

60 Appointment as Chairman of Law Commission

- (1) Section 1 of the Law Commissions Act 1965 (c. 22) is amended as follows.
- (2) After subsection (1) insert –
 - “(1A) The person appointed to be the Chairman shall be a person who holds office as a judge of the High Court or Court of Appeal in England and Wales.”
- (3) In subsection (2) before “Commissioners” insert “the other”.

61 Orders permitting disclosures to Judicial Appointments Commission

In section 90(5)(a) of the Justice (Northern Ireland) Act 2002 (c. 26) (which provides that certain orders under that Act are subject to annulment in pursuance of a resolution of either House of Parliament), after “section 2(2)(a) or (c),” insert “5A(6),”.

PART 3

ENFORCEMENT BY TAKING CONTROL OF GOODS

CHAPTER 1

PROCEDURE

62 Enforcement by taking control of goods

- (1) Schedule 12 applies where an enactment, writ or warrant confers power to use the procedure in that Schedule (taking control of goods and selling them to recover a sum of money).
- (2) The power conferred by a writ or warrant of control to recover a sum of money, and any power conferred by a writ or warrant of possession or delivery to take control of goods and sell them to recover a sum of money, is exercisable only by using that procedure.
- (3) Schedule 13 –
 - (a) amends some powers previously called powers to distrain, so that they become powers to use that procedure;
 - (b) makes other amendments relating to Schedule 12 and to distress or execution.
- (4) The following are renamed –
 - (a) writs of fieri facias, except writs of fieri facias de bonis ecclesiasticis, are renamed writs of control;
 - (b) warrants of execution are renamed warrants of control;
 - (c) warrants of distress, unless the power they confer is exercisable only against specific goods, are renamed warrants of control.

63 Enforcement agents

- (1) This section and section 64 apply for the purposes of Schedule 12.
- (2) An individual may act as an enforcement agent only if one of these applies –

- (a) he acts under a certificate under section 64;
 - (b) he is exempt;
 - (c) he acts in the presence and under the direction of a person to whom paragraph (a) or (b) applies.
- (3) An individual is exempt if he acts in the course of his duty as one of these –
- (a) a constable;
 - (b) an officer of Revenue and Customs;
 - (c) a person appointed under section 2(1) of the Courts Act 2003 (c. 39) (court officers and staff).
- (4) An individual is exempt if he acts in the course of his duty as an officer of a government department.
- (5) For the purposes of an enforcement power conferred by a warrant, an individual is exempt if in relation to the warrant he is a civilian enforcement officer, as defined in section 125A of the Magistrates' Courts Act 1980 (c. 43).
- (6) A person is guilty of an offence if, knowingly or recklessly, he purports to act as an enforcement agent without being authorised to do so by subsection (2).
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

64 Certificates to act as an enforcement agent

- (1) A certificate may be issued under this section –
- (a) by a judge assigned to a county court district;
 - (b) in prescribed circumstances, by a district judge.
- (2) The Lord Chancellor must make regulations about certificates under this section.
- (3) The regulations may in particular include provision –
- (a) for fees to be charged for applications;
 - (b) for certificates to be issued subject to conditions, including the giving of security;
 - (c) for certificates to be limited to purposes specified by or under the regulations;
 - (d) about complaints against holders of certificates;
 - (e) about suspension and cancellation of certificates;
 - (f) to modify or supplement Schedule 12 for cases where a certificate is suspended or cancelled or expires;
 - (g) requiring courts to make information available relating to certificates.
- (4) A certificate under section 7 of the Law of Distress Amendment Act 1888 (c. 21) which is in force on the coming into force of this section has effect as a certificate under this section, subject to any provision made by regulations.

65 Common law rules replaced

- (1) This Chapter replaces the common law rules about the exercise of the powers which under it become powers to use the procedure in Schedule 12.
- (2) The rules replaced include –

- (a) rules distinguishing between an illegal, an irregular and an excessive exercise of a power;
- (b) rules that would entitle a person to bring proceedings of a kind for which paragraph 66 of Schedule 12 provides (remedies available to the debtor);
- (c) rules of replevin;
- (d) rules about rescuing goods.

66 Pre-commencement enforcement not affected

Where –

- (a) by any provision of this Part a power becomes a power to use the procedure in Schedule 12, and
- (b) before the commencement of that provision, goods have been distrained or executed against, or made subject to a walking possession agreement, under the power,

this Part does not affect the continuing exercise of the power in relation to those goods.

67 Transfer of county court enforcement

In section 85(2) of the County Courts Act 1984 (c. 28) (under which writs of control give the district judge, formerly called the registrar, power to execute judgments or orders for payment of money) for “the registrar shall be” substitute “any person authorised by or on behalf of the Lord Chancellor is”.

68 Magistrates’ courts warrants of control

In the Magistrates’ Courts Act 1980 (c. 43) after section 125 insert –

“125ZA Warrants of control

- (1) This section applies to a warrant of control issued by a justice of the peace.
- (2) The person to whom it is directed must endorse the warrant as soon as possible after receiving it.
- (3) For the purposes of this section a person endorses a warrant by inserting on the back the date and time when he received it.
- (4) No fee may be charged for endorsing a warrant under this section.”

69 County court warrants of control etc.

For section 99 of the County Courts Act 1984 substitute –

“99 Endorsement of warrants of control etc.

- (1) This section applies to –
 - (a) a warrant of control issued under section 85(2);
 - (b) a warrant of delivery or of possession, but only if it includes a power to take control of and sell goods to recover a sum of money and only for the purposes of exercising that power.

- (2) The person to whom the warrant is directed must, as soon as possible after receiving it, endorse it by inserting on the back the date and time when he received it.
- (3) No fee may be charged for endorsing a warrant under this section.”

70 Power of High Court to stay execution

- (1) If, at any time, the High Court is satisfied that a party to proceedings is unable to pay –
 - (a) a sum recovered against him (by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise), or
 - (b) any instalment of such a sum,
 the court may stay the execution of any writ of control issued in the proceedings, for whatever period and on whatever terms it thinks fit.
- (2) The court may act under subsection (1) from time to time until it appears that the cause of the inability to pay has ceased.
- (3) In this section a party to proceedings includes every person, whether or not named as a party, who is served with notice of the proceedings or attends them.

CHAPTER 2

RENT ARREARS RECOVERY

Abolition of common law right

71 Abolition of common law right

The common law right to distrain for arrears of rent is abolished.

Commercial rent arrears recovery

72 Commercial rent arrears recovery (CRAR)

- (1) A landlord under a lease of commercial premises may use the procedure in Schedule 12 (taking control of goods) to recover from the tenant rent payable under the lease.
- (2) A landlord’s power under subsection (1) is referred to as CRAR (commercial rent arrears recovery).

73 Landlord

- (1) In this Chapter “landlord”, in relation to a lease, means the person for the time being entitled to the immediate reversion in the property comprised in the lease.
- (2) That is subject to the following.
- (3) In the case of a tenancy by estoppel, a person is “entitled to the immediate reversion” if he is entitled to it as between himself and the tenant.

- (4) If there are joint tenants of the immediate reversion, or if a number of persons are entitled to the immediate reversion as between themselves and the tenant—
 - (a) “landlord” means any one of them;
 - (b) CRAR may be exercised to recover rent due to all of them.
- (5) If the immediate reversion is mortgaged, “landlord” means—
 - (a) the mortgagee, if he has given notice of his intention to take possession or enter into receipt of rents and profits;
 - (b) otherwise, the mortgagor.
- (6) Subsection (5) applies whether the lease is made before or after the mortgage is created, but CRAR is not exercisable by a mortgagee in relation to a lease that does not bind him.
- (7) Where a receiver is appointed by a court in relation to the immediate reversion, CRAR is exercisable by the receiver in the name of the landlord.
- (8) Any authorisation of a person to exercise CRAR on another’s behalf must be in writing and must comply with any prescribed requirements.
- (9) This Chapter applies to any other person entitled to exercise CRAR as it applies to a landlord.

74 Lease

- (1) “Lease” means a tenancy in law or in equity, including a tenancy at will, but not including a tenancy at sufferance.
- (2) A lease must be evidenced in writing.
- (3) References to a lease are to a lease as varied from time to time (whether or not the variation is in writing).
- (4) This section applies for the purposes of this Chapter.

75 Commercial premises

- (1) A lease (A) is of commercial premises if none of the demised premises is—
 - (a) let under lease A as a dwelling,
 - (b) let under an inferior lease (B) as a dwelling, or
 - (c) occupied as a dwelling.
- (2) The “demised premises” in this section include anything on them.
- (3) “Let as a dwelling” means let on terms permitting only occupation as a dwelling or other use combined with occupation as a dwelling.
- (4) Premises are not within subsection (1)(b) if letting them as a dwelling is a breach of a lease superior to lease B.
- (5) Premises are not within subsection (1)(c) if occupying them as a dwelling is a breach of lease A or a lease superior to lease A.
- (6) This section applies for the purposes of this Chapter.

76 Rent

- (1) “Rent” means the amount payable under a lease (in advance or in arrear) for possession and use of the demised premises, together with—
 - (a) any interest payable on that amount under the lease, and
 - (b) any value added tax chargeable on that amount or interest.
- (2) “Rent” does not include any sum in respect of rates, council tax, services, repairs, maintenance, insurance or other ancillary matters (whether or not called “rent” in the lease).
- (3) The amount payable for possession and use of the demised premises, where it is not otherwise identifiable, is to be taken to be so much of the total amount payable under the lease as is reasonably attributable to possession and use.
- (4) Where a rent is payable under or by virtue of Part 2 of the Landlord and Tenant Act 1954 (c. 56), the amount payable under the lease for possession and use of those premises is to be taken to be that rent.
- (5) This section applies for the purposes of this Chapter except sections 71 and 85.

77 The rent recoverable

- (1) CRAR is not exercisable except to recover rent that meets each of these conditions—
 - (a) it has become due and payable before notice of enforcement is given;
 - (b) it is certain, or capable of being calculated with certainty.
- (2) The amount of any rent recoverable by CRAR is reduced by any permitted deduction.
- (3) CRAR is exercisable only if the net unpaid rent is at least the minimum amount immediately before each of these—
 - (a) the time when notice of enforcement is given;
 - (b) the first time that goods are taken control of after that notice.
- (4) The minimum amount is to be calculated in accordance with regulations.
- (5) The net unpaid rent is the amount of rent that meets the conditions in subsection (1), less—
 - (a) any interest or value added tax included in that amount under section 76(1)(a) or (b), and
 - (b) any permitted deductions.
- (6) Regulations may provide for subsection (5)(a) not to apply in specified cases.
- (7) Permitted deductions, against any rent, are any deduction, recoupment or set-off that the tenant would be entitled to claim (in law or equity) in an action by the landlord for that rent.

78 Intervention of the court

- (1) If notice of enforcement is given in exercise (or purported exercise) of CRAR the court may make either or both of these orders on the application of the tenant—
 - (a) an order setting aside the notice;

- (b) an order that no further step may be taken under CRAR, without further order, in relation to the rent claimed.
- (2) Regulations may make provision about—
 - (a) the further orders that may be made for the purposes of subsection (1)(b);
 - (b) grounds of which the court must be satisfied before making an order or further order.
- (3) In this section “the court” means the High Court or a county court, as rules of court may provide.

79 Use of CRAR after end of lease

- (1) When the lease ends, CRAR ceases to be exercisable, with these exceptions.
- (2) CRAR continues to be exercisable in relation to goods taken control of under it—
 - (a) before the lease ended, or
 - (b) under subsection (3).
- (3) CRAR continues to be exercisable in relation to rent due and payable before the lease ended, if the conditions in subsection (4) are met.
- (4) These are the conditions—
 - (a) the lease did not end by forfeiture;
 - (b) not more than 6 months has passed since the day when it ended;
 - (c) the rent was due from the person who was the tenant at the end of the lease;
 - (d) that person remains in possession of any part of the demised premises;
 - (e) any new lease under which that person remains in possession is a lease of commercial premises;
 - (f) the person who was the landlord at the end of the lease remains entitled to the immediate reversion.
- (5) In deciding whether a person remains in possession under a new lease, section 74(2) (lease to be evidenced in writing) does not apply.
- (6) In the case of a tenancy by estoppel, the person who was the landlord remains “entitled to the immediate reversion” if the estoppel with regard to the tenancy continues.
- (7) A lease ends when the tenant ceases to be entitled to possession of the demised premises under the lease together with any continuation of it by operation of an enactment or of a rule of law.

80 Agricultural holdings

- (1) This section applies to the exercise of CRAR where the premises concerned are an agricultural holding.
- (2) CRAR is not exercisable to recover rent that became due more than a year before notice of enforcement is given.
- (3) For the purposes of subsection (2), deferred rent becomes due at the time to which payment is deferred.

- (4) “Deferred rent” means rent the payment of which has been deferred, according to the ordinary course of dealing between the landlord and the tenant, to the end of a quarter or half-year after it legally became due.
- (5) The permitted deductions under section 77(7) at any time include any compensation due to the tenant in respect of the holding, under the 1986 Act or under custom or agreement, that has been ascertained at that time.
- (6) In this section –
 - the “1986 Act” means the Agricultural Holdings Act 1986 (c. 5);
 - “agricultural holding” has the meaning given by section 1 of the 1986 Act.

Right to rent from sub-tenant

81 Right to rent from sub-tenant

- (1) This section applies where CRAR is exercisable by a landlord to recover rent due and payable from a tenant (the immediate tenant).
- (2) The landlord may serve a notice on any sub-tenant.
- (3) The notice must state the amount of rent that the landlord has the right to recover from the immediate tenant by CRAR (the “notified amount”).
- (4) When it takes effect the notice transfers to the landlord the right to recover, receive and give a discharge for any rent payable by the sub-tenant under the sub-lease, until –
 - (a) the notified amount has been paid (by payments under the notice or otherwise), or
 - (b) the notice is replaced or withdrawn.
- (5) A notice under this section takes effect at the end of a period to be determined by regulations.
- (6) Regulations may state –
 - (a) the form of a notice under this section;
 - (b) what it must contain;
 - (c) how it must be served;
 - (d) what must be done to withdraw it.
- (7) In determining for the purposes of this section whether CRAR is exercisable, section 77 applies with these modifications –
 - (a) if notice of enforcement has not been given, references to that notice are to be read as references to the notice under this section;
 - (b) if goods have not been taken control of, section 77(3)(b) does not apply.
- (8) In this section and sections 82 to 84 –
 - (a) “sub-tenant” means a tenant (below the immediate tenant) of any of the premises comprised in the headlease (and “sub-lease” is to be read accordingly);
 - (b) “headlease” means the lease between the landlord and the immediate tenant.

82 Off-setting payments under a notice

- (1) For any amount that a sub-tenant pays under a notice under section 81, he may deduct an equal amount from the rent that would be due to his immediate landlord under the sub-lease.
- (2) If an amount is deducted under subsection (1) or this subsection from rent due to a superior sub-tenant, that sub-tenant may deduct an equal amount from any rent due from him under his sub-lease.
- (3) Subsection (1) applies even if the sub-tenant's payment or part of it is not due under the notice, if it is not due because—
 - (a) the notified amount has already been paid (wholly or partly otherwise than under the notice), or
 - (b) the notice has been replaced by a notice served on another sub-tenant.
- (4) That is subject to the following.
- (5) Subsection (1) does not apply if the landlord withdraws the notice before the payment is made.
- (6) Where the notified amount has already been paid (or will be exceeded by the payment), subsection (1) does not apply (or does not apply to the excess) if the sub-tenant has notice of that when making the payment.
- (7) Subsection (1) does not apply if, before the payment is made, payments under the notice at least equal the notified amount.
- (8) Subsection (1) does not apply to a part of the payment if, with the rest of the payment, payments under the notice at least equal the notified amount.
- (9) Where the notice has been replaced by one served on another sub-tenant, subsection (1) does not apply if the sub-tenant has notice of that when making the payment.

83 Withdrawal and replacement of notices

- (1) A notice under section 81 is replaced if the landlord serves another notice on the same sub-tenant for a notified amount covering the same rent or part of that rent.
- (2) A notice under section 81 served on one sub-tenant is also replaced if—
 - (a) the landlord serves a notice on another sub-tenant for a notified amount covering the same rent or part of that rent, and
 - (b) in relation to any of the premises comprised in the first sub-tenant's sub-lease, the second sub-tenant is an inferior or superior sub-tenant.
- (3) The landlord must withdraw a notice under section 81 if any of these happens—
 - (a) the notice is replaced;
 - (b) the notified amount is paid, unless it is paid wholly by the sub-tenant.

84 Recovery of sums due and overpayments

- (1) For the purposes of the recovery of sums payable by a sub-tenant under a notice under section 81 (including recovery by CRAR), the sub-tenant is to be

treated as the immediate tenant of the landlord, and the sums are to be treated as rent accordingly.

- (2) But those sums (as opposed to rent due from the immediate tenant) are not recoverable by notice under section 81 served on an inferior sub-tenant.
- (3) Any payment received by the landlord that the sub-tenant purports to make under a notice under section 81, and that is not due under the notice for any reason, is to be treated as a payment of rent by the immediate tenant, for the purposes of the retention of the payment by the landlord and (if no rent is due) for the purposes of any claim by the immediate tenant to recover the payment.
- (4) But subsection (3) does not affect any claim by the sub-tenant against the immediate tenant.

Supplementary

85 Contracts for similar rights to be void

- (1) A provision of a contract is void to the extent that it would do any of these—
 - (a) confer a right to seize or otherwise take control of goods to recover amounts within subsection (2);
 - (b) confer a right to sell goods to recover amounts within subsection (2);
 - (c) modify the effect of section 72(1), except in accordance with subsection (3).
- (2) The amounts are any amounts payable—
 - (a) as rent;
 - (b) under a lease (other than as rent);
 - (c) under an agreement collateral to a lease;
 - (d) under an instrument creating a rentcharge;
 - (e) in respect of breach of a covenant or condition in a lease, in an agreement collateral to a lease or in an instrument creating a rentcharge;
 - (f) under an indemnity in respect of a payment within paragraphs (a) to (e).
- (3) A provision of a contract is not void under subsection (1)(c) to the extent that it prevents or restricts the exercise of CRAR.
- (4) In this section—
 - “lease” also includes a licence to occupy land;
 - “rent” and “rentcharge” have the meaning given by section 205(1) of the Law of Property Act 1925 (c. 20).

86 Amendments

Schedule 14 makes minor and consequential amendments (including repeals of powers to distrain for rentcharges and other amounts within section 85(2)).

87 Interpretation of Chapter

In this Chapter—

“landlord” has the meaning given by section 73;

“lease” has the meaning given by section 74 (subject to section 85(4));
“notice of enforcement” means notice under paragraph 7 of Schedule 12;
“rent” (except in sections 71 and 85) has the meaning given by section 76;
“tenant”, in relation to a lease, means the tenant for the time being under the lease.

CHAPTER 3

GENERAL

88 Abolition of Crown preference

Crown preference for the purposes of execution against goods is abolished.

89 Application to the Crown

- (1) This Part binds the Crown.
- (2) But the procedure in Schedule 12 may not be used –
 - (a) to recover debts due from the Crown,
 - (b) to take control of or sell goods of the Crown (including goods owned by the Crown jointly or in common with another person), or
 - (c) to enter premises occupied by the Crown.

90 Regulations

- (1) In this Part –
 - “prescribed” means prescribed by regulations;
 - “regulations” means regulations made by the Lord Chancellor.
- (2) The following apply to regulations under this Part.
- (3) Any power to make regulations is exercisable by statutory instrument.
- (4) A statutory instrument containing regulations under paragraph 24(2) or 31(5) of Schedule 12 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) In any other case a statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Regulations may include any of these that the Lord Chancellor considers necessary or expedient –
 - (a) supplementary, incidental or consequential provision;
 - (b) transitory, transitional or saving provision.
- (7) Regulations may make different provision for different cases.