
STATUTORY INSTRUMENTS

1989 No. 1058

The Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989

PART III

ENFORCEMENT

Interpretation and application of Part III

10.—(1) In this Part—

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

“liability order” means an order under regulation 12.

(2) A sum which has become payable to a charging authority under Part II and which has not been paid shall be recoverable under a liability order, or in a court of competent jurisdiction, in accordance with regulations 11 to 21.

(3) References in this Part to a sum which has become payable and which has not been paid include references to a sum forming part of a larger sum which has become payable and the other part of which has been paid.

Liability orders: preliminary steps

11.—(1) Subject to paragraph (3), before a charging authority applies for a liability order it shall serve on the person against whom the application is to be made a notice (“reminder notice”), which is to be in addition to any notice required to be served under Part II and which is to 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.

(3) A reminder notice need not be served on a person who has been served under regulation 8(1) with a notice in respect of the amount concerned where there has been such a failure as is mentioned in regulation 8(2)(a) in relation to the notice.

Application for liability order

12.—(1) Subject to paragraph (3), if an amount which has fallen due under regulation 8(2) in consequence of such a failure as is mentioned in sub-paragraph (a) of that provision is wholly or partly unpaid, or (in a case where a reminder notice is required under regulation 11) the amount stated in the reminder notice is wholly or partly unpaid at the expiry of the period of 7 days beginning with the day on which the notice was served, the charging authority may, in accordance with paragraph (2), apply to a magistrates' court for an order against the person by whom it is payable.

(2) The application is to be instituted by making 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 he has not paid the sum which is outstanding.

(3) Section 127(1) of the Magistrates' Courts Act 1980(1) does not apply to such an application; but no application may be instituted in respect of a sum after the period of 6 years beginning with the day on which it became due under Part II.

(4) A warrant shall not be issued under section 55(2) of the Magistrates' Courts Act 1980 in any proceedings under this regulation.

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

(6) The order shall be made in respect of an amount equal to the aggregate of—

- (a) the sum payable, and
- (b) a sum of an amount equal to the costs reasonably incurred by the applicant in obtaining the order.

Liability orders: further provision

13.—(1) A single liability order may deal with one person and one such amount as is mentioned in regulation 12(6) (in which case the order shall be in the form specified as form A in Schedule 2, or a form to the like effect), or, if the court thinks fit, may deal with more than one person and more than one such amount (in which case the order shall be in the form specified as form B in that Schedule, or a form to the like effect).

(2) A summons issued under regulation 12(2) may be served on a person—

- (a) by delivering it to him,
- (b) by leaving it at his usual or last known place of abode, or in the case of a company, at its registered office,
- (c) by sending it by post to him at his usual or last known place of abode, or in the case of a company, to its registered office,
- (d) where all or part of the sum to which it relates is payable with respect to a hereditament which is a place of business of the person, by leaving it at, or by sending it by post to him at, the place of business, or
- (e) by leaving it at, or by sending it by post to him at, an address given by the person as an address at which service of the summons will be accepted.

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

Distress

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

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

- (a) an amount equal to any outstanding sum which is or forms part of the amount in respect of which the liability order was made, and
- (b) a sum determined in accordance with Schedule 3 in respect of charges connected with the distress.

(3) 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 shall accept the amount and the levy shall not be proceeded with.

(4) Where an authority has seized goods of the debtor in pursuance of the distress, but before sale of those 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 shall accept the amount, the sale shall not be proceeded with and the goods shall be made available for collection by the debtor.

(5) The person levying distress on behalf of an authority shall carry with him the written authorisation of the authority, which he shall show to the debtor if so requested; and he shall hand to the debtor or leave at the premises where the distress is levied a copy of this regulation and Schedule 3 and a memorandum setting out the appropriate amount, and shall hand to the debtor a copy of any close or walking possession agreement entered into.

(6) A distress may be made anywhere in England and Wales.

(7) 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; and 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.

(8) The provisions of this regulation shall not affect the operation of any enactment which protects goods of any class from distress.

(9) Nothing in the Distress (Costs) Act 1817(2), as extended by the Distress (Costs) Act 1827(3), (which make provision as to the costs and expenses chargeable in respect of the levying of certain distresses) shall apply to a distress under this regulation.

Appeals in connection with distress

15.—(1) A person aggrieved by the levy of, or an attempt to levy, a distress may appeal to a magistrates' court.

(2) The appeal shall be instituted by making 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 he is aggrieved.

(3) If the court is satisfied that a levy was irregular, it may order the goods distrained to be discharged if they are in the possession of the authority; and it may by order award compensation in respect of any goods distrained and sold of an amount equal to the amount which, in the opinion of the court, would be awarded by way of special damages in respect of the goods if proceedings were brought in trespass or otherwise in connection with the irregularity under regulation 14(7).

(4) 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

16.—(1) Where a charging authority has sought to levy an amount by distress under regulation 14, the debtor is an individual, and it appears to the authority that no (or insufficient) goods of the debtor can be found on which to levy the amount, the authority may apply to a magistrates' court for the issue of a warrant committing the debtor to prison.

(2) 1817 c. 93.

(3) 1827 c. 17.

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

(3) If (and only if) the court is of the opinion that his failure was due to his 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 shall 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 14(2), 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 applicant in respect of the application.

(5) The warrant—

- (a) shall state the relevant amount mentioned in paragraph (4),
- (b) may be directed to the authority making the application and to such other persons (if any) 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 the issue of a warrant the appropriate amount mentioned in regulation 14(2) (or so much of it as remains outstanding) is paid or tendered to the authority, or
 - (b) after the issue of the warrant, the amount stated in it is paid or tendered to the authority,
- the authority shall accept the amount concerned, no further steps shall be taken as regards its recovery, and the debtor if committed to prison shall be released.

(7) The order in the warrant shall be that the debtor be imprisoned for a time specified in the warrant which shall not exceed 3 months, unless the amount stated in the warrant is sooner paid; but—

- (a) where a warrant is issued after a postponement under paragraph (3)(b) and, 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 shall be the term fixed under paragraph (3) reduced by such number 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, and
- (b) where, after the issue of a warrant, a part payment of the amount stated in it is made, the period of imprisonment shall 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.

(8) In calculating a reduction required under paragraph (7) any fraction of a day shall be left out of account; and rule 55(1), (2) and (3) of the Magistrates' Courts Rules 1981(4) 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

17.—(1) A single warrant may not be issued under regulation 16 against more than one person, and shall be in the form specified as form C in Schedule 2, or in a form to the like effect.

(2) Where an application under regulation 16 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 14(2) to which the application relates.

(3) Where an application under regulation 16 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 his employer, shall in any proceedings under regulation 16 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 16(2), a justice of the peace may—

- (a) issue a summons to him to appear before a magistrates' court and (if he does not obey the summons) issue a warrant for his 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 his police area; and section 125(3) of the Magistrates' Courts Act 1980 applies to such a warrant.

(7) Regulation 16 and this regulation have effect subject to Part I of the Criminal Justice Act 1982⁽⁵⁾ (treatment of young offenders).

Insolvency

18.—(1) Where a liability order has been made and the debtor against whom it was made is an individual, the amount due shall be deemed to be a debt for the purposes of section 267 of the Insolvency Act 1986⁽⁶⁾ (grounds of creditor's petition).

(2) Where a liability order has been made and the debtor against whom it was made is a company, the amount due shall be deemed to be a debt for the purposes of section 122(1)(f) of that Act (winding up of companies by the court).

(3) The amount due for the purposes of this regulation is an amount equal to any outstanding sum which is or forms part of the amount in respect of which the liability order was made.

Relationship between remedies under a liability order

19.—(1) Where a warrant of commitment is issued against (or a term of imprisonment is fixed in the case of) a person under regulation 16(3), no steps, or no further steps, may be taken under this Part by way of distress or bankruptcy in relation to the relevant amount mentioned in regulation 16(4).

(2) Steps under this Part by way of distress, commitment, bankruptcy or winding up may not be taken against a person under a liability order while steps by way of another of those methods are being taken against him under it.

(3) Subject to paragraphs (1) and (2) distress may be resorted to more than once.

(4) Where a step is taken by way of distress for the recovery of an outstanding sum which is or forms part of an amount in respect of which a liability order has been made, any sum recovered

(5) 1982 c. 48.

(6) 1986 c. 45.

thereby which is less than the aggregate of the amount outstanding and any charges arising under Schedule 3 shall be treated as discharging first the charges, the balance (if any) being applied towards the discharge of the outstanding sum.

Recovery in court of competent jurisdiction

20.—(1) A sum which has become payable to a charging authority under Part II, which has not been paid, and 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) above.

Magistrates' courts

21.—(1) Justices of the peace appointed for a commission area within which is situated the area of a charging authority shall have jurisdiction to act under the provisions of this Part as respects that authority.

(2) Subject to any other enactment authorising a stipendiary magistrate or other person to act by himself, a magistrates' court shall not under this Part 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.

(3) References to a justice of the peace in regulations 12(2) and 15(2) shall be construed subject to rule 3 of the Justices' Clerks Rules 1970(7) (which authorises certain matters authorised to be done by a justice of the peace to be done by a justices' clerk).

Repayments

22. A sum which has become payable (by way of repayment) under Part II to a person other than a charging authority but which has not been paid shall be recoverable in a court of competent jurisdiction.

Miscellaneous provisions

23.—(1) Any matter which could be the subject of an appeal under regulations under section 55 of the Act may not be raised in proceedings under this Part.

(2) The contents of a local non-domestic rating list or an extract from such a list may be proved in proceedings under this Part by production of a copy of the list or relevant part of the list purporting to be certified by the proper officer of the charging authority to which the list or extract relates to be a true copy.

(3) If a liability order has been made and by virtue of—

- (a) a notification which is given by the charging authority under regulation 8(4) or (7) or 9(2) or paragraph 6(3) or 7(2)(a) of Schedule 1, or
- (b) paragraph 10(4) of Schedule 7 to the Act applying in any case,

any part of the amount mentioned in regulation 12(6)(a) in respect of which the order was made would (if paid) fall to be repaid or credited against any subsequent liability, that part shall be treated for the purposes of this Part as paid on the day the notification is given or the multiplier in substitution is set under paragraph 10 of Schedule 7 to the Act (as the case may be) and accordingly as no longer outstanding.

(7) S.I. 1970/231, to which there are amendments not relevant to these Regulations.

(4) If, after a warrant is issued or term of imprisonment is fixed under regulation 16(3), and before the term of imprisonment has begun or been fully served, a charging authority gives such a notification as is mentioned in paragraph (3)(a) in the case in question, or sets a multiplier in substitution so that paragraph 10(4) of Schedule 7 to the Act applies in the case in question, it shall forthwith notify accordingly the clerk of the court which issued the warrant and (if the debtor is detained) the governor or keeper of the prison or place where he is detained or such other person as has lawful custody of him.