

STATUTORY INSTRUMENTS

1998 No. 3132

The Civil Procedure Rules 1998

[^{F1}PART 85

Claims on Controlled Goods and Executed Goods

Textual Amendments

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SECTION I

Scope and Interpretation

Scope

85.1.—(1) This Part contains rules about claims on controlled goods and executed goods as follows—

- (a) Section II sets out the mode of application for claims under this Part;
 - (b) Section III relates to the procedure for making claims to controlled goods;
 - (c) Section IV relates to the procedure for making claims against executed goods;
 - (d) Section V relates to the procedure for a debtor making a claim to exempt goods;
 - (e) Section VI relates to the powers of the court hearing any application under this Part.
- (2) The rules in this Part apply where—
- (a) a person makes an application to the court claiming that goods of which control has been taken belong to that person and not to the debtor;
 - (b) a person makes an application to the court claiming that goods, money or chattels taken or intended to be taken under a writ of execution or the proceeds or value of such goods or chattels belong to that person and not to the debtor; and
 - (c) a debtor, whose goods have been made subject to an enforcement power under an enactment, writ or warrant of control or have been taken or are intended to be taken under a writ of execution, claims that such goods or any of them are exempt goods.

Interpretation

85.2.—(1) In this Part—

- (a) “the Act” means the Tribunals, Courts and Enforcement Act 2007;
- (b) “claim to controlled goods” is a claim made under paragraph 60(1) of Schedule 12;
- (c) “a claim to exempt goods” means a claim by a debtor whose goods have been subject to an enforcement power under an enactment, writ or warrant of control or the right to execute conferred by a writ of execution, that such goods are exempt goods;
- (d) “claimant to controlled goods” means any person making a claim to controlled goods;
- (e) “claimant to executed goods” means any person making a claim to executed goods;
- (f) “the court” has the meaning given in paragraph 60(8) of Schedule 12, in respect of a claim to controlled goods;

- (g) “debtor’s home court” means the Central Office or District Registry of the High Court or the County Court hearing centre serving the address where the debtor resides or carries on business;
- (h) “enforcement agent” has the meaning given in paragraph 2(1) of Schedule 12;
- (i) “enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003;
- (j) “executed goods” means goods subject to a writ of execution;
- (k) “exempt goods” —
 - (i) in respect of controlled goods has the meaning given in paragraph 3(1) of Schedule 12 and defined in regulations 4 and 5 of the TCG Regulations; and
 - (ii) in respect of executed goods has the meaning given in paragraph 9(3) of Schedule 7 to the Courts Act 2003;
- (l) “goods subject to enforcement” refers to either controlled goods or executed goods;
- (m) “relevant enforcement officer” means—
 - (i) in relation to a writ of execution which is directed to a single enforcement officer, that officer; and
 - (ii) in relation to a writ of execution which is directed to two or more enforcement officers, the officer to whom the writ is allocated;
- (n) “required payments” has the meaning given in paragraph 60(4) of Schedule 12;
- (o) “Schedule 12” means Schedule 12 to the Act;
- (p) “TCG Regulations” means the Taking Control of Goods Regulations 2013;
- (q) “warrant of control” is to be construed in accordance with section 62(4) of the Act;
- (r) “writ of control” is to be construed in accordance with section 62(4) of the Act;
- (s) “writ of execution” includes—
 - (i) a writ of possession;
 - (ii) a writ of delivery;
 - (iii) a writ of sequestration;
 - (iv) writs relating to ecclesiastical property, namely—
 - (aa) a writ of fieri facias de bonis ecclesiasticis;
 - (bb) a writ of sequestrari de bonis ecclesiasticis,and any further writ in aid of any such writs, but does not include a writ of control;
- (t) the following words or phrases have the meaning given in paragraph 1 of Schedule 12, in respect of a claim to controlled goods—
 - (i) “creditor”;
 - (ii) “debt”;
 - (iii) “debtor”;
 - (iv) “enforcement power”;
- (u) the following words or phrases have the meaning given in paragraph 3(1) of Schedule 12—
 - (i) “control”;
 - (ii) “controlled goods”;
 - (iii) “co-owner”;
 - (iv) “disposal”;

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- (v) “interest”;
- (vi) “money”;
- (vi) “premises”;
- (vii) “securities”.

SECTION II

Mode of Application for Claims under this Part

Mode of application for claims under this Part

85.3. Any claim under this Part must be made by an application in accordance with Part 23.

SECTION III

Procedure for making a claim to controlled goods

Procedure for making a claim to controlled goods

85.4.—(1) Any person making a claim under paragraph 60(1) of Schedule 12 must, as soon as practicable but in any event within 7 days of the goods being removed under the exercise of an enforcement power, give notice in writing of their claim to the enforcement agent who has taken control of the goods (“the notice of claim to controlled goods”) and must include in such notice—

- (a) their full name and address, and confirmation that such address is their address for service;
- (b) a list of all those goods in respect of which they make such a claim; and
- (c) the grounds of their claim in respect of each item.

(2) On receipt of a notice of claim to controlled goods which complies with paragraph (1) the enforcement agent must within 3 days give notice of such claim to—

- (a) the creditor; and
- (b) any other person making a claim to the controlled goods under paragraph (1) (“any other claimant to the controlled goods”);

(3) The creditor, and any other claimant to the controlled goods, must, within 7 days after receiving the notice of claim to controlled goods, give notice in writing to the enforcement agent informing them whether the claim to controlled goods is admitted or disputed in whole or in part.

(4) The enforcement agent must notify the claimant to the controlled goods in writing within 3 days of receiving the notice in paragraph (3) whether the claim to controlled goods is admitted or disputed in whole or in part.

(5) A creditor who gives notice in accordance with paragraph (3) admitting a claim to controlled goods is not liable to the enforcement agent for any fees and expenses incurred by the enforcement agent after receipt of that notice by the enforcement agent.

(6) If an enforcement agent receives a notice from a creditor under paragraph (3) admitting a claim to controlled goods the following applies—

- (a) the enforcement power ceases to be exercisable in respect of such controlled goods; and
- (b) as soon as reasonably practicable the enforcement agent must make the goods available for collection by the claimant to controlled goods if they have been removed from where they were found.

(7) Where the creditor, or any other claimant to controlled goods to whom a notice of claim to controlled goods was given, fails, within the period mentioned in paragraph (3), to give the required notice, the enforcement agent may seek—

- (a) the directions of the court by way of an application; and
- (b) an order preventing the bringing of any claim against them for, or in respect of, their having taken control of any of the goods or having failed so to do.

Procedure for making a claim to controlled goods where the claim is disputed

85.5.—(1) Where a creditor, or any other claimant to controlled goods to whom a notice of claim to controlled goods was given, gives notice under rule 85.4(3) that the claim to controlled goods, or any part of it, is disputed, and wishes to maintain their claim to the controlled goods, the following procedure will apply.

(2) The claimant to controlled goods must make an application which must be supported by—

- (a) a witness statement—
 - (i) specifying any money;
 - (ii) describing any goods claimed; and
 - (iii) setting out the grounds upon which their claim to the controlled goods is based; and
- (b) copies of any supporting documents that will assist the court to determine the claim.

(3) In the High Court the claimant to controlled goods must serve the application notice and supporting witness statements and exhibits on—

- (a) the creditor;
- (b) any other claimant to controlled goods of whom the claimant to controlled goods is aware; and
- (c) the enforcement agent.

(4) In the County Court when the application is made the claimant to controlled goods must provide to the court the addresses for service of—

- (a) the creditor;
- (b) any other claimant to controlled goods of whom the claimant to controlled goods is aware; and
- (c) the enforcement agent,

(“the respondents”), and the court will serve the application notice and any supporting witness statement and exhibits on the respondents.

(5) An application under paragraph (2) must be made to the court which issued the writ or warrant conferring power to take control of the controlled goods, or, if the power was conferred under an enactment, to the debtor’s home court.

(6) The claimant to controlled goods must make the required payments on issue of the application in accordance with paragraph 60(4)(a) of Schedule 12, unless such claimant seeks a direction from the court that the required payment be a proportion of the value of the goods, in which case they must seek such a direction immediately after issue of the application, on notice to the creditor and to the enforcement agent.

(7) The application notice will be referred to a Master or District Judge.

(8) On receipt of an application for a claim to controlled goods, the Master or District Judge may—

- (a) give directions for further evidence from any party;

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- (b) list a hearing to give directions;
- (c) list a hearing of the application;
- (d) determine the amount of the required payments, make directions or list a hearing to determine any issue relating to the amount of the required payments or the value of the controlled goods;
- (e) stay, or dismiss, the application if the required payments have not been made;
- (f) make directions for the retention, sale or disposal of the controlled goods;
- (g) give directions for determination of any issue raised by a claim to controlled goods.

SECTION IV

Procedure for making a Claim against Executed Goods

Procedure for making a claim against executed goods

85.6.—(1) A claimant to executed goods must, as soon as practicable but in any event within 7 days of the goods being removed by the enforcement officer, give notice in writing of their claim to the relevant enforcement officer (“the notice of claim to executed goods”) and must include in such notice—

- (a) their full name and address, and confirmation that such address is their address for service;
- (b) a list of all those goods in respect of which they make such a claim; and
- (c) the grounds of their claim in respect of each item.

(2) On receipt of a notice of claim to executed goods which complies with paragraph (1) the enforcement officer must within 3 days give notice of such claim to—

- (a) the creditor; and
- (b) any other person making a claim to the executed goods under paragraph (1) (“any other claimant to the executed goods”).

(3) The creditor, and any other claimant to executed goods, must, within 7 days after receiving the notice of claim to the executed goods, give notice in writing to the enforcement officer informing them whether the claim to the executed goods is admitted or disputed in whole or in part.

(4) The enforcement officer must notify the claimant to executed goods in writing within 3 days of receiving the notice in paragraph (3) whether the claim to executed goods is admitted or disputed in whole or in part.

(5) A creditor who gives notice in accordance with paragraph (3) admitting a claim to executed goods is not liable to the enforcement officer for any fees and expenses incurred by the enforcement officer after receipt of that notice by the enforcement officer.

(6) If an enforcement officer receives a notice from a creditor under paragraph (3) admitting a claim to executed goods the following applies—

- (a) the writ of execution ceases to be exercisable in respect of such executed goods; and
- (b) as soon as reasonably practicable the enforcement officer must make the goods available for collection by the claimant to executed goods if the enforcement officer has removed the goods from where they were found.

(7) Where the creditor, or any other claimant to executed goods to whom a notice of claim to executed goods was given, fails, within the period mentioned in paragraph (3), to give the required notice, the enforcement officer may seek—

- (a) the directions of the court by way of an application; and

(b) an order preventing the bringing of any claim against them for, or in respect of, the seizure of the executed goods or their having failed so to do.

(8) An application under paragraph (7) must be made to the court which issued the writ of execution.

Procedure for making a claim to executed goods where the claim is disputed

85.7.—(1) Where a creditor, or any other claimant to executed goods to whom a notice of claim to executed goods was given, gives notice under rule 85.6(3) that the claim to executed goods, or any part of it, is disputed, and wishes to maintain their claim, the following procedure will apply.

(2) The claimant to executed goods must make an application by application notice which must be supported by—

(a) a witness statement—

(i) specifying any money;

(ii) describing any goods claimed; and

(iii) setting out the grounds upon which the claim to the executed goods is based; and

(b) copies of any supporting documents that will assist the court to determine the claim.

(3) The claimant to executed goods must serve the application notice and supporting witness statements and exhibits on—

(a) the creditor;

(b) any other claimant to the executed goods of whom they are aware; and

(c) the relevant enforcement officer.

(4) An application under paragraph (2) must be made to the court which issued the writ of execution.

(5) The application notice will be referred to a Master or District Judge of a District Registry.

(6) On receipt of an application for a claim to executed goods, the Master or District Judge may—

(a) give directions for further evidence from any party;

(b) list a hearing to give directions;

(c) list a hearing of the application;

(d) make directions for the retention, sale or disposal of the executed goods; and

(e) give directions for determination of any issue raised by a claim to executed goods.

(Rule 83.3(11) provides that the validity of a writ of execution is automatically extended following an application under paragraph (2) until 12 months from the conclusion of the application proceedings.)

SECTION V

Procedure for a Debtor making a Claim to Exempt Goods

Procedure for a debtor making a claim to exempt goods

85.8.—(1) A debtor making a claim to exempt goods must, as soon as practicable and in any event within 7 days of the removal of the goods, give notice in writing of the claim to exempt goods (“notice of claim to exempt goods”) to the enforcement agent who has taken control of the goods or relevant enforcement officer and must include in such notice—

(a) their full name and address and that address is their address for service;

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- (b) a list of all those goods in respect of which they make such a claim; and
 - (c) the grounds of the claim in respect of each item.
- (2) On receipt of a notice of claim to exempt goods, the enforcement agent or relevant enforcement officer must within 3 days give notice of such claim to—
- (a) the creditor; and
 - (b) any other person making a claim under rule 85.4 or 85.6 to the goods subject to enforcement (“any other claimant to the goods subject to enforcement”).
- (3) The creditor, and any other claimant to the goods subject to enforcement, must, within 7 days after receiving the notice of claim to exempt goods, give notice in writing to the enforcement agent or relevant enforcement officer informing them whether the claim to exempt goods is admitted or disputed in whole or in part.
- (4) The enforcement agent or relevant enforcement officer must notify the debtor in writing within 3 days of receiving the notice in paragraph (3) whether the claim to exempt goods is admitted or disputed in whole or in part.
- (5) A creditor who gives notice in accordance with paragraph (3) admitting a claim to controlled goods or to executed goods is not liable to the enforcement agent or officer for any fees and expenses incurred by the enforcement agent or officer after receipt of that notice by the enforcement agent or officer.
- (6) If an enforcement agent or relevant enforcement officer receives a notice from a creditor and from any other claimant to the goods subject to enforcement under paragraph (3) admitting a claim to exempt goods the following applies—
- (a) the enforcement power ceases to be exercisable, and the right to execute conferred by any writ of execution ceases to have effect, in respect of such exempt goods;
 - (b) as soon as reasonably practicable the enforcement agent or relevant enforcement officer must make the goods available for collection by the debtor if the enforcement agent or officer has removed them from where they were found.
- (7) Where the creditor, or any other claimant to the goods subject to enforcement to whom notice of claim to exempt goods was given, fails, within the period mentioned in paragraph (3), to give the required notice, the enforcement agent or relevant enforcement officer may seek—
- (a) the directions of the court by way of an application; and
 - (b) an order preventing the bringing of any claim against them for, or in respect of, their having taken control of or seized by execution any of the goods or their having failed to do so.
- (8) An application under paragraph (7) must be made to the court which issued the writ or warrant conferring power to take control of controlled goods, or the writ of execution or, if the power to take control of controlled goods was conferred under an enactment, to the County Court hearing centre which is the debtor’s home court.

Procedure for making a claim to exempt goods where the claim is disputed

85.9.—(1) Where a creditor, or any other claimant to goods subject to enforcement to whom notice of a claim to exempt goods was given, gives notice under rule 85.8 that the claim to exempt goods, or any part of it, is disputed, and wishes to maintain their claim on the goods subject to enforcement, the following procedure will apply.

(2) The debtor must make an application within 7 days of receiving the notice under rule 85.8(3) which must be supported by—

- (a) a witness statement—
 - (i) describing any goods to which a claim to exempt goods is made; and

- (ii) setting out the grounds upon which such claim is based; and
 - (b) copies of any supporting documents that will assist the court to determine such claim.
- (3) In the High Court the debtor must serve the application notice and supporting witness statements and exhibits on—
- (a) the creditor;
 - (b) any other claimant to the goods subject to enforcement of whom they are aware; and
 - (c) the enforcement agent or relevant enforcement officer.
- (4) In the County Court the debtor must provide to the court when the application is made the addresses for service of—
- (a) the creditor;
 - (b) any other claimant to controlled goods of whom the debtor is aware; and
 - (c) the enforcement agent,
- (“the respondents”), and the court will serve the application notice and supporting witness statements and exhibits on the respondents.
- (5) An application under paragraph (2) must be made to the court which issued the writ or warrant conferring power to take control of controlled goods or the writ of execution or if the power to take control of controlled goods was conferred under an enactment, to the debtor’s home court.
- (6) The application notice will be referred to a Master or District Judge.
- (7) On receipt of an application for a claim to exempt goods, the Master or District Judge may—
- (a) give directions for further evidence;
 - (b) list a hearing to give directions;
 - (c) list a hearing of the application;
 - (d) make directions for the retention, sale or disposal of the goods subject to the claim to exempt goods;
 - (e) give directions for determination of any issue raised by the exempt goods claim.

SECTION VI

Powers of the Court hearing any application under this Part

Directions and determination of claims

- 85.10.**—(1) At any hearing of any application under this Part the court may—
- (a) determine an application summarily; or
 - (b) give directions for the determination of any issue raised by such application;
 - (c) order that any issue between any parties to a claim to goods subject to enforcement be stated and tried, and give all necessary directions for trial;
 - (d) give directions for the purpose of determining the amount of the required payments or any underpayment of the required payments pursuant to paragraph 60(5) of Schedule 12 and regulation 49 of the TCG Regulations;
 - (e) summarily determine the amount of the required payments or any underpayment of the required payments pursuant to paragraph 60(5) of Schedule 12 and regulation 49 of the TCG Regulations;
 - (f) make directions for the retention, sale or disposal of goods subject to enforcement and for the payment of any proceeds of sale; or

(g) make any order that the court considers appropriate.

(2) Where a claimant to goods subject to enforcement or a debtor making a claim to exempt goods does not appear at any hearing listed on the application or, having appeared, fails or refuses to comply with an order made in the proceedings, the court may make an order declaring such claimant, or the debtor, and all persons claiming under them, for ever barred from prosecuting their claim against the creditor or any other claimant to the goods subject to enforcement, but such an order will not affect the rights of any other claimants to the goods subject to enforcement as between themselves.

(3) Where a claimant to goods subject to enforcement alleges that they are entitled, under a bill of sale or otherwise, to the controlled goods or to the executed goods by way of security for debt, the court may order those goods or any part thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

(4) Nothing in this rule limits the court's case management powers to make any other directions permissible under these Rules.

Trial of issue

85.11.—(1) Part 39 will, with the necessary modifications, apply to the trial of an issue in an application under this Part as it applies to the trial of a claim.

(2) The court by which an issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the application.

(3) Practice Direction 2B applies to the trial of an issue in an application under this Part.

Costs

85.12.—(1) The court may in or for the purposes of any application under this Part make such order as to costs as it thinks just.

(2) Where a claimant to goods subject to enforcement or a debtor in a claim to exempt goods fails to appear at a hearing, the court may direct that the enforcement agent's or officer's costs and creditor's costs will be assessed by a Master, District Judge, Costs judge or Costs officer.

(3) In a claim to controlled goods a debtor may request the court to assess the costs incurred by an enforcement agent, in which case the court will apply the Taking Control of Goods (Fees) Regulations 2014 to such assessment.

(4) In a claim to executed goods a debtor may request the court to assess the costs incurred by an enforcement officer, in which case the court will apply Schedule 3 of the High Court Enforcement Officers Regulations 2004 to such assessment, save in relation to the costs of execution of writs of sequestration and writs relating to ecclesiastical property.]

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