

ENFORCEMENT OF COURT ORDERS IN ENGLAND AND WALES

The England and Wales law on enforcing Court Orders is more streamlined and coherent than in Ireland. Enforcement is handled by the Courts offices to a greater extent than in Ireland.

Seizing Goods

The High Court enforcement officers in the High Court and the bailiffs in the County Court are entitled to enforce judgement by seizing the defendant's/debtor's goods. If the debt remains unpaid, the goods are sold at public auction and the proceeds are used to pay the debt including the interest costs and enforcement fee.

The officers and bailiffs can seize jointly owned property and they must apportion the sale proceeds between the parties entitled to the judgement and the co-owner. There are procedures if a third party claims ownership of the goods seized.

Charging Order

A creditor is entitled to apply for a charging order over land or property owned by the debtor. This temporarily charges the land until the matter is referred to Court. The charging order can be registered in the Land Registry. The Court has discretion as to whether to make a charging order although the burden is on the debtor to oppose it.

A charging order will not be made if there is a reasonable chance the debt will be paid in the near future or if the debt is relatively small compared with the value of the property concerned. A charging order will not be made if this would give unfair advantage over other creditors.

If the Court makes a final charging order, it will normally be registered in the Land Registry. If the debtor sells the land the proceeds must be paid towards the judgments.

There are procedures to force the sale of the land but it is necessary to apply to Court for an order for sale. This involves commencement of separate procedures and would not generally be economic if the value of the debt is small.

Bankruptcy

If there is an undisputed debt for £750, it is possible to apply to make the debtor bankrupt. It is more advisable to check the solvency of the debtor before commencing proceedings as if insolvency has already commenced and the debtor is insolvent it may not be possible to ultimately recover the monies. If the debt is not disputed, the creditor can serve the statutory demand and commence insolvency proceedings immediately. In insolvency proceedings all of the debtor's assets are administered for the benefit of all of his creditors.

Insolvency proceedings are public knowledge and credit agencies take reference of the relevant advertisements concerned. They can affect a debtor's ability to obtain credit in the future and damage their business. Sometimes the threat of insolvency is more potent than the threat of litigation. As against this the cost of insolvency proceedings may be significant and the creditor may not be able to recover all his debt.

In England, a court order will usually come to the attention of the credit agencies quickly. It is possible to have a judgement removed if paid within 14 days.

Interception of Money

It is possible for a creditor to apply to intercept money owed by a third party to the debtor/defendant. An application must be made to Court and the order will usually be granted unless it is contested and good reason shown why this should not be done.

It is possible to obtain an attachment of earnings order as in Ireland. Application is made to the County Court. The order directs the defendant's/debtor's employer to deduct instalments on a weekly or monthly basis in repayment.

Where interests and assets of the defendant cannot be reached by normal enforcement methods, such as when future payments are included, it is possible to apply to Court for the appointment of a receiver who will take the property as it becomes available and distribute it. This is a complex and expensive method of enforcement.

Specific Court Orders

Where ownership of land is involved the Court will issue a writ of possession or warrant of possession. An order for delivery of goods may be made when goods are claimed. The order will specifically require delivery of the goods. These orders will allow enforcement of the judgement by a court officer.

European Union Cross Border Enforcement

European Union law requires every State to recognise and enforce the orders or judgements of courts of other member States. This means that Irish court orders can be enforced against assets, property and persons in England and Wales and that equally court orders issued by England and Wales courts can be enforced in Ireland.

A Court in one state will not generally reopen another Court's decision given in another EU state, either on the basis of its jurisdiction (i.e. to power to make it) or on the merits.

Where a court order has been obtained in one State and needs to be enforced in the other, it is necessary to make an application to the Court offices of the other state to register it so it can be enforced. Once registered, it will have much the same effect as a judgement in the enforcing country. Notice of registration should be served on the debtor or defendant. This is a simple notice and does not involve formal proceedings.

A judgement may not be "recognised" and enforced if it is a default judgement i.e. one where the other party has not contested, unless the defendant has been given a full and proper opportunity to organise his defence. There are other narrow circumstances where judgements will not be enforced on public policy grounds

Where a judgement has been obtained in one State and needs to be enforced in the other it is necessary to make an application to the Court offices to register it so it can be enforced. This is done without notice to the other party. It must be supported by written statements, setting out the background and nature of the judgement, setting out what monies, if any, have been recovered. If leave to register is granted, it will have much the same effect as a judgement in the enforcing country. Notice of registration should then be served on the debtor or defendant. This is a simple notice and does not involve formal proceedings.

European Enforcement Orders

Recent legislation has allowed for an even more direct method of enforcement of Court Orders of other EU countries such as the UK, without having to be registered by the Irish Court Office. It is now possible to obtain an “European Enforcement Order” (EEO) from the court office who issued the court order. The EEO is a method of enforcing foreign judgements within the European Union without the need of any intermediate proceedings in the enforcing Country. It is therefore possible to enforce the Judgement in any Member State as if it were a judgement of that State.

An EEO may be appropriate in debt collection cases. The UK court or court office can certify a judgement Court order or settlement as a European Enforcement Order. It is then directly enforceable in Ireland as if it was an Irish court order. This means only one court office needs to be involved.

The Regulations lay down the minimum standards to ensure that judgements, court settlements and authentic instruments in uncontested claims can circulate freely. It is now no longer necessary to use the procedure for recognition and enforcement in each Member State that it is wished to pursue enforcement of a Judgement of another.

The procedure involves applying to the Court that gave judgement or lodged a settlement agreement with, using a prescribed form. The Court may then certify all, or part of the judgement as a European enforcement order. The EEO can also extend to cover any costs order made, provided that the debtor has not specifically objected to his



obligation to bear such costs. The EEO takes effect on the same terms as the original judgement itself.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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