

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

EXPLANATORY NOTES

PART 3: ENFORCEMENT BY TAKING CONTROL OF GOODS

Commentary on Sections: Part 3

Schedule 12: Taking control of goods

332. This Schedule prescribes a new procedure to be followed by enforcement agents when seizing and selling goods pursuant to powers under High Court writs of execution, county court warrants of execution, certain magistrates' court warrants of distress, High Court writs and county court warrants of delivery and possession which contain a power to seize and sell goods and the following enactments as amended by Schedule 13:
- Sections 4 and 16 of the Inclosure Act 1773;
 - Section 91 of the Lands Clauses Consolidation Act 1845;
 - Sections 151 and 159 of the Inclosure Act 1845;
 - Section 33 of the Railways Clauses Act 1863;
 - Section 13 of the Compulsory Purchase Act 1965;
 - Section 61 of the Taxes Management Act 1970;
 - Section 76 of the Magistrates' Court Act 1980;
 - Section 85 of the County Courts Act 1984;
 - Section 62A of the Local Government Finance Act 1988;
 - Section 35 of the Child Support Act 1991;
 - Schedule 15, paragraph 12 of the Water Resources Act 1991;
 - Section 54 of the Land Drainage Act 1991;
 - Section 121A of the Social Security Administration Act 1992;
 - Section 14 of the Local Government Finance Act 1992;
 - Section 51 of the Finance Act 1997;
 - Schedule 12, paragraph 1A of the Finance Act 2003;
 - Section 72 of the Tribunals, Courts and Enforcement Act 2007.
333. The Schedule prescribes, or enables regulations to prescribe, the entire process to be followed by enforcement agents when taking control of and selling goods under the above mentioned powers, from the serving of a notice, to taking control of goods

*These notes refer to the Tribunals, Courts and Enforcement Act
2007 (c.15) which received Royal Assent on 19th July 2007*

(including which goods may be taken), powers of entry, goods which may be seized, care of goods seized, the sale of goods seized and the distribution of the sale proceeds.

334. On the issue of which goods may be taken, the Schedule provides that all goods of the debtor may be seized other than those which are exempt (as prescribed in regulations) or protected under any other enactment. Examples of protection from seizure are:
- any statutory state or diplomatic immunity;
 - personal property of a trustee pursuant to section 23 of the Trade Union and Labour Relations (Consolidation) Act 1992;
 - works of art from abroad loaned for temporary exhibitions and protected under section 135 of the Tribunals, Courts and Enforcement Act 2007.
335. The Schedule also enables regulations to specify fees, charges and expenses that can be charged by a person in connection with taking control of goods (by way of example, the fees charged by an enforcement agent for taking control of goods). Such regulations will specify when and how such fees, charges and expenses will be recoverable from the debtor, to include when such amounts can be deducted from the proceeds of sale of any goods. The regulations may also specify that any disputed amount of such fees, costs and expenses is to be assessed in accordance with rules of court.
336. In addition, the Schedule sets out the remedial action and the level of damages available to a debtor against an enforcement agent who breaches the procedure. The Schedule does not make any provision for the debtor's right to bring a claim against an enforcement agent whose actions were not authorised at the outset because this is already covered by the existing law of tort. The Schedule also specifies the circumstances when a creditor can bring a claim against the debtor and it creates offences of intentionally obstructing an enforcement agent in the lawful exercise of his power and interfering with goods seized.