Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951

1951 CHAPTER 65 14 and 15 Geo 6

PART I

PROTECTION AGAINST CERTAIN LEGAL REMEDIES

Provisions as to England and Wales

1 Application of sections two to six.

The five next following sections shall apply to England and Wales only.

2 General restrictions on execution and other remedies.

(1) In the cases mentioned in the next following section no person shall be entitled, subject to the provisions of this Part of this Act, to proceed, except with the leave of the appropriate court, to execution on, or otherwise to the enforcement of, a judgment or order of any court other than **[**[F1]the county court**]** (whether given or made before or after the commencement of this Act) for the payment or recovery of a sum of money:

Provided that nothing in this subsection shall apply to—

(a) a judgment for the recovery of damages for tort;

(b) a judgment or order for the recovery of a debt which has become due by virtue of a contract made after the relevant date;

(c) a judgment or order under which no sum of money is recoverable otherwise than in respect of costs;

[[F2](d) an order for alimony, maintenance or other payment made under sections 21 to 33 of the Matrimonial Causes Act 1973 or made, or having effect as if made, under Schedule 1 to the Children Act 1989.**]**

(e) an order made in criminal proceedings, or an order made in proceedings for the recovery of a penalty in respect of a contravention of, or failure to comply

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with, any provisions of an Act; or to the enforcement of any other judgment or order by judgment summons.

(2) In the cases mentioned in the next following section no person shall be entitled, subject to the provisions of this Part of this Act, except with the leave of the appropriate court—

(a) to proceed to exercise any remedy which is available to him by way of—

the levying of distress;

[[F3]using the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods);**]**

the taking of possession of any property;

the appointment of a receiver of any property;

re-entry upon land;

the realisation of a security; or

the forfeiture of a deposit; or

(b) to institute proceedings for foreclosure or for sale in lieu of foreclosure, or for the recovery of possession of mortgaged property, or to take any step in any such proceedings instituted before the relevant date:

Provided that this subsection shall not apply to any remedy or proceedings available in consequence of default in the payment of a debt arising by virtue of a contract made after the relevant date or the performance of an obligation so arising; and nothing in this subsection shall affect—

(i) a power of sale of a mortgagee of land or an interest in land who is in possession of the mortgaged property at the relevant date, or who before that date has appointed a receiver who at that date is in possession, or in receipt of the rents and profits, of the mortgaged property; or

(ii) a power of sale of a mortgagee in possession of property other than land or some interest in land, where the power of sale has arisen and notice of the intended sale has been given before the relevant date; or

(iii) a right or power of a pawnbroker to deal with a pledge; or

(iv) any right or power of a person to sell goods in his custody as a bailee, being a right or power arising by reason of default in the payment of a debt; or

(v) the institution or prosecution of proceedings for the appointment by the court of a receiver of any property.

(3) In the cases mentioned in the next following section no person shall be entitled, subject to the provisions of this Part of this Act, to proceed, except with the leave of the appropriate court, to execution on, or otherwise to the enforcement of, a judgment or order of any court (whether given or made before or after the commencement of this Act) for the recovery of possession of land in default of payment of rent or for the delivery of any property other than mortgaged property by reason of a default in the payment of money:

Provided that nothing in this subsection shall apply to a judgment given or order made in proceedings for the enforcement of a contract made after the relevant date.

(4) If, on any application for such leave as is required under this section for the exercise of any of the rights and remedies mentioned in subsections (1), (2) and (3) of this section, the appropriate court is of opinion that the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question is unable immediately to do so by reason of circumstances directly or indirectly attributable to

his or someone else's performing or having performed a period of relevant service, the court may, subject to the provisions of this Part of this Act, refuse leave for the exercise of that right or remedy, or give leave therefor subject to such restrictions and conditions as the court thinks proper.

(5) The appropriate court, in determining for the purpose of the last foregoing subsection whether a person is unable immediately to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question by reason of any such circumstances as are mentioned in that subsection, or in determining the restrictions and conditions (if any) subject to which leave is to be given under that subsection, may take account of other liabilities, whether present or future, of his.

(6) Where—

(a) a bankruptcy petition has been presented against a debtor, and it is shown to the satisfaction of the court having jurisdiction in the bankruptcy that his inability to pay his debts is due to circumstances directly or indirectly attributable to his or someone else's performing or having performed a period of relevant service; [F4]. . .

[F4](b) . . . . . .

the court may at any time stay the proceedings under the petition for such time and subject to such conditions as the court thinks fit.

[F4]. . .

Textual Amendments

F1 Words in s. 2(1) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F2 S. 2(1)(d) substituted by Children Act 1989 (c. 41, SIF 20), s. 108(5), **Sch. 13 para. 12** (with Sch. 14 para. 1(1)): S.I. 1991/828, **art. 3(2)**

F3 Words in s. 2(2)(a) inserted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 13 para. 24** (with s. 89); S.I. 2014/768, art. 2(1)(b)

F4 Words in s. 2(6) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. V** Group 1.

3 Scope of protection.

(1) Subject to the following provisions of this section, the provisions of subsection (1), (2) or (3) of the last foregoing section shall apply to the exercise of a right or remedy in the following cases, and in the following cases only, that is to say:—

(a) they shall apply (by virtue of this paragraph and without more) where the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question is for the time being performing a period of relevant service;

(b) they shall apply (by virtue of this paragraph and without more, but subject to any order of the appropriate court directing that they shall not so apply or shall cease so to apply) where the person liable as aforesaid has been performing a period of relevant service and, while he was so doing, an application was made to the appropriate court for leave under the last foregoing section to exercise the right or remedy;

(c) they shall apply in a case where—

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(i) the appropriate court by order so directs, on the application of the person liable as aforesaid and on being satisfied that he is unable immediately to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question by reason of circumstances directly or indirectly attributable to his or someone else's performing or having performed a period of relevant service; or

(ii) the person liable as aforesaid has made to the appropriate court an application for an order under this paragraph and the application has not been disposed of, or not having made such an application has given to the proper person written notice of his intention to do so.

(2) A notice given for the purpose of paragraph (c) of the foregoing subsection shall expire at the expiration of fourteen days (or, if given in a class of case as to which a longer period is prescribed for the purposes of this subsection, at the expiration of that period) from the date on which it was given, and where the person giving a notice for that purpose has given a previous notice to the like effect the later notice shall have no operation unless the previous notice was withdrawn with the consent of the proper person before it expired.

(3) For the purpose of the foregoing subsections, the expression "the proper person" means the person seeking to exercise the right or remedy in question, but a notice shall be deemed to be given to the proper person if given to any person (whether the proper person or his agent or not) proceeding to the enforcement of that right or remedy.

(4) Where the appropriate court makes an order under paragraph (c) of subsection (1) of this section with respect to the exercise of a right or remedy, the powers of the court under the last foregoing section shall thereupon be exercisable as if an application for leave to exercise the right or remedy in question had been made under that section.

(5) The appropriate court, in determining for the purpose of the said paragraph (c) whether the applicant is unable immediately to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question by reason of any such circumstances as are mentioned in that paragraph, may take account of other liabilities, whether present or future, of his.

(6) In their application to the enforcement of a judgment or order for the recovery of possession of land in default of payment of rent, the references in subsection (4) of the last foregoing section and subsection (1) of this section to the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question shall be construed as referring only to the person or persons against whom the judgment or order was made and who is or are, or would, but for any forfeiture incurred in consequence of the default be, entitled to the benefit of the lease under which the rent was reserved.

(7) Any reference in subsection (4) of the last foregoing section or subsection (1) of this section to the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question shall in a case where it is sought to exercise a right or remedy against one such person separately from any others who are also so liable, be construed as referring to him only and not including any such other person, but, in a case where it is sought to exercise it against two or more such persons jointly, shall be construed as referring to all or any of the persons against whom it is sought to exercise the right or remedy; and in this subsection references to exercising a right or remedy against a person shall include exercising it against property in which he has an interest or of which he is in possession.

(8) This section, and subsection (4) of the last foregoing section, shall apply to a person affected, or claiming to be affected, by an exercise or proposed exercise by the mortgagee of any property of any of the rights or remedies mentioned in subsection (2) of the last foregoing section, being a right or remedy arising by virtue of a default in the payment of any mortgage money or a breach of any mortgage obligation, as if that person were a person liable to pay the mortgage money or to perform the mortgage obligation:

Provided that the said subsection (2) shall not apply to require leave for the exercise of the right or remedy otherwise than against the person liable as aforesaid except by virtue of paragraph (c) of subsection (1) of this section.

(9) For the purposes of the last foregoing section and of subsection (3) of this section a person shall be deemed to be proceeding to execution on, or otherwise to the enforcement of, a judgment or order if, being entitled to the benefit of the judgment or order—

(a) he issues a bankruptcy notice or presents a bankruptcy petition or a winding-up petition founded on the non-payment of money due under the judgment or order; or

(b) he takes out some judicial process with a view to, or in the course of, the enforcement of the judgment or order;

and, where a person has (in a case for which leave was not required under the last foregoing section) taken out any judicial process with a view to, or in the course of, the enforcement of a judgment or order, or proceeded to the exercise of any such remedy as is mentioned in subsection (2) of that section, he shall be deemed to be proceeding to the enforcement of the judgment or order or to the exercise of the remedy when any step is taken by him or on his behalf towards its completion:

Provided that—

(i) the last foregoing section shall not apply to require leave for the taking of any such step as aforesaid except by virtue of paragraph (c) of subsection (1) of this section; and

(ii) for the purposes of this subsection, an application for discovery in aid of execution shall not be treated as the taking out of a judicial process or as the taking of a step towards the completion of the enforcement of a judgment or order.

(10) For the purposes of the last foregoing section, the expression "the relevant date" means the date on which the service man in question began to perform the period of relevant service:

Provided that—

(a) for the purposes of any reference in the last foregoing section to a contract made after the relevant date, where a service man performs two or more periods of relevant service the said expression means the date on which he began the later or latest of those periods of service; and

(b) for the purposes of paragraph (b) of subsection (2) of the last foregoing section, and of paragraphs (i) and (ii) of the proviso to the said subsection (2) —

(i) where the said date was before the commencement of this Act, then subject to sub-paragraph (ii) of this paragraph the said expression means the date of that commencement; and

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(ii) in a case to which the last foregoing section applies by virtue of paragraph (c) of subsection (1) of this section, the said expression means the date on which that section began so to apply.

4 Special provisions as to leases and hire-purchase agreements.

(1) Where under section two of this Act the appropriate court refuses, or grants subject to restrictions and conditions, leave to enforce a judgment or order for the recovery of possession in default of payment of rent of any premises, the lease shall be deemed not to have been forfeited by reason of the default so long as the judgment or order remains unenforceable; and a judgment or order shall be deemed to have remained unenforceable, notwithstanding that it has at some time been enforceable, if before it is enforced it again becomes unenforceable.

(2) A judgment or order for the recovery of possession of a dwelling house **[**[F5]let on or subject to a protected tenancy of statutory tenancy within the meaning of the [M1]Rent Act 1977**]** shall be deemed for the purposes of the foregoing provisions of this Act to be a judgment or order for the recovery of possession of the dwelling house in default of payment of rent if the court in giving or making the judgment or order was exercising the power conferred by **[**[F5]Case 1 in Schedule 15 to the Rent Act 1977**]** on the sole ground that rent lawfully due from the tenant had not been paid and was not exercising any other power conferred by that Schedule.

[[F6](2A) For the purposes of the foregoing provisions of this Act, a judgment or order for the recovery of possession of a dwelling-house let on an assured tenancy within the meaning of Part I of the Housing Act 1988 shall be regarded as a judgment or order for the recovery of possession in default of payment of rent if the judgment or order was made on any of Grounds 8, 10 and 11 in Schedule 2 to that Act and not on any other ground.**]**

(3) On an application under section two of this Act for leave to enforce a judgment or order for the recovery in default of payment of rent of possession of land held in distinct parcels under one lease by two or more lessees, the court may (notwithstanding that a single rent was reserved by the lease and the proviso for re-entry in default of payment of the rent was not severable) order that the application shall be dealt with as if those parcels had been held under distinct leases and applications were being made for leave to enforce separate judgments or orders in relation thereto, and may make such consequential provision as seems just for the apportionment of the arrears of rent, for the relief of any lessee from forfeiture of the parcel held by him and for the adjustment of the rights and obligations under the lease of the parties to the application.

[[F7](4) Where the appropriate court refuses leave under section 4(2) of this Act to take possession of goods subject to a hire-purchase agreement or a conditional sale agreement or to execute a judgment or order for delivery of such goods, or gives leave subject to restrictions and conditions, and the person to whom the goods are bailed, or, as the case may be, the buyer, before possession is taken or execution on the judgment or order completed, pays the total price, the creditor's title to the goods shall, notwithstanding any failure to pay the total price at the time required by the agreement, vest in that person.

(5) Where the creditor under a hire-purchase agreement or a conditional sale agreement has taken possession of the goods bailed or agreed to be sold under it, the appropriate court on an application under section 3(1)(c) of this Act, may, if it thinks fit, deal with the case as if the creditor were proceeding to take possession of the goods and, if it

makes an order under that paragraph, may direct accordingly that the goods be restored to the person to whom they were bailed or, as the case may be, the buyer; and if, after the creditor has taken possession of the goods, notice is given under that paragraph with respect to them, he shall not, so long as the notice is in force or any application in pursuance of the notice is undisposed of, deal with the goods in such a way as to prejudice the powers of the appropriate court under this subsection.**]**

Textual Amendments

F5 Words substituted by Rent Act 1977 (c. 42), **Sch. 23 para. 2**

F6 S. 4(2A) inserted by Housing Act 1988 (c. 50, SIF 75:1),s. 140(1), Sch. 17 para. 1

F7 S. 4(4)(5) substituted for s. 4(4)—(6) by Consumer Credit Act 1974 (c. 39), s. 192, **Sch. 4 Pt. I para. 12**

Marginal Citations

M1 1977 c. 42.

5 Appropriate courts and procedure.

(1) The appropriate court for the purposes of any of the provisions of this Part of this Act applying to England and Wales shall be such court as may be designated by rules made by the Lord Chancellor under this section, and such rules may designate different courts in relation to different classes of proceedings.

(2) **[**[F8]Rules may be made in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005**]** prescribing the manner in which applications under the said provisions are to be made, and prescribing any matter which under any of those provisions is to be prescribed, and generally for regulating the conduct of proceedings under the said provisions.

(3) **[**[F9]Rules under subsection (2)**]** may in particular make provision for enabling a court, for the purpose of hearing and determining an application under the said provisions of this Part of this Act or in exercising any discretion for the purposes of the said provisions of this Part of this Act, to admit any document as evidence of any facts stated therein.

(4) **[**[F9]Rules under subsection (2)**]** may in particular make provision for requiring, or dispensing with, service of notice of any application under the said provisions of this Part of this Act upon persons who may be affected, whether by virtue of subsection (5) of section two or subsection (5) or (8) of section three or otherwise, and for enabling any persons to be heard at the hearing of any application under those provisions, and may also make provision for the making of applications ex parte in such cases as may be prescribed by the rules.

(5) **[**[F9]Rules under subsection (2)**]** may, for the purpose of enabling a person performing relevant service to obtain the protection afforded by subsections (8) and (9) of section three of this Act, provide for enabling the appropriate court to treat as an application made by him for an order under paragraph (c) of subsection (1) of the said section three, an application for that purpose made by some other person on his behalf; and the rules may further provide that an application which the appropriate court has, under the rules, power to treat as an application by the person performing relevant service shall also be treated for the purposes of sub-paragraph (ii) of the said paragraph (c) as an application made by that person.

[[F10](5A) The Lord Chancellor must consult the Lord Chief Justice of England and Wales before making rules under subsection (1) that relate to England and Wales.

(5B) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (5A).**]**

(6) The power to make rules conferred by **[**[F11]subsection (1)**]** shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F8 Words in s. 5(2) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 1 para. 8(2)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 7

F9 Words in s. 5(3)-(5) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 1 para. 8(3)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 7

F10 S. 5(5A)(5B) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 41(2)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(d)

F11 Words in s. 5(6) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 1 para. 8(4)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 7

6 Interpretation of sections two to five.

(1) In the foregoing provisions of this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"costs" includes all charges and possession money payable to a sheriff in respect of interpleader proceedings taken by him;

"lease" includes an underlease and any contract of tenancy, and the expression "lessee" shall be construed accordingly;

"mortgage" includes any charge, and the expressions "mortgagor" and "mortgagee" shall be construed accordingly;

"mortgage money" includes any part thereof and interest thereon;

"mortgage obligation" means any obligation arising under or by virtue of the mortgage, other than an obligation to pay the mortgage money;

"prescribed" means prescribed by rules made under the last foregoing section;

"rent" includes any sum payable by way of mesne profits;

"the relevant date" has the meaning assigned to it by subsection (10) of section three of this Act.

(2) It is hereby declared that in this Part of this Act the expression "distress" includes distress for rates.

(3) For the purposes of the foregoing provisions of this Act an execution against goods shall be deemed to be completed by seizure and sale or, where a writ or warrant of delivery is issued, by delivery of the goods, an attachment of a debt shall be deemed to be completed by the receipt of the debt, an execution against land shall be deemed to be completed by seizure or, in the case of an equitable interest, by the appointment of a receiver, and the enforcement of a judgment or order for recovery of possession of land shall be deemed to be completed by delivery of possession.

(4) References in the foregoing provisions of this Act to judgments or orders for the recovery of possession of land include references to any judgment or order the effect of which is to enable a person to obtain possession of land, and in particular includes, in relation to a mortgagee, a judgment or order for the delivery of possession of the mortgaged land.

(5) For the purposes of the foregoing provisions of this Act a mortgagee of land or any interest in land shall be treated as not being entitled to obtain possession of the mortgaged property, whether by virtue of his estate or interest as mortgagee or of any attornment or other provision contained in the mortgage or in any agreement collateral thereto, unless default has been made in payment of some mortgage money, or there has been a breach on the part of the mortgagor, or of some person concurring in the making of the mortgage of some mortgage obligation; and for this purpose default shall not be deemed to have been made in payment of any mortgage money (except in a case where the mortgage money is repayable by instalments) unless a written demand for payment has been served on the person liable, and a period of three months has elapsed since the service of the demand.

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