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Tribunals, Courts and Enforcement Act 2007

2007 CHAPTER 15

PART 3 **E+W**

ENFORCEMENT BY TAKING CONTROL OF GOODS

CHAPTER 1 **E+W**

PROCEDURE

62 Enforcement by taking control of goods **E+W**

- (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.

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Commencement Information

II S. 62(1) in force at 15.7.2013 for specified purposes by S.I. 2013/1739, art. 3(a)

VALID FROM 06/04/2014

63 Enforcement agents **E+W**

- (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 **E+W**

- (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;

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- (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.

Commencement Information

I2 S. 64(2)(3)(4) in force at 15.7.2013 for specified purposes by S.I. 2013/1739, art. 3(b)

VALID FROM 06/04/2014

65 Common law rules replaced **E+W**

- (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.

VALID FROM 06/04/2014

66 Pre-commencement enforcement not affected **E+W**

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.

VALID FROM 06/04/2014

67 Transfer of county court enforcement **E+W**

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

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orders for payment of money) for “the registrar shall be” substitute “ any person authorised by or on behalf of the Lord Chancellor is ”.

VALID FROM 06/04/2014

68 Magistrates' courts warrants of control **E+W**

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.”

VALID FROM 06/04/2014

69 County court warrants of control etc. **E+W**

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.”

VALID FROM 06/04/2014

70 Power of High Court to stay execution **E+W**

- (1) If, at any time, the High Court is satisfied that a party to proceedings is unable to pay—

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- (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.

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