

## PART 84 - ENFORCEMENT BY TAKING CONTROL OF GOODS

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## SECTION I SCOPE AND INTERPRETATION

### Scope

**84.1** This Part contains rules in relation to enforcement by taking control of goods using the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007.

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### Interpretation

**84.2** In this Part—

- (a) 'the Act' means the Tribunals Courts and Enforcement Act 2007<sup>1</sup>;
- (b) 'Schedule 12' means Schedule 12 to the Act<sup>2</sup>;
- (c) 'creditor' has the meaning given in paragraph 1(6) of Schedule 12;
- (d) 'co-owner' has the meaning given in paragraph 3(1) of Schedule 12;
- (e) 'debtor' has the meaning given in paragraph 1(5) of Schedule 12;
- (f) 'enforcement agent' has the meaning given in paragraph 2(1) of Schedule 12;
- (g) 'Fees Regulations' means the Taking Control of Goods (Fees) Regulations 2014<sup>3</sup>;
- (h) 'TCG Regulations' means the Taking Control of Goods Regulations 2013<sup>4</sup>;
- (i) 'writ of control' and 'warrant of control' are to be construed in accordance with section 62(4) of the Act.

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## SECTION II WHERE AND HOW TO MAKE APPLICATIONS

### Where and how to make applications

#### 84.3

- (1) This rule sets out where and how applications referred to in this Part must be made.
- (2) Applications referred to in this Part must be made in accordance with the procedure in Part 23 as modified by this Part.
- (3) Where there are no pre-existing proceedings, an application referred to in this Part must be made to the County Court.
- (4) Where there are pre-existing proceedings, the application must be made to the High Court or the County Court in accordance with rule 23.2.

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## SECTION III TAKING CONTROL OF GOODS

### Notice of enforcement prior to taking control of goods – application for notice period of less than the minimum period

#### 84.4

- (1) This rule applies where a person seeks an order under regulation 6(3) of the TCG Regulations that a shorter notice period than the minimum period for taking control of goods set out in regulation 6(1) of those Regulations be given to the debtor.
- (2) The person may make an application for the order.
- (3) The application—
  - (a) may be made without notice; and
  - (b) must be accompanied by evidence demonstrating that if the order is not made, it is likely that goods of the debtor will be moved or otherwise disposed of, in order to avoid the enforcement agent taking control of the goods.

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### Application to extend the period in which to take control of goods

#### 84.5

- (1) An application under regulation 9(4) of the TCG Regulations (application to extend the period in which to take control of goods) must be accompanied by—
  - (a) a witness statement made by the person making the application that no previous application under regulation 9(4) has been made to extend that period; and
  - (b) the applicant's grounds for not taking control of goods of the debtor during the period specified in regulation 9(1).
- (2) If—

(a) the application is made before the expiry of the period specified in regulation 9(1); and

(b) the court orders the period of extension,

the period of extension will start on the day after the expiry of the period specified in regulation 9(1), or on such later day as the court may order.

(3) If the court orders the period of extension—

(a) the applicant must serve a copy of the extension order on the debtor, and on the creditor, enforcement agent or enforcement officer as appropriate; and

(b) if the goods are to be taken into control by virtue of a warrant or writ of control, or of any other writ or warrant conferring the power to use the procedure in Schedule 12, the court will endorse on the warrant or writ a note of the extension.

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## Application to take control of goods during prohibited hours

**84.6** An application by the enforcement agent under regulation 13(2)(a) of the TCG Regulations for an order allowing goods to be taken into control during hours prohibited by regulation 13(1) of those Regulations—

(a) may be made without notice; and

(b) must be accompanied by evidence demonstrating that if the order is not made, it is likely that goods of the debtor will be moved or otherwise disposed of, in order to avoid the enforcement agent taking control of the goods.

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## Application to enter, re-enter or remain on premises otherwise than during permitted hours

**84.7** An application by the enforcement agent under regulation 22(5) of the TCG Regulations for an order allowing the enforcement agent to enter, re-enter or remain on premises at times other than those permitted by regulation 22(2), (3) or (4) of those Regulations—

(a) may be made without notice; and

(b) must be accompanied by evidence demonstrating that if the order is not made, it is likely that goods of the debtor will be moved or otherwise disposed of, in order to avoid the enforcement agent taking control of the goods.

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## Notice of intention to re-enter premises – application for notice period of less than the minimum period

**84.8**

(1) This rule applies where a person seeks an order under regulation 25(3) of the TCG Regulations that a shorter notice period than the minimum period for re-entering premises set out in regulation 25(1) of those Regulations be given to the debtor.

(2) The person may make an application for the order.

(3) The application—

(a) may be made without notice; and

(b) must be accompanied by evidence demonstrating that if the order is not made, it is likely that goods of the debtor will be moved to be disposed of, in order to avoid the enforcement agent inspecting or removing the goods.

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## Application for a warrant to enter premises – conditions to be satisfied before a warrant may be issued

### 84.9

(1) This rule applies to an application by an enforcement agent for—

(a) the issue of a warrant under paragraph 15(1) of Schedule 12;

(b) the issue of a warrant under paragraph 20(2) of Schedule 12 allowing the use of reasonable force to enter premises; or

(c) the inclusion in a warrant power under paragraph 21(2) of Schedule 12 to use reasonable force to enter premises.

(2) Where the application is for the issue of a warrant under paragraph 15(1) of Schedule 12, the enforcement agent must provide the court with sufficient evidence and information to satisfy the court that the conditions in paragraph 15(2) of Schedule 12 are met.

(3) Where the application is for the issue of a warrant under paragraph 20(2) or 21(2) of Schedule 12, the enforcement agent must provide the court with sufficient evidence and information to satisfy the court that the conditions set out in regulation 28(2) of the TCG Regulations have been met.

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## Application for a warrant allowing reasonable force in relation to goods on the highway – conditions to be satisfied before a warrant may be issued

### 84.10

(1) This rule applies to an application by an enforcement agent for the issue of a warrant under paragraph 31(1) of Schedule 12 allowing the use of reasonable force in relation to goods on the highway.

(2) The enforcement agent must provide the court with sufficient evidence and information to satisfy the court that the conditions set out in regulation 29(2) of the TCG Regulations have been met.

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## Application for sale otherwise than by public auction

**84.11** (1) This rule applies to an application by an enforcement agent for an order for sale otherwise than by public auction under paragraph 41(2) of Schedule 12 ('alternative sale application').

(2) Where the enforcement agent has made a statement to the court under paragraph 41(4) of Schedule 12 (reason to believe that an enforcement power has become exercisable by another creditor against the debtor or co-owner), the alternative sale application must be accompanied by—

(a) a list of the name and address of every other creditor that the enforcement agent has reason to believe has an exercisable enforcement power against the debtor or co-owner and a explanation of why the enforcement agent has such a belief; and

(b) a copy of the notice of application required by paragraph 41(5) of Schedule 12 and proof that the notice has been served on such other creditors not less than 4 days before the day fixed for the hearing of the application.

(3) Every person to whom notice of the application was given may attend and be heard on the hearing of the application.

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## Application in relation to disposal of abandoned goods

### **84.12**

(1) This rule applies to an application by the enforcement agent under regulation 47(5) of the TCG Regulations for an order for the disposal of goods abandoned by the debtor.

(2) If the enforcement agent applies for an order for disposal by way of donation to a charitable organisation or destruction of goods, the enforcement agent must explain in the application why the enforcement agent does not wish the goods to be made available for a further period of collection.

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## Application by the debtor for a remedy in relation to goods taken into control

### **84.13**

(1) This rule applies where the debtor wishes to bring proceedings under paragraph 66 of Schedule 12<sup>5</sup> for—

(a) breach of a provision of Schedule 12; or

(b) enforcement action taken under a defective instrument.

(2) The debtor may bring proceedings by way of an application.

(3) The application must be accompanied by evidence of how—

(a) the provisions of Schedule 12 are alleged to have been breached; or

(b) the instrument is alleged to be defective.

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## Application by the enforcement agent for exceptional disbursements

### **84.14**

(1) This rule applies to an application by an enforcement agent for exceptional disbursements under regulation 10 of the Fees Regulations.

(2) The application must be accompanied by—

(a) evidence of the creditor's consent to the application; and

(b) evidence that the disbursements to which the application relate are necessary for effective enforcement of the sum to be recovered, having regard to all the circumstances including—

(i) the amount of the sum to be recovered; and

(ii) the nature and value of the goods which have been taken into control, or which it is sought to take into control.

(3) Where the application is made before the goods are taken into control, it may be made without notice.

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## Application where there is a dispute regarding a co-owner's share of proceeds

### 84.15

(1) This rule applies to an application under regulation 15 of the Fees Regulations to determine the amount of the proceeds payable to a co-owner.

(2) The applicant must file with the application—

(a) evidence of the enforcement power;

(b) a copy of the itemised list of goods sold or otherwise disposed of required by regulation 14(1)(a) of the Fees Regulations;

(c) a copy of the statement of the sum received in relation to each item required by regulation 14(1)(b)(i) of the Fees Regulations;

(d) a copy of the statement of the proceeds required by regulation 14(1)(b)(ii) of the Fees Regulations;

(e) a copy of the statement of the application of the proceeds required by regulation 14(1)(b)(iii) of the Fees Regulations;

(f) evidence that the share of proceeds paid to the co-owner was not proportionate to the co-owner's interest in the goods sold.

(3) The applicant must serve a copy of the application notice in accordance with table 1.

**Table 1**

Applicant	Those to be served with a copy of the application notice
Co-owner	Any other co-owners; creditor; debtor; enforcement agent
Creditor	Co-owners; debtor; enforcement agent
Debtor	Co-owners; creditor; enforcement agent
Enforcement agent	Co-owners; creditor; debtor

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## Disputes about the amount of fees or disbursements recoverable under the Fees Regulations

## **84.16**

(1) This rule applies where—

(a) there is a dispute about the amount of fees or disbursements, other than exceptional disbursements, recoverable under the Fees Regulations; and

(b) a party wishes the court to assess the amounts recoverable under regulation 16 of the Fees Regulations.

(2) A party may make an application to the court to assess the amounts.

(3) The application must be accompanied by—

(a) evidence of the amount of fees or disbursements in dispute;

(b) evidence that the fees or disbursements in dispute were not applicable, as the debt had been settled before the stage where it would have been necessary to incur those fees or expenses;

(c) evidence that, because the enforcement agent was instructed to use the TCG procedure in relation to the same debtor but in respect of more than one enforcement power where the enforcement powers could reasonably be exercised at the same time, regulation 11 of the Fees Regulations should have been applied;

(d) evidence that the fee due and any disbursements for the enforcement stage, first enforcement stage, or first and second enforcement stage, as appropriate, are not recoverable under regulation 12 of the Fees Regulations; or

(e) where the dispute concerns the amount of the percentage fee, calculated in accordance with regulation 7 of the Fees Regulations, evidence of the amount of the sum to be recovered.

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## **SECTION IV PROCEEDINGS IN RELATION TO CERTIFICATES UNDER SECTION 64 OF THE 2007 ACT**

### **Interpretation**

**84.17** In this Section—

(a) 'Certification Regulations' means the Certification of Enforcement Agents Regulations 2014<sup>6</sup>;

(b) 'applicant', 'certificate', 'certificated person' and 'complainant' have the meanings given in regulation 2 of the Certification Regulations.

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### **Application for issue of a certificate under section 64 of the 2007 Act**

#### **84.18**

(1) This rule applies to an application for the issue of a certificate under section 64 of the 2007 Act.

(2) The application must be made to the County Court Business Centre, using the relevant form prescribed in Practice Direction 4.



(3) The application must specify one of the County Court hearing centres listed in Practice Direction 84 as the centre at which the application is to be heard.

(4) The application must, in addition to the matters specified in rule 23.6, provide evidence that the applicant fulfils the requirements of regulation 3(b) of the Certification Regulations, and in particular—

(a) the application must be accompanied by the documents specified in Practice Direction 84; and

(b) the additional documents specified in Practice Direction 84 must be produced to the court on the day of the hearing.

(5) If any reasons have been submitted to the court in response to the notice of the application required by regulation 4(5) of the Certification Regulations, a copy of those reasons must be sent to the applicant at least 7 days before the hearing, and the applicant may respond both in writing and at the hearing.

(6) The applicant must also file such further evidence as the court may direct.

(7) The applicant must attend for examination on the day of the hearing.

(8) Rules 23.2, 23.4, 23.7, 23.8, 23.9 and 23.10 do not apply to an application to which this rule applies.

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## Issue of replacement certificates and surrender of certificates

### **84.19**

(1) Where changes are required to be notified and the certificate produced under regulation 8 of the Certification Regulations, the changes must be notified to, and the certificate produced at, the County Court hearing centre at which the certificate was issued.

(2) Where a certificate is required to be surrendered under regulation 12 of the Certification Regulations, the certificate must be surrendered to the County Court hearing centre at which the certificate was issued.

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## Complaints as to fitness to hold a certificate

### **84.20**

(1) This rule applies to a complaint under regulation 9(1) of the Certification Regulations.

(2) The complaint must be submitted to the County Court hearing centre at which the certificate was issued, using the relevant form prescribed in Practice Direction 4.

(3) A copy of the complaint must be sent to the applicant at least 14 days before the hearing, and the applicant may respond both in writing and at the hearing.

(4) The complainant is not liable for any costs incurred by the certificated person in responding to the complaint, unless paragraph (5) applies.

(5) The court may order the complainant to pay such costs as it considers reasonable if it is satisfied that the complainant—

(a) discloses no reasonable grounds for considering that the certificated person is not a fit person to hold a certificate; and

(b) amounts to an abuse of the court's process.

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## Footnotes

1. 2007 c.15. [Back to text](#)
2. Schedule 12 is amended by the Crime and Courts Act 2013 (c.22), section 17(5) and Schedule 9, Part 3, paragraph 52(1)(b) and (2). [Back to text](#)
3. S.I. 2014/1. [Back to text](#)
4. S.I. 2013/1894. [Back to text](#)
5. Paragraph 66 of Schedule 12 is amended by the Crime and Courts Act 2013 (c.22), section 17(5) and Schedule 19, paragraph 52(1)(b) and (2). [Back to text](#)
6. S.I. 2014/421. [Back to text](#)

## PART 85 - CLAIMS ON CONTROLLED GOODS AND EXECUTED GOODS

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### SECTION I SCOPE AND INTERPRETATION

## Scope

**85.1** (1) This Part contains rules about claims on controlled goods and executed goods as follows—

- (a) Section II sets out the mode of application for claims under this Part;
- (b) Section III relates to the procedure for making claims to controlled goods;
- (c) Section IV relates to the procedure for making claims against executed goods;
- (d) Section V relates to the procedure for a debtor making a claim to exempt goods;
- (e) Section VI relates to the powers of the court hearing any application under this Part.

(2) The rules in this Part apply where—

- (a) a person makes an application to the court claiming that goods of which control has been taken belong to that person and not to the debtor;
- (b) a person makes an application to the court claiming that goods, money or chattels taken or intended to be taken under a writ of execution or the proceeds or value of such goods or chattels belong to that person and not to the debtor; and
- (c) a debtor, whose goods have been made subject to an enforcement power under an enactment, writ or warrant of control or have been taken or are intended to be taken under a writ of execution, claims that such goods or any of them are exempt goods.

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## Interpretation

### **85.2**

(1) In this Part—

- (a) 'the Act' means the Tribunals, Courts and Enforcement Act 2007<sup>1</sup>;
- (b) 'claim to controlled goods' is a claim made under paragraph 60(1) of Schedule 12;
- (c) 'a claim to exempt goods' means a claim by a debtor whose goods have been subject to an enforcement power under an enactment, writ or warrant of control or the right to execute conferred by a writ of execution, that such goods are exempt goods;
- (d) 'claimant to controlled goods' means any person making a claim to controlled goods;
- (e) 'claimant to executed goods' means any person making a claim to executed goods;
- (f) 'the court' has the meaning given in paragraph 60(8) of Schedule 12<sup>2</sup>, in respect of a claim to controlled goods;
- (g) 'debtor's home court' means the Central Office or District Registry of the High Court or the County Court hearing centre serving the address where the debtor resides or carries on business;
- (h) 'enforcement agent' has the meaning given in paragraph 2(1) of Schedule 12;

(i) 'enforcement officer' means an individual who is authorised to act as an enforcement officer under the Courts Act 2003<sup>3</sup>;

(j) 'executed goods' means goods subject to a writ of execution;

(k) 'exempt goods' —

(i) in respect of controlled goods has the meaning given in paragraph 3(1) of Schedule 12 and defined in regulations 4 and 5 of the TCG Regulations<sup>4</sup>; and

(ii) in respect of executed goods has the meaning given in paragraph 9(3) of Schedule 7 to the Courts Act 2003;

(l) 'goods subject to enforcement' refers to either controlled goods or executed goods;

(m) 'relevant enforcement officer' means—

(i) in relation to a writ of execution which is directed to a single enforcement officer, that officer; and

(ii) in relation to a writ of execution which is directed to two or more enforcement officers, the officer to whom the writ is allocated;

(n) 'required payments' has the meaning given in paragraph 60(4) of Schedule 12<sup>5</sup>;

(o) 'Schedule 12' means Schedule 12 to the Act<sup>6</sup>;

(p) 'TCG Regulations' means the Taking Control of Goods Regulations 2013;

(q) 'warrant of control' is to be construed in accordance with section 62(4) of the Act;

(r) 'writ of control' is to be construed in accordance with section 62(4) of the Act;

(s) 'writ of execution' includes—

(i) a writ of possession;

(ii) a writ of delivery;

(iii) a writ of sequestration;

(iv) writs relating to ecclesiastical property, namely—

(aa) a writ of fieri facias de bonis ecclesiasticis;

(bb) a writ of sequestrari de bonis ecclesiasticis,

and any further writ in aid of any such writs, but does not include a writ of control;

(t) the following words or phrases have the meaning given in paragraph 1 of Schedule 12, in respect of a claim to controlled goods—

(i) 'creditor';

(ii) 'debt';

(iii) 'debtor';

(iv) 'enforcement power';

(u) the following words or phrases have the meaning given in paragraph 3(1) of Schedule 12<sup>7</sup>—

(i) 'control';

(ii) 'controlled goods';

(iii) 'co-owner';

(iv) 'disposal';

(v) 'interest';

(vi) 'money';

(vi) 'premises';

(vii) 'securities'.

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## SECTION II MODE OF APPLICATION FOR CLAIMS UNDER THIS PART

### Mode of application for claims under this Part

**85.3** Any claim under this Part must be made by an application in accordance with Part 23.

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## SECTION III PROCEDURE FOR MAKING A CLAIM TO CONTROLLED GOODS

### Procedure for making a claim to controlled goods

#### **85.4**

(1) Any person making a claim under paragraph 60(1) of Schedule 12 must, as soon as practicable but in any event within 7 days of the goods being removed under the exercise of an enforcement power, give notice in writing of their claim to the enforcement agent who has taken control of the goods ('the notice of claim to controlled goods') and must include in such notice—

(a) their full name and address, and confirmation that such address is their address for service;

(b) a list of all those goods in respect of which they make such a claim; and

(c) the grounds of their claim in respect of each item.

(2) On receipt of a notice of claim to controlled goods which complies with paragraph (1) the enforcement agent must within 3 days give notice of such claim to—

(a) the creditor; and

(b) any other person making a claim to the controlled goods under paragraph (1) ('any other claimant to the controlled goods');

(3) The creditor, and any other claimant to the controlled goods, must, within 7 days after receiving the notice of claim to controlled goods, give notice in writing to the enforcement agent informing them whether the claim to controlled goods is admitted or disputed in whole or in part.

(4) The enforcement agent must notify the claimant to the controlled goods in writing within 3 days of receiving the notice in paragraph (3) whether the claim to controlled goods is admitted or disputed in whole or in part.

(5) A creditor who gives notice in accordance with paragraph (3) admitting a claim to controlled goods is not liable to the enforcement agent for any fees and expenses incurred by the enforcement agent after receipt of that notice by the enforcement agent.

(6) If an enforcement agent receives a notice from a creditor under paragraph (3) admitting a claim to controlled goods the following applies—

(a) the enforcement power ceases to be exercisable in respect of such controlled goods; and

(b) as soon as reasonably practicable the enforcement agent must make the goods available for collection by the claimant to controlled goods if they have been removed from where they were found.

(7) Where the creditor, or any other claimant to controlled goods to whom a notice of claim to controlled goods was given, fails, within the period mentioned in paragraph (3), to give the required notice, the enforcement agent may seek—

(a) the directions of the court by way of an application; and

(b) an order preventing the bringing of any claim against them for, or in respect of, their having taken control of any of the goods or having failed so to do.

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## Procedure for making a claim to controlled goods where the claim is disputed

### 85.5

(1) Where a creditor, or any other claimant to controlled goods to whom a notice of claim to controlled goods was given, gives notice under rule 85.4(3) that the claim to controlled goods, or any part of it, is disputed, and wishes to maintain their claim to the controlled goods, the following procedure will apply.

(2) The claimant to controlled goods must make an application which must be supported by—

(a) a witness statement—

(i) specifying any money;

(ii) describing any goods claimed; and

(iii) setting out the grounds upon which their claim to the controlled goods is based; and

(b) copies of any supporting documents that will assist the court to determine the claim.

(3) In the High Court the claimant to controlled goods must serve the application notice and supporting witness statements and exhibits on—

(a) the creditor;

(b) any other claimant to controlled goods of whom the claimant to controlled goods is aware; and

(c) the enforcement agent.

(4) In the County Court when the application is made the claimant to controlled goods must provide to the court the addresses for service of—

(a) the creditor;

(b) any other claimant to controlled goods of whom the claimant to controlled goods is aware; and

(c) the enforcement agent,

(‘the respondents’), and the court will serve the application notice and any supporting witness statement and exhibits on the respondents.

(5) An application under paragraph (2) must be made to the court which issued the writ or warrant conferring power to take control of the controlled goods, or, if the power was conferred under an enactment, to the debtor’s home court.

(6) The claimant to controlled goods must make the required payments on issue of the application in accordance with paragraph 60(4)(a) of Schedule 12<sup>8</sup>, unless such claimant seeks a direction from the court that the required payment be a proportion of the value of the goods, in which case they must seek such a direction immediately after issue of the application, on notice to the creditor and to the enforcement agent.

(7) The application notice will be referred to a Master or District Judge.

(8) On receipt of an application for a claim to controlled goods, the Master or District Judge may—

(a) give directions for further evidence from any party;

(b) list a hearing to give directions;

(c) list a hearing of the application;

(d) determine the amount of the required payments, make directions or list a hearing to determine any issue relating to the amount of the required payments or the value of the controlled goods;

(e) stay, or dismiss, the application if the required payments have not been made;

(f) make directions for the retention, sale or disposal of the controlled goods;

(g) give directions for determination of any issue raised by a claim to controlled goods.

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## SECTION IV PROCEDURE FOR MAKING A CLAIM AGAINST EXECUTED GOODS



# Procedure for making a claim against executed goods

## 85.6

(1) A claimant to executed goods must, as soon as practicable but in any event within 7 days of the goods being removed by the enforcement officer, give notice in writing of their claim to the relevant enforcement officer (“the notice of claim to executed goods”) and must include in such notice—

(a) their full name and address, and confirmation that such address is their address for service;

(b) a list of all those goods in respect of which they make such a claim; and

(c) the grounds of their claim in respect of each item.

(2) On receipt of a notice of claim to executed goods which complies with paragraph (1) the enforcement officer must within 3 days give notice of such claim to—

(a) the creditor; and

(b) any other person making a claim to the executed goods under paragraph (1) ('any other claimant to the executed goods').

(3) The creditor, and any other claimant to executed goods, must, within 7 days after receiving the notice of claim to the executed goods, give notice in writing to the enforcement officer informing them whether the claim to the executed goods is admitted or disputed in whole or in part.

(4) The enforcement officer must notify the claimant to executed goods in writing within 3 days of receiving the notice in paragraph (3) whether the claim to executed goods is admitted or disputed in whole or in part.

(5) A creditor who gives notice in accordance with paragraph (3) admitting a claim to executed goods is not liable to the enforcement officer for any fees and expenses incurred by the enforcement officer after receipt of that notice by the enforcement officer.

(6) If an enforcement officer receives a notice from a creditor under paragraph (3) admitting a claim to executed goods the following applies—

(a) the writ of execution ceases to be exercisable in respect of such executed goods; and

(b) as soon as reasonably practicable the enforcement officer must make the goods available for collection by the claimant to executed goods if the enforcement officer has removed the goods from where they were found.

(7) Where the creditor, or any other claimant to executed goods to whom a notice of claim to executed goods was given, fails, within the period mentioned in paragraph (3), to give the required notice, the enforcement officer may seek—

(a) the directions of the court by way of an application; and

(b) an order preventing the bringing of any claim against them for, or in respect of, the seizure of the executed goods or their having failed so to do.

(8) An application under paragraph (7) must be made to the court which issued the writ of execution.

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# Procedure for making a claim to executed goods where the claim is disputed

## 85.7

(1) Where a creditor, or any other claimant to executed goods to whom a notice of claim to executed goods was given, gives notice under rule 85.6(3) that the claim to executed goods, or any part of it, is disputed, and wishes to maintain their claim, the following procedure will apply.

(2) The claimant to executed goods must make an application by application notice which must be supported by—

(a) a witness statement—

(i) specifying any money;

(ii) describing any goods claimed; and

(iii) setting out the grounds upon which the claim to the executed goods is based; and

(b) copies of any supporting documents that will assist the court to determine the claim.

(3) The claimant to executed goods must serve the application notice and supporting witness statements and exhibits on—

(a) the creditor;

(b) any other claimant to the executed goods of whom they are aware; and

(c) the relevant enforcement officer.

(4) An application under paragraph (2) must be made to the court which issued the writ of execution.

(5) The application notice will be referred to a Master or District Judge of a District Registry.

(6) On receipt of an application for a claim to executed goods, the Master or District Judge may—

(a) give directions for further evidence from any party;

(b) list a hearing to give directions;

(c) list a hearing of the application;

(d) make directions for the retention, sale or disposal of the executed goods; and

(e) give directions for determination of any issue raised by a claim to executed goods.

(Rule 83.3(11) provides that the validity of a writ of execution is automatically extended following an application under paragraph (2) until 12 months from the conclusion of the application proceedings.)

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## SECTION V PROCEDURE FOR A DEBTOR MAKING A CLAIM TO EXEMPT GOODS

### Procedure for a debtor making a claim to exempt goods

## 85.8

(1) A debtor making a claim to exempt goods must, as soon as practicable and in any event within 7 days of the removal of the goods, give notice in writing of the claim to exempt goods (“notice of claim to exempt goods”) to the enforcement agent who has taken control of the goods or relevant enforcement officer and must include in such notice—

(a) their full name and address and that address is their address for service;

(b) a list of all those goods in respect of which they make such a claim; and

(c) the grounds of the claim in respect of each item.

(2) On receipt of a notice of claim to exempt goods, the enforcement agent or relevant enforcement officer must within 3 days give notice of such claim to—

(a) the creditor; and

(b) any other person making a claim under rule 85.4 or 85.6 to the goods subject to enforcement (‘any other claimant to the goods subject to enforcement’).

(3) The creditor, and any other claimant to the goods subject to enforcement, must, within 7 days after receiving the notice of claim to exempt goods, give notice in writing to the enforcement agent or relevant enforcement officer informing them whether the claim to exempt goods is admitted or disputed in whole or in part.

(4) The enforcement agent or relevant enforcement officer must notify the debtor in writing within 3 days of receiving the notice in paragraph (3) whether the claim to exempt goods is admitted or disputed in whole or in part.

(5) A creditor who gives notice in accordance with paragraph (3) admitting a claim to controlled goods or to executed goods is not liable to the enforcement agent or officer for any fees and expenses incurred by the enforcement agent or officer after receipt of that notice by the enforcement agent or officer.

(6) If an enforcement agent or relevant enforcement officer receives a notice from a creditor and from any other claimant to the goods subject to enforcement under paragraph (3) admitting a claim to exempt goods the following applies—

(a) the enforcement power ceases to be exercisable, and the right to execute conferred by any writ of execution ceases to have effect, in respect of such exempt goods;

(b) as soon as reasonably practicable the enforcement agent or relevant enforcement officer must make the goods available for collection by the debtor if the enforcement agent or officer has removed them from where they were found.

(7) Where the creditor, or any other claimant to the goods subject to enforcement to whom notice of claim to exempt goods was given, fails, within the period mentioned in paragraph (3), to give the required notice, the enforcement agent or relevant enforcement officer may seek—

(a) the directions of the court by way of an application; and

(b) an order preventing the bringing of any claim against them for, or in respect of, their having taken control of or seized by execution any of the goods or their having failed to do so.

(8) An application under paragraph (7) must be made to the court which issued the writ or warrant conferring power to take control of controlled goods, or the writ of execution or, if the power to take control of controlled goods was conferred under an enactment, to the County Court hearing centre which is the debtor’s home court.

## Procedure for making a claim to exempt goods where the claim is disputed

### 85.9

(1) Where a creditor, or any other claimant to goods subject to enforcement to whom notice of a claim to exempt goods was given, gives notice under rule 85.8 that the claim to exempt goods, or any part of it, is disputed, and wishes to maintain their claim on the goods subject to enforcement, the following procedure will apply.

(2) The debtor must make an application within 7 days of receiving the notice under rule 85.8(3) which must be supported by—

(a) a witness statement—

(i) describing any goods to which a claim to exempt goods is made; and

(ii) setting out the grounds upon which such claim is based; and

(b) copies of any supporting documents that will assist the court to determine such claim.

(3) In the High Court the debtor must serve the application notice and supporting witness statements and exhibits on—

(a) the creditor;

(b) any other claimant to the goods subject to enforcement of whom they are aware; and

(c) the enforcement agent or relevant enforcement officer.

(4) In the County Court the debtor must provide to the court when the application is made the addresses for service of—

(a) the creditor;

(b) any other claimant to controlled goods of whom the debtor is aware; and

(c) the enforcement agent,

('the respondents'), and the court will serve the application notice and supporting witness statements and exhibits on the respondents.

(5) An application under paragraph (2) must be made to the court which issued the writ or warrant conferring power to take control of controlled goods or the writ of execution or if the power to take control of controlled goods was conferred under an enactment, to the debtor's home court.

(6) The application notice will be referred to a Master or District Judge.

(7) On receipt of an application for a claim to exempt goods, the Master or District Judge may—

(a) give directions for further evidence;

(b) list a hearing to give directions;

(c) list a hearing of the application;

(d) make directions for the retention, sale or disposal of the goods subject to the claim to exempt goods;

(e) give directions for determination of any issue raised by the exempt goods claim.

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## SECTION VI POWERS OF THE COURT HEARING ANY APPLICATION UNDER THIS PART

### Directions and determination of claims

#### 85.10

(1) At any hearing of any application under this Part the court may—

(a) determine an application summarily; or

(b) give directions for the determination of any issue raised by such application;

(c) order that any issue between any parties to a claim to goods subject to enforcement be stated and tried, and give all necessary directions for trial;

(d) give directions for the purpose of determining the amount of the required payments or any underpayment of the required payments pursuant to paragraph 60(5) of Schedule 12 and regulation 49 of the TCG Regulations;

(e) summarily determine the amount of the required payments or any underpayment of the required payments pursuant to paragraph 60(5) of Schedule 12<sup>9</sup> and regulation 49 of the TCG Regulations<sup>10</sup>;

(f) make directions for the retention, sale or disposal of goods subject to enforcement and for the payment of any proceeds of sale; or

(g) make any order that the court considers appropriate.

(2) Where a claimant to goods subject to enforcement or a debtor making a claim to exempt goods does not appear at any hearing listed on the application or, having appeared, fails or refuses to comply with an order made in the proceedings, the court may make an order declaring such claimant, or the debtor, and all persons claiming under them, for ever barred from prosecuting their claim against the creditor or any other claimant to the goods subject to enforcement, but such an order will not affect the rights of any other claimants to the goods subject to enforcement as between themselves.

(3) Where a claimant to goods subject to enforcement alleges that they are entitled, under a bill of sale or otherwise, to the controlled goods or to the executed goods by way of security for debt, the court may order those goods or any part thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

(4) Nothing in this rule limits the court's case management powers to make any other directions permissible under these Rules.

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### Trial of issue

#### 85.11

(1) Part 39 will, with the necessary modifications, apply to the trial of an issue in an application under this Part as it applies to the trial of a claim.

(2) The court by which an issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the application.

(3) Practice Direction 2B applies to the trial of an issue in an application under this Part.

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## Costs

### 85.12

(1) The court may in or for the purposes of any application under this Part make such order as to costs as it thinks just.

(2) Where a claimant to goods subject to enforcement or a debtor in a claim to exempt goods fails to appear at a hearing, the court may direct that the enforcement agent's or officer's costs and creditor's costs will be assessed by a Master, District Judge, Costs judge or Costs officer.

(3) In a claim to controlled goods a debtor may request the court to assess the costs incurred by an enforcement agent, in which case the court will apply the Taking Control of Goods (Fees) Regulations 2014<sup>11</sup> to such assessment.

(4) In a claim to executed goods a debtor may request the court to assess the costs incurred by an enforcement officer, in which case the court will apply Schedule 3 of the High Court Enforcement Officers Regulations 2004<sup>12</sup> to such assessment, save in relation to the costs of execution of writs of sequestration and writs relating to ecclesiastical property.

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## Footnotes

1. 2007 c.15. [Back to text](#)
2. Paragraph 60(8) of Schedule 12 is amended by the Crime and courts Act 2013 (c.22), section 17(5) and Schedule 19, paragraph 52(1)(b) and (2). [Back to text](#)
3. 2003 c.39. [Back to text](#)
4. S.I. 2013/1894. [Back to text](#)
5. Paragraph 60 is amended by the Crime and Courts Act 2013 (c.22), section 17(5) and Schedule 9, Part 3, paragraph 52. [Back to text](#)
6. 2007 c.15. Schedule 12 was amended by the Finance Act 2008 (c.9), section 129, Schedule 129, section 43, Part 1 paragraph 10 and is further amended by the Crime and Courts Act 2013, sections 17(5), and 25 and Schedule 9, Part 3, paragraph 52. [Back to text](#)
7. Paragraph 3 is amended by the Crime and Courts Act 2013 (c.22) section 17(5) and Schedule 9, Part 3, paragraph 52. [Back to text](#)
8. 2007 c.15. Paragraph 60 is amended by the Crime and Courts Act 2013 (c.22), section 17(5) and Schedule 9, Part 3, paragraph 52. [Back to text](#)
9. 2007 c.15. Paragraph 60 is amended by the Crime and Courts Act 2013 (c.22) section 17(5) and Schedule 9, Part 3, paragraph 52. [Back to text](#)
10. S.I. 2013/1894. [Back to text](#)
11. S.I. 2014/1. [Back to text](#)
12. S.I. 2004/400. [Back to text](#)

