



# Finance Act 2008

## 2008 CHAPTER 9

### PART 7

#### ADMINISTRATION

#### CHAPTER 5

#### PAYMENT AND ENFORCEMENT

#### *Taking control of goods etc*

VALID FROM 06/04/2014

#### **127 Enforcement by taking control of goods: England and Wales**

- (1) This section applies if a person does not pay a sum that is payable by that person to the Commissioners under or by virtue of an enactment or under a contract settlement.
- (2) The Commissioners may use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) (taking control of goods) to recover that sum.
- (3) This section extends to England and Wales only.

#### **128 Summary warrant: Scotland**

- (1) This section applies if a person does not pay a sum that is payable by that person to the Commissioners under or by virtue of any enactment or under a contract settlement.
- (2) An officer of Revenue and Customs may apply to the sheriff for a summary warrant.
- (3) An application under subsection (2) must be accompanied by a certificate which—
  - (a) complies with subsection (4), and

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- (b) is signed by the officer.
- (4) A certificate complies with this subsection if—
- (a) it states that—
    - (i) none of the persons specified in the application has paid the sum payable by that person,
    - (ii) the officer has demanded payment from each such person of the sum payable by that person, and
    - (iii) the period of 14 days beginning with the day on which the demand is made has expired without payment being made, and
  - (b) it specifies the sum payable by each person specified in the application.
- (5) Subsection (4)(a)(iii) does not apply to an application under subsection (2) insofar as it relates to—
- (a) sums payable in respect of value added tax,
  - (b) sums payable in respect of deductions required to be made under section 61 of FA 2004 (sub-contractors in the construction industry), and
  - (c) sums payable by a person in that person's capacity as an employer.
- (6) The sheriff must, on an application by an officer of Revenue and Customs under subsection (2), grant a summary warrant in, or as nearly as may be in, the form prescribed by Act of Sederunt.
- (7) A summary warrant granted under subsection (6) authorises the recovery of the sum payable by—
- (a) attachment,
  - (b) money attachment,
  - (c) earnings arrestment,
  - (d) arrestment and action of furthcoming or sale.
- (8) Subject to subsection (9) and without prejudice to section 39(1) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) (expenses of attachment) —
- (a) the sheriff officer's fees, and
  - (b) any outlays necessarily incurred by that officer,
- in connection with the execution of a summary warrant are to be chargeable against the person in relation to whom the warrant was granted.
- (9) No fees are to be chargeable by the sheriff officer against the person in relation to whom the summary warrant was granted for collecting, and accounting to the Commissioners for, sums paid to that officer by that person in respect of the sum payable.
- (10) This section extends to Scotland only.

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**Commencement Information**

**II** S. 128 in force at 23.11.2009 by S.I. 2009/3024, art. 3 (with art. 4)

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## **129 Consequential provision and commencement**

- (1) Part 1 of Schedule 43 contains provision consequential on section 127.
- (2) Part 2 of that Schedule contains provision consequential on section 128.
- (3) The extent of the amendments and repeals in Schedule 43 is the same as the provision amended or repealed.
- (4) Sections 127 and 128 and Schedule 43 come into force on such day as the Commissioners may by order made by statutory instrument appoint.
- (5) An order under subsection (4) may—
  - (a) make different provision for different purposes, and
  - (b) contain transitional provision and savings.

### *Set off*

## **130 Set-off: England and Wales and Northern Ireland**

- (1) This section applies where there is both a credit and a debit in relation to a person.
- (2) The Commissioners may set the credit against the debit (subject to section 131 and any obligation of the Commissioners to set the credit against another sum).
- (3) The obligations of the Commissioners and the person concerned are discharged to the extent of any set-off under subsection (2).
- (4) “Credit”, in relation to a person, means—
  - (a) a sum that is payable by the Commissioners to the person under or by virtue of an enactment, or
  - (b) a relevant sum that may be repaid to the person by the Commissioners.
- (5) For the purposes of subsection (4), in relation to a person, “relevant sum” means a sum that was paid in connection with any liability (including any purported or anticipated liability) of that person to make a payment to the Commissioners under or by virtue of an enactment or under a contract settlement.
- (6) “Debit”, in relation to a person, means a sum that is payable by the person to the Commissioners under or by virtue of an enactment or under a contract settlement.
- (7) In this section references to sums paid, repaid or payable by or to a person (however expressed) include sums that have been or are to be credited by or to a person.
- (8) This section has effect without prejudice to any other power of the Commissioners to set off amounts.
- <sup>F1</sup>(9) .....
- (10) Subsections (1) to (8) extend to England and Wales and Northern Ireland only.

### **Textual Amendments**

**F1** S. 130(9) repealed (retrospective to 6.4.2012) by Finance Act 2012 (c. 14), s. 50(3)(a)(4)

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### **131 No set-off where insolvency procedure has been applied**

- (1) This section applies where—
  - (a) an insolvency procedure has been applied to a person, and
  - (b) there is a post-insolvency credit in relation to that person.
- (2) The Commissioners may not use the power under section 130 to set that post-insolvency credit against a pre-insolvency debit in relation to the person.
- (3) “Post-insolvency credit” means a credit that—
  - (a) became due after the insolvency procedure was applied to the person, and
  - (b) relates to, or to matters occurring at, times after it was so applied.
- (4) “Pre-insolvency debit” means a debit that—
  - (a) arose before the insolvency procedure was applied to the person, or
  - (b) arose after that procedure was so applied but relates to, or to matters occurring at, times before it was so applied.
- (5) Subject to subsection (6), an insolvency procedure is to be taken, for the purposes of this section, to be applied to a person when—
  - (a) a bankruptcy order or winding up order is made or an administrator is appointed in relation to that person,
  - (b) that person is put into administrative receivership,
  - (c) if the person is a corporation, that person passes a resolution for voluntary winding up,
  - (d) a voluntary arrangement comes into force in relation to that person, or
  - (e) a deed of arrangement takes effect in relation to that person.
- (6) In this section references to the application of an insolvency procedure to a person do not include—
  - (a) the application of an insolvency procedure to a person at a time when another insolvency procedure applies to the person, or
  - (b) the application of an insolvency procedure to a person immediately upon another insolvency procedure ceasing to have effect.
- (7) For the purposes of this section—
  - (a) a person shall be treated as being in administrative receivership throughout any continuous period for which there is an administrative receiver of that person (disregarding any temporary vacancy in the office of receiver), and
  - (b) the reference in subsection (5) to a person being put into administrative receivership shall be interpreted accordingly.
- (8) In this section—
 

“administrative receiver” means an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 (c. 45) or Article 5(1) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),

“administrator” means a person appointed to manage the affairs, business and property of another person under Schedule B1 to that Act or to that Order,

“credit” and “debit” have the same meaning as in section 130,

“deed of arrangement” means a deed of arrangement registered in accordance with the Deeds of Arrangement Act 1914 (c. 47) or Chapter 1

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of Part 8 the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), and

“voluntary arrangement” means a voluntary arrangement approved in accordance with Part 1 or Part 8 of the Insolvency Act 1986 (c. 45) or Part 2 or Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989.

(9) This section extends to England and Wales and Northern Ireland only.

### **132 VAT: requirement to set-off**

(1) Section 81 of VATA 1994 (set-off of credits etc) is amended as follows.

(2) For subsection (4C) substitute—

“(4C) In this section, references to the application of an insolvency procedure to a person do not include—

- (a) the application of an insolvency procedure to a person at a time when another insolvency procedure applies to the person, or
- (b) the application of an insolvency procedure to a person immediately upon another insolvency procedure ceasing to have effect.”

(3) In subsection (5)—

- (a) omit paragraph (a),
- (b) in paragraph (b)—
  - (i) for “that Act of 1986” substitute “ the Insolvency Act 1986 ”, and
  - (ii) for “that Order of 1989” substitute “ the Insolvency (Northern Ireland) Order 1989 ”, and
- (c) before the “and” at the end of paragraph (b) insert—
  - “(ba) “administrator” means a person appointed to manage the affairs, business and property of another person under Schedule B1 to that Act or to that Order;”.

### **133 Set-off etc where right to be paid a sum has been transferred**

(1) This section applies where there has been a transfer from one person (“the original creditor”) to another person (“the current creditor”) of a right to be paid a sum (“the transferred sum”) by the Commissioners.

(2) The Commissioners—

- (a) must set the transferred sum against a sum payable to them by the original creditor if they would have had an obligation to do so under or by virtue of an enactment had the original creditor retained the right, and
- (b) may do so if they would have had a power to do so under or by virtue of an enactment or under a rule of law had the original creditor retained the right.

(3) Subsection (2) applies whether the sum payable by the original creditor to the Commissioners first became payable before or after the transfer (but not if it only became payable after the Commissioners discharged their obligation to pay the transferred sum to the current creditor).

(4) The following are discharged to the extent of any set-off under this section—

- (a) the obligations of the Commissioners in relation to the current creditor, and
- (b) the obligations of the original creditor.

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- (5) An obligation under or by virtue of an enactment (other than this section) to set the transferred sum against a sum payable to the Commissioners by a person other than the original creditor has effect subject to the obligation under subsection (2)(a) and to any exercise of the power under subsection (2)(b).
- (6) A power under or by virtue of an enactment (other than this section) or under a rule of law to set the transferred sum against a sum payable to the Commissioners by a person other than the original creditor has effect subject to the obligation under subsection (2)(a).
- (7) In determining the sum (if any) to be paid, the Commissioners may make any reduction that they could have made if the original creditor had retained the right to be paid the transferred sum (in addition to any other reduction that they are entitled to make), including a reduction arising from any defence to a claim for the sum.
- (8) In this section—
  - (a) references to the transfer of a right are to its transfer by assignment, assignation or any other means, <sup>F2</sup>...
  - (b) references to a sum that is payable by or to a person are to a sum that is to be paid, repaid or credited by or to that person and references to the payment of the sum (however expressed) are to be interpreted accordingly, and
  - (c) where a right in relation to a sum has been transferred more than once, references to the original creditor are to the person from whom the right was first transferred (except in subsection (1)).
- (9) Where the right to be paid the transferred sum is dependent on the making of a claim—
  - (a) subsection (2) does not apply unless a claim in respect of the transferred sum has been made, and
  - (b) the references in subsections (2) and (7) to the obligations or powers that the Commissioners would have had if the original creditor had retained the right are references to those that they would have had if the original creditor had also made the claim in respect of the transferred sum.
- (10) This section has effect where the right to be paid the transferred sum was transferred from the original creditor on or after 25 June 2008.

#### Textual Amendments

- F2** Words in s. 133(8)(a) omitted (retrospective to 6.4.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), s. 50(2)(c)(4)

### 134 Retained funding bonds: tender by Commissioners

- (1) Section 939 of ITA 2007 (duty to retain bonds where issue treated as payment of interest) is amended as follows.
- (2) After subsection (4) insert—
 

“(4A) If bonds are tendered in accordance with subsection (4), the Commissioners for Her Majesty's Revenue and Customs may tender the bonds in satisfaction of any amount that is payable by the Commissioners to the relevant creditor in connection with the relevant debt.

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- (4B) For the purposes of subsection (4A)—
- (a) “relevant creditor” and “relevant debt” mean the creditor and the debt mentioned in subsection (1)(a), and
  - (b) a bond is to be taken to have the same value that it had at the time of its issue.
- (4C) If bonds that are to be tendered in accordance with subsection (4) or (4A) are subject to restrictions on their tender or transfer, the restrictions do not prevent the bonds from being—
- (a) tendered in accordance with that subsection, or
  - (b) transferred from the person tendering them to the person to whom they are tendered.”
- (3) Omit subsection (5).
- (4) In ITA 2007, after section 940 insert—

**“940A No appropriate bond or combination of bonds**

- (1) This section applies if—
- (a) the Commissioners for Her Majesty's Revenue and Customs hold one or more bonds tendered in accordance with section 939(4),
  - (b) the Commissioners wish to tender bonds in accordance with section 939(4A) in satisfaction of an amount payable to the relevant creditor, and
  - (c) the Commissioners consider that they do not hold a bond, or combination of bonds, that is appropriate for satisfying the amount payable.
- (2) If requested to do so by the Commissioners, the bond issuer must secure that the Commissioners hold a bond, or combination of bonds, that the Commissioners consider to be appropriate for satisfying the amount payable.
- (3) If requested to do so by the bond issuer, a person must assist the bond issuer to comply with subsection (2).
- (4) The duty under subsection (2), or under subsection (3), does not apply if it would be impracticable for the bond issuer, or the other person, to comply with the duty.
- (5) The matters which the Commissioners may take into account when considering whether or not a bond or combination of bonds is appropriate for satisfying the amount payable include—
- (a) the value of a bond at the time of its issue,
  - (b) the interest which the relevant creditor, or any other person, has in a bond (including the nature or size of the interest), and
  - (c) the terms on which a bond is issued.
- (6) For the purposes of this section—
- (a) “bond issuer” means the person by or through whom bonds were issued, and
  - (b) “relevant creditor” and “relevant debt” have the same meanings as in section 939(4A).”

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- (5) The amendments made by this section have effect in relation to funding bonds issued on or after 12 March 2008.

### *Other measures*

## **135 Interest on unpaid tax in case of disaster etc of national significance**

- (1) This section applies in any case where the Commissioners agree that the payment of a relevant sum may be deferred by reason of circumstances arising as a result of a disaster or emergency specified in an order under this section (an “agreement for deferred payment”).
- (2) In subsection (1) “relevant sum” means a sum to meet any liability to the Commissioners arising under or by virtue of an enactment or a contract settlement.
- (3) No interest on the amount deferred is chargeable in respect of the relief period and no liability to a surcharge on the deferred amount arises during that period.
- (4) The relief period is the period—
  - (a) beginning with a date specified in the order or, if the Commissioners so direct, a later date from which the agreement for deferred payment has effect, and
  - (b) ending with the date on which the agreement for deferred payment ceases to have effect or, if earlier, the date on which the order is revoked.
- (5) The agreement for deferred payment ceases to have effect at the end of the period of deferment specified in the agreement or, if the Commissioners agree to extend (or further extend) that period by reason of circumstances arising as a result of the disaster or emergency, with the end of that extended (or further extended) period.
- (6) If the agreement for deferred payment is an agreement for payment by instalments, the period of deferment in relation to each instalment ends with the date on or before which that instalment is to be paid; but if an instalment is not paid by the agreed date and the Commissioners do not agree to extend the period of deferment, the whole of the agreement for deferred payment is to be treated as ceasing to have effect on that date.
- (7) This section applies whether the agreement for deferred payment was made—
  - (a) before or after the amount to which it relates becomes due and payable, or
  - (b) before or after the making of the order concerned.
- (8) If in any case the Commissioners are satisfied that, although no agreement for deferred payment was made, one could have been made, this section applies as if one had been made; and the terms of the notional agreement for deferred payment are to be assumed to be such as the Commissioners are satisfied would have been agreed in the circumstances.
- (9) An order under this section may be made only in relation to a disaster or emergency which the Treasury consider to be of national significance.
- (10) Such an order—
  - (a) may specify a disaster or emergency which has begun (or both begun and ended) before it is made (including one which has begun, or both begun and ended, before the passing of this Act), and



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- (b) may specify a date before the date on which it is made (including a date before the passing of this Act).
- (11) The power to make an order under this section is exercisable by the Treasury by statutory instrument.
- (12) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the House of Commons.
- (13) In FA 2001, omit section 107 (interest on unpaid tax etc: foot and mouth disease); but the repeal of that section does not affect any agreement for deferred payment made before this Act is passed.

### **136 Fee for payment**

- (1) The Commissioners may by regulations provide that, where a person makes a payment to the Commissioners or a person authorised by the Commissioners using a method of payment specified in the regulations, the person must also pay a fee specified in, or determined in accordance with, the regulations.
- (2) A method of payment may only be specified in regulations made under this section if the Commissioners expect that they, or the person authorised by them, will be required to pay a fee or charge (however described) in connection with amounts paid using that method of payment.
- (3) Regulations under this section—
  - (a) may make provision about the time and manner in which the fee must or may be paid,
  - (b) may make provision generally or only for specified purposes, and
  - (c) may make different provision for different purposes.
- (4) Regulations under this section are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

### **137 County court proceedings**

- (1) In section 25 of CRCA 2005 (conduct of civil proceedings)—
  - (a) after subsection (1) insert—

“(1A) An officer of Revenue and Customs or a person authorised by the Commissioners may conduct county court proceedings for the recovery of an amount payable to the Commissioners under or by virtue of an enactment or under a contract settlement.”, and
  - (b) after subsection (5) insert—

“(6) In this section “contract settlement” means an agreement made in connection with any person’s liability to make a payment to the Commissioners under or by virtue of an enactment.”
- (2) In section 66 of TMA 1970 (county court proceedings)—
  - (a) in subsection (1), omit “commenced in the name of a collector”, and
  - (b) omit subsection (2).

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- (3) Accordingly, in FA 1984, omit section 57(2).
- (4) In section 244 of IHTA 1984 (right to address court), omit “county court or”.
- (5) In paragraph 3 of Schedule 4 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (recovery of contributions where income tax recovery provisions not applicable)—
  - (a) in sub-paragraph (1), omit “commenced in the name of an authorised officer”, and
  - (b) omit sub-paragraph (2).
- (6) In paragraph 5 of Schedule 12 to FA 2003 (stamp duty land tax)—
  - (a) in sub-paragraph (1), omit “brought in the name of the collector”, and
  - (b) omit sub-paragraph (2).
- (7) Nothing in subsections (2) to (6) affects proceedings commenced or brought in the name of a collector or authorised officer before this Act is passed.

### **138 Certificates of debt**

- (1) In CRCA 2005, after section 25 insert—

#### **“25A Certificates of debt**

- (1) A certificate of an officer of Revenue and Customs that, to the best of that officer's knowledge and belief, a relevant sum has not been paid is sufficient evidence that the sum mentioned in the certificate is unpaid.
  - (2) In subsection (1) “relevant sum” means a sum payable to the Commissioners under or by virtue of an enactment or under a contract settlement (within the meaning of section 25).
  - (3) Any document purporting to be such a certificate shall be treated as if it were such a certificate until the contrary is proved.
  - (4) Subsection (1) has effect subject to any provision treating the certificate as conclusive evidence.”
- (2) Schedule 44 contains provisions consequential on this section.

#### *Supplementary*

### **139 Interpretation of Chapter**

In this Chapter—

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs, and

“contract settlement” means an agreement made in connection with any person's liability to make a payment to the Commissioners under or by virtue of an enactment.

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