

Judicial Pensions and Retirement Act 1993 (c. 8)

- 11 The Judicial Pensions and Retirement Act 1993 is amended as follows.
- 12 In section 26(7) (certain offices for which retirement date is age 75), for paragraph (g) (certain deputy district judges) substitute –
- “(g) hold office as a deputy district judge if either section 102(1B) of that Act (former district judge appointed as deputy in the High Court) or section 8(1ZB) of the County Courts Act 1984 (former district judge appointed as deputy in the county courts) applied to the appointment;”.
- 13 (1) Schedule 5 (“the relevant offices” for the purposes of the retirement provisions) is amended as follows.
- (2) In the entry for a deputy district judge appointed under section 102 of the Supreme Court Act 1981, for the words after “except in a case where” substitute “subsection (1B) of that section applied to the appointment of the person in question”.
- (3) In the entry for a deputy district judge appointed under section 8 of the County Courts Act 1984, for the words after “except in a case where” substitute “subsection (1ZB) of that section applied to the appointment of the person in question”.

Courts Act 2003 (c. 39)

- 14 In section 64(2) of the Courts Act 2003 (power to alter listed judicial titles), in the entry for a deputy district judge for a county court district, for “for a county court district” substitute “appointed under section 8 of the County Courts Act 1984”.

Constitutional Reform Act 2005 (c. 4)

- 15 In Part 2 of Schedule 14 to the Constitutional Reform Act 2005 (certain offices to which appointments are made by the Lord Chancellor) –
- (a) in the entry for a deputy district judge in a district registry of the High Court, omit “in a district registry of the High Court”, and
- (b) in the entry for a deputy district judge for a county court district, omit “for a county court district”.

SCHEDULE 12

Section 62(1)

TAKING CONTROL OF GOODS

PART 1

INTRODUCTORY

The procedure

- 1 (1) Using the procedure in this Schedule to recover a sum means taking control of goods and selling them to recover that sum in accordance with this Schedule and regulations under it.

- (2) In this Schedule a power to use the procedure to recover a particular sum is called an “enforcement power”.
- (3) The following apply in relation to an enforcement power.
- (4) “Debt” means the sum recoverable.
- (5) “Debtor” means the person liable to pay the debt or, if two or more persons are jointly or jointly and severally liable, any one or more of them.
- (6) “Creditor” means the person for whom the debt is recoverable.

Enforcement agents

- 2 (1) In this Schedule “enforcement agent” means an individual authorised by section 63(2) to act as an enforcement agent.
- (2) Only an enforcement agent may take control of goods and sell them under an enforcement power.
- (3) An enforcement agent, if he is not the person on whom an enforcement power is conferred, may act under the power only if authorised by that person.
- (4) In relation to goods taken control of by an enforcement agent under an enforcement power, references to the enforcement agent are references to any person for the time being acting as an enforcement agent under the power.

General interpretation

- 3 (1) In this Schedule—
 - “amount outstanding” is defined in paragraph 50(3);
 - “control” (except in paragraph 5(4)(a)) means control under an enforcement power;
 - “controlled goods” means goods taken control of that—
 - (a) have not been sold or abandoned,
 - (b) if they have been removed, have not been returned to the debtor (unless subject to a controlled goods agreement), and
 - (c) if they are goods of another person, have not been returned to that person;
 - “controlled goods agreement” has the meaning given by paragraph 13(4);
 - “co-owner” in relation to goods of the debtor means a person other than the debtor who has an interest in the goods, but only if the enforcement agent—
 - (a) knows that the person has an interest in the particular goods, or
 - (b) would know, if he made reasonable enquiries;
 - “the court”, unless otherwise stated, and subject to rules of court, means—
 - (a) the High Court, in relation to an enforcement power under a writ of the High Court;
 - (b) a county court, in relation to an enforcement power under a warrant issued by a county court;

- (c) in any other case, a magistrates' court;
 - “disposal” and related expressions, in relation to securities, are to be read in accordance with paragraph 48(2);
 - “exempt goods” means goods that regulations exempt by description or circumstances or both;
 - “goods” means property of any description, other than land;
 - “interest” means a beneficial interest;
 - “money” means money in sterling or another currency;
 - “premises” means any place, and in particular includes –
 - (a) a vehicle, vessel, aircraft or hovercraft;
 - (b) a tent or movable structure;
 - “securities” includes bills of exchange, promissory notes, bonds, specialties and securities for money.
- (2) In this Schedule –
- (a) references to goods of the debtor or another person are references to goods in which the debtor or that person has an interest, but
 - (b) references to goods of the debtor do not include references to trust property in which either the debtor or a co-owner has an interest not vested in possession.

PART 2

THE PROCEDURE

Binding property in the debtor's goods

- 4 (1) For the purposes of any enforcement power, the property in all goods of the debtor, except goods that are exempt goods for the purposes of this Schedule or are protected under any other enactment, becomes bound in accordance with this paragraph.
- (2) Where the power is conferred by a writ issued from the High Court the writ binds the property in the goods from the time when it is received by the person who is under a duty to endorse it.
- (3) Where the power is conferred by a warrant to which section 99 of the County Courts Act 1984 (c. 28) or section 125ZA of the Magistrates' Courts Act 1980 (c. 43) applies, the warrant binds the property in the goods from the time when it is received by the person who is under a duty to endorse it under that section.
- (4) Where sub-paragraphs (2) and (3) do not apply but notice is given to the debtor under paragraph 7(1), the notice binds the property in the goods from the time when the notice is given.

Effect of property in goods being bound

- 5 (1) An assignment or transfer of any interest of the debtor's in goods while the property in them is bound for the purposes of an enforcement power –
- (a) is subject to that power, and
 - (b) does not affect the operation of this Schedule in relation to the goods, except as provided by paragraph 61 (application to assignee or transferee).

- (2) Sub-paragraph (1) does not prejudice the title to any of the debtor's goods that a person acquires –
 - (a) in good faith,
 - (b) for valuable consideration, and
 - (c) without notice.
- (3) For the purposes of sub-paragraph (2)(a), a thing is to be treated as done in good faith if it is in fact done honestly (whether it is done negligently or not).
- (4) In sub-paragraph (2)(c) “notice” means –
 - (a) where the property in the goods is bound by a writ or warrant, notice that the writ or warrant, or any other writ or warrant by virtue of which the goods of the debtor might be seized or otherwise taken control of, had been received by the person who was under a duty to endorse it and that goods remained bound under it;
 - (b) where the property in the goods is bound by notice under paragraph 7(1), notice that that notice had been given and that goods remained bound under it.
- (5) In sub-paragraph (4)(a) “endorse” in relation to a warrant to which section 99 of the County Courts Act 1984 (c. 28) or section 125ZA of the Magistrates' Courts Act 1980 (c. 43) applies, means endorse under that section.

Time when property ceases to be bound

- 6 (1) For the purposes of any enforcement power the property in goods of the debtor ceases to be bound in accordance with this paragraph.
- (2) The property in any goods ceases to be bound –
 - (a) when the goods are sold;
 - (b) in the case of money used to pay any of the amount outstanding, when it is used.
- (3) The property in all goods ceases to be bound when any of these happens –
 - (a) the amount outstanding is paid, out of the proceeds of sale or otherwise;
 - (b) the instrument under which the power is exercisable ceases to have effect;
 - (c) the power ceases to be exercisable for any other reason.

Notice of enforcement

- 7 (1) An enforcement agent may not take control of goods unless the debtor has been given notice.
- (2) Regulations must state –
 - (a) the minimum period of notice;
 - (b) the form of the notice;
 - (c) what it must contain;
 - (d) how it must be given;
 - (e) who must give it.
- (3) The enforcement agent must keep a record of the time when the notice is given.

- (4) If regulations authorise it, the court may order in prescribed circumstances that the notice given may be less than the minimum period.
- (5) The order may be subject to conditions.

Time limit for taking control

- 8 (1) An enforcement agent may not take control of goods after the prescribed period.
- (2) The period may be prescribed by reference to the date of notice of enforcement or of any writ or warrant conferring the enforcement power or any other date.
- (3) Regulations may provide for the period to be extended or further extended by the court in accordance with the regulations.

Goods which may be taken

- 9 An enforcement agent may take control of goods only if they are –
 - (a) on premises that he has power to enter under this Schedule, or
 - (b) on a highway.
- 10 An enforcement agent may take control of goods only if they are goods of the debtor.
- 11 (1) Subject to paragraphs 9 and 10 and to any other enactment under which goods are protected, an enforcement agent –
 - (a) may take control of goods anywhere in England and Wales;
 - (b) may take control of any goods that are not exempt.
- (2) Regulations may authorise him to take control of exempt goods in prescribed circumstances, if he provides the debtor with replacements in accordance with the regulations.

Value of goods taken

- 12 (1) Unless sub-paragraph (2) applies, an enforcement agent may not take control of goods whose aggregate value is more than –
 - (a) the amount outstanding, and
 - (b) an amount in respect of future costs, calculated in accordance with regulations.
- (2) An enforcement agent may take control of goods of higher value on premises or on a highway, only to the extent necessary, if there are not enough goods of a lower value within a reasonable distance –
 - (a) on a highway, or
 - (b) on premises that he has power to enter under this Schedule, either under paragraph 14 or under an existing warrant.
- (3) For the purposes of this paragraph goods are above a given value only if it is or ought to be clear to the enforcement agent that they are.
- (4) Sub-paragraph (1) does not affect the power to keep control of goods if they rise in value once they have been taken.

Ways of taking control

- 13 (1) To take control of goods an enforcement agent must do one of the following—
- (a) secure the goods on the premises on which he finds them;
 - (b) if he finds them on a highway, secure them on a highway, where he finds them or within a reasonable distance;
 - (c) remove them and secure them elsewhere;
 - (d) enter into a controlled goods agreement with the debtor.
- (2) Any liability of an enforcement agent (including criminal liability) arising out of his securing goods on a highway under this paragraph is excluded to the extent that he acted with reasonable care.
- (3) Regulations may make further provision about taking control in any of the ways listed in sub-paragraph (1), including provision—
- (a) determining the time when control is taken;
 - (b) prohibiting use of any of those ways for goods by description or circumstances or both.
- (4) A controlled goods agreement is an agreement under which the debtor—
- (a) is permitted to retain custody of the goods,
 - (b) acknowledges that the enforcement agent is taking control of them, and
 - (c) agrees not to remove or dispose of them, nor to permit anyone else to, before the debt is paid.

Entry without warrant

- 14 (1) An enforcement agent may enter relevant premises to search for and take control of goods.
- (2) Where there are different relevant premises this paragraph authorises entry to each of them.
- (3) This paragraph authorises repeated entry to the same premises, subject to any restriction in regulations.
- (4) If the enforcement agent is acting under section 72(1) (CRAR), the only relevant premises are the demised premises.
- (5) If he is acting under section 121A of the Social Security Administration Act 1992 (c. 5), premises are relevant if they are the place, or one of the places, where the debtor carries on a trade or business.
- (6) Otherwise premises are relevant if the enforcement agent reasonably believes that they are the place, or one of the places, where the debtor—
- (a) usually lives, or
 - (b) carries on a trade or business.

Entry under warrant

- 15 (1) If an enforcement agent applies to the court it may issue a warrant authorising him to enter specified premises to search for and take control of goods.

- (2) Before issuing the warrant the court must be satisfied that all these conditions are met—
 - (a) an enforcement power has become exercisable;
 - (b) there is reason to believe that there are goods on the premises that the enforcement power will be exercisable to take control of if the warrant is issued;
 - (c) it is reasonable in all the circumstances to issue the warrant.
- (3) The warrant authorises repeated entry to the same premises, subject to any restriction in regulations.

Re-entry

- 16 (1) This paragraph applies where goods on any premises have been taken control of and have not been removed by the enforcement agent.
- (2) The enforcement agent may enter the premises to inspect the goods or to remove them for storage or sale.
- (3) This paragraph authorises repeated entry to the same premises.

General powers to use reasonable force

- 17 Where paragraph 18 or 19 applies, an enforcement agent may if necessary use reasonable force to enter premises or to do anything for which the entry is authorised.
- 18 This paragraph applies if these conditions are met—
 - (a) the enforcement agent has power to enter the premises under paragraph 14 or 16 or under a warrant under paragraph 15;
 - (b) he is acting under an enforcement power conferred by a warrant of control under section 76(1) of the Magistrates' Courts Act 1980 (c. 43) for the recovery of a sum adjudged to be paid by a conviction;
 - (c) he is entitled to execute the warrant by virtue of section 125A (civilian enforcement officers) or 125B (approved enforcement agencies) of that Act.
- 19 (1) This paragraph applies if these conditions are met—
 - (a) the enforcement agent has power to enter the premises under paragraph 16;
 - (b) he reasonably believes that the debtor carries on a trade or business on the premises;
 - (c) he is acting under an enforcement power within sub-paragraph (2).
- (2) The enforcement powers are those under any of the following—
 - (a) a writ or warrant of control issued for the purpose of recovering a sum payable under a High Court or county court judgment;
 - (b) section 61(1) of the Taxes Management Act 1970 (c. 9);
 - (c) section 121A(1) of the Social Security Administration Act 1992 (c. 5);
 - (d) section 51(A1) of the Finance Act 1997 (c. 16);
 - (e) paragraph 1A of Schedule 12 to the Finance Act 2003 (c. 14).

Application for power to use reasonable force

- 20 (1) This paragraph applies if an enforcement agent has power to enter premises under paragraph 14 or 16 or under a warrant under paragraph 15.
- (2) If the enforcement agent applies to the court it may issue a warrant which authorises him to use, if necessary, reasonable force to enter the premises or to do anything for which entry is authorised.
- 21 (1) This paragraph applies if an enforcement agent is applying for power to enter premises under a warrant under paragraph 15.
- (2) If the enforcement agent applies to the court it may include in the warrant provision authorising him to use, if necessary, reasonable force to enter the premises or to do anything for which entry is authorised.
- 22 (1) The court may not issue a warrant under paragraph 20 or include provision under paragraph 21 unless it is satisfied that prescribed conditions are met.
- (2) A warrant under paragraph 20 or provision included under paragraph 21 may require any constable to assist the enforcement agent to execute the warrant.

Other provisions about powers of entry

- 23 Paragraphs 24 to 30 apply where an enforcement agent has power to enter premises under paragraph 14 or 16 or under a warrant under paragraph 15.
- 24 (1) The power to enter and any power to use force are subject to any restriction imposed by or under regulations.
- (2) A power to use force does not include power to use force against persons, except to the extent that regulations provide that it does.
- 25 (1) The enforcement agent may enter and remain on the premises only within prescribed times of day.
- (2) Regulations may give the court power in prescribed circumstances to authorise him to enter or remain on the premises at other times.
- (3) The authorisation –
- (a) may be by order or in a warrant under paragraph 15;
- (b) may be subject to conditions.
- 26 (1) The enforcement agent must on request show the debtor and any person who appears to him to be in charge of the premises evidence of –
- (a) his identity, and
- (b) his authority to enter the premises.
- (2) The request may be made before the enforcement agent enters the premises or while he is there.
- 27 (1) The enforcement agent may take other people onto the premises.
- (2) They may assist him in exercising any power, including a power to use force.
- (3) They must not remain on the premises without the enforcement agent.
- (4) The enforcement agent may take any equipment onto the premises.

- (5) He may leave equipment on the premises if he leaves controlled goods there.
- 28 (1) After entering the premises the enforcement agent must provide a notice for the debtor giving information about what the enforcement agent is doing.
- (2) Regulations must state –
 - (a) the form of the notice;
 - (b) what information it must give.
- (3) Regulations may prescribe circumstances in which a notice need not be provided after re-entry to premises.
- (4) If the debtor is on the premises when the enforcement agent is there, the enforcement agent must give him the notice then.
- (5) If the debtor is not there, the enforcement agent must leave the notice in a conspicuous place on the premises.
- (6) If the enforcement agent knows that there is someone else there or that there are other occupiers, a notice he leaves under sub-paragraph (5) must be in a sealed envelope addressed to the debtor.
- 29 If the premises are occupied by any person apart from the debtor, the enforcement agent must leave at the premises a list of any goods he takes away.
- 30 The enforcement agent must leave the premises as effectively secured as he finds them.

Goods on a highway

- 31 (1) If the enforcement agent applies to the court it may issue a warrant which authorises him to use, if necessary, reasonable force to take control of goods on a highway.
- (2) The court may not issue a warrant unless it is satisfied that prescribed conditions are met.
- (3) The warrant may require any constable to assist the enforcement agent to execute it.
- (4) The power to use force is subject to any restriction imposed by or under regulations.
- (5) The power to use force does not include power to use force against persons, except to the extent that regulations provide that it does.
- 32 (1) The enforcement agent may not exercise any power under this Schedule on a highway except within prescribed times of day.
- (2) Regulations may give the court power in prescribed circumstances to authorise him to exercise a power at other times.
- (3) The authorisation may be subject to conditions.
- 33 (1) If the enforcement agent takes control of goods on a highway or enters a vehicle on a highway with the intention of taking control of goods, he must provide a notice for the debtor giving information about what he is doing.
- (2) Regulations must state –

- (a) the form of the notice;
 - (b) what information it must give.
- (3) If the debtor is present when the enforcement agent is there, the enforcement agent must give him the notice then.
- (4) Otherwise the enforcement agent must deliver the notice to any relevant premises (as defined by paragraph 14) in a sealed envelope addressed to the debtor.

Inventory

- 34
- (1) If an enforcement agent takes control of goods he must provide the debtor with an inventory of them as soon as reasonably practicable.
 - (2) But if there are co-owners of any of the goods, the enforcement agent must instead provide the debtor as soon as reasonably practicable with separate inventories of goods owned by the debtor and each co-owner and an inventory of the goods without a co-owner.
 - (3) The enforcement agent must as soon as reasonably practicable provide the co-owner of any of the goods with—
 - (a) the inventory of those goods, and
 - (b) a copy of the notice under paragraph 28.
 - (4) Regulations must state—
 - (a) the form of an inventory, and
 - (b) what it must contain.

Care of goods removed

- 35
- (1) An enforcement agent must take reasonable care of controlled goods that he removes from the premises or highway where he finds them.
 - (2) He must comply with any provision of regulations about their care while they remain controlled goods.

Valuation

- 36
- (1) Before the end of the minimum period, the enforcement agent must—
 - (a) make or obtain a valuation of the controlled goods in accordance with regulations;
 - (b) give the debtor, and separately any co-owner, an opportunity to obtain an independent valuation of the goods.
 - (2) In this paragraph “minimum period” means the period specified by regulations under—
 - (a) paragraph 49, in the case of securities;
 - (b) paragraph 39, in any other case.

Best price

- 37
- (1) An enforcement agent must sell or dispose of controlled goods for the best price that can reasonably be obtained in accordance with this Schedule.

- (2) That does not apply to money that can be used for paying any of the outstanding amount, unless the best price is more than its value if used in that way.

Sale

- 38 Paragraphs 39 to 42 apply to the sale of controlled goods, except where –
 (a) the controlled goods are securities, or
 (b) the sale is by exchange of one currency for another.
- 39 (1) The sale must not be before the end of the minimum period except with the agreement of the debtor and any co-owner.
 (2) Regulations must specify the minimum period.
- 40 (1) Before the sale, the enforcement agent must give notice of the date, time and place of the sale to the debtor and any co-owner.
 (2) Regulations must state –
 (a) the minimum period of notice;
 (b) the form of the notice;
 (c) what it must contain (besides the date, time and place of sale);
 (d) how it must be given.
 (3) The enforcement agent may replace a notice with a new notice, subject to any restriction in regulations.
 (4) Any notice must be given within the permitted period.
 (5) Unless extended the permitted period is 12 months beginning with the day on which the enforcement agent takes control of the goods.
 (6) Any extension must be by agreement in writing between the creditor and debtor before the end of the period.
 (7) They may extend the period more than once.
- 41 (1) The sale must be by public auction unless the court orders otherwise.
 (2) The court may make an order only on an application by the enforcement agent.
 (3) Regulations may make provision about the types of sale the court may order.
 (4) In an application for an order under sub-paragraph (2) the enforcement agent must state whether he has reason to believe that an enforcement power has become exercisable by another creditor against the debtor or a co-owner.
 (5) If the enforcement agent states that he does, the court may not consider the application until notice of it has been given to the other creditor in accordance with regulations (or until the court is satisfied that an enforcement power is not exercisable by the other creditor against the debtor or a co-owner).
- 42 Regulations may make further provision about the sale of controlled goods, including in particular –
 (a) requirements for advertising;
 (b) provision about the conduct of a sale.

Place of sale

- 43 (1) Regulations may make provision about the place of sale of controlled goods.
- (2) They may prescribe circumstances in which the sale may be held on premises where goods were found by the enforcement agent.
- (3) Except where the regulations provide otherwise, the sale may not be held on those premises without the consent of the occupier.
- (4) Paragraphs 44 to 46 apply if the sale may be held on those premises.
- 44 (1) The enforcement agent and any person permitted by him –
- (a) may enter the premises to conduct or attend the sale;
- (b) may bring equipment onto the premises for the purposes of the sale.
- (2) This paragraph authorises repeated entry to the premises.
- (3) If necessary the enforcement agent may use reasonable force to enable the sale to be conducted and any person to enter under this paragraph.
- 45 (1) The enforcement agent must on request show the debtor and any person who appears to him to be in charge of the premises evidence of –
- (a) his identity, and
- (b) his authority to enter and hold the sale on the premises.
- (2) The request may be made before the enforcement agent enters the premises or while he is there.
- 46 The enforcement agent must leave the premises as effectively secured as he finds them.

Holding and disposal of securities

- 47 Paragraphs 48 and 49 apply to securities as controlled goods.
- 48 (1) Regulations may make provision about how securities are to be held and disposed of.
- (2) In this Schedule, references to disposal include, in relation to securities, realising the sums secured or made payable by them, suing for the recovery of those sums or assigning the right to sue for their recovery.
- (3) Regulations may in particular make provision for purposes corresponding to those for which provision is made in this Schedule in relation to the disposal of other controlled goods.
- (4) The power to make regulations under this paragraph is subject to paragraph 49.
- 49 (1) The creditor may sue in the name of the debtor, or in the name of any person in whose name the debtor might have sued, for the recovery of any sum secured or made payable by securities, when the time of payment arrives.
- (2) Before any proceedings under sub-paragraph (1) are commenced or the securities are otherwise disposed of, the enforcement agent must give notice of the disposal to the debtor and any co-owner.
- (3) Regulations must state –
- (a) the minimum period of notice;

- (b) the form of the notice;
 - (c) what it must contain;
 - (d) how it must be given.
- (4) The enforcement agent may replace a notice with a new notice, subject to any restriction in regulations.
 - (5) Any notice must be given within the permitted period.
 - (6) Unless extended the permitted period is 12 months beginning with the time of payment.
 - (7) Any extension must be by agreement in writing between the creditor and debtor before the end of the period.
 - (8) They may extend the period more than once.

Application of proceeds

- 50 (1) Proceeds from the exercise of an enforcement power must be used to pay the amount outstanding.
- (2) Proceeds are any of these –
 - (a) proceeds of sale or disposal of controlled goods;
 - (b) money taken in exercise of the power, if paragraph 37(1) does not apply to it.
- (3) The amount outstanding is the sum of these –
 - (a) the amount of the debt which remains unpaid (or an amount that the creditor agrees to accept in full satisfaction of the debt);
 - (b) any amounts recoverable out of proceeds in accordance with regulations under paragraph 62 (costs).
- (4) If the proceeds are less than the amount outstanding, which amounts in sub-paragraph (3)(a) and (b) must be paid, and how much of any amount, is to be determined in accordance with regulations.
- (5) If the proceeds are more than the amount outstanding, the surplus must be paid to the debtor.
- (6) If there is a co-owner of any of the goods, the enforcement agent must –
 - (a) first pay the co-owner a share of the proceeds of those goods proportionate to his interest;
 - (b) then deal with the rest of the proceeds under sub-paragraphs (1) to (5).
- (7) Regulations may make provision for resolving disputes about what share is due under sub-paragraph (6)(a).

Passing of title

- 51 (1) A purchaser of controlled goods acquires good title, with two exceptions.
- (2) The exceptions apply only if the goods are not the debtor's at the time of sale.
- (3) The first exception is where the purchaser, the creditor, the enforcement agent or a related party has notice that the goods are not the debtor's.

- (4) The second exception is where a lawful claimant has already made an application to the court claiming an interest in the goods.
- (5) A lawful claimant in relation to goods is a person who has an interest in them at the time of sale, other than an interest that was assigned or transferred to him while the property in the goods was bound for the purposes of the enforcement power.
- (6) A related party is any person who acts in exercise of an enforcement power, other than the creditor or enforcement agent.
- (7) “The court” has the same meaning as in paragraph 60.

Abandonment of goods other than securities

- 52 Paragraphs 53 and 54 apply to controlled goods other than –
 - (a) securities;
 - (b) money to which paragraph 37(1) does not apply.
- 53 (1) Controlled goods are abandoned if the enforcement agent does not give the debtor or any co-owner notice under paragraph 40 (notice of sale) within the permitted period.
 - (2) Controlled goods are abandoned if they are unsold after a sale of which notice has been given in accordance with that paragraph.
 - (3) Regulations may prescribe other circumstances in which controlled goods are abandoned.
- 54 (1) If controlled goods are abandoned then, in relation to the enforcement power concerned, the following apply –
 - (a) the enforcement power ceases to be exercisable;
 - (b) as soon as reasonably practicable the enforcement agent must make the goods available for collection by the debtor, if he removed them from where he found them.
 - (2) Regulations may make further provision about arrangements under sub-paragraph (1)(b), including in particular provision about the disposal of goods uncollected after a prescribed period.
 - (3) Where the enforcement power was under a writ or warrant, sub-paragraph (1) does not affect any power to issue another writ or warrant.

Abandonment of securities

- 55 Paragraphs 56 and 57 apply to securities as controlled goods.
- 56 (1) Securities are abandoned if the enforcement agent does not give the debtor or any co-owner notice under paragraph 49 (notice of disposal) within the permitted period.
 - (2) Securities are abandoned if they are not disposed of in accordance with a notice of disposal under that paragraph.
 - (3) Regulations may prescribe other circumstances in which securities are abandoned.
- 57 (1) If securities are abandoned then, in relation to the enforcement power concerned, the following apply –

- (a) the enforcement power ceases to be exercisable;
 - (b) as soon as reasonably practicable the enforcement agent must make the securities available for collection by the debtor, if he removed them from where he found them.
- (2) Where the enforcement power was under a writ or warrant, sub-paragraph (1) does not affect any power to issue another writ or warrant.

Payment of amount outstanding

- 58 (1) This paragraph applies where the debtor pays the amount outstanding in full –
 - (a) after the enforcement agent has taken control of goods, and
 - (b) before they are sold or abandoned.
- (2) If the enforcement agent has removed the goods he must as soon as reasonably practicable make them available for collection by the debtor.
- (3) No further step may be taken under the enforcement power concerned.
- (4) For the purposes of this paragraph the amount outstanding is reduced by the value of any controlled goods consisting of money required to be used to pay that amount, and sub-paragraph (2) does not apply to that money.
- 59 (1) This paragraph applies if a further step is taken despite paragraph 58(3).
- (2) The enforcement agent is not liable unless he had notice, when the step was taken, that the amount outstanding had been paid in full.
- (3) Sub-paragraph (2) applies to a related party as to the enforcement agent.
- (4) If the step taken is sale of any of the goods the purchaser acquires good title unless, at the time of sale, he or the enforcement agent had notice that the amount outstanding had been paid in full.
- (5) A person has notice that the amount outstanding has been paid in full if he would have found it out if he had made reasonable enquiries.
- (6) Sub-paragraphs (2) to (4) do not affect any right of the debtor or a co-owner to a remedy against any person other than the enforcement agent or a related party.
- (7) In this paragraph, “related party” has the meaning given by paragraph 65(4).

Third party claiming goods

- 60 (1) This paragraph applies where a person makes an application to the court claiming that goods taken control of are his and not the debtor’s.
- (2) After receiving notice of the application the enforcement agent must not sell the goods, or dispose of them (in the case of securities), unless directed by the court under this paragraph.
- (3) The court may direct the enforcement agent to sell or dispose of the goods if the applicant fails to make, or to continue to make, the required payments into court.
- (4) The required payments are –

- (a) payment on making the application (subject to sub-paragraph (5)) of an amount equal to the value of the goods, or to a proportion of it directed by the court;
 - (b) payment, at prescribed times (on making the application or later), of any amounts prescribed in respect of the enforcement agent's costs of retaining the goods.
- (5) If the applicant makes a payment under sub-paragraph (4)(a) but the enforcement agent disputes the value of the goods, any underpayment is to be –
 - (a) determined by reference to an independent valuation carried out in accordance with regulations, and
 - (b) paid at the prescribed time.
- (6) If sub-paragraph (3) does not apply the court may still direct the enforcement agent to sell or dispose of the goods before the court determines the applicant's claim, if it considers it appropriate.
- (7) If the court makes a direction under sub-paragraph (3) or (6) –
 - (a) paragraphs 38 to 49, and regulations under them, apply subject to any modification directed by the court;
 - (b) the enforcement agent must pay the proceeds of sale or disposal into court.
- (8) In this paragraph "the court", subject to rules of court, means –
 - (a) the High Court, in relation to an enforcement power under a writ of the High Court;
 - (b) a county court, in relation to an enforcement power under a warrant issued by a county court;
 - (c) in any other case, the High Court or a county court.

Application to assignee or transferee

- 61
- (1) This Schedule applies as follows where an interest of the debtor's in goods is assigned or transferred while the property in the goods is bound for the purposes of an enforcement power, and the enforcement agent –
 - (a) knows that the assignee or transferee has an interest in the particular goods, or
 - (b) would know, if he made reasonable enquiries.
 - (2) These apply as if the assignee or transferee were a co-owner of the goods with the debtor –
 - (a) paragraph 34 (inventory);
 - (b) paragraph 36 (valuation);
 - (c) paragraphs 39 to 41 (sale);
 - (d) paragraph 59(6) (remedies after payment of amount outstanding).
 - (3) If the interest of the assignee or transferee was acquired in good faith, for valuable consideration and without notice, paragraph 50(6) applies as if "co-owner" included the assignee or transferee.
 - (4) If the interest of the assignee or transferee was not acquired in good faith, for valuable consideration and without notice, the enforcement agent must pay any surplus under paragraph 50(5) to the assignee or transferee and to the debtor (if he retains an interest).

- (5) If the surplus is payable to two or more persons it must be paid in shares proportionate to their interests.
- (6) Paragraph 5(3) and (4) (“good faith” and “notice”) apply for the purposes of this paragraph.

Costs

- 62 (1) Regulations may make provision for the recovery by any person from the debtor of amounts in respect of costs of enforcement-related services.
- (2) The regulations may provide for recovery to be out of proceeds or otherwise.
- (3) The amount recoverable under the regulations in any case is to be determined by or under the regulations.
- (4) The regulations may in particular provide for the amount, if disputed, to be assessed in accordance with rules of court.
- (5) “Enforcement-related services” means anything done under or in connection with an enforcement power, or in connection with obtaining an enforcement power, or any services used for the purposes of a provision of this Schedule or regulations under it.

Limitation of liability for sale or payment of proceeds

- 63 (1) Any liability of an enforcement agent or related party to a lawful claimant for the sale of controlled goods is excluded except in two cases.
- (2) The first exception is where at the time of the sale the enforcement agent had notice that the goods were not the debtor’s, or not his alone.
- (3) The second exception is where before sale the lawful claimant had made an application to the court claiming an interest in the goods.
- (4) A lawful claimant in relation to goods is a person who has an interest in them at the time of sale, other than an interest that was assigned or transferred to him while the property in the goods was bound for the purposes of the enforcement power.
- 64 (1) Any liability of an enforcement agent or related party to a lawful claimant for paying over proceeds is excluded except in two cases.
- (2) The first exception is where at the time of the payment he had notice that the goods were not the debtor’s, or not his alone.
- (3) The second exception is where before that time the lawful claimant had made an application to the court claiming an interest in the goods.
- (4) A lawful claimant in relation to goods is a person who has an interest in them at the time of sale.
- 65 (1) Paragraphs 63 and 64 –
 - (a) do not affect the liability of a person other than the enforcement agent or a related party;
 - (b) do not apply to the creditor if he is the enforcement agent.
- (2) The following apply for the purposes of those paragraphs.

- (3) The enforcement agent or a related party has notice of something if he would have found it out if he had made reasonable enquiries.
- (4) A related party is any person who acts in exercise of an enforcement power, other than the creditor or enforcement agent.
- (5) “The court” has the same meaning as in paragraph 60.

Remedies available to the debtor

- 66
- (1) This paragraph applies where an enforcement agent –
 - (a) breaches a provision of this Schedule, or
 - (b) acts under an enforcement power under a writ, warrant, liability order or other instrument that is defective.
 - (2) The breach or defect does not make the enforcement agent, or a person he is acting for, a trespasser.
 - (3) But the debtor may bring proceedings under this paragraph.
 - (4) Subject to rules of court, the proceedings may be brought –
 - (a) in the High Court, in relation to an enforcement power under a writ of the High Court;
 - (b) in a county court, in relation to an enforcement power under a warrant issued by a county court;
 - (c) in any other case, in the High Court or a county court.
 - (5) In the proceedings the court may –
 - (a) order goods to be returned to the debtor;
 - (b) order the enforcement agent or a related party to pay damages in respect of loss suffered by the debtor as a result of the breach or of anything done under the defective instrument.
 - (6) A related party is either of the following (if different from the enforcement agent) –
 - (a) the person on whom the enforcement power is conferred,
 - (b) the creditor.
 - (7) Sub-paragraph (5) is without prejudice to any other powers of the court.
 - (8) Sub-paragraph (5)(b) does not apply where the enforcement agent acted in the reasonable belief –
 - (a) that he was not breaching a provision of this Schedule, or
 - (b) (as the case may be) that the instrument was not defective.
 - (9) This paragraph is subject to paragraph 59 in the case of a breach of paragraph 58(3).

Remedies available to the creditor

- 67
- If a debtor wrongfully interferes with controlled goods and the creditor suffers loss as a result, the creditor may bring a claim against the debtor in respect of the loss.

Offences

- 68 (1) A person is guilty of an offence if he intentionally obstructs a person lawfully acting as an enforcement agent.
- (2) A person is guilty of an offence if he intentionally interferes with controlled goods without lawful excuse.
- (3) A person guilty of an offence under this paragraph is liable on summary conviction to –
- (a) imprisonment for a term not exceeding 51 weeks, or
 - (b) a fine not exceeding level 4 on the standard scale, or
 - (c) both.
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), the reference in sub-paragraph (3)(a) to 51 weeks is to be read as a reference to 6 months.

Relation to insolvency provisions

- 69 This Schedule is subject to sections 183, 184 and 346 of the Insolvency Act 1986 (c. 45).

SCHEDULE 13

Section 62(3)

TAKING CONTROL OF GOODS: AMENDMENTS

Inclosure Act 1773 (c. 81)

- 1 The Inclosure Act 1773 is amended as follows.
- 2 (1) Section 4 (expenses how to be defrayed) is amended as follows.
- (2) For “levied by distress and sale of the goods and chattels of” substitute “recovered, by using the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods), from”.
- (3) Omit the words from “rendering” to the end.
- 3 (1) Section 16 (assessments to be levied for the improving of wastes where there are stinted commons) is amended as follows.
- (2) For “levied by distress and sale of the goods and chattels of” substitute “recovered, by using the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods), from”.
- (3) Omit the words from “rendering” to the end.

Oaths Act 1775 (c. 39)

- 4 In the Oaths Act 1775 (justices to administer oaths for levying penalties etc.) at the end insert –
- “In this Act references to making a distress include references to using the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) to recover a sum.”