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Procedures for enforcing a judgment

When a Court is involved in solving a dispute, there are two steps that must be ensured at the end of the process. First, the Court must hand down a judgment and then the judgment needs to be enforced in practice.

To force the other party (defendant or your debtor) to comply with the judgment against him/her (for example to pay up), you will have to go to the enforcement authorities. They alone have the power to force the debtor to pay, calling on the forces of law and order if need be.

Under the [Brussels I Regulation \(recast\)](#) which governs the recognition and enforcement of judgments in cross border cases, if you have an enforceable judgment issued in the Union Member State, you can go to the enforcement authorities in other Member State where e.g. the debtor has assets without any intermediary procedure being required (the Regulation abolishes the 'exequatur' procedure). The debtor against whom you seek the enforcement may apply to the court requesting refusal of enforcement. The names and location of those competent courts and courts for further appeals are provided [here](#).

The purpose of enforcement is generally to recover sums of money, but it may also be to have some other kind of duty performed (duty to do something or refrain from doing something, such as to deliver goods or finish work or refrain from trespassing).

Different European procedures (such as the [European Payment Order](#), the [European Small Claims Procedure](#) and the [European Enforcement Order](#)) can be used in cross border civil cases, but for all of them, a judgment must be enforced in accordance with the national rules and procedures of the State of enforcement (usually where the debtor or his/her assets are).

In practice, you need to have an enforceable document (a court judgment or a deed) if you wish to apply for enforcement. The enforcement procedures and the authorities who handle them (courts, debt-collection agencies and bailiffs) are decided by national law of the Member State where enforcement is sought.

To obtain detailed information please select one of the flags listed on the right hand side.

Last update: 12/12/2019

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Procedures for enforcing a judgment - Estonia

1 What does enforcement mean in civil and commercial matters?

Enforcement in civil and commercial matters means using the debtor's assets to satisfy the claim set out in the enforcement instrument, or obliging the debtor to deliver a person or to perform or refrain from performing a certain operation.

2 What are the conditions under which an enforceable title or decision may be issued?

2.1 The procedure

A court decision is enforced:

- 1) After its entry into force

A court judgment enters into force when it can no longer be contested in any manner other than by the review procedure. If a court judgment is contested lawfully, the entry into force of the judgment is suspended. If it is partially contested, the uncontested part of the judgment enters into force. A court judgment that has entered into force is binding on the parties to the proceedings to the extent to which the claim filed in the action or counteraction is resolved on the basis of the circumstances behind the action, unless otherwise provided for by law.

A judgment is enforced on the basis of an application by the claimant.

- 2) Prior to its entry into force if the court has declared that it is subject to immediate enforcement.

A court judgment that is declared to be subject to immediate enforcement is enforced before it enters into force. The court declares that the judgment is subject to immediate enforcement either in the judgment itself or through a ruling.

The court judgment is enforced on the basis of an enforcement instrument.

Enforcement instruments in civil and commercial matters may include the following:

court judgments and rulings in civil matters which have entered into force or are subject to immediate enforcement;
decisions recognised or subject to enforcement without recognition by courts of foreign states;
decisions of arbitration tribunals permanently operating in Estonia and decisions of other arbitration tribunals which are declared to be subject to enforcement;
decisions made by a labour dispute committee, lease committee or motor insurance committee which have entered into force.

An exhaustive list of enforcement instruments is provided in Section 2 of the Code of Enforcement Procedure (*Täitemenetluse seadustik*).

If the enforcement instrument is not executed voluntarily, an enforcement procedure can be initiated.

Under the Code of Enforcement Procedure, claims arising from the enforcement instruments provided by law are enforced. The enforcement of enforcement instruments is organised by bailiffs (*kohtutäitur*), unless otherwise prescribed by law.

A bailiff conducts enforcement proceedings based on an application by a claimant and an enforcement instrument. The bailiff conducts enforcement proceedings regardless of any application by a claimant if a decision on payment of the bailiff's fee or on ordering payment of the enforcement costs is the enforcement instrument, and in other cases provided by law.

An enforcement file setting out the enforcement actions and notices sent in chronological order is opened for an enforcement matter. The documents received in the enforcement matter and issued by a bailiff, or copies of these documents, are recorded in the enforcement file.

If the conditions for starting enforcement proceedings are complied with, the bailiff delivers an enforcement notice to the debtor.

The bailiff delivers the enforcement notice to the debtor, and delivers to participants in the enforcement proceedings a statement of the seizure of property, an auction report, his or her decisions on complaints filed against his or her actions, and other documents provided for by law.

If no term is specified by law or a court decision for voluntary compliance with an enforcement instrument, the term is to be set by the bailiff. The term may not be shorter than ten days or longer than thirty days, unless otherwise prescribed in the Code. With the consent of the claimant, the bailiff may set a term of over thirty days for voluntary compliance with an enforcement instrument.

A bailiff is required to immediately take all measures permitted by law in order to enforce an enforcement instrument, collect information necessary for enforcement proceedings and explain to participants in enforcement proceedings their rights and obligations.

A bailiff may postpone an enforcement action on the basis of an application by the claimant or a corresponding court decision.

On the basis of an application by a debtor, a court may suspend enforcement proceedings or extend or defer enforcement if it would be unfair on the debtor to continue with the proceedings. In these cases, the interests of the claimant and other circumstances are taken into account, including the debtor's family and economic situation.

Some or all of the costs involved in the enforcement procedure may be awarded by the court.

2.2 The main conditions

Required conditions for enforcing an enforcement instrument:

A court decision which has entered into force or a decision of a labour dispute committee, lease committee or motor insurance committee which has entered into force and which bears a notation on entry into force is accepted for enforcement. A notation on entry into force is not appended to a decision subject to immediate enforcement.

In enforcement proceedings with respect to the property of a spouse, the assumption is made, to the benefit of the claimant, that movable property in the possession of the spouse who is a debtor or in the joint possession of the spouses is in the ownership of the spouse who is a debtor. The bailiff may seize and sell the movable property in question.

Making a claim for payment on the joint property of spouses is permitted with the consent of the spouse who is not a debtor if there is an enforcement instrument requiring both spouses to perform the obligation.

In order to make a claim for payment on property owned by a partnership, an enforcement instrument applying to all partners is required.

If a debtor dies during enforcement proceedings, the proceedings continue in respect of the debtor's estate, unless otherwise prescribed by law.

If the falling due of a claim contained in an enforcement instrument depends on the expiry of a term, the fulfilment of a condition or the arrival of a due date, the enforcement acts may be commenced after the expiry of the term, fulfilment of the condition or arrival of the due date.

If enforcement proceedings depend on the security of a claimant, the proceedings may only start if it has been certified in a written document that the security has been provided and a copy of the document has been delivered to the debtor or is delivered to the debtor together with the enforcement notice.

If the execution of an enforcement instrument depends on the claimant simultaneously performing an obligation to the debtor, the bailiff may not commence enforcement proceedings until the claimant's obligation has been performed or, if the claimant or bailiff has made an offer to the debtor for the claimant to carry out the obligation, until the debtor has unjustifiably refused to accept the performance or has delayed acceptance of the performance for other reasons.

If a claimant needs a right of succession certificate or another document for compulsory enforcement, the claimant, instead of the debtor, may request that a notary or an administrative agency issue it. In this case, the claimant must submit the enforcement instrument.

3 Object and nature of enforcement measures

3.1 What types of assets can be subject to enforcement?

A claim for payment can be made on movable and immovable property and on proprietary rights.

3.2 What are the effects of enforcement measures?

Ways of making claims for payment on property:

Seizure of property – when payment is claimed with respect to property, the property is seized and sold. The claimant's claim is satisfied using the money received from the sale of the property. Property is not seized if it is apparent that the money received from selling the items seized will only cover the enforcement costs. Money that is raised from the debtor's assets through compulsory enforcement and is paid into the bailiff's official bank account is transferred by the bailiff to the claimant within ten working days after the receipt of the money.

When a financial claim is filed against the state or a local government, a claim for monetary payment is made. If the claim for monetary payment has not succeeded within a reasonable period of time, the claim for payment should be made with respect to things.

On the basis of an application by the claimant and the debtor, the bailiff may sell seized things in a manner other than by oral or electronic auction if the auction has failed or if it seems that the thing cannot be sold at auction, or if the revenue that the thing is likely to fetch at auction is significantly lower than the revenue that would be received if it were sold by other means.

1.1 Effect

1.1.1 Making a claim for payment with respect to movable property

The bailiff sells seized movable property at a public electronic or oral auction.

The amount remaining after enforcement costs are covered and the claims are satisfied is returned to the debtor.

Ownership regarding a thing sold at auction is created when the thing is transferred on the basis of the auction report.

1.1.2 Making a claim for payment with respect to immovable property

In order to fulfil a claim made by a claimant, a claim for payment may be made with respect to immovable property if the debtor is entered in the land register as the owner of the immovable property or the debtor is a universal successor of the owner entered in the land register.

Making a claim for payment with respect to immovable property also includes objects to which a mortgage extends.

In order to seize the immovable property, the bailiff records the immovable property and its accessories and other objects to which a mortgage extends, prohibits their disposal and has a notation concerning prohibition on the use of the immovable property entered in the land register.

Seized immovable property remains in the possession of the debtor, and the debtor can administer and use it within the limits of regular management, unless the immovable property is placed under compulsory administration.

Once the property has been seized, the debtor may not dispose of it. If the seizure also extends to movable property, this may be disposed of within the limits of regular management.

Any disposal in violation of the ban on disposal is void, unless otherwise provided for by law.

If disposal of ownership, a limited real right or a proprietary right is prohibited, a notation concerning the prohibition is entered in the relevant register pursuant to the procedure provided by law. A notation concerning prohibition prohibits entries from being made in the register to the relevant extent without an application by or the consent of a bailiff.

Making a claim for payment on the debtor's account – A claim for payment may be made on the debtor's account. A credit institution issues information to the bailiff concerning the existence or absence of the account. The account is seized on the basis of an instrument of seizure to the extent indicated in the instrument.

2.1 Effect - Money corresponding to the amount seized on the basis of the instrument of seizure is transferred from the debtor's account to the bailiff's official bank account if the enforcement instrument is a ruling on securing an action concerning anything other than a claim for child support made during court proceedings. If there is not enough money in the debtor's account at the time it is seized, any money paid into the account after it is seized is also deemed to have been seized until the outstanding amount is paid off. Money paid into the account after it is seized is transferred to the bailiff's official bank account until the instrument of seizure has been enforced. If a bailiff has sent an instrument of seizure concerning the debtor's account to a credit institution for enforcement, the instrument of seizure is also deemed to be in force with respect to any accounts opened by the debtor in the future.

Ordering compulsory administration - When claiming payment for immovable property, compulsory administration of the immovable property may be ordered. An entry concerning compulsory administration and the compulsory administrator is made in the land register on the basis of the court ruling.

3.1 Effect - A compulsory administrator has the right to take possession of immovable property on the basis of the ruling appointing him or her as administrator of the immovable property. In the event of compulsory administration, the claim should be satisfied using the funds received from the compulsory administration.

Making a claim for payment on securities - In order to seize securities listed in Section 2 of the Estonian Central Register of Securities Act (*Eesti väärtpaberite keskturu seadus*), the bailiff sends the registrar an order to make a notation concerning the prohibition on the disposal of rights and obligations.

4.1 Effect - A security is seized as of the moment when it is frozen in the register. The bailiff sells securities in line with the provisions on making claims for payment on movable property. The bailiff has the right to register a registered security in the name of the purchaser and to submit the necessary applications for this in place of the debtor. The bailiff must present a bill of exchange, a cheque or a bond for payment if this is possible depending on the security.

Making a claim for payment on a share of a private limited company - If a share of a private limited company is not entered in the Estonian Central Register of Securities, the share is deemed to have been seized pursuant to the procedure provided for the seizure of movable property. The bailiff informs the management board of the private limited company of the seizure.

5.1 Effect - The bailiff sells shares of a private limited company in line with the provisions regarding making claims for payment on movable property. The bailiff who sells the shares must send a notice concerning the transfer of the shares, in the form established by the Minister of Justice, to the registrar of the commercial register within two days as of the auction.

3.3 What is the validity of such measures?

The limitation period for claims recognised by a court judgment that has entered into force and for claims arising from a court settlement or another enforcement instrument is ten years.

Enforcement proceedings initiated before the death of the debtor continue in respect of the estate of the debtor, unless otherwise prescribed by law.

Before the expiry of the term for renouncing an estate or accepting succession, enforcement proceedings based on a claim against the estate may be conducted only in respect of the estate. In that case, a claim for payment may not be made against the estate on the basis of the personal obligations of the successor.

If an enforcement instrument also applies to the legal successor of the claimant or debtor, the bailiff accepts the enforcement instrument if the legal succession has been proven to the bailiff by a court decision, an extract from a public register or a notarised document. The same applies to the enforcement of a court decision in respect of the owner of the disputed thing if the thing has changed hands since the court decision was made.

4 Is there a possibility of appeal against the decision granting such a measure?

A participant in enforcement proceedings may file a complaint with a bailiff against a decision or the actions of the bailiff when executing an enforcement instrument or refusing to perform an enforcement action, within ten days as of the day on which the complainant becomes or should have become aware of the decision or action, unless otherwise provided by law.

A participant in proceedings may file an appeal against a decision made by a bailiff regarding a complaint with the county court whose jurisdiction covers the bailiff's office within ten days of the delivery of the decision. No appeal against a decision or the actions of a bailiff may be filed with a court unless a complaint has been filed with the bailiff beforehand.

An appeal against a ruling by a judge may be filed in enforcement proceedings, unless otherwise provided by law.

A debtor may file an action against a claimant on the basis of an enforcement instrument for compulsory enforcement to be declared inadmissible, in particular on the grounds that the claim has been satisfied, postponed or set off. The fact that the action has been satisfied does not affect the validity or legal force of the enforcement instrument.

A third party who has a right regarding an object of compulsory enforcement that prevents compulsory enforcement, especially the right of ownership or a restricted real right, may file a claim for the property to be released from seizure or for compulsory enforcement to be declared inadmissible for other reasons with the court whose jurisdiction covers the location of the compulsory enforcement.

Related links

Bailiffs – contact details can be found [here](#).

Last update: 22/07/2014

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Procedures for enforcing a judgment - Ireland

1 What does enforcement mean in civil and commercial matters?

There is no precise definition of enforcement in Ireland. In practical terms it amounts to the act of carrying into effect a judgment or order of a court. This enforcement action is usually sanctioned by the court prior to it being carried out.

The following are the more common means of enforcing judgments of a civil and commercial nature in Ireland:

Execution

This type of action involves the seizure of the goods of the judgment debtor. The Court issues an order at the request of the judgment creditor directing the County Registrar (or the Sheriff in the case of Dublin or Cork) to seize goods to the value of the judgment debt (including any legal costs incurred). These goods may then be sold in order to satisfy the debt.

Registration

The existence of a judgment can be brought into the public domain by its registration in the Register of Judgments in the High Court. The Register contains any judgment, regardless of whether it was obtained in the District, Circuit or High Court, which the creditor has requested be entered. The name and

address of the debtor together with details of the judgment is published in some newspapers and in commercial publications such as Stubbs Gazette. In addition credit institutions record this information and an unpaid judgment may affect access by the debtor to finance.

Judgment Mortgage Affidavit

An affidavit may be sworn by the judgment creditor and upon certification of the judgment by the relevant court it may be registered against the debtor's property. The proceeds of the sale of the property must, having regard to the priority of other mortgages, be applied in discharge of the debt prior to being given to the debtor. A further step which can be taken is to apply to court for a well charging order and an order for the sale of the property.

Instalment Orders / Committal Orders

An application can be made to the District Court to have an order made for the payment of a judgment by way of instalments pursuant to the [Enforcement of Court Orders Acts 1926 to 2009](#). A Judge will decide, having regard to the means of the debtor, the amount of the instalment directed to be paid. A committal order is only available against natural persons and not against legal persons i.e. companies. Failing payment of an instalment order may give rise to an application for a committal order. This effectively means that you may be imprisoned if you can afford to pay but refuse to do so.

Attachment of Earnings

An order may be obtained by a judgment creditor directing that deductions be made directly from the wages / salary of the debtor. The effect of this is that the payment is made directly from the debtor's employer to the creditor.

Garnishee Order

Where a judgment creditor is aware of a debt due by a third party to the judgment debtor, an application may be made to court to have an order made directing the third party to pay a certain amount directly to the creditor. It is at the discretion of the Court whether or not to grant the order.

Receiver by Equitable Execution

This measure involves the appointment of a receiver by the court over, for example, proceeds of the sale of an asset by the debtor with a view to the satisfaction of the debt. The decision to appoint a receiver is at the Court's discretion.

It is important to note that the means of attempting to enforce a judgment is a matter for a judgment creditor and the legal advisors. The [Courts Service](#) does not suggest any particular course of action. This list is not intended to be exhaustive but merely outlines the common procedures used.

2 Which authority or authorities are competent for enforcement?

For a domestic judgment, it may be necessary to obtain the authorisation of the court which granted the judgment in order to enforce the judgment (see above). In certain cases, such as execution and registration of a judgment, an application to court is not required and an application for enforcement may be made to the court office concerned.

In the case of judgments from other EU jurisdictions, the competent court is the High Court. However, in the case of periodic maintenance payments certified as a European Enforcement Order in other EU jurisdictions, the competent court is the District Court.

3 What are the conditions under which an enforceable title or decision may be issued?

3.1 The procedure

Judicial and certain non-judicial decisions are enforceable. As well as orders of the court these include judgments in summary matters entered by a Registrar in the High Court or the County Registrar in the Circuit Court.

It is often necessary to obtain the authorisation of the court which granted the judgment in order to enforce the judgment. In some cases however, such as execution and registration of judgment, an application to court is not required. The authorisation can be given by the court office concerned.

In the case of judgments from other jurisdictions to be enforced under EU Regulations, the competent court is the High Court. (or in the case of periodic maintenance payments certified as a European Enforcement Order, the District Court). The functions in relation to Regulation (EC) 44/2001 (replaced by Regulation (EU) No 1215/2012 which applies to court settlements approved or concluded on or after 10 January 2015) have been delegated to the Master of the High Court and an application can be made in open court for a declaration that a judgment is enforceable in Ireland and a subsequent Order made for its enforcement.

A judgment certified as a European Enforcement Order issued under Regulation (EC) 805/2004 is recognised as and has the same effect as a High Court judgment and is enforced accordingly. The competent court for enforcing a periodic maintenance payment certified as a European Enforcement Order is the District Court. The domestic regulations governing this process can be found in S.I. 274 of 2011.

In the case of a judgment delivered on an uncontested claim to be enforced in another EU jurisdiction, the court which delivered the judgment has jurisdiction for applications in relation to its enforcement under Regulation 805/2004 relating to European Enforcement Orders.

The application for the enforcement of a judgment is usually made to the court (or court office) by a legal practitioner although there is no necessity for a creditor to be legally represented. All court applications must be made by a local practitioner and cannot be made by post. Certain applications to court offices, such as applications for execution, registration and certification of judgment for the purposes of a judgment mortgage affidavit, may be made by post. Advice on the practice and procedure involved may be obtained by contacting the Judgments Section in the High Court at HighCourtCentralOffice@Courts.ie. The costs (fees) imposed by the Courts Service are minimal and the current fees can be located in the [Fees Orders](#) on the [Courts Service](#) website. Costs which may be incurred as a result of instructing solicitors and barristers are a matter between creditors and their legal representatives. Some or all of the costs involved in the enforcement procedure may be awarded by the court.

3.2 The main conditions

Section 15 of the [Enforcement of Court Orders Act 1926 \(as substituted by Section 1 of the Courts \(No. 2\) Act 1986\)](#) provides that where a debt is due on foot of a judgment order or decree, the creditor can apply to the District Court for the issue of a summons requiring the debtor to attend for examination as to his/her means by a District Court Judge. An application for an Enforcement Order must be made within six years from the date of the judgment order or decree. The creditor must produce evidence of the original debt and the debtor must complete a statement of means. Section 16 of the 1926 Act as amended by Section 9 of the 1986 Act allows evidence to be adduced and the cross examination of the debtor or creditor. An enforcement order can continue in force for a period of twelve years from the date of the relevant judgment order or decree

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

All types of assets, with the exception of perishable goods or goods held by the debtor on a sale or return basis, can be the subject of enforcement.

4.2 What are the effects of enforcement measures?

Non compliance with a Court Order may result in the party in default being open to sanctions for being in contempt. The penalties which can be imposed by a Court include fines or imprisonment until such time as the contempt is purged. There is therefore no limit on the length of time a person can be imprisoned. This also applies to any third party who breaches the terms of a Court Order.

It is important to note that, pursuant to Section 20 of the [Enforcement of Court Orders Act 1926](#), imprisonment of a debtor for failure to comply with an instalment order does not operate as a satisfaction or extinguishment of the debt or any part thereof and does not deprive the creditor of other remedies for the recovery of debts.

Banks and other financial institutions are under the same obligations as other parties in relation to compliance with Court Orders. In circumstances not specifically covered by a Court Order regard should be had to legislation and regulations governing personal information held by such an institution (for example the [Data Protection Act 1988](#)))

4.3 What is the validity of such measures?

Certain orders will always state the length of time in which the party concerned has to comply with the terms of the order although this may not always be the case. A judgment is valid for a period of twelve years although some of the enforcement measures which may be granted have time limits set out in Court Rules or in legislation. An example is a High Court execution Order which is valid for one year from its issue. After this period a new execution order is required.

5 Is there a possibility of appeal against the decision granting such a measure?

An appeal does not usually lie against the enforcement measure itself as authorised by the court office but against the substantive judgment or order upon which it is grounded. An affected party may apply to the appellate court to have the judgment or order discharged. The time limits under which appeals must be brought vary and are as follows

District Court to Circuit Court: 14 days from the judgment or order

Circuit Court to High Court: 10 days from the date of the order

Master's Court to High Court: 6 days from the date of perfection of the order or if the order was made ex parte, from notice of the said order or if refused, from the date of such refusal (one month from service of the order in the case of enforcement of a foreign judgment pursuant to Regulation 44/2001)

High Court to Court of Appeal: either 10 days or 28 days from the date of perfection of the order, depending on the nature of the case

High Court or Court of Appeal to Supreme Court: 28 days from the date of perfection of the order.

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

A judgment is valid for a period of twelve years and no action may be brought on foot of judgment after the expiration of 12 years from the date on which it became enforceable. In addition, some of the enforcement measures which may be granted have time limits set out in Court Rules or in legislation. An example is a High Court execution Order which is valid for one year from its issue. After this period a new execution order is required. A further example is that leave of the court is required to issue a High Court execution order where more than six years have elapsed since the making of the enforceable court order.

Last update: 01/07/2015

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Procedures for enforcing a judgment - Portugal

1 What does 'enforcement' mean in civil and commercial matters?

An enforcement action is an action in which a creditor requests appropriate steps to be taken for the enforcement of an obligation he is due.

The entire enforcement is based on a title which determines the purpose and limits of the enforcement action.

The purpose of enforcement may be the payment of a specific sum of money, the handingover of a particular item or the obligation to do something or to refrain from doing something.

Both in the case of enforcement for the handing-over of a particular item and in the case of the performance of, or abstention from, a particular act, if the debtor does not fulfil the obligation, this will be converted into an enforcement for the payment of a sum of money, at the request of the person seeking enforcement.

In this case, if the debtor does not pay voluntarily, his assets or entitlements are seized and, in special cases, so are the assets or entitlements of third parties. This happens when the assets are linked to a loan guarantee or are the object of an action carried out to the detriment of the creditor. After that, the money is handed over directly to the creditor, or the seized assets are assigned to him, or amounts taken from income are paid, or the assets are sold and the proceeds are made over to the creditor.

2 Which authority or authorities are competent for enforcement?

Involvement of the courts

Titles are enforced as a result of a case being heard in a court.

Jurisdiction

In the enforcement of a decision by the Portuguese courts, the enforcement request is made as part of the proceedings in which the decision was handed down, and the enforcement is recorded in the same case file and processed independently, unless the case has subsequently gone to appeal, in which case a copy of the file is transferred.

When, in accordance with the law of judicial organisation, a specialised enforcement section is responsible for enforcement, a copy of the judgement, the application which gave rise to the enforcement and accompanying documents must be sent to this specialised section as a matter of urgency.

If the decision was handed down by arbitrators in an arbitration which took place in Portugal, the competent court for enforcement is the district court of the place where the arbitration took place.

If the case was heard at the Appeal Court or the Supreme Court of Justice or if it concerns the enforcement of a foreign judgement, the court of the debtor's domicile is competent, unless the case involves a judge, his or her spouse, descendants, ascendants or a person with whom the said judge shares the same household. In this case if the action would have been brought in the area where the judge serves, the next nearest court district has jurisdiction. In either case, the file relating to the declaratory action or a copy thereof is sent to the court competent for enforcement.

Save in specific cases provided for by law, the court of the debtor's domicile has jurisdiction for enforcement. The creditor may opt for the court of the place where the obligation is to be complied with when the debtor is a legal person or when the creditor's domicile is in the metropolitan area of Lisbon or Porto and the debtor is domiciled in the same metropolitan area.

However, if the enforcement is for the handing-over of a particular item or for the collection of a debt with a real guarantee, the respective competent courts are the court of the place where the item is to be found or the court of the place where the items used as the guarantee are situated.

When the action for enforcement should be brought in the court of the debtor's domicile and the said debtor does not have a domicile in Portugal but has assets there, jurisdiction for enforcement rests with the court for the place where these assets are located.

In cases involving several enforcements, the analysis of which falls within the jurisdiction of different courts, the court of the debtor's domicile has jurisdiction.

Enforcement agent

It is the responsibility of the enforcement agent to carry out all measures involved in the enforcement process which are not attributed to the court registry or are the responsibility of a judge. This includes summons, notifications, publications, database checking, seizure and registration thereof, liquidation and payments.

Even after a finding of no need to give judgement, an enforcement agent must ensure that acts arising from the case requiring his intervention are correctly executed.

An enforcement agent is appointed by the creditor seeking enforcement, who may choose from those registered on the official list. Without prejudice to his withdrawal by the body responsible for discipline, an enforcement agent may be replaced by the creditor, who must duly state the reasons for such replacement.

Where the enforcement measures involve travel that proves to be disproportionately expensive, they may be undertaken, at the request of the appointed enforcement agent and under his responsibility, by an enforcement agent in the place where they must be carried out or, in the absence of an enforcement agent, by a judicial officer.

An enforcement agent may, under his responsibility and supervision, have any material steps in the enforcement proceeding which do not involve material seizure of assets, sale or payment, undertaken by an employee in his service who is duly certified for the purpose by the competent body, in accordance with the law.

In addition to what is laid down in other legal provisions, it is the responsibility of the judicial officer to carry out measures which are the responsibility of the enforcement agent:

- a) in enforcements in which the State is the creditor seeking enforcement;
- b) in enforcements in which the Public Prosecutor represents the creditor;
- c) when the judge so decides, at the request of the creditor, based on the absence of an enforcement agent registered in the county where the enforcement is to take place and based on the manifest disproportion of the costs which would be incurred if the action were to be taken by an enforcement agent from another county;
- d) when the judge so decides, at the request of the enforcement agent, if the enforcement measures require travel involving disproportionate travel costs and there is no other enforcement agent in the place where the enforcement is to be carried out;
- e) in enforcements for a value not greater than double the limit which can be dealt with by the court of first instance, where the creditors are natural persons and the object of the enforcement are claims not resulting from commercial or industrial activity, provided that they so request in the enforcement application and pay the respective court fee;
- f) in enforcements for a value not greater than the limit applied to the Appeal Court, if the claim to be enforced is of a labour-related nature and if the creditor so requests in the enforcement application and pays the respective court fee.

3 What are the conditions under which an enforceable title or decision may be issued?

3.1 The procedure

The following are enforcement titles:

a) Court judgements

The judgment is only considered as enforceable after becoming *res judicata*, unless the appeal lodged against it has suspensive effect.

From an enforceability point of view, official orders and any other decisions or acts by judicial authority which require compliance with an obligation are equivalent to judgements. Decisions handed down by the Court of Arbitration are enforceable in the same terms as decisions by common courts.

Without prejudice to what is laid down in treaties, conventions, Community regulations and special laws, judgements handed down by courts or arbitrators in a foreign country may only serve as the basis for enforcement after being reviewed and confirmed by the competent Portuguese court.

However, titles issued in foreign countries do not require review in order to be enforceable.

b) Documents drawn up or certified by a notary or other entities or professionals with competence for the purpose, which serve to establish or recognise any obligation

Documents drawn up or certified by a notary or other entities or professionals with competence for the purpose, in which future performance is agreed or future obligations are set out, may serve as the basis for enforcement, provided that it is proven, by a document drawn up in compliance with the clauses set out in such documents or, should such clauses be absent, a document having its own enforceability, that an act was performed for the conclusion of a business deal or that an obligation was established as a consequence of an agreement between the parties.

Any document signed on behalf of someone else only enjoys enforceability if the signature has been certified by a notary or other entities or professionals with competence for the purpose.

c) Debt obligations, even though merely handwritten, provided that, in this case, the facts which constitute evidence of the underlying relationship feature in the respective document or are stated in the enforcement application.

Debt obligations include, for example, cheques, bills of exchange and promissory notes.

d) Documents to which enforceability is assigned through special provision.

For example, applications for orders to which an enforcement clause has been appended and minutes of meetings of condominiums.

Enforcement titles are considered to include late payment interest, at the statutory rate, on the obligation therein.

Process

Use of legal professionals

Parties must be represented by a lawyer, trainee lawyer or solicitor in enforcements involving a value greater than the limit set for first instance courts, and must be represented by a lawyer in enforcements involving a value greater than the limit set for appeal courts and in enforcements of a value equal to or less than this amount, but greater than the value set for first instance courts, when any proceedings are brought that follow the terms of the declaratory process.

Enforcement application

Enforcement applications are submitted to the court preferably by electronic means but may also be submitted on paper.

Electronic submission is carried out by the legal representative by completing and sending the electronic enforcement application form which can be found at <http://citius.tribunaisnet.mj.pt/> in accordance with [Article 132 of the Civil Procedure Code](#) and in line with the procedures and instructions therein. The form must be accompanied by the requisite documents.

When a party is not represented by legal counsel, or when justifiable reasons exist preventing submission in accordance with the previous article, the enforcement application may be presented on paper to the court registry or sent by registered post or fax to the competent court using the [model](#)

enforcement application form in Annex I to [Implementing Order \(Portaria\) 282/2013 of 29 August 2013](#). The form must be accompanied by the requisite documents.

The party seeking enforcement is later notified for payment, within 10 days, of the sum initially due to the enforcement agent for fees and expenses.

The enforcement application is only considered as submitted on the date that the sum initially due to the enforcement agent for fees and expenses is paid or on confirmation of the granting of legal aid in the form of the assignment of an enforcement agent.

Procedure

The procedure **followed** for common enforcement of the payment of a specific sum may be either summary or ordinary.

The summary procedure is employed in enforcements based on a judicial or arbitration decision where such a decision must not be enforced in the main proceedings, on applications for an order to which an enforcement clause has been appended, on an extrajudicial title for a payable monetary obligation, guaranteed through a mortgage or lien, and on an extrajudicial title for a payable monetary obligation, the value of which does not exceed twice the limit set for the court of the first instance.

The summary procedure cannot be applied when the obligation is an alternative and the choice of fulfilment falls to the debtor or third parties, when the obligation is dependent on a suspensive condition or fulfilment by the creditor or third party, when the obligation to be enforced requires liquidation in the enforcement stage and the liquidation is not dependent on a simple mathematical calculation, when an enforcement title other than a judgement exists against only one of the spouses and the creditor claims in the enforcement application that the debt is common to both, and in enforcements brought only against the subsidiary debtor who has not waived the defence of prior recourse.

In the ordinary procedure, the preliminary intervention of the judge is secured and the debtor is served a summons before the seizure, except if the judge, at the request of the creditor, dispenses with prior summons on the debtor as there is a justified fear of losing the asset guarantee on the claim to be enforced and the case is then given due urgency.

The [common procedure for handing-over a particular item](#) (Articles 859 to 867 of the Civil Procedures Code) and for [performance of a particular act](#) (Articles 868 to 877 of the Civil Procedures Code) take the same form.

The enforcement process is dealt with electronically through IT systems supporting the activity of enforcement agents and the courts.

Enforcement costs

The costs of enforcement, including fees and expenses payable to the enforcement agent, of appended proceedings and of the respective action for declaratory relief are deducted from the proceeds of the seized assets.

The costs account is kept on a continuous basis throughout the process by the court registry dealing with the enforcement, in accordance with the Litigation Costs Regulation.

Fees due to an enforcement agent and the reimbursement of his expenses, as well as debts to third parties as a result of the enforcement sale, are borne by the creditor. The said creditor may require reimbursement of these costs from the debtor in cases where it is impossible to apply the provisions of the first paragraph (costs, fees and expenses deducted from the proceeds of the seized assets).

The enforcement will not proceed until the creditor pays the enforcement agent all sums due for fees and expenses.

The creditor, debtor, the Chamber of Solicitors, the court and any third party which has a legitimate interest is entitled to be informed, preferably by electronic means, about the details of the current account for the case. This account must be kept permanently up to date by the enforcement agent.

The detailed current account for the case includes foreseeable expenses for the completion of the proceedings, more specifically expenses incurred in the cancellation of registrations.

Enforcement agents are entitled to remuneration for dealing with cases, acts carried out or procedures undertaken, in accordance with the amounts stipulated in the [table in Annex VII to Implementing Order \(Portaria\) 282/2013 of 29 August 2013](#), which include the carrying-out of acts required within the limits provided for therein.

Enforcement agents are entitled to be paid fees for services rendered and to be reimbursed for duly proven expenses.

An enforcement agent is due an additional remuneration at the end of enforcement proceedings for the payment of a specific sum, which varies depending on the sum recovered or guaranteed, the point in the proceedings at which the sum was recovered or guaranteed, and on the existence or otherwise of a real guarantee on the assets seized or to be seized.

Parties are ensured access to the current account for cases in which they are involved through IT systems supporting the activity of enforcement agents.

The enforcement agent must inform the creditor, at the start of the proceedings, and the debtor, at the point of summons, of the probable amount of his fees and expenses. This information must be recorded in the IT systems supporting the activity of enforcement agents and included in the case file.

External actions, i.e. those not carried out through the IT systems supporting the activity of enforcement agents, must be recorded in that system up to the end of the second working day after the day the action was carried out. Failure to do so will result in the enforcement agent not being reimbursed for the respective expenses.

The Chamber of Solicitors provides access on its official website to a simulator for the fees and expenses of enforcement agents. The values indicated by the simulator are merely indicative.

The amounts set in this Implementing Order (*Portaria*) are expressed in units of account (UC).

A UC is the monetary amount equivalent to a quarter of the value of the Social Support Index, rounded up to the nearest whole euro, set out in the provisions of Article 5 of the Litigation Costs Regulation and calculated on the basis of the provisions of Article 22 of Decree-Law No 34/2008.

The value of a UC in 2014 was €102.00.

3.2 The main conditions

As to the claim

Enforcement begins with measures, to be requested by the creditor, with a view to making the obligation certain, due and net, should this not be the case with regard to the enforcement title.

As to the creditor

The enforcement must be brought by the person who is named as the creditor in the enforceable title. If the title is made out to the bearer, enforcement must be carried out by the title bearer.

If succession has occurred in the right or the obligation, the enforcement should be brought between the heirs of the persons named in the enforceable title as creditors or debtors. In the enforcement application itself, the applicant must set out the facts proving succession.

As to the debtor

The enforcement must be brought against the person who is named as the debtor in the enforceable title.

The enforcement of a debt backed by a real guarantee on third party assets must be brought directly against that third party if the creditor seeking enforcement wishes to enforce the guarantee, notwithstanding the fact that the debtor may also be sued immediately.

When the enforcement has been brought against the third party only and it is known that the assets burdened with the real guarantee are insufficient, the creditor seeking enforcement can, in the same process, request the continuation of the enforcement proceedings against the debtor, who will be ordered to fully satisfy the claim. When the burdened assets belong to the debtor but are in the possession of a third party, the latter as well as the debtor may be sued immediately.

In an enforcement brought against a subsidiary debtor, the assets of the said subsidiary debtor may not be seized until all of the assets of the main debtor have been seized, provided that the subsidiary debtor invokes – based on clear grounds and within the deadline for opposing enforcement, i.e. 20 days from the date of the summons – the right of surety to require execution to be directed against the main debtor.

When the common assets of a couple are seized in an enforcement brought against only one spouse, due to the fact that insufficient assets of the debtor are known, the spouse of the debtor served the summons may, within 20 days, apply for the legal separation of assets or append a certificate corroborating that this action is pending, having already been requested, under penalty of the enforcement continuing against the common assets.

When enforcement is brought against one spouse, the creditor may claim, based on clear grounds, that the debt, in a title other than a judgement, is common. In such cases the spouse of the debtor is summoned to declare, within 20 days, whether he or she accepts that the debt is common, on the grounds stated; if nothing is said, the debt is considered common, without prejudice to the lodging of an appeal.

When enforcement is brought against any of the co-holders of autonomous assets or an indivisible asset, the assets in common property or fractions thereof or specified parts of the indivisible asset may not be seized.

When enforcement is brought against heirs, only assets which have been received from the owner of the estate may be seized. When the seizure refers to other assets, the debtor may state which assets in his possession are from the estate and request the enforcement agent to lift the seizure. The request may be granted if the creditor does not object.

If the creditor objects, the debtor may only obtain the lifting of the seizure, where the inheritance has simply been accepted, if he states and proves to a judge: a) that the assets seized did not come from the inheritance; b) that he did not receive in the inheritance more assets than those stated or, if more were received, that such other assets were used to settle charges relating to the inheritance.

The debtor's assets are seized even though, through any title, they are in the possession of a third party, without prejudice however to rights which such a third party is entitled to assert vis-à-vis the creditor.

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

All of the debtor's assets which can be seized under substantive law may be subject to enforcement. In cases specially provided for by law, third party assets may be seized if the enforcement has been brought against that third party.

The seizure is limited to the assets necessary for the payment of the debt in question and the foreseeable costs of the enforcement, which are presumed to be, for the purpose of carrying out the seizure and without prejudice to subsequent liquidation, 20 %, 10 % and 5 % of the value of the enforcement, depending, respectively, on whether the said enforcement (a) falls within the financial remit of the district court, (b) exceeds it, without exceeding four times the value set for the appeal court, or (c) is greater than this last value.

Only objects and rights which can be evaluated in monetary terms may be seized. Assets which are not traded cannot be seized. Immovable property, movable assets, purchase rights and expectations, bonuses or income, bank deposits, jointly owned assets, and shares in companies and commercial establishments can be the object of enforcement.

4.2 What are the effects of enforcement measures?

The effects of seizure are:

Loss of the debtor's rights of possession;

Relative lack of effect of subsequent measures of disposal: rights established in the event of transfer are null and void;

Real entitlement of guarantee in favour of the creditor.

4.3 What is the validity of such measures?

No validity period is laid down for such measures.

Even where the legislator establishes special validity periods, as is the case for the records of seizure of immovable property, this does not automatically cause the validity of the enforcement measures to expire as such records may be renewed for equal periods of time, without any limit to the number of renewals.

If seizable assets are not found within three months from the date of the notification sent by the registry to the enforcement agent to begin measures for seizure, the enforcement agent notifies the creditor to specify which assets he wishes to be seized in the enforcement. The debtor is also notified to provide a list of assets to be seized, stating that omission or false statements may lead to compulsory fines of 5 % of the debt per month, with a minimum overall limit of 10 CU, if a further renewal of the court enforcement occurs and the existence of seizable assets is established therein.

If neither the creditor nor the debtor provides a list of seizable assets within 10 days, the enforcement is immediately cancelled.

When the enforcement begins without a requirement to send a prior summons, the debtor is summoned; if the creditor does not provide a list of seizable assets, and the personal summons on the debtor proves ineffective, no written summons is issued and the enforcement is cancelled in accordance with the preceding paragraph.

5 Is there a possibility of appeal against the decision granting such a measure?

The arrangements laid down for appeals in the declaratory process also apply for appeals lodged against decisions handed down in proceedings or incidents of a declaratory nature, occurring in the execution of the enforcement action.

It is possible to appeal against decisions made granting enforcement orders if the case involves an amount greater than the limit for the court in which the case is being heard and the contested decisions are unfavourable to the appealing party for an amount which is greater than half the limit for this court.

Appeal is also possible, in general terms, against:

- a) the decisions provided for in [Article 644\(2\) of the Civil Procedure Code](#), when applicable to enforcement action;
- b) decisions which determine the suspension, termination or cancellation of the enforcement;
- c) decisions on the cancellation of the sale;
- d) decisions on the exercising of the right of preference or redemption.

Appeal is always possible against an official decision refusing to accept the enforcement application, or even part thereof, as well as against an official decision rejecting a preferred enforcement application in accordance with the provisions of [Article 734 of the Civil Procedure Code](#).

Without prejudice to cases in which appeal to the Supreme Court of Justice is always admissible, the only appeal court rulings open to review, in general terms, are those handed down in liquidation proceedings not requiring simple mathematical calculation, proceedings for the verification and ranking of claims and proceedings opposing the enforcement.

In enforcement proceedings the debtor may oppose enforcement within a time limit of 20 days from the date of the summons. In the case of summary procedures, any action by the debtor to oppose seizure is combined with the opposition to enforcement.

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

There are legal limits to seizure which render some assets unseizable either totally, partially or only under certain conditions.

The following cannot be seized under any circumstances:

- a) Inalienable objects or rights;
- b) Assets in the public ownership of the State and of other public legal persons;
- c) Objects whose seizure would be offensive to good morals or would not make economic sense because their market value is insignificant;
- d) Objects specially destined for public worship;
- e) Tombs;
- f) Instruments which are essential for the disabled and objects intended for treating the sick.

The following are exempt from seizure:

Except where the enforcement is for payment of a debt with a real guarantee, the assets of the State and other public legal persons, those of entities holding public works or public service concessions, or those of legal persons of public utility which are specially assigned to purposes in the public interest;

The working tools and objects essential for the pursuit of the debtor's professional activity or vocational training, except where:

- a) the debtor indicates they can be seized;
- b) the enforcement is for the payment of their purchase price or repair cost;
- c) they are seized as tangible elements incorporated in a commercial establishment.

Goods which are indispensable for any household in the house where the debtor resides, except if the enforcement is for the payment of the purchase price of the items themselves or cost of their repair.

The following cannot be seized:

Two thirds of net income, salaries, periodic amounts received as retirement pension or any other social benefit, insurance, accident indemnity or annuity, or any other payments of a similar nature which ensure the livelihood of the debtor. For the purposes of calculating the liquid part of the abovementioned payments, only contributions which are legally required are considered.

In the cases referred to in the last paragraph, the non-seizability has a maximum limit equivalent to three national minimum wages at the time of each seizure and a minimum limit, when the debtor has no other income, of the equivalent of one national minimum wage.

When the claim being pursued relates to maintenance, an amount equivalent to a full noncontributory pension cannot be seized.

In the seizure of money or of a current account bank balance, the overall amount equivalent to one national minimum wage may not be seized or, if it refers to maintenance obligations, the sum referred to above.

Weighing up the amount and the nature of the claim being pursued and the needs of the debtor and his family, the judge may, exceptionally, at the request of the debtor, reduce the part of his income which can be seized for a period which he considers reasonable. The judge may even exempt the debtor's income totally for a period of not more than one year.

Non-seizability is not cumulative for the items set out above which refer to payments of any kind, sums of money or bank balances which ensure the livelihood of the debtor.

The amount of money or the bank deposit resulting from the satisfaction of a claim for which seizure was not possible cannot be seized, in the same way as the original claim could not give rise to seizure.

Last update: 27/07/2015

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Procedures for enforcing a judgment - Finland

1 What does 'enforcement' mean in civil and commercial matters?

In Finland enforcement is divided into what are known as separate and general enforcement.

Separate enforcement refers to the recovery of judgment debts. Where necessary, individual debts imposed in a court judgment or on other grounds arising from the Enforcement Code (*ulosottoaari*) are collected by way of enforcement. No such grounds are needed for collecting taxes, public payments or other public receivables (e.g. fines).

General enforcement refers to personal or corporate debt restructuring and bankruptcy. These kinds of proceedings generally encompass all debts and assets of the debtor. Only separate enforcement, i.e. the recovery of judgment debts, will be discussed here.

In practice, the most important form of enforcement in civil and commercial matters is the enforcement of a judgment debt. The process includes the distraint of the assets of the debtor, the sale of assets, if necessary, and the payment of the accrued funds to the creditor. Assets are distrained up to the amount that is necessary to pay the debt to the creditor. In cases where enforcement has been requested by several creditors or the distrained assets are subject to collateral rights, the funds are divided among the creditors in order of priority.

Another important form of enforcement is eviction. Eviction involves forcing a tenant to vacate a property upon the termination of the tenancy. Obligations to transfer certain assets to another, obligations to do something as well as injunctions against doing something and obligations to allow another to do something can also be enforced. These kinds of obligations and injunctions are usually enforced by means of coercive measures or penalty payments, depending on the circumstances. Court-ordered seizures or other precautionary measures can also be enforced. Only the enforcement of judgment debts will be discussed in more detail below.

Enforcement authorities also have the power to enforce family law judgments, such as orders to return a child under the Hague Convention on the Civil Aspects of International Child Abduction.

2 Which authority or authorities are competent for enforcement?

3 What are the conditions under which an enforceable title or decision may be issued?

3.1 The procedure

In Finland enforcement is the responsibility of bailiffs. Practical enforcement work is usually carried out by deputy bailiffs. Bailiffs are impartial and independent enforcement authorities employed by the State, and they have an obligation to observe the rules of proper conduct. They must carry out their duties promptly, efficiently and expeditiously without causing unnecessary distress to the debtor or third parties. Bailiffs have considerable powers, including the right to search for debtors' assets.

Enforcement requires that the creditor has a court judgment establishing the debt or that there are other grounds for enforcement. However, there is usually no need for a specific enforcement order.

In civil and commercial matters, enforcement is usually based on a judgment or ruling of a general court of law. General courts of law include district courts (*käräjäoikeus*) as courts of first instance and Courts of Appeal (*hovioikeus*) and the Supreme Court (*korkein oikeus*) as appellate courts. An arbitral award can also provide grounds for enforcement. In practice, one of the most important grounds for enforcement is a maintenance order confirmed by a municipal authority. On the other hand, Finland does not recognise contracts between private parties as grounds for enforcement.

A judgment issued by a foreign court or similar documents only qualify as grounds for enforcement in Finland if this has been expressly provided for in law. In practice, this mostly involves provisions laid down in Community law.

Creditors must apply for enforcement from their local enforcement authorities and append the grounds for enforcement to the application. Applications can be for full enforcement or limited enforcement (see section 3.1.). Creditors can also ask enforcement authorities to monitor a debt for a period of two years if it is not possible to collect the debt immediately. There is no need to hire a lawyer or a legal adviser. Although applications are made to local enforcement authorities, bailiffs operate nationwide.

The fees collected by the State for enforcement are usually charged to the debtor. The creditor will be liable to pay a disbursement fee on the disbursed amount. If collection fails, the creditor will have to pay a small handling fee.

3.2 The main conditions

The validity of the creditor's claim is examined by a court in a civil procedure before a judgment is issued to serve as grounds for enforcement. In practice, the majority of rulings are default judgments. A default judgment is based on the failure of the other party to respond to the summons or to attend court. A default judgment is given without a detailed examination of the validity of the claim. This allows creditors with uncontested claims to establish grounds for enforcement quickly and easily. For more information, see "Simplified and accelerated procedures – Finland".

Bailiffs have a duty to enforce courts' judgments or other grounds for enforcement and cannot question their validity. Instead, bailiffs must check that the debt has not ceased to exist since the court's judgment was given, due to payment or the expiry of a statute of limitations.

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

In principle, all types of assets belonging to the debtor that have monetary value can be distrained. In practice, funds from the debtor's bank account, tax refunds, wages, salaries, pensions or other regular income can be garnished. In addition, other movable assets or effects and immovable property can be distrained. However, if the creditor has applied for limited enforcement, only assets ascertainable from registers that do not require liquidation can be distrained.

On the other hand, the law prohibits certain types of assets from being distrained, based on social and other grounds. Various social benefits, for example, cannot be garnished. Debtors also enjoy a so-called separation advantage, which means that a debtor's ordinary household effects or professional tools, for example, cannot be distrained.

To guarantee a reasonable livelihood to debtors and their families, the garnishment of wages, salaries and pensions is subject to quantitative restrictions. As a general rule, no more than one third of a debtor's net wage or salary can be garnished. The debtor is always guaranteed a protected portion of his or her income.

If distrained assets need to be liquidated, they are usually sold at a public auction.

4.2 What are the effects of enforcement measures?

Once assets have been distrained, the debtor may not destroy or dispose of the distrained assets or make other decisions concerning the same to the detriment of the creditor. Any action taken in violation of this injunction has no legal power. However, a third party may enjoy *bona fide* protection in some cases. Handling distrained assets is a criminal offence.

Bailiffs enjoy extensive access to information not only from the debtor but also from third parties, such as banks. Once a bank has been informed of a debtor's funds having been frozen, the bank must not release funds from the debtor's bank account to anyone except the bailiff. Paying a receivable or wages or salaries in violation of this injunction is a criminal offence.

4.3 What is the validity of such measures?

A court judgment or other grounds for enforcement cannot be enforced if the right conferred by the same has subsequently lapsed due to the debt having been paid or the statute of limitations having expired. Judgments usually carry a statute of limitations of five years, which the creditor can interrupt.

Time limits have been set for the enforceability of certain kinds of debts in Finland. This applies to cases where a natural person has been ordered to repay a monetary debt. The objective is to prevent enforcement proceedings from continuing for unreasonably long periods of time. These kinds of debts are usually enforceable for a period of 15 years or in some cases 20 years.

Enforcement measures as such do not usually have specific time limits. Bailiffs have an obligation to carry out their duties expeditiously and without unnecessary delay.

5 Is there a possibility of appeal against the decision granting such a measure?

Bailiffs' enforcement measures and decisions can be appealed by anyone whose interests are affected by said measure or decision. Appeals are handled by general courts of law with district courts acting as courts of first instance. Appeals must be filed within three weeks of the date on which the decision is issued or the date on which the interested party receives notice of the decision.

Filing an appeal does not usually suspend the enforcement process, unless the court rules otherwise. If the appeal is granted, the court will overrule or amend the bailiff's decision. In some cases bailiffs can also correct any obvious errors in their decisions themselves.

If resolving an argument or claim presented in connection with enforcement requires taking oral evidence, the matter may need to be decided in a civil proceeding in a court of law (enforcement dispute).

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

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Last update: 29/12/2015

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Procedures for enforcing a judgment - England and Wales

1

1 What does 'enforcement' mean in civil and commercial matters?

Enforcement is court-sanctioned action taken to compel judgment debtors to comply with the orders of the court.

Under the legal system of England and Wales the choice of enforcement method lies entirely with the judgment creditor.

When choosing which method to use a creditor must consider whether:

- he/she is likely to get their money and court fee from the defendant;
- the defendant owes other people money or has other county court judgments;
- the defendant owns any goods or assets which can be taken and sold at auction;
- the defendant is working;
- the defendant has other earnings, such as income from investments;
- the defendant has a bank, building society or other account;
- the defendant owns property (a house); or
- anyone else owes the defendant money.

Information on the different types of enforcement measures follows. A judgment creditor should choose the one which is most likely to get him/her the money owed.

A court cannot guarantee that the judgment creditor will get his/her money back, and a court fee is payable for any action taken. Although the court will add the fee to the money the defendant already owes, the court cannot return what the creditor has paid if he/she does not get the money from the defendant.

More information can be found in a leaflet on enforcement procedures.

General information for a creditor can be found in the guide [Make a Court Claim for Money](#).

General information for a debtor can be found in the following guides:

[County court judgments for debt](#)

[Respond to a court claim for money](#)

[Make a Court Claim for Money](#)

The different types of enforcement methods are:

Taking control of goods (formerly known as Distraint/execution)

The seizure of goods for possible eventual removal and sale at auction to cover the costs of a judgment debt.

To obtain enforcement by taking control of goods it is necessary to apply to the court for a warrant of control. A warrant will only help if the defendant has:

- enough goods at the address given by the judgment creditor which could be sold at auction to raise money; or
- all the money claimed for on the warrant (to stop goods being sold).

Before the court can issue a warrant, the defendant must have:

- failed to pay the amount he or she has been ordered to pay; or
- fallen behind with at least one of his or her payments.

Bailiffs cannot always remove and sell the defendant's goods. For example, they cannot remove essential household items and tradesman's tools or goods subject to hire purchase or rental agreements. The bailiff will not take the defendant's goods if they are not worth enough to pay the warrant after the costs of taking and selling the goods. Goods sold at auction often raise only a fraction of their original value. In addition the defendant's goods may also already have been seized by bailiffs acting under another warrant.

More information on warrants of control can be found on the website of the Ministry of Justice.

Attachment of earnings orders

Under this method of enforcement, an order is obtained whereby a fixed sum is deducted from the judgment debtor's wages or salary regularly on the day they are paid and is forwarded directly to the judgment creditor.

The defendant must be employed by someone before an attachment of earnings order can be issued. An order cannot be made if the defendant is unemployed or self-employed. Also, the court may not be able to make an order, or may only make an order to pay it back in small instalments, if the defendant's living expenses are greater than what is earned.

More information on attachment of earnings orders can be found on the website of the Ministry of Justice.

Charging orders - including orders for sale and stop orders

A charging order prevents the defendant from selling his or her assets (such as property, land or investments) without paying what is owed to the judgment creditor. The judgment creditor is paid either from the proceeds of the sale when the judgment creditor sells the property or from the proceeds of the estate when the judgment debtor dies. This process can also involve two further types of court order. First there is the order for sale, where the court can force the sale of the items of immovable property under a charging order. Secondly, there is a stop order, which prevents a judgment debtor from disposing of items of immovable property to avoid charging order proceedings being taken against him.

More information on charging orders can be found on the website of the Ministry of Justice.

Third party debt orders (formerly known as garnishee proceedings)

Under this method of enforcement, an order is obtained whereby the judgment debtor's bank accounts are frozen on order of the court. An amount to cover the judgment debt is then automatically transferred to the judgment creditor in satisfaction of the debt. If there are insufficient funds in the bank accounts to cover the debt then such funds as are available are used to repay at least some of the amount owed.

More information on third party debt orders can be found on the website of the Ministry of Justice.

A [video](#) provides further information.

Bankruptcy proceedings

If the amount owed is at least £5,000 a judgment creditor can also apply to make the defendant bankrupt. These proceedings can be brought in both the county court and the High Court. This can be expensive however.

Orders to obtain information (formerly known as oral examinations)

Although not in itself an enforcement method, this procedure allows for judgment debtors to be questioned for information regarding their assets, to enable the judgment creditor to make a more informed choice as to the enforcement method they would wish to use.

More information on orders to obtain information can be found on the website of the Ministry of Justice.

2 Which authority or authorities are competent for enforcement?

The High Court, county court or magistrates court are competent for enforcement in England and Wales. The High Court and county court will produce judgments and the magistrates courts will issue liability orders to local authorities.

3 What are the conditions under which an enforceable title or decision may be issued?

3.1 The procedure

It is possible to enforce both judicial and non-judicial decisions. It is not always necessary to apply for a court order authorising the enforcement. Taking control of goods proceedings can be undertaken for unpaid rent, taxes, customs and excise duties and parking fines without the need for prior judicial consent.

Both the county court and the High Court are competent for ordering enforcement in cases where they have granted judgment. It should be noted, however, that a county court bailiff cannot enforce any amount over £5000 (unless enforcing an agreement regulated under the Consumer Credit Act 1974 which can only be enforced in the county court). County court judgments for more than £5000 must be transferred to the High Court for execution by an Enforcement Officer. Enforcement Officers in the High Court cannot enforce judgments for amounts less than £600.

There is a procedure whereby judgment creditors can choose to transfer county court judgments between £600 and £5000 to the High Court for enforcement by way of execution. It should also be noted that there is no attachment of earnings procedure in the High Court; a matter has to be referred to a county court for this method of enforcement to be used.

If a claim was issued using [Money Claim Online](#) a request for a warrant of execution can also be requested online.

The status, roles, responsibilities and powers of enforcement agents

High Court Enforcement Officers (formerly Sheriffs) - Since 1 April 2004, High Court Enforcement Officers have carried out enforcement of High Court writs. These are enforcement professionals who are appointed by the Lord Chancellor to carry out enforcement within certain postal districts. They have to meet numerous criteria before being considered suitable for appointment, covering such issues as qualifications, financial probity, membership of a professional association, and commitments to diversity and a suitable conduct and discipline procedure. High Court Enforcement Officers can enforce county court money judgments where the amount it is sought to enforce exceeds £600 and the creditor chooses to transfer the debt to the High Court for execution.

County court bailiffs, who are employees of Her Majesty's Courts and Tribunals Service and therefore civil servants, deal with enforcement of judgments and /or orders made and registered in the county courts. They enforce warrants of control, repossess land with warrants of possession and recover goods under warrants for return of goods. In addition, county court bailiffs carry out other duties, including personal service of documents and warrants of committal.

Certificated enforcement agents are private enforcement agents authorised by a Judge sitting in the county court. They deal with the seizing of a tenant's goods by a landlord to secure payment of rent arrears without the intervention of the court. Under a number of other Acts certificated enforcement agents are also permitted to enforce other specific debts such as council tax, non-domestic rates etc.

Magistrates' Courts: Civilian enforcement officers are responsible for enforcing magistrates' court orders. They can seize and sell goods to recover the amount owed under a fine or community penalty notice. They can also execute warrants of arrest, committal, detention and control issued by a magistrates' court under any one of a range of statutes, including those covering the enforcement of fines and community penalties. Some magistrates' courts may opt to contract enforcement work out to certified enforcement agents.

Use of lawyers or other legal professionals

There is no obligation upon the creditor to make their application for enforcement through a lawyer or any other legal professional.

Enforcement procedures can be complicated, though, especially in the High Court. Creditors may want to get advice, therefore, from a solicitor, law centre or [Citizens Advice](#) before commencing an enforcement procedure.

Scale of costs for enforcement

There are different court fees for each of the methods of enforcement. As mentioned above, although the court will add the fee to the money the defendant already owes, the court cannot return what the creditor has paid if he/she does not get the money from the defendant. The current fees for enforcement methods can be found on the website of the Ministry of Justice.

3.2 The main conditions

As mentioned above, in England and Wales the choice of enforcement method to be used is wholly within the hands of the judgment creditor. Responsible creditors who have obtained a valid judgment through the courts and have still not been paid are entitled to enforce that judgment by the most appropriate means available to them. Therefore, as long as a valid judgment is in place and a proper application is made, the court is obliged to follow the creditor's wishes and use the method of enforcement of the creditor's choosing.

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

Enforcement action may be taken against the following assets:

Bank accounts by use of the third party debt (or garnishee) order procedure.

Tangible movable property by use of taking control of goods.

Registered means of transport by use of taking control of goods.

Immovable property by use of the charging order procedure.

Salaries or wages by use of the attachment of earnings procedure.

The enforcement officer can only take goods which belong to the defendant or are jointly owned. The following list of goods are exempt

(a) items or equipment (for example, tools, books, telephones, computer equipment and vehicles) which are necessary for use personally by the debtor in the debtor's employment, business, trade, profession, study or education, except that in any case the aggregate value of the items or equipment to which this exemption is applied shall not exceed £1350;

(b) such clothing, bedding, furniture, household equipment, items and provisions as are reasonably required to satisfy the basic domestic needs of the debtor and every member of the debtor's household, including (but not restricted to) —

(i) a cooker or microwave;

(ii) a refrigerator;

(iii) a washing machine;

(iv) a dining table large enough, and sufficient dining chairs, to seat the debtor and every member of the debtor's household;

(v) beds and bedding sufficient for the debtor and every member of the debtor's household;

(vi) one landline telephone, or if there is no landline telephone at the premises, a mobile or internet telephone which may be used by the debtor or a member of the debtor's household;

(vii) any item or equipment reasonably required for—

- the medical care of the debtor or any member of the debtor's household;
- safety in the dwelling-house; or
- the security of the dwelling-house (for example, an alarm system) or security in the dwelling-house;
- (viii) sufficient lamps or stoves, or other appliance designed to provide lighting or heating facilities, to satisfy the basic heating and lighting needs of the debtor's household; and
- (ix) any item or equipment reasonably required for the care of—
 - a person under the age of 18;
 - a disabled person; or
 - an older person;

(c) assistance dogs (including guide dogs, hearing dogs and dogs for disabled persons), sheep dogs, guard dogs or domestic pets;

(d) a vehicle on which a valid disabled person's badge is displayed because it is used for, or in relation to which there are reasonable grounds for believing that it is used for, the carriage of a disabled person;

(e) a vehicle (whether in public ownership or not) which is being used for, or in relation to which there are reasonable grounds for believing that it is used for, police, fire or ambulance purposes; and

(f) a vehicle displaying a valid British Medical Association badge or other health emergency badge because it is being used for, or in relation to which there are reasonable grounds for believing that it is used for, health emergency purposes.

Any goods which the enforcement officer takes must be likely to fetch money at auction. Enforcement officers will not remove goods if they think that they will not fetch enough to pay something towards the warrant after the cost of removing and selling them at auction have been paid.

For attachment of earnings orders the court will take into account how much the defendant needs to live on for food, rent or mortgage and essentials and to pay regular bills, such as electricity. This is called the 'protected earnings rate'. If the defendant earns more than the protected earnings rate, an order will be made.

For third party debt orders a judgment debtor who is prevented from withdrawing money from his or her account with a bank or building society and claims that he or she or his or her family is suffering hardship in meeting ordinary living expenses as a result, may apply to a court for a hardship payment order which allows one or more payments to be made to specific individuals.

4.2 What are the effects of enforcement measures?

For both debtors and third parties, the failure to comply with the requirements of court orders leads them open to sanctions for contempt. The penalties that can be imposed for contempt include "purging contempt" (that is an apology to the judge in open court), fines, and in the most serious cases imprisonment for up to 14 days.

Banks have certain obligations regarding disclosing information and attaching bank accounts. When a bank receives a third party debt order imposed upon one of its customers, the bank does not have to reveal how much money is held in the account. It can state that there is no money in the account, that there are insufficient funds to meet the whole amount but can pay some of it, or that there are sufficient funds to meet the whole amount requested. There are very strict data protection issues that govern what information other than this the bank can provide.

4.3 What is the validity of such measures?

All orders state the length of time that is being given to provide relevant information or to comply with the court order, and also state the maximum penalties that may be imposed for failing to comply with a court order.

5 Is there a possibility of appeal against the decision granting such a measure?

The court based enforcement methods (charging orders, attachment of earnings orders and third party debt orders) all involve a two-stage process. The interim stage of the process is purely a paper based judicial function, and the judgment debtor has no input to the process at this stage. However, for attachment of earnings orders and third party debt orders to progress to the final stage, there has to be a hearing to which the judgment debtor will be invited to attend where he will be able to give any reasons as to why the planned method of enforcement should not proceed. The 'final' hearing will be held at the same court as the original application for that method of enforcement was lodged (unless specifically requested otherwise). The date of the hearing will be notified to all parties well in advance, and in all cases there is a fixed minimum amount of time that must elapse between the 'interim' stage, notification of the 'final' hearing, and the 'final' hearing itself, to enable the debtor (and any relevant, directly involved third party e.g. the bank in a third party debt order case) time to prepare their case. If the date of the 'final' hearing is inconvenient for the parties, they may be able to get it postponed to a more mutually convenient date. Should this happen, the interim order will remain in place, but the order cannot be made 'final' until that hearing has been held.

For charging orders, an interim order must be served on the debtor by the creditor and unless the debtor objects the interim order is made final without the need for a hearing, unless the judge rules that a hearing is necessary. The debtor has to reply to the court within 10 days of the date of service of the hearing. If the debtor does object to the interim order, or the judge transfers the matter, the case is transferred to the original court that the judgment was made at and a hearing date will be fixed. Both creditor and debtor will attend the hearing.

There is no appeal against the decision once the court has made its order. In appropriate circumstances appeals or requests to set aside can only be made on the original judgment that gave the creditor the authority to request enforcement in the first place. Only if the judgment is successfully challenged by appeal or is set aside can the enforcement process be revoked by a court. If a challenge to the judgment is lodged after a court has authorised a creditor's request for enforcement a warrant may be suspended on application to the court. Bailiffs may not take away goods but they must continue to levy on them (that is list those that could later be seized and taken away for sale).

Provided that a creditor has made a correct application for enforcement to a court, that court cannot refuse to authorise the method of enforcement chosen by the creditor. There is, therefore, no need for the creditor to have a means of appeal against the decision granting a measure.

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

A warrant or writ of control is time limited. The warrant and writ are valid for 12 months and can be extended for a further 12 months by an order of the court. In the taking control of goods procedure a debtor must be given 7 clear days notice of enforcement to give him or her the opportunity to pay the debt and costs before the enforcement officer can take control of goods. This period can be reduced by an order of the court if there is evidence that the debtor will move assets to avoid enforcement.

An enforcement officer may not take control of goods before 6:00 or after 21:00 where the debtor is an individual.

An enforcement officer may not enter premises to take control of goods where a child or vulnerable person (whether more than one or a combination of both) is the only person present in the premises in which the goods are located.

Where the debtor is a vulnerable person the fee or fees due for the enforcement stage of taking control of goods are not recoverable unless the enforcement officer has, before proceeding to remove goods, given the debtor an adequate opportunity to get assistance and advice.

Related links

 [Ministry of Justice](#)

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Procedures for enforcing a judgment - Northern Ireland

1 What does enforcement mean in civil and commercial matters?

Enforcement is the legal process by which compliance with a judgment, order or decree of the courts can be compelled.

Northern Ireland has a unique system for the enforcement of judgment debts and other court orders. Unlike most common law systems that enforce judgments by ancillary orders of the courts, in Northern Ireland judgments are enforced by a central body called the Enforcement of Judgments Office that exercises both administrative and judicial functions.

The Enforcement of Judgments Office was established in 1971 and since 1979 has been administered by the Northern Ireland Courts and Tribunals Service. The powers and procedures of the Enforcement of Judgments Office are contained in the Judgments Enforcement (Northern Ireland) Order 1981 ("the 1981 Order") and the Judgments Enforcement Rules (Northern Ireland) 1981 (SR 1981/147).

The different types of enforcement methods are:

Instalment Order - This is an order for payment by instalments provided the Enforcement of Judgments Office is satisfied that the debtor has or will have the means to satisfy the whole or any part of the amount owing within a reasonable time.

Attachment of Earnings Order - This is an order directed to the debtor's employer and requires him to make periodic deductions from the debtor's wages or salary and pay these to the Enforcement of Judgments Office. This order is different from most other enforcement orders in that the Enforcement of Judgments Office has no power to make it without a prior application from the creditor. The Enforcement of Judgments Office can also suspend service of the order on the employer if it is satisfied that the debtor will make the payments voluntarily to the office

Order of Seizure - This order enables the Enforcement of Judgments Office to remove and sell some of the debtor's goods and other property. The property comes into the custody and possession of the Enforcement of Judgments Office and is charged in favour of the creditor for whose benefit the order is made.

Order Charging Land - This order is most frequently used for substantial debts and is generally used together with another enforcement method. This order by itself effects no practical enforcement of the debt; the creditor must take steps to exercise power of sale by making an application to enforce their charge to the court - There is also provision in the 1981 Order for the making of charging orders over other species of property.

Order Appointing Receiver and Order Under the Crown Proceedings Act - An order appointing receiver order operates with the Chief Enforcement Officer being appointed receiver over any payment that the debtor might be entitled. Examples of the kinds of payments suitable for an order appointing receiver order include the rents and profits of land, reversionary interests under a will, or sums due to a self-employed debtor in contract or payments due from a civil claim against another person or company.

Attachment of Debts (Garnishee) Order - An attachment of debts order requires a debtor (or "garnishee") of the judgment debtor to pay the debt to or for the benefit of the creditor instead. It confers secured creditor status on any creditor obtaining it and is applicable to debts due or accruing.

Orders for Delivery of Possession of Land - A judgment for the possession of land is enforced by an order for the delivery of possession of land and entitles the Enforcement of Judgments Office to eject any person in possession, whether the defendant or not.

Order for the Delivery of Goods - A judgment for possession of goods is enforced by an order for delivery of the goods. The goods will be taken by the Enforcement of Judgments Office and handed back to the creditor. This should not be confused with an order of seizure as the goods are not sold.

2 Which authority or authorities are competent for enforcement?

Enforcement of Judgments Office

Laganside House

23-27 Oxford Street

Belfast

BT1 3LA

3 What are the conditions under which an enforceable title or decision may be issued?

3.1 The procedure

Any person entitled to enforce a judgment may, on payment of the appropriate fee, apply to the Enforcement of Judgments Office for enforcement of that judgment. An application must be preceded by a 'notice of intent to apply for enforcement' to the debtor. Where the debtor fails to settle the judgment within ten days of the date of the notice of intent to enforce the applicant may proceed to enforcement. A preliminary application may be made in cases where the balance of all sums due exceeds £3000. This enables the judgment creditor to obtain the issue of a custody warrant and a report as to the debtor's means in order to make a more informed decision about whether to proceed with enforcement.

Once an application is accepted the Enforcement of Judgments Office immediately serves on the debtor a 'custody warrant' deeming specified goods (with a few exceptions such as domestic goods) of the debtor to be in the possession and control of the Enforcement of Judgments Office so that they cannot be disposed of. A custody warrant is only discharged upon payment of the amount stated on the judgment, or where the application for enforcement is dispensed with.

The next stage in the enforcement process is the discovery of information about the debtor's means and is of fundamental importance to the determination of the enforcement application. A judgment debtor is required to give the enforcement officer such information as to his means as the officer may require. The judgment debtor is interviewed in his home or summoned to appear before a nominated officer for examination.

Upon receipt of a report from the enforcement officer, the Master (see below) or the Chief Enforcement Officer makes a provisional decision disposing of the enforcement application. Only the Master is able to make orders of seizure, garnishee and orders appointing receivers and order under the crown proceedings act. The financial and other relevant circumstances of the debtor are considered and a determination made of the best means of enforcing the judgment, or indeed whether the judgment can be enforced at all. The parties are notified and given the opportunity to make objections. If no objection is made the decision is confirmed but if an objection is made the matter is listed for hearing before the Master.

The status, roles, responsibilities and powers of enforcement agents.

The Enforcement of Judgments Office is headed by a senior officer with the status and rank of a Master (a type of judicial officer) and the staff includes the Chief Enforcement Officer (and Deputy), Nominated Officers and Enforcement Officers each allocated to a district of Northern Ireland.

The powers conferred on the Enforcement of Judgments Office to enable it to exercise its jurisdiction are set out in the 1981 Order. Of particular importance is the power to make the wide range of enforcement orders listed above. The Enforcement of Judgments Office has ancillary powers to aid the enforcement process. These include the issue of custody warrants and processes for the attendance and examination of witnesses, the examination of debtors as to their means, including the examination of 3rd parties (who may have information about the means and assets of a debtor) and the receipt of moneys recovered in enforcement of judgments.

The Enforcement of Judgments Office also has the power to dismiss an application for enforcement. The grounds on which this may be done are not specified in the 1981 Order but will generally be when the applicant is not entitled to enforce the judgment. Where a judgment cannot be enforced within a reasonable time (by the issue of any order of enforcement) the Enforcement of Judgments Office may grant a notice and a certificate of unenforceability. The Enforcement of Judgments Office also has a broad power to stay the enforcement of any judgment either absolutely or subject to conditions.

Use of lawyers or other legal professionals

At a hearing before the Master any party or person affected by an order may appear in person or by counsel or solicitor.

Scale of costs for enforcement

The enforcement of judgments system in Northern Ireland is funded by fees paid by users. The fees payable are contained in Part 1 of the Schedule to the Judgments Enforcement Fees Order (Northern Ireland) 1996(as amended) (SR 1996/101) and depend on the amount recoverable under the judgment and the current fees can also be found on the Northern Ireland Courts and Tribunals Service website.

3.2 The main conditions

The jurisdiction of the Enforcement of Judgments Office is laid down in the 1981 Order and includes the following judgments:

Money judgments including judgments of any court tier in Northern Ireland, judgments made outside Northern Ireland and registered in Northern Ireland and some judgments made under European Law for debt or damages along with some tribunal and arbitration awards

Judgments under which a person is entitled to possession of any land, mainly orders for possession in favour of mortgagees, although it is also made for private and public sector landlords

Judgments under which a person is entitled to the delivery of goods

Judgments requiring a person to pay money into court or do any act within a limited time and judgments against a company

There are some restrictions on the Enforcement of Judgments Office's power to enforce a judgment including the following:

Where the judgment can only be enforced with the leave of the court that granted it, the court's leave must first be obtained

Where enforcement has been stayed or postponed an application to enforce cannot be accepted until the stay or postponement is lifted

Where six years or more have expired since the judgment became enforceable it cannot be enforced. An application may be made to the Master seeking leave to enforce after this time.

A judgment against a person in a name or style other than his own requires the leave of the court before it can be enforced.

The decision as to which enforcement order is made is for the Enforcement of Judgments Office and no applicant can require the use of any particular method.

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

Enforcement action may be taken in respect of salaries or wages by use of the attachment of earnings procedure. The sum deducted is calculated taking into account the "normal deduction rate" and "the protected earnings rate". The former is the rate at which the Enforcement of Judgments Office thinks it is reasonable for the debtor's earnings to be applied to meet his liability under the judgment. The latter is the rate below which the Enforcement of Judgments Office considers the debtor's earnings should not be reduced having regard to his resources and needs.

There are four categories of property that can be the subject of a seizure order:

goods in which the debtor has a saleable interest;

money, bills of exchange, bonds and promissory notes and any other securities for money belonging to the debtor;

any life policy in which the debtor has a sole beneficial interest; and

goods of the debtor's spouse where the judgment debt relates to goods obtained or services rendered or the rent of or rates due in respect of the occupation of premises for the general use or enjoyment of the debtor and his family.

Property that is exempt from seizure includes clothes, furniture, bedding and other essential domestic goods; tools and implements of the debtor's trade to the value of £200; property held by the debtor in trust for another; and property in the hands of a receiver appointed by the court.

An order charging land may be made over any land or estate in land of the debtor and "estate in land" includes any legal or equitable estate or interest, easement, right, title, claim, demand, charge, lien or encumbrance in, over, to or in respect of the land. Charging orders and other similar orders may be made over other types of property in addition to land. Specifically these are over funds or stock in government bodies, public undertakings or companies; debentures; funds in court; and shares in private companies.

In addition to attaching to money owed to a judgment debtor by a client or customer for work or services rendered, an attachment of debts order may be made in respect of any money the judgment debtor has in a bank or building society.

4.2 What are the effects of enforcement measures?

Any order of enforcement made by the Enforcement of Judgments Office has the like force and effect as an order of the High Court. There are various ancillary enforcement powers that can be used in the event of non-compliance with an enforcement order including:

Committal to prison for up to six weeks for wilful failure to pay instalments due under an instalment order or other sum of money specified in Article 107 of the 1981 Order.

Sequestration orders that empower any person appointed as sequestrator to enter any lands which are the property of the person against whom the judgment was given; to receive, sequester and take the rents and profits of that land; and to take any other personal property of that party and keep it under sequestration until the order is complied with.

Contempts of the Enforcement of Judgments Office may be referred to the High Court which may deal with the offence as if it had been committed in that court.

4.3 What is the validity of such measures?

The satisfaction of a money judgment occurs when the amount stated on the judgment is paid or satisfied. When this occurs every enforcement order made in respect of the judgment is discharged. Where an order for possession of land or for the delivery of goods has been successfully executed no further proceedings may be taken except for the recovery of the costs and expenses of enforcement.

A creditor or a judgment debtor may apply to the Enforcement of Judgments Office for an enforcement order to be set aside, discharged or varied and a hearing may take place.

5 Is there a possibility of appeal against the decision granting such a measure?

Internal appeals are from the Chief Enforcement Officer to the Master.

External appeals lie from the Enforcement of Judgments Office to the High Court on issues of fact and law in the circumstances specified in Article 140 of the 1981 Order and otherwise to the Court of Appeal on a point of law. An attachment of earnings order is the only type of money judgment enforcement order listed in Article 140 and there is no general right of appeal against the refusal to make any particular enforcement order.

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

A number of limitations on enforcement are set out within Article 17 of the Judgments Enforcement (Northern Ireland) Order 1981 and also Rule 5 of the Judgments Enforcement Rules (Northern Ireland) 1981. Limitations exist and relate to a number of different scenarios where enforcement of a judgment is sought. The Limitations exist in order to protect the debtor from a number of different situations, such as [but not limited to]:

- a) Where leave of a court must be sought prior to the commencement of enforcement;
- b) Where the court has stayed or postponed enforcement of the judgment that would prevent enforcement of a judgment being made to the EJO;
- c) Where an application to enforce a judgment is made more than 6 years from which the date the judgment became enforceable. In this instance the creditor will seek leave from the office to enforce their judgment prior to making an application - this will be determined by the Master of the Enforcement of Judgments Office;
- d) An application for enforcement will not be accepted where more than 12 years has passed from which the date the judgment became enforceable;
- e) Where more than one application is made to enforce the same judgment. If more than one application has made, the creditor will seek leave from the Chief Enforcement Officer, prior to making a further application for enforcement of the same judgment;
- f) Where a creditor has assigned a debt to a third party after judgment has been given;
- g) Where the court has inserted a condition on the judgment that has not been fulfilled that would prevent enforcement of a judgment being made to the EJO;
- h) Acceptance of an application of enforcement where an order staying enforcement is pending under Rule 103. Leave of the Master must be made prior to any application for enforcement being made;
- i) Acceptance of an application of enforcement where an order staying enforcement on the grounds of insolvency has been made under Article 14(1);

If the EJO has certified that a judgment is unenforceable (Article 19 - 21 of the Judgments Enforcement (Northern Ireland) Order 1981) the certificate can be set aside (upon application from the creditor). This is however limited to 12 years from the date in which the certificate of unenforceability was issued).

Article 16 of the Limitations (Northern Ireland) Order 1989 sets out limitations on the enforcement of judgments (and interest) will not commence after 6 years from which the judgment became enforceable. The Master of the Enforcement of Judgments Office will take this into consideration when dealing with an application to enforce a judgment which is more than 6 years old (see Paragraph (d) above).

Related links

Northern Ireland Courts and Tribunals Service

Last update: 05/04/2016

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Procedures for enforcing a judgment - Scotland

1 What does enforcement mean in civil and commercial matters?

In Scotland the term diligence is used to describe a number of legal processes which can be executed against debtors in order to enforce payment of debts due to creditors. Diligence can only competently proceed on a lawful warrant such as a court decree or document of debt for payment of money or, more widely, an order of the civil courts generally including for performance or prevention of an act.

Types of diligence include arrestment of earnings, arrestment of goods or funds in the hands of a third party, attachment of goods or funds, inhibition and adjudication for debt.

Adjudication for debt

Adjudication for debt is a very old diligence against heritable property, the effect of which is judicial heritable security in favour of the creditor. This rarely used diligence is exclusively a Court of Session process. After decree of adjudication is granted, the extract decree is recorded or registered in the appropriate Scottish land register (Register of Sasines or the Land Register). The adjudicating creditor then obtains, in general, the same rights as other heritable creditors, but excluding a power of sale. It allows the creditor to raise an action to remove the debtor if he is in possession, or raise an action to receive rent money from tenants if the property is leased. It is only after a period of ten years that the creditor can apply to the court to become the owner and sell the property.

Arrestment of goods or funds in the hands of a third party

Arrestment is a diligence against moveable property belonging to the debtor which is in the hands of a third party. It operates by preventing the third party from releasing the arrested property. Subjects which can be arrested include debts, funds held in a bank account, shares, trusts estate, insurance policies, and corporeal moveable property. Corporeal moveable property in the hands of the debtor cannot be arrested, as the appropriate diligence for that is attachment.

Attachment of goods

Corporeal moveable property in possession of a debtor may be attached by a creditor and sold at auction as a means of recovering outstanding debts. However attachment cannot be used to seize certain items such as tools of trade or books required by the debtor for their profession, or vehicles which are reasonably required by the debtor and which do not exceed a specified value. Attachment also cannot be used to take possession of goods in the debtor's dwelling house, unless an order for exceptional attachment has been granted by the Sheriff at court. Attachment allows a creditor to attach money (cash including coins and banknotes in a foreign currency, postal orders, banking instruments, etc) which is held on a debtor's premises, although money in a dwelling house or on the debtor's person cannot be attached.

Earnings Arrestment

Diligence against a debtor's earnings can be executed in the form of an earnings arrestment (for enforcement of a single debt), a current maintenance arrestment (for enforcement of ailment or a periodical allowance on divorce), or a conjoined arrestment order (an order granted by the court to enforce payment of two or more of the same type of debts, at the same time).. A deduction from earnings order can also be made in terms of the Child Support Act 1991 for anyone liable to pay child support under a maintenance arrestment. On being served with an arrestment schedule, the employer must deduct an amount from the debtor's earnings calculated in accordance with statutory tables each payday and pay it over to the creditor until such time as the debt is settled or the debtor leaves the employment.

Ejection or Removing from property

Ejection may be undertaken on the authority of decrees for recovery of possession of heritable property, removing or ejection. Removing is the term used where a landlord seeks to recover possession of property from a tenant. Ejection is the remedy for removal of an occupier who does not hold title to occupy the heritable property.

Inhibition

Inhibition is a personal diligence which prohibits a debtor from selling or otherwise disposing of or granting any security over their heritable property, to the detriment of the inhibiting creditor. This is achieved by registering an inhibition in the Register of Inhibitions and Adjudications. An inhibition offers comfort to the inhibitor in that the debtor will have difficulty in disposing of their heritable property, but it does not give the inhibitor any real right over the property. An Inhibition is a negative or prohibitory diligence which remains effective for a period of five years, but will terminate earlier if the inhibiting creditor agrees to discharge; usually upon satisfaction of the debt.

2 Which authority or authorities are competent for enforcement?

Sheriff Officers and Messengers-at-Arms are the competent authorities for enforcement in Scotland. They will be instructed by creditors to enforce court orders or warrants against debtors which are issued by Sheriff Courts or the Court of Session, as well as documents of debt registered at the Books of Council and Session for enforcement.

3 What are the conditions under which an enforceable title or decision may be issued?

3.1 The procedure

Court orders or decrees issued by a Sheriff Court in any Sheriffdom in Scotland, or by the Court of Session, and equivalent authorities (such as a document of debt registered for enforcement), are enforceable. An extract of the decree generally bears warrant for all lawful enforcement.

Enforcement by diligence generally falls to Sheriff Officers and Messengers-at-Arms. These are independent fee paid contractors who hold a Commission from the Sheriff Principal of the Sheriffdom in which they are authorised to act. These officers are subject to the control and supervision of the court, although they are not directly employed by the court. The Debtors (Scotland) Act 1987 sets out a statutory framework for control of their admission, training and conduct in the exercise of their official functions, while the Debt Arrangement and Attachment (Scotland) Act 2002 and the Bankruptcy and Diligence etc. (Scotland) Act 2007 further regulate their functions and conduct. Additionally, all officers of court are required to execute their duties in accordance with the Constitution and Bye-Laws of the Society of Messengers-at-Arms and Sheriff Officers.

Only in some enforcement processes is it necessary to use a lawyer.

Fees charged by Sheriff Officers and Messengers-at-Arms for executing diligence are currently prescribed by the Act of Sederunt (Fees of Sheriff Officers) 2013 (SSI 2013/345) and the Act of Sederunt (Fees of Messengers-at-Arms) 2013 (SSI 2013/346). These fee tables are changed regularly.

3.2 The main conditions

The granting of a decree in the pursuer's (the person raising the action) favour is normally sufficient for executing enforcement. However most diligences also require the service of a charge for payment and the issue of a Debt Advice and Information Package before the debt can be recovered. A charge for payment is a formal demand for payment served on a debtor for the amount owed to a creditor, including any associated interest and costs. It provides the debtor with a period of fourteen days (if the debtor is within the UK) in which to make payment. If the debt is not satisfied within the period specified, the creditor may then use diligence to recover the sums due. A Debt Advice and Information Package advises debtors to obtain money advice.

In the case of an exceptional attachment order, the creditor must return to court to seek specific authorisation to attach non-essential articles kept in the debtor's dwelling house. In considering whether to make such an order the Sheriff has regard to various matters. These are

- the nature of the debt (and in particular whether the debt relates to any tax or duty or to any trade or business carried on by the debtor);
- whether the debtor resides in the dwelling house specified;
- whether the debtor carries on a trade or business from that dwelling house;
- whether money advice has been given to the debtor;
- whether any extension of time to pay orders or directions have lapsed; and
- any agreement between the debtor and creditor for the settlement of the debt.

In particular, the Sheriff must be satisfied that the creditor has taken reasonable steps to negotiate a settlement of the debt and that the creditor has already taken steps to enforce the debt by way of an arrestment and an earnings arrestment and that there is a reasonable prospect that the sum recovered from auction of the debtor's non-essential assets would be at least equal to the aggregate of a reasonable estimate of chargeable expenses and £100.

Arrestment operates to attach property (funds and moveable goods) in the hands of a third party and secures a measure of preference for the arresting creditor. Where funds are arrested they are subject to automatic release after a period of fourteen weeks, provided that no objection has been lodged. Any objection should be lodged with the Sheriff at court, and be on the grounds that the arrestment is unduly harsh, that the Sheriff Officer has not carried out the arrestment properly, or that the arrested funds belong to a third party (or are owned by a third party in common with a debtor). For the release of arrested goods the creditor must raise an action of forthcoming which, if granted by the court, will instruct the arrestee to release the arrested goods.

In the case of adjudication, if the debt remains unpaid after ten years ("the legal"), the adjudger may convert his right into a right of absolute property. This is done by a Court of Session action known as an action of declarator of expiry of the legal. A debtor may defend an action of declarator of expiry of the legal on the grounds that the debt is paid.

An inhibition takes effect from the date on which the schedule of inhibition and the certificate of execution of the inhibition are registered in the Register of Inhibitions and Adjudications. However, where a notice of inhibition is registered in the Register of Inhibitions and Adjudication and the schedule of inhibition and certificate of execution are registered within 21 days of this notice, the inhibition will take effect from the date that notice is registered.

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

There is a diligence available for every type of asset, except cash in the hands of the debtor.

4.2 What are the effects of enforcement measures?

Adjudication for debt

Adjudication has the effect of a judicial heritable security in favour of the creditor. A decree of adjudication does not give the adjudger an immediate power of sale: only a power to secure the rents if the heritable property is leased, or remove the debtor if they are in possession.

Arrestment of goods or funds in the hands of a third party

The effect of an arrestment is to freeze funds and/or moveable property belonging to the debtor in the hands of a third party. The third party is prevented from using or disposing of the goods or funds or releasing them to the debtor without the creditor's consent. In order to have arrested goods released to a creditor, the creditor must raise an action of forthcoming. Arrested funds in the hands of a financial institution are subject to automatic release after a period of 14 weeks if there has been no objection. If an arrestee parts with the subjects arrested, they are liable to the arresting creditor for its value. They will also theoretically be in contempt of court by acting in breach of an arrestment. There is a legal obligation on arrestees to disclose to an arresting creditor the existence or extent of assets attached by an arrestment. Failure to comply with this obligation may result in the Sheriff making an order requiring the arrestee to pay a sum of money to the arresting creditor.

Earnings Arrestment or Current Maintenance Order

Where an employer has been served with an earnings arrestment schedule or current maintenance order, he must deduct the calculated amount and pay it over to the creditor. If the employer does not comply with the terms, they are liable to the creditor for the amount of money that should have been paid over.

Ejection or Removing from property

A decree of ejection or removing has the effect of requiring a person to remove himself from the property specified in the extract decree. If the subject of an ejection or removal order does not voluntarily comply and remove by the date specified, Sheriff Officers may remove them and secure the property, requesting the assistance of police if necessary. A 'Charge of Removing from Heritable Property' must be served on the person to be removed, and the period of charge contained therein must have expired before a removal or ejection can take place, unless the Sheriff has dispensed with this requirement.

Inhibition

The registering of an inhibition in the Register of Inhibitions and Adjudications has the effect of preventing the debtor from selling, or otherwise disposing of, or granting a security over his heritable property to the detriment of the inhibitor. Any disposition or standard security or other deed granted by the debtor contrary to an inhibition is reducible at the instance of the inhibitor.

A decree *ad factum praestandum* is a decree to enforce the performance by the debtor of an act other than a payment of money and requires compliance. The terms of the decree must specify precisely what is to be done, and when applied for at court it is desirable that an alternative request be added for damages less compliance. Failure to comply cannot result in imprisonment unless the person who originally sought decree ("the applicant") makes an application to the court where decree was initially granted. It is then for the applicant to satisfy the court that the debtor is willfully refusing to comply with the decree. If so satisfied, the court may grant warrant for imprisonment of the respondent for any period not exceeding 6 months. Imprisonment does not operate to extinguish the obligation imposed by the decree.

Money attachment

This allows a creditor to attach and remove money (cash including coins and banknotes in a foreign currency, postal orders, banking instruments etc) which is held on a debtor's premises although money in a dwelling house and in the hands of the debtor cannot be attached.

4.3 What is the validity of such measures?

Adjudication for debt

After granting the decree, the extract is recorded in the appropriate Scottish land register. The decree is then valid and only after a period of 10 years is the creditor then able to apply to the court to become the owner and sell the property.

Arrestment of goods or funds in the hands of a third party

An arrestment in execution is either successful or not. For example, an arrestment can be served on a bank but if the debtor does not have an account with that bank or has insufficient funds in any accounts, then the arrestment will not catch any funds.

Attachment of goods

An attachment only has effect until the earlier of the date which is six months after the date on which an article is attached and the date which is 20 days after the date on which the attached article was removed from the place at which it was attached. An exceptional attachment order specifies the period in which it must be executed.

Earnings Arrestment or Current Maintenance Order

The service of an earnings arrestment schedule, or a current maintenance arrestment, is either successful or not. If the debtor is not in the employment of the person on whom the schedule is served, it falls. If the debtor is in employment, it remains in force until such time as the debt is satisfied or the debtor leaves that employment.

Ejection or Removing from property

Execution of diligence following a decree of removing or ejection must be carried out without undue delay. There is no definition as to what might constitute undue delay. This is dependent on the particular circumstances of each case.

Inhibition

An inhibition prescribes after 5 years. It may be renewed on application to the court by inhibitor. A decree *ad factum praestandum* must specify exactly what has to be done and the time within which it must be done.

Money attachment

Money attachment will either be successful or not. For example if the Sheriff Officer finds no funds on the debtor's premises then the money attachment will have failed. If the Money Attachment is successful then the officer of the court (Sheriff Officers or Messengers at Arms) must before the expiry of the period of 14 days beginning with the day on which the money attachment is executed make a report to the Sheriff. The officer of the court must copy the report to the debtor and creditor. The attachment will cease to have effect if the Sheriff refuses to receive the report.

5 Is there a possibility of appeal against the decision granting such a measure?

An employer or the debtor can apply to the Sheriff to make an order declaring a current maintenance order invalid or that it has ceased to have effect. Also, if the debtor can satisfy the Sheriff that he is unlikely to default on payment again, the Sheriff can make an order recalling it.

The debtor, the arrestee or a third party may, by notice of objection, apply to the Sheriff for an order recalling or restricting the arrestment. This notice must be given within 4 weeks of the execution of the arrestment.

An appeal can be made against any decision of a Sheriff made in relation to an attachment or exceptional attachment. The appeal can be made, only with the leave of the Sheriff, to the Sheriff Principal and on a point of law. The decision of the Sheriff Principal on such an appeal is final.

The grounds for discharge or recall of an inhibition are where the inhibition has been procedurally inept and where the decree for payment has been reduced. There is no appeal against removing or ejection once the decree is executed.

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

Debtor Entering Into a Debt Solution

Should a debtor be sequestrated or enter into a trust deed, a protected trust deed, or a debt payment programme under the debt arrangement scheme, then creditors cannot take any further diligence against the debtor, subject to certain conditions. Instead the creditor would generally have to look at placing a claim for the sums due with the debtor's trustee, or adding the debt to any debt payment programme.

Moratorium on Diligence

A moratorium on diligence is to be introduced across all statutory debt solutions in Scotland through changes to the Bankruptcy (Scotland) Act 1985 which come into force on 1 April 2015 by virtue of the Bankruptcy and Debt Advice (Scotland) Act 2014. This will mean that if an individual gives notice that they want to apply for a statutory debt solution, they will be given a 6 week period of protection from any diligence action against them by their creditors. This is the same 6 week period as there presently is under the Bankruptcy and Diligence (Scotland) Act 2007 which introduced a moratorium on diligence for a debtor who intends to apply for or has applied for a debt payment programme, or a 6 week period from the date they intimate to the debt arrangement scheme administrator that it is their intention to apply for a debt payment programme. These 6 week moratorium periods can however be reduced or extended in certain circumstances.

Time to Pay

In granting decree against a debtor for payment of certain types of debt, the court may make a time to pay direction to the effect that the sum payable can be paid in instalments over time. Also once diligence has commenced the court may make a time to pay order. While a time to pay direction or order is in force, it is not competent to serve a charge for payment or carry out any diligence in order to enforce payment of the debt.

Enforcement Time Limits

If after the date when an obligation has become enforceable it has subsisted for a continuous period of twenty years without a relevant claim having been made and without the subsistence of the obligation having been relevantly acknowledged, then the obligation shall extinguish. Therefore if no diligence is taken on a court decree or document of debt for a continuous period of 20 years without it also having been unequivocally admitted in writing by or on behalf of the debtor, the obligation will prescribe. However where a creditor executes diligence to enforce a decree or document of debt and the debtor clearly acknowledges to the creditor that the debt still subsists, the creditor will be given another 20 years in which to seek full satisfaction of the claim against the debtor.

Related links

[Accountant in Bankruptcy](#)

Last update: 18/11/2015

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Procedures for enforcing a judgment - Gibraltar

1 What does enforcement mean in civil and commercial matters?

Enforcement is court-sanctioned action taken to compel judgment debtors to comply with the orders of the court. The choice of enforcement method lies entirely with the judgment creditor.

When choosing which method to use a creditor must consider whether:

- he/she is likely to get their money and court fee from the defendant;
- the defendant owes other people money or has other court judgments;
- the defendant owns any goods or assets which can be taken and sold at auction;
- the defendant is working;
- the defendant has other earnings, such as income from investments;
- the defendant has a bank, building society or other account;
- the defendant owns property (a house); or
- anyone else owes the defendant money.

Information on the different types of enforcement measures follows. A judgment creditor should choose the one which is most likely to get him/her the money owed.

A court cannot guarantee that the judgment creditor will get his/her money back, and a court fee is payable for any action taken. Although the court will add the fee to the money the defendant already owes, the court cannot return what the creditor has paid if he/she does not get the money from the defendant.

The different types of enforcement methods are:

Seizure of goods

Execution is the enforcement of civil court judgments by seizure of goods. To obtain enforcement by execution it is necessary to apply to the court for a warrant of execution. A warrant will only help if the defendant has:

- enough goods at the address given by the judgment creditor which could be sold at auction to raise money; or
- all the money claimed for on the warrant (to stop goods being sold).

Before the court can issue a warrant, the defendant must have:

- failed to pay the amount he or she has been ordered to pay; or
- fallen behind with at least one of his or her payments.

Bailiffs cannot always remove and sell the defendant's goods. For example, they cannot remove essential household items and tradesman's tools or goods subject to hire purchase or rental agreements. The bailiff will not take the defendant's goods if they are not worth enough to pay the warrant after the costs of taking and selling the goods. Goods sold at auction often raise only a fraction of their original value. In addition the defendant's goods may also already have been seized by bailiffs acting under another warrant.

Third party debt orders

A judgment creditor may make an application to the Supreme Court that a debt owed by a third party to the defendant be paid to the judgment creditor instead. In practice this method is used to seize funds which the defendant may have in bank accounts. If there are insufficient funds in the bank accounts to cover the debt then such funds as are available are used to repay at least some of the amount owed.

Insolvency proceedings

If the amount owed is more than £750 a judgment creditor can also apply to make the defendant insolvent. These proceedings are brought in the Supreme Court. This can be expensive however.

Judgment Summons

In the Small Claims Jurisdiction of the Supreme Court (claims up to £10000), a judgment creditor can apply for a judgment summons. The court can then impose payment of the debt due by installments which can, in certain limited circumstances, lead to imprisonment on default of payment.

Orders to obtain information

Although not in itself an enforcement method, this procedure allows for judgment debtors to be questioned for information regarding their assets, to enable the judgment creditor to make a more informed choice as to the enforcement method they would wish to use.

2 Which authority or authorities are competent for enforcement?

The Supreme Court is competent for enforcement in Gibraltar.

3 What are the conditions under which an enforceable title or decision may be issued?

3.1 The procedure

The Supreme Court (including its Small Claims Jurisdiction) can order enforcement in cases where they have granted judgment.

In Gibraltar, Bailiffs are employees of the Court Service and therefore civil servants. They deal with enforcement of judgments and/or orders made and registered in the courts. They enforce warrants of execution, repossess land with warrants of possession and recover goods under warrants for return of goods. In addition, bailiffs carry out other duties, including personal service of documents and warrants of committal.

Use of lawyers or other legal professionals

There is no obligation upon the creditor to make their application for enforcement through a lawyer or any other legal professional.

Except in the Small Claims Jurisdiction of the Supreme Court enforcement procedures can be complicated. Creditors may want to get advice, therefore, from a solicitor or the Citizens Advice Bureau before commencing an enforcement procedure.

Scale of costs for enforcement

There are different court fees for each of the methods of enforcement. As mentioned above, although the court will add the fee to the money the defendant already owes, the court cannot return what the creditor has paid if he/she does not get the money from the defendant. For further information on applicable fees you can contact the Supreme Court Registry, 277 Main Street, Gibraltar, telephone number (+350) 200 75608.

3.2 The main conditions

As mentioned above, in Gibraltar, the choice of enforcement method to be used is wholly within the hands of the judgment creditor. Responsible creditors who have obtained a valid judgment through the courts and have still not been paid are entitled to enforce that judgment by the most appropriate means available to them. Therefore, as long as a valid judgment is in place and a proper application is made, the court is obliged to follow the creditor's choosing.

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

Enforcement action may be taken against the following assets:

Bank accounts by use of the third party debt order procedure.

Tangible movable property by use of execution.

Immovable property by use of the charging order procedure.

There is no hard and fast lists of goods that are exempt from distraint action. However, there are guidelines. The bailiff can only take goods which belong to the defendant or are jointly owned.

Any goods which the bailiff takes must be likely to fetch money at auction. Bailiffs will not remove goods if they think that they will not fetch enough to pay something towards the warrant after the cost of removing and selling them at auction have been paid.

Bailiffs cannot take:

items which the defendant needs for his job or business, such as tradesman's tools or books;

essential household items which the defendant and his family need such as clothing or bedding;

items which are leased, rented or are on hire purchase agreements (including cars);

goods which may have already been seized by bailiffs acting under another warrant; or

equipment which does not belong to a business (e.g. office furniture, machinery and vehicles which are leased).

For third party debt orders a judgment debtor who is prevented from withdrawing money from his or her account with a bank or building society and claims that he or she or his or her family is suffering hardship in meeting ordinary living expenses as a result, may apply to a court for a hardship payment order which allows one or more payments to be made to specific individuals.

4.2 What are the effects of enforcement measures?

For both debtors and third parties, the failure to comply with the requirements of court orders leads them open to sanctions for contempt. The penalties that can be imposed for contempt include "purging contempt" (that is an apology to the judge in open court), fines, and in the most serious cases imprisonment for up to 14 days.

Banks have certain obligations regarding disclosing information and attaching bank accounts. When a bank receives a third party debt order imposed upon one of its customers, the bank does not have to reveal how much money is held in the account. It can state that there is no money in the account, that there are insufficient funds to meet the whole amount but can pay some of it, or that there are sufficient funds to meet the whole amount requested. There are very strict data protection issues that govern what information other than this the bank can provide.

4.3 What is the validity of such measures?

All orders state the length of time that is being given to provide relevant information or to comply with the court order, and also state the maximum penalties that may be imposed for failing to comply with a court order.

5 Is there a possibility of appeal against the decision granting such a measure?

The court based enforcement methods (charging orders, and third party debt orders) all involve a two-stage process. The interim stage of the process is purely a paper based judicial function, and the judgment debtor has no input to the process at this stage. However, for each method to progress to the final stage, there has to be a hearing to which the judgment debtor will be invited to attend where he will be able to give any reasons as to why the planned method of enforcement should not proceed. The date of the hearing will be notified to all parties well in advance, and in all cases there is a fixed minimum amount of time that must elapse between the 'interim' stage, notification of the 'final' hearing, and the 'final' hearing itself, to enable the debtor (and any relevant, directly involved third party e.g. the bank in a third party debt order case) time to prepare their case. If the date of the 'final' hearing is inconvenient for the parties, they may be able to get it postponed to a more mutually convenient date. Should this happen, the interim order will remain in place, but the order cannot be made 'final' until that hearing has been held.

There is no appeal against the decision once the court has made its order. In appropriate circumstances appeals or requests to set aside can only be made on the original judgment that gave the creditor the authority to request enforcement in the first place. Only if the judgment is successfully challenged by appeal or is set aside can the enforcement process be revoked by a court. If a challenge to the judgment is lodged after a court has authorised a creditor's request for enforcement a warrant may be suspended on application to the court. Bailiffs may not take away goods but they must continue to levy on them (that is list those that could later be seized and taken away for sale).

Provided that a creditor has made a correct application for enforcement to a court, that court cannot refuse to authorise the method of enforcement chosen by the creditor. There is, therefore, no need for the creditor to have a means of appeal against the decision granting a measure.

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

A warrant or writ of execution is time limited. The warrant and writ are valid for 12 months and can be extended for a further 12 months by an order of the court.

In the taking control of goods procedure a debtor must be given a notice explaining that his goods have been seized and that he has 5 days in which to enter into a 'walking possession' agreement with the Bailiffs. This agreement allows the debtor to retain the goods. If the debtor does not sign the agreement within 5 days the Bailiffs can remove the goods and proceed to their auction.

Last update: 09/12/2015

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