

Options for Post Liability Order Recovery



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LANCASHIRE & CHESHIRE IRRV ASSOCIATION

Main Points

- Introduction
- Background
- Recovery Options
- Relationship between Remedies
- Further Considerations
- Summary



Background

- CT (Admin & Enforcement) Regs 1992
- TCE 2007 (Part 3 Schedules 12 & 13)
- TCOG Regs
 - 2013 S.I. 1894
 - Fees 2014 S.I. 1
 - Certification of EA's 2014 S.I. 421
 - Consequential/Transitional 2014 S.I. 600



Provision of Info

- Reg 36
- Duties of Debtor subject to L/O
- Legal Duty
- Info Required

Offence not to Provide Info

- Reg 56
- Criminal Offence
- Penalties
- My Experience

Attachment of Earnings Orders

- Reg 37
- Schedule 4 - % Table
- Employer Responsibility
- £1 Deduction

Table 1 – Deductions from weekly earnings

(1) Net earnings	(2) Deduction rate (percentage)
Not exceeding £75	0
Exceeding £75 but not exceeding £135	3
Exceeding £135 but not exceeding £185	5
Exceeding £185 but not exceeding £225	7
Exceeding £225 but not exceeding £355	12
Exceeding £355 but not exceeding £505	17
Exceeding £505	17 in respect of the first £505 and 50% in respect of the remainder

Table 2 – Deductions from monthly earnings

(1) Net earnings	(2) Deduction rate (percentage)
Not exceeding £300	0
Exceeding £300 but not exceeding £550	3
Exceeding £550 but not exceeding £740	5
Exceeding £740 but not exceeding £900	7
Exceeding £900 but not exceeding £1,420	12
Exceeding £1,420 but not exceeding £2,020	17
Exceeding £2,020	17 in respect of the first £2,020 and 50% in respect of the remainder

Deductions from Benefit

- S.I. 1993/494
- IS / JSA / ESA / Pension Credit
- £3.70 per week
- One at a time, L/O's can stack up

Attachment of Allowances

- Reg 44
- Elected Members
- 40% Deducted
- Restrictions on Voting whilst in Arrears

Taking Control of Goods

- TCOG Regs
 - 2013 S.I. 1894
 - Fees 2014 S.I. 1
 - Certification of EA's 2014 S.I. 421
 - Consequential/Transitional 2014 S.I. 600
- Replaced Distress
- EA instructed to Take Control of Debtors Goods
- 3 Clear Stages (Process and Fees)

Taking Control of Goods

- EA Training, Accreditation, Certification
- Focus on:
 - Early Engagement
 - Opportunity to Pay pre-visit
 - Perceived Aggression
 - Vulnerability Awareness



Taking Control of Goods Fees

Fee Stage	Fixed Fee	Percentage fee (Regulation 7) percentage of sum to be recovered exceeding £1,500
Compliance Stage	£75	0%
Enforcement Stage	£235	7.5%
Sale or disposal Stage	£110	7.5%

Compliance Procedure ⁽¹⁾

- The Enforcement Agent must leave 7 clear days before commencing the Enforcement Stage (Reg 6)
- A Notice of Enforcement (NoE) must be GIVEN to the debtor in the prescribed form (Reg 7)
- The notice MUST be issued by an Enforcement Agent (Reg 8)

Compliance Procedure ⁽²⁾

- 12 months time limit for taking control of goods (Reg 9)
- Goods are “bound” at the point of issue of the Notice of Enforcement. Goods transferred after this date can be followed (Schedule 12)

Enforcement Procedure ⁽¹⁾

- Attendance must be made by a Certificated EA at the relevant premises
- Entry must be made by a door or usual means of access (Reg 20)
- Attendance between 6am – 9pm any day of the week (Reg 12 + 13)

Enforcement Procedure (2)

- Four Ways to Take Control of Goods:
(Reg 16-19)
 - Secure Goods on the Premises
 - Secure Goods on the Highway
 - Remove Goods
 - Enter into a Controlled Goods Agreement
- Exempt Goods (Reg 4)
- Tools of the Trade (Reg 4)



Sale or Disposal

- Reg 5 (c) the sale or disposal stage, which comprises all activities relating to enforcement from **the first attendance at the property for the purpose of transporting goods to the place of sale**, or from commencing preparation for sale if the sale is to be held on the premises, until the completion of the sale or disposal.

Reg 5 (SI 2014/1)



TCOG Offences

- **Criminal Liability**

- If the debtor obstructs the Enforcement Agent (68.1)
 - If the debtor intentionally interferes with the controlled goods (68.2)
-
- A person guilty of an offence under this paragraph is liable on summary conviction to:
 - (a) imprisonment for a term not exceeding 51 weeks, or
 - (b) a fine not exceeding level 4 on the standard scale, or
 - (c) both.

Schedule 12 Para 68

TCOG in the News

- *‘Bailiffs are necessary for both the economy and the justice system. They carry out a difficult role in often challenging circumstances’.*
 - MOJ 2013
- *‘The use of bailiffs to enforce debts by seizing goods has long been the most effective and controversial method of debt collection available in English Law’.*
 - Citizens Advice 2006



Committal to Prison ⁽¹⁾

- Reg 47
- Need to have attempted TCOG
- Purpose to Coerce Payment, not Punish
- £245 Court Fee (can Charge £305)

Committal to Prison ⁽²⁾

- Mags enquire into Income & Expenditure
- Up to 90 Day Sentence (for Wilful Refusal or Culpable Neglect)
- Sentence can be Suspended with Payment Order
- Mags can also remit



Insolvency

- Reg 49
- Individual or Company unable to Pay
- Application to the County Court
- Trustee Appointed, Assets Paid to Creditors
- Individual Debt > £5K Company Debt > £750
(SI 2015/922 Effective 1 October 2015)

Charging Orders

- Reg 50
- Application to the County Court
- L/O must be > £1K
- Charge on Property, Other Sums (Mortgages) may take Priority

Considerations

- Relationship Between Remedies (Reg 52)
- Recovery/Corporate Debt Policy and LGO
- Importance of Debtors Circumstances/History and Contact Info
- Trigger Points for Debtor Engagement
- LCTRS and Small Balances

Summary

- Recovery Procedures well Established
- Recovery Rates Demonstrate Effectiveness
 - Average England CT Collection 2015/2016 – 97.1%
 - Average England NDR Collection 2015/2016 – 98.2% (DCLG)
- Technology Improvements
- HMRC Data Sharing
- Select the Best Remedy



Options for Post Liability Order Recovery

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The logo for Rundles, featuring the word "Rundles" in a bold, black, sans-serif font, followed by a small yellow square.