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STATUTORY INSTRUMENTS

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**2012 No. 1726**

**The Criminal Procedure Rules 2012**

**PART 52**

**ENFORCEMENT OF FINES AND OTHER ORDERS FOR PAYMENT**

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**Contents of this Part**

When this Part applies	rule 52.1
Exercise of court's powers	rule 52.2
Duty to give receipt	rule 52.3
Appeal against decision of fines officer	rule 52.4
Application to reduce a fine or vary payment terms	rule 52.5
Claim to avoid fine after penalty notice	rule 52.6
Information to be included in a warrant to take goods, etc.	rule 52.7
Execution of a warrant to take goods, etc.	rule 52.8
Sale of goods taken under a warrant	rule 52.9
Financial penalties imposed in other European Union member states	rule 52.10

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*[Note. Part 18 contains rules about warrants for arrest, detention or imprisonment, including such warrants issued for failure to pay fines, etc.*

*Part 37 contains rules about the procedure on sentencing in a magistrates' court.*

*Part 42 contains rules about the exercise of a magistrates' court's powers to enforce an order made by another court.]*

**When this Part applies**

- 52.1.**—(1) This Part applies where a magistrates' court can enforce payment of—
- (a) a fine, or a sum that legislation requires the court to treat as a fine; or
  - (b) any other sum that a court has ordered to be paid—
    - (i) on a conviction, or
    - (ii) on the forfeiture of a surety.
- (2) Rules 52.7 to 52.9 apply where the court, or a fines officer, issues a warrant that requires someone to—
- (a) take control of goods or money belonging to the defendant;
  - (b) remove and sell any such goods; and

- (c) pay any such money, and any proceeds of such a sale, to the court officer towards payment of a sum to which this Part applies.

(3) In this Part—

- (a) ‘defendant’ means anyone liable to pay a sum to which this Part applies;
- (b) ‘payment terms’ means by when, and by what (if any) instalments, such a sum must be paid.

*[Note. For the means by which a magistrates’ court may enforce payment, see—*

- (a) *Part 3 of the Magistrates’ Courts Act 1980*(1); and
- (b) *Schedule 5 to the Courts Act 2003*(2) and *The Fines Collection Regulations 2006*(3).

*Under that Schedule and those Regulations, some enforcement powers may be exercised by a fines officer:*

*In some legislation, including the 1980 and 2003 Acts, a warrant to which this Part applies is described as ‘a warrant of distress’. On the coming into force of the Tribunals, Courts and Enforcement Act 2007*(4), *such a warrant will be described as ‘a warrant of control’.*]

### **Exercise of court’s powers**

**52.2.** The court must not exercise its enforcement powers unless—

- (a) the court officer has served on the defendant any collection order or other notice of—
  - (i) the obligation to pay,
  - (ii) the payment terms, and
  - (iii) how and where the defendant must pay; and
- (b) the defendant has failed to comply with the payment terms.

*[Note. See section 76 of the Magistrates’ Courts Act 1980*(5); *and paragraphs 12 and 13 of Schedule 5 to the Courts Act 2003*(6).]

### **Duty to give receipt**

**52.3.—**(1) This rule applies where the defendant makes a payment to—

- (a) the court officer specified in an order or notice served under rule 52.2;
- (b) another court officer;
- (c) any—
  - (i) custodian of the defendant,
  - (ii) supervisor appointed to encourage the defendant to pay, or
  - (iii) responsible officer appointed under a community sentence or a suspended sentence of imprisonment; or
- (d) a person executing a warrant to which rule 18.6 (warrants for arrest, detention or imprisonment that cease to have effect on payment) or this Part applies.

(2) The person receiving the payment must—

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(1) 1980 c. 43.  
 (2) 2003 c. 39; Schedule 5 was amended by articles 2, 4, 6, 7 and 8 of *S.I. 2006/1737*. It is further amended by section 88 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), with effect from a date to be appointed.  
 (3) *S.I. 2006/501*.  
 (4) 2007 c. 15.  
 (5) 1980 c. 43.  
 (6) 2003 c. 39; paragraph 13 was amended by articles 2, 4 and 15 of *S.I. 2006/1737*.

- (a) give the defendant a receipt; and
- (b) as soon as practicable transmit the payment to the court officer specified in an order or notice served under rule 52.2, if the recipient is not that court officer.

*[Note. For the effect of payment to a person executing a warrant to which—*

- (a) *rule 18.6 applies, see that rule and sections 79(7) and 125(1)(8) of the Magistrates' Courts Act 1980;*
- (b) *this Part applies, see rule 52.8(5).*

*For the circumstances in which the court may appoint a person to supervise payment, see section 88 of the 1980 Act(9).]*

### **Appeal against decision of fines officer**

**52.4.**—(1) This rule applies where—

- (a) a collection order is in force;
  - (b) a fines officer makes a decision under one of these paragraphs of Schedule 5 to the Courts Act 2003(10)—
    - (i) paragraph 22 (Application to fines officer for variation of order or attachment of earnings order, etc.),
    - (ii) paragraph 31(11) (Application to fines officer for variation of reserve terms), or
    - (iii) paragraph 37(12) (Functions of fines officer in relation to defaulters: referral or further steps notice); and
  - (c) the defendant wants to appeal against that decision.
- (2) Unless the court otherwise directs, the defendant must—
- (a) appeal in writing not more than 10 business days after the decision;
  - (b) serve the appeal on the court officer; and
  - (c) in the appeal—
    - (i) explain why a different decision should be made, and
    - (ii) specify the decision that the defendant proposes.
- (3) Where the court determines an appeal—
- (a) the general rule is that it will do so at a hearing; but
  - (b) it may do so without a hearing.

*[Note. Under paragraph 12 of Schedule 5 to the Courts Act 2003, where a collection order is in force the court's powers to deal with the defendant's liability to pay the sum for which that order was made are subject to the provisions of that Schedule and to fines collection regulations.*

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- (7) 1980 c. 43; section 79 was amended by paragraph 219 of Schedule 8 to the Courts Act 2003 (c. 39) and is amended by section 62 of, and paragraphs 45, 47 and 48 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.
  - (8) 1980 c. 43; section 125(1) was amended by section 97(4) of the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 238 of Schedule 8 to, the Courts Act 2003 (c. 39).
  - (9) 1980 c. 43; section 88 was amended by paragraph 53 of Schedule 14 to the Criminal Justice Act 1982 (c. 48) and by paragraph 68 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by paragraphs 58 and 64 of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) and section 62 of, and paragraphs 45 and 54 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29), with effect from a date to be appointed.
  - (10) 2003 c. 39; Schedule 5 was amended by articles 2, 4, 6, 7 and 8 of S.I. 2006/1737. It is further amended by section 88 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), with effect from a date to be appointed.
  - (11) 2003 c. 39; paragraph 31 was amended by articles 2, 4 and 20 of S.I. 2006/1737.
  - (12) 2003 c. 39; paragraph 37 was amended by articles 2, 4 and 25(a) and (b) of S.I. 2006/1737.

*For the circumstances in which a defendant may appeal against a decision to which this rule applies, see paragraphs 23, 32 and 37(9) of Schedule 5 to the 2003 Act(13). The time limit for appeal is prescribed by those paragraphs. It may be neither extended nor shortened.]*

### **Application to reduce a fine or vary payment terms**

**52.5.**—(1) This rule applies where—

- (a) no collection order is in force; and
- (b) the defendant wants the court to—
  - (i) reduce the amount of a fine, or
  - (ii) vary payment terms.

(2) Unless the court otherwise directs, the defendant must—

- (a) apply in writing;
- (b) serve the application on the court officer; and
- (c) in the application, explain—
  - (i) what relevant circumstances have not yet been considered by the court, and
  - (ii) why the fine should be reduced, or the payment terms varied.

*[Note. See sections 75, 85 and 85A of the Magistrates' Courts Act 1980(14).]*

### **Claim to avoid fine after penalty notice**

**52.6.**—(1) This rule applies where—

- (a) a chief officer of police serves on the magistrates' court officer a certificate registering, for enforcement as a fine, a sum payable by a defendant after failure to comply with a penalty notice; and
- (b) the court or a fines officer enforces the fine.

(2) A defendant who claims not to be the person to whom the penalty notice was issued must, unless the court otherwise directs—

- (a) make that claim in writing; and
- (b) serve it on the court officer.

(3) The court officer must—

- (a) notify the chief officer of police by whom the certificate was registered; and
- (b) refer the case to the court.

(4) Where such a claim is made—

- (a) the general rule is that the court will adjourn the enforcement for 28 days and fix a hearing; but
- (b) the court may make a different order.

(5) At any such hearing, the chief officer of police must introduce any evidence to contradict the defendant's claim.

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(13) 2003 c. 39; paragraph 32 was amended by articles 2, 4 and 24(b) of S.I. 2006/1737.

(14) 1980 c. 43; section 75 was amended by section 11 of, and paragraph 6 of Schedule 2 to, the Maintenance Enforcement Act 1991 (c. 17). Section 85 was amended by section 61 (1) and (5) of the Criminal Justice Act 1988 (c. 33), section 55 of, and paragraph 10(2) of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43) and section 109(1) of, and paragraph 222 of Schedule 8 to, the Courts Act 2003 (c. 39). It is amended by section 304 of, and paragraphs 25 and 28 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. Section 85A was inserted by section 51(1) of the Criminal Justice Act 1982 (c. 48).

[*Note. See section 10 of the Criminal Justice and Police Act 2001(15).*]

*For the circumstances in which a sum may be registered for enforcement as a fine after failure to comply with a penalty notice, see sections 8 and 9 of the 2001 Act(16).]*

### **Information to be included in a warrant to take goods, etc.**

**52.7.**—(1) A warrant must identify—

- (a) each person to whom it is directed;
- (b) the defendant against whom it was issued;
- (c) the sum for which it was issued and the reason that sum is owed;
- (d) the court or fines officer who issued it, unless that is otherwise recorded by the court officer; and
- (e) the court office for the court or fines officer who issued it.

(2) A person to whom a warrant is directed must record on it the date and time at which it is received.

(3) A warrant that contains an error is not invalid, as long as—

- (a) it was issued in respect of a lawful decision by the court or fines officer; and
- (b) it contains enough information to identify that decision.

[*Note. See sections 78 and 125ZA of the Magistrates' Courts Act 1980(17).*]

### **Execution of a warrant to take goods, etc.**

**52.8.**—(1) A warrant may be executed by—

- (a) any person to whom it is directed; or
- (b) anyone authorised to do so by section 125 (warrants), 125A (civilian enforcement officers) or 125B (execution by approved enforcement agency) of the Magistrates' Courts Act 1980(18).

(2) The person who executes a warrant must—

- (a) explain, in terms the defendant can understand—
  - (i) the order or decision that the warrant was issued to enforce,
  - (ii) the sum for which the warrant was issued, and

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(15) 2001 c. 16; section 10 is amended by paragraphs 1 and 10 of Schedule 23 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), with effect from a date to be appointed.

(16) 2001 c. 16; section 8 was amended by section 109(1) of, and paragraph 399 of Schedule 8 to, the Courts Act 2003 (c. 39). Section 9 was amended by section 109(1) of, and paragraph 400(1) (2) (3) and (4) of Schedule 8 to, the Courts Act 2003 (c. 39).

(17) 1980 c. 43; section 78 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48) and paragraph 219 of Schedule 8 to, the Courts Act 2003 (c. 39). Section 125ZA is inserted by section 68 of the Tribunals, Courts and Enforcement Act 2007 (c. 29), with effect from a date to be appointed.

(18) 1980 c. 43; section 125 was amended by section 33 of the Police and Criminal Evidence Act 1984 (c. 60), section 65(1) of the Criminal Justice Act 1988 (c. 33), sections 95(1), 97(4) and 106 of, and Part V of Schedule 15 and Table (8) to, the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 238 of Schedule 8 to, the Courts Act 2003 (c. 39). It is further amended by sections 62(3), 86 and 146 of and paragraphs 45 and 57 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed. Section 125A was inserted by section 92 of the Access to Justice Act 1999 (c. 22) and amended by articles 46 and 52 of S.I. 2006/1737 and article 8 of, and paragraph 5 of the Schedule to, S.I. 2007/2128. It is further amended by section 62 of, and paragraphs 45 and 58 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29), with effect from a date to be appointed. Section 125B was inserted by section 93(2) of the Access to Justice Act 1999 (c. 22) and amended by paragraph 239 of Schedule 8 to the Courts Act 2003 (c. 39). It is further amended by section 62 of, and paragraphs 45, 59 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29), with effect from a date to be appointed.

- (iii) any extra sum payable in connection with the execution of the warrant;
- (b) show the defendant the warrant, if that person has it;
- (c) if the defendant asks—
  - (i) arrange for the defendant to see the warrant, if that person does not have it, and
  - (ii) show the defendant any written statement of that person’s authority required by section 125A or 125B of the 1980 Act; and
- (d) clearly mark any goods that are taken under the warrant, unless that person removes those goods at once.
- (3) These goods must not be taken under the warrant—
  - (a) clothes or bedding used by the defendant or by anyone living with the defendant;
  - (b) tools, books, vehicles or other equipment that the defendant needs to use in the defendant’s employment, business or vocation, unless the defendant is a corporation.
- (4) Unless the court otherwise directs, or the defendant otherwise agrees, if the person who executes the warrant takes household goods they must not be removed until the day of sale.
- (5) The warrant no longer has effect if—
  - (a) there is paid to the person executing it the sum for which it was issued and any extra sum payable in connection with its execution;
  - (b) those sums are offered to, but refused by, that person; or
  - (c) that person—
    - (i) is shown a receipt given under rule 52.3 for the sum for which the warrant was issued, and
    - (ii) is paid any extra sum payable in connection with its execution.

*[Note. Under section 125 of the Magistrates’ Courts Act 1980, a warrant issued by a magistrates’ court may be executed by any person to whom it is directed or by any constable acting within that constable’s police area.*

*Certain warrants issued by a magistrates’ court may be executed anywhere in England and Wales by a civilian enforcement officer, under section 125A of the 1980 Act; or by an approved enforcement agency, under section 125B of the Act. In either case, the person executing the warrant must, if the defendant asks, show a written statement indicating: that person’s name; the authority or agency by which that person is employed, or in which that person is a director or partner; that that person is authorised to execute warrants; and, where section 125B applies, that the agency is registered as one approved by the Lord Chancellor.*

*See also section 125D of the 1980 Act(19), under which—*

- (a) *a warrant to which section 125A applies may be executed by any person entitled to execute it, even though it is not in that person’s possession at the time; and*
- (b) *certain other warrants, including any warrant to which this Part applies, may be executed by a constable, even though it is not in that constable’s possession at the time.]*

### **Sale of goods taken under a warrant**

**52.9.—(1)** Unless the court otherwise directs or the defendant otherwise agrees, goods taken under a warrant must be sold—

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(19) 1980 c. 43; section 125D was inserted by section 96 of the Access to Justice Act 1999 (c. 22). It is further amended by sections 62 and 146 of, and paragraphs 45 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29), with effect from a date to be appointed.

- (a) at public auction; and
  - (b) as soon as reasonably practicable after the expiry of 5 business days from the date of execution of the warrant.
- (2) After a sale, the person who executed the warrant must, as soon as reasonably practicable—
- (a) collect the proceeds of sale;
  - (b) deduct any sum payable in connection with the execution of the warrant;
  - (c) pay the court officer specified in an order or notice served under rule 52.2 the sum for which the warrant was issued;
  - (d) pay any balance remaining to the defendant; and
  - (e) deliver an account of those deductions and payments to the court officer.

### **Financial penalties imposed in other European Union member States**

**52.10.**—(1) This rule applies where the Lord Chancellor gives the court officer a request to enforce a financial penalty imposed in another European Union member State.

- (2) The court officer must serve on the defendant—
- (a) notice of the request for enforcement, and of its effect;
  - (b) a copy of—
    - (i) the certificate requesting enforcement, and
    - (ii) the decision requiring payment to which that certificate relates; and
  - (c) notice that the procedure set out in this rule applies.
- (3) A defendant who wants the court to refuse enforcement must—
- (a) serve notice of objection on the court officer;
  - (b) unless the court otherwise directs, serve that notice not more than 14 days after service of notice of the request; and
  - (c) in the notice of objection—
    - (i) identify each ground for refusal on which the defendant relies,
    - (ii) summarise any relevant facts not already included in the certificate and decision served with the notice of the request, and
    - (iii) identify any other document that the defendant thinks the court will need to determine the request (and serve any such document with the notice).
- (4) The court—
- (a) may determine a request for enforcement—
    - (i) at a hearing, which will be in public unless the court otherwise directs, or
    - (ii) without a hearing; but
  - (b) must not allow enforcement unless the defendant has had at least 14 days in which to serve notice of objection.
- (5) Paragraphs (2) and (3) do not apply if, on receipt of the request, the court decides that a ground for refusal applies.
- (6) The court officer must serve on the Lord Chancellor notice of the court’s decision.

*[Note. Under section 84 of the Criminal Justice and Immigration Act 2008(20)—*

- (a) *the Lord Chancellor may receive—*
  - (i) *a certificate issued in another European Union member State, requesting enforcement of a financial penalty to which applies the Framework Decision of the Council of the European Union 2005/214/JHA, as amended by Council Framework Decision 2009/299/JHA, on the application of the principle of mutual recognition to financial penalties; and*
  - (ii) *the decision requiring payment of the penalty to which that certificate relates; and*
- (b) *the Lord Chancellor must then give the court officer—*
  - (i) *that certificate and that decision, and*
  - (ii) *a notice stating whether the Lord Chancellor thinks that any of the grounds for refusal of the request apply, and giving reasons for that opinion.*

*Under section 85 of the 2008 Act—*

- (a) *the court must then decide whether it is satisfied that any of the grounds for refusal of the request apply; and*
- (b) *if the court is not so satisfied, then the decision requiring payment may be enforced as if the penalty concerned were a sum that the court itself had ordered to be paid on convicting the defendant.*

*The grounds for refusal are listed in Schedule 19 to the 2008 Act, paraphrasing the grounds set out in the Framework Decision.*

*See also sections 91 and 92 of the 2008 Act.]*