
DRAFT STATUTORY INSTRUMENTS

2010 No.

The Community Infrastructure Levy Regulations 2010

PART 9

ENFORCEMENT

CHAPTER 3

RECOVERY OF CIL

Interpretation and application of Chapter 3

95.—(1) In this Chapter—

“authority concerned” means the collecting authority which applied for one or more liability orders against a debtor under regulation 97;

“charging order” means an order under regulation 103;

“debtor” means a person against whom a liability order has been made;

“liability order” means an order under regulation 97; and

“reminder notice” means a notice served under regulation 96.

(2) An amount which has become payable to a collecting authority under these Regulations and which has not been paid is recoverable in accordance with this Chapter.

Liability orders: reminder notice

96.—(1) Before a collecting authority applies for a liability order it must serve on the person against whom the application is to be made a notice (“reminder notice”) which must state every amount in respect of which the authority is to make the application.

(2) A reminder notice may be served in respect of an amount at any time after it has become due.

Application for liability order

97.—(1) Where the amount stated in a reminder notice is wholly or partly unpaid at the end of the period of seven days beginning with the day on which the reminder notice was served, the collecting authority may apply to a magistrates’ court for an order (“liability order”) against the person by whom it is payable.

(2) An application is instituted by making a complaint to a justice of the peace, and requesting the issue of a summons directed to that person to appear before the court to show why the person has not paid the outstanding amount.

(3) Section 127(1) of the Magistrates’ Courts Act 1980(1) (limitation of time) does not apply to such an application; but no application may be instituted in respect of an outstanding amount after the period of six years beginning with the day that amount became due.

(1) 1980 c. 43.

(4) Section 55(2) of the Magistrates' Courts Act 1980 (non-appearance of defendant) does not apply to any proceedings under this regulation.

(5) The court must make the liability order if it is satisfied that the amount has become payable by the defendant and has not been paid.

(6) An order made pursuant to paragraph (5) must be made in respect of an amount equal to the aggregate of—

- (a) the outstanding amount; and
- (b) an amount equal to the costs reasonably incurred by the collecting authority in obtaining the order.

(7) Where the outstanding amount is paid after an order has been applied for under paragraph (2) but before it has been made, the court must nonetheless (if so requested by the collecting authority) make the order in respect of an amount equal to the costs reasonably incurred by the authority in making the application.

(8) A single liability order may deal with one person and one such amount as is mentioned in paragraph (6) and (7) or, if the court thinks fit, may deal with more than one person and more than one such amount.

(9) No liability order may be made in pursuance of a summons issued under paragraph (2) before the end of the period of 14 days beginning with the day on which the summons was served.

(10) The amount in respect of which a liability order is made is enforceable in accordance with this Chapter; and accordingly for the purposes of Part 3 of the Magistrates' Court Act 1980 (satisfaction and enforcement) it is not to be treated as a sum adjudged to be paid by order of the court.

Distress

98.—(1) Where a liability order has been made the authority concerned may levy the appropriate amount by distress and sale of goods of the debtor against whom the liability order was made.

(2) Without prejudice to paragraph (12) no person making a distress may seize any clothing, bedding, furniture, household equipment or provisions which are necessary for satisfying the basic domestic needs of the debtor and his family.

(3) The appropriate amount for the purposes of paragraph (1) is the aggregate of—

- (a) an amount equal to any amount which is or forms part of the amount in respect of which the liability order was made; and
- (b) a sum in respect of charges connected with distress.

(4) Schedule 3 to the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989⁽²⁾ applies for the purpose of determining the sum referred to in paragraph (3)(b).

(5) If, before any goods are seized, the appropriate amount (including charges arising up to the time of the payment or tender) is paid or tendered to the authority, the authority must accept the amount and not proceed with the levy.

(6) Where an authority has seized goods of the debtor in pursuance of distress, but before sale of the goods the appropriate amount (including charges arising up to the time of the payment or tender) is paid or tendered to the authority, the authority must—

- (a) accept the amount and not proceed with the levy; and
- (b) make the goods available for collection by the debtor.

(7) The person levying distress on behalf of the authority must—

(2) [S.I. 1989/1058](#), relevant amending instruments are [S.I. 1993/774](#), [S.I. 1998/3089](#), [S.I. 2003/2210](#), [S.I. 2004/1013](#), [S.I. 2006/3395](#) and [S.I. 2007/501](#).

- (a) produce written evidence of the person's authority, if so requested by the debtor;
 - (b) hand to the debtor, or leave at the premises where the distress is levied, a copy of this regulation and a memorandum setting out the appropriate amount; and
 - (c) hand to the debtor a copy of any close or walking possession agreement entered into.
- (8) A distress may be made anywhere in England and Wales.
- (9) No distress under this regulation may be made other than by a person who is authorised to act as a bailiff by a general certificate granted under section 7 of the Law of Distress Amendment Act 1888(3) (distress to be levied by certified bailiffs).
- (10) A distress shall not be deemed unlawful on account of any defect or want of form in the liability order, and no person making a distress shall be deemed a trespasser on that account.
- (11) No person making a distress shall be deemed a trespasser from the beginning on account of any subsequent irregularity in making the distress; but a person sustaining special damage by reason of the subsequent irregularity may recover full satisfaction for the special damage (and no more) by proceedings in trespass or otherwise.
- (12) The provisions of this regulation do not affect the operation of any enactment which protects goods of any class from distress.

Appeals in connection with distress

- 99.**—(1) A person aggrieved by the levy of, or an attempt to levy, a distress may appeal to a magistrates' court.
- (2) The appeal must be instituted by making a complaint to a justice of the peace, and requesting the issue of a summons directed to the authority which levied or attempted to levy the distress to appear before the court to answer to the matter by which the person is aggrieved.
- (3) If the court is satisfied that a levy was irregular, it may—
- (a) order the goods distrained to be discharged if they are in the possession of the authority;
 - (b) by order award compensation in respect of any goods distrained and sold.
- (4) The amount of compensation that may be awarded under paragraph (3)(b) is an amount equal to the amount which, in the opinion of the court, would be awarded by special damages in respect of the goods if proceedings were brought in trespass or otherwise in connection with the irregularity under regulation 98(11).
- (5) If the court is satisfied that an attempted levy was irregular, it may by order require the authority to desist from levying in the manner giving rise to the irregularity.

Commitment to prison

- 100.**—(1) A collecting authority may apply to a magistrates' court for the issue of a warrant committing a debtor to prison where—
- (a) the debtor is an individual;
 - (b) the authority has sought to levy an amount by distress under regulation 98 and the person making the distress reports that they were unable (for whatever reason) to find any or sufficient goods of the debtor on which to levy the amount; and
 - (c) the authority is able to demonstrate to the court that it is unable to recover the amount payable by the debtor by means of a charging order under regulation 103.

(3) 1888 c. 21; section 7 was amended by paragraph 2 of Schedule 8 to the Courts Act 1971 (c. 23) and section 74 of the Courts and Legal Services Act 1990 (c. 41).

(2) On such an application being made the court must (in the debtor's presence) inquire as to the debtor's means and inquire whether the failure to pay the debt which led to the liability order being made against the debtor was due to the debtor's wilful refusal or culpable neglect.

(3) If (and only if) the court is of the opinion that the failure to pay the debt was due to the debtor's wilful refusal or culpable neglect it may if it thinks fit—

- (a) issue a warrant of commitment against the debtor; or
- (b) fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as the court thinks just.

(4) The warrant must be made in respect of the relevant amount; and the relevant amount for this purpose is the aggregate of—

- (a) the appropriate amount mentioned in regulation 98(3), or (as the case may be) so much of it as remains outstanding; and
- (b) a sum of an amount equal to the costs reasonably incurred by the collecting authority in respect of the application.

(5) The warrant—

- (a) must state the relevant amount mentioned in paragraph (4);
- (b) may be directed to the authority making the application and to such other persons as the court issuing it thinks fit; and
- (c) may be executed anywhere in England and Wales by any person to whom it is directed.

(6) If—

- (a) before a warrant has been issued, or a term of imprisonment fixed and the issue of a warrant postponed, an amount determined in accordance with paragraph (7) is paid or tendered to the authority;
- (b) after a term of imprisonment has been fixed and the issue of a warrant postponed, any amount the court has ordered the debtor to pay is paid or tendered to the authority; or
- (c) after a warrant has been issued, the amount stated in it is paid or tendered to the authority,

the authority must accept the amount concerned, take no further steps as regards its recovery, and the debtor, if committed to prison, must be released.

(7) The amount referred to in paragraph (6)(a) is the aggregate of—

- (a) the appropriate amount mentioned in regulation 98(3) (or so much of it as remains outstanding); and
- (b) the authority's reasonable costs incurred up to the time of payment or tender.

(8) Subject to paragraphs (9) and (10) the warrant must order that the debtor be imprisoned for a time specified in the warrant (which must not exceed three months) unless the amount stated in the warrant is paid sooner.

(9) Where—

- (a) a warrant is issued after a postponement under paragraph (3)(b); and
- (b) since the term of imprisonment was fixed but before the issue of the warrant, the amount mentioned in paragraph (4)(a) with respect to which the warrant would (but for the postponement) have been made has been reduced by a part payment,

the period of imprisonment ordered under the warrant must be the term fixed under paragraph (3) reduced by such numbers of days as bears to the total number of days in that term less one day the same proportion as the part paid bears to that amount.

(10) Where, after the issue of a warrant, a part payment of the amount stated in it is made, the period of imprisonment must be reduced by such number of days as bears to the total number of

days in the term of imprisonment specified in the warrant less one day the same proportion as the part paid bears to the amount so stated.

- (11) In calculating a reduction required under paragraphs (9) and (10)—
- (a) any fraction of a day must be left out of account; and
 - (b) rule 55(1), (2) and (3) of the Magistrates' Courts Rules 1981⁽⁴⁾ (payment after imprisonment imposed) applies (so far as is relevant) to a part payment as if the imprisonment concerned were imposed for want of sufficient distress to satisfy a sum adjudged to be paid by a magistrates' court.

Commitment to prison: further provision

101.—(1) A single warrant may not be issued under regulation 100 against more than one person.

(2) Where an application under regulation 100 has been made, and after the making of the inquiries mentioned in paragraph (2) of that regulation no warrant is issued or term of imprisonment fixed, the court may remit all or part of the appropriate amount mentioned in regulation 98(3) to which the application relates.

(3) Where an application under regulation 100 has been made but no warrant is issued or term of imprisonment fixed, the application may be renewed (except so far as regards any sum remitted under paragraph (2)) on the ground that the circumstances of the debtor have changed.

(4) A statement in writing to the effect that wages of any amount have been paid to the debtor during any period, purporting to be signed by or on behalf of the debtor's employer, shall in any proceedings under regulation 100 be evidence of the facts there stated.

(5) For the purpose of enabling enquiry to be made as to the debtor's conduct and means under regulation 100(2), a justice of the peace may—

- (a) issue a summons to the debtor to appear before a magistrates' court and (if the debtor does not obey the summons) issue a warrant for the debtor's arrest; or
- (b) issue a warrant for the debtor's arrest without issuing a summons.

(6) A warrant issued under paragraph (5) may be executed anywhere in England and Wales by any person to whom it is directed or by any constable acting within the constable's police area.

Magistrates' courts

102.—(1) A magistrates' court must not under this Chapter hear a summons, entertain an application for a warrant or hold an inquiry as to means on such an application except when composed of at least two justices.

(2) Paragraph (1) is subject to any enactment authorising a District Judge (Magistrates' Courts) or other person to act alone.

(3) References to a justice of the peace in regulations 97(2) and 99(2) must be construed subject to rule 2 of the Justices' Clerks Rules 2005⁽⁵⁾ (which authorises certain matters authorised to be done by a justice of the peace to be done by a justices' clerk).

(4) In any proceedings under regulations 97, 99 or 100, a statement contained in a document constituting or forming part of a record compiled by the applicant authority is admissible as evidence of any fact stated in it of which direct oral evidence would be admissible.

(5) In paragraph (4) "statement" includes any representation of fact, whether made in words or otherwise; and the reference to an application under regulation 100 includes a reference to an application made in the circumstances mentioned in regulation 101(3).

(4) S.I. 1981/552; relevant amending instruments are S.I. 2001/610 and S.I. 2005/617.

(5) S.I. 2005/545.

Charging orders

103.—(1) An application to the appropriate court may be made under this regulation where—

- (a) a magistrates’ court has made one or more liability orders pursuant to regulation 97(5);
- (b) the amount mentioned in regulation 97(6)(a) in respect of which the liability order was made, or, where more than one liability order was made, the aggregate of the amounts mentioned in regulation 97(6)(a) in respect of which each such liability order was made, is an amount the debtor is liable to pay under these Regulations; and
- (c) at the time the application under this regulation is made at least £2000 of the amount in respect of which the liability order was made, or, where more than one liability order was made, the aggregate of the amounts in respect of which those liability orders were made, remains outstanding.

(2) The application which may be made to the appropriate court under this regulation is an application by the authority concerned for an order imposing a charge on a relevant interest to secure the due amount.

(3) Before making the application referred to in paragraph (2) the authority concerned must notify the debtor of its intention to do so.

(4) The notification must be in writing and—

- (a) set out the authority’s reasons for seeking a charging order;
- (b) specify the effect of a charging order; and
- (c) state the due amount and the steps the authority concerned will take if payment of the due amount is not forthcoming.

(5) The notification must be sent to the debtor and any other person the authority considers may be prejudiced by the making of the charging order.

(6) Where the charge would be imposed on land the notification must be displayed on that land.

(7) If the authority concerned does not receive payment of the due amount within 21 days of the date of the notification, it may make the application referred to in paragraph (2).

(8) For the purposes of this regulation—

“appropriate court” has the meaning given in section 1 of the Charging Orders Act 1979(6) (charging orders);

“due amount” means the aggregate of—

- (a) an amount equal to any outstanding sum which is, or forms part of, the amount in respect of which the one or more liability orders referred to in paragraph (1)(a) were made, and
- (b) an amount equal to the costs reasonably incurred by the collecting authority in obtaining the charging order;

“relevant interest” means any interest held by the debtor beneficially in any asset of a kind mentioned in section 2(2) of the Charging Orders Act 1979 (property which may be charged).

Charging orders: further provision

104.—(1) In deciding whether to make a charging order, the court must consider all the circumstances of the case, and in particular any evidence before it as to—

- (a) the personal circumstances of the debtor; and

(6) 1979 c. 53; section 1 was amended by paragraphs 2, 3 and 6 of Schedule 3 to the Administration of Justice Act 1982 (c. 53) and paragraph 71 of Schedule 2 to the County Courts Act 1984 (c. 28).

- (b) whether any other person would be likely to be unduly prejudiced by the making of the order.
- (2) A charging order—
 - (a) must specify the interest on which the charge is imposed; and
 - (b) may, as the court thinks fit, be made absolutely or subject to conditions as to the time when the charge is to become enforceable or as to other matters.
- (3) A charge imposed by a charging order has the like effect and is enforceable in the same courts and in the same manner as an equitable charge created by the debtor by writing under the debtor's hand.
- (4) The court by which a charging order was made may at any time, on the application of the debtor or the collecting authority on whose application the order was made, make an order discharging or varying the charging order.
- (5) Where a charging order has been protected by an entry registered under the Land Charges Act 1972(7) or the Land Registration Act 2002(8), an order under paragraph (4) discharging the charging order may direct that the entry be cancelled.

Insolvency

- 105.**—(1) Where a liability order has been made against a debtor who is an individual, the amount due is deemed to be a debt for the purposes of section 267 of the Insolvency Act 1986(9) (grounds of creditor's petition).
- (2) Where a liability order has been made against a debtor which is a company, the amount due is deemed to be a debt for the purposes of section 122(1)(f) (winding up of companies by the court) or, as the case may be, 221(5)(b) (winding up of unregistered companies) of the Insolvency Act 1986.

Recovery in a court of competent jurisdiction

- 106.**—(1) An amount—
 - (a) which has become payable to a collecting authority in accordance with these Regulations;
 - (b) which has not been paid; and
 - (c) in respect of which a liability order has not been made,may (as an alternative to recovery under a liability order) be recovered in a court of competent jurisdiction.
- (2) A liability order may not be made in respect of any amount in relation to which proceedings have been instituted under paragraph (1).

Enforcement of local land charges

- 107.**—(1) This regulation applies where a collecting authority wishes to enforce a local land charge imposed under these Regulations in respect of a chargeable development.
- (2) The collecting authority must notify—
 - (a) the owners of the relevant land; and
 - (b) any other person the authority considers may be prejudiced by enforcement of the charge, of its intention to enforce the charge.

(7) 1972 c. 61.
(8) 2002 c. 9.
(9) 1986 c. 45.

- (3) The notification must—
- (a) be in writing;
 - (b) be displayed on the relevant land;
 - (c) set out the collecting authority’s reasons for seeking to enforce the charge; and
 - (d) state the outstanding amount of CIL due in respect of the chargeable development and the steps the collecting authority will take if payment of that amount is not forthcoming.
- (4) If the collecting authority does not receive payment of the amount referred to in paragraph (3) (d) within 21 days of the date of the notification, it may apply to a county court for consent to enforce the local land charge.
- (5) In deciding whether to grant consent to enforce the charge the court must consider all the circumstances of the case, and in particular any evidence before it as to whether any person would be likely to be unduly prejudiced by enforcement of the charge.
- (6) The collecting authority may not enforce a local land charge imposed in respect of the chargeable development if the outstanding amount of CIL due in respect of that development is less than £2000.
- (7) For the purpose of enforcing a local land charge under this regulation, the collecting authority has all the same powers and remedies under the Law of Property Act 1925⁽¹⁰⁾ and otherwise as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

⁽¹⁰⁾ 1925 c. 20.