o) in making a report of an agreement under section 36(2) of this Act;
 - (p) subject to section 39(3) of this Act, in making a report of sale under that section;
 - (q) in granting a receipt under section 41(4) of this Act for payment for the release from a poinding of any article which is owned in common;
 - (r) in making a report under section 41(5)(b) of this Act of the release of any such article;
 - (s) in opening shut and lockfast places in the execution of the diligence;
 - (t) by a solicitor in instructing an officer of court to take any of the steps specified in this sub-paragraph.
- (2) The Lord Advocate may by regulations add to, delete or vary any of the steps specified in sub-paragraph (1) above.

Status: This is the original version (as it was originally enacted).

- 2 Where a warrant of sale is varied under section 35 of this Act, there shall be chargeable against the debtor the expenses incurred in the application for the variation and the execution of the warrant of sale as varied but, subject to paragraph 4 below, not in the application for, and the execution of, the original warrant of sale.
- 3 Where arrangements for a sale are cancelled under subsection (1) of section 36 of this Act, if new arrangements are made for the sale in the circumstances mentioned in subsection (3)(a) of that section, there shall be chargeable against the debtor the expenses incurred in the making of the new arrangements but not in the making of the arrangements which have been cancelled.
- 4 Where a warrant of sale is varied under section 35 of this Act and the sheriff has awarded an additional sum of expenses under paragraph 9 below in the application for the original warrant of sale, that sum shall be chargeable against the debtor.
- 5 Subject to paragraph 6 below, where any such further poinding as is mentioned in section 28(2) of this Act has been executed, there shall be chargeable against the debtor the expenses incurred in that poinding but not the expenses incurred in the original poinding.
- 6 Where any such further poinding as is mentioned in subsection (2) of section 28 of this Act has been executed and—
- (a) the creditor has, as a condition of his consenting to the removal of the poinded articles under subsection (1)(a) of that section, required the debtor to undertake liability for the expenses incurred in the original poinding; or
 - (b) the sheriff has, when authorising the removal of the poinded articles under subsection (1)(b) of that section, directed that the debtor shall be liable for those expenses,
- there shall be chargeable against the debtor the expenses incurred in both poindings.
- 7 Where a new date is arranged under section 35(10) of this Act for the holding of a warrant sale or for the removal of poinded articles for sale, there shall be chargeable against the debtor the expenses incurred in connection with arranging the new date but not those incurred in connection with arranging the original date.

Circumstances where liability for expenses is at the discretion of the sheriff

- 8 The liability for any expenses incurred by the creditor or the debtor—
- (a) in an application by the creditor or an officer of court to the sheriff under any provision of Part II of this Act, other than an application for a warrant of sale under section 30(1) of this Act or an application for variation of a warrant of sale under section 35(1) of this Act; or
 - (b) in implementing an order under—
 - (i) section 21(1) of this Act (order for security or immediate disposal of poinded articles); or
 - (ii) section 28(4) to (6) or 29 of this Act (orders dealing with unauthorised removal, damage or destruction of poinded articles),
- shall be as determined by the sheriff.

Calculation of amount chargeable against debtor under the foregoing provisions

- 9 Expenses—
- (a) chargeable against the debtor by virtue of any of paragraphs 1 to 6 above in respect of an application under Part II of this Act; or

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

- (b) awarded by the sheriff against the debtor in favour of the creditor in a determination under paragraph 8 above in respect of an application other than an application under section 28(4) to (6) or 29 of this Act,

shall be calculated, whether or not the application is opposed by the debtor, as if it were unopposed, except that, if the debtor opposes the application on grounds which appear to the sheriff to be frivolous, the sheriff may award an additional sum of expenses, not exceeding £25 or such amount as may be prescribed in regulations made by the Lord Advocate, against the debtor.

Circumstances where no expenses are due to or by either party

- 10 Subject to paragraph 11 below, the debtor shall not be liable to the creditor nor the creditor to the debtor for any expenses incurred by the other party in connection with—

- (a) an application by the debtor to the sheriff under any provision of Part II of this Act;
(b) any objections to such an application;
(c) a hearing held by virtue of section 24(5), 30(4), 35(6) or 39(6) of this Act.

- 11 If—

- (a) an application mentioned in paragraph 10(a) above is frivolous;
(b) such an application is opposed on frivolous grounds; or
(c) a party requires a hearing held by virtue of any of the provisions mentioned in paragraph 10(c) above to be held on frivolous grounds,

the sheriff may award a sum of expenses, not exceeding £25 or such amount as may be prescribed in regulations made by the Lord Advocate, against the party acting frivolously in favour of the other party.

Supplementary

- 12 Any expenses chargeable against the debtor by virtue of any provision of this Schedule shall be recoverable out of the proceeds of sale.