



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

1951 CHAPTER 65

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 a 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;
- (d) an order in a matter of bastardy, an order enforceable as an affiliation order, or an order for alimony, maintenance or other payments which has been made under sections nineteen to twenty-seven of the Matrimonial Causes Act, 1950, or under subsection (2) of section three or subsection (4) of section five of the Guardianship of Infants Act, 1925 ;

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- (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 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;
 - 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

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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; or
- (b) a winding-up petition has been presented against an exempt private company on the ground that it is unable to pay its debts, and it is shown to the satisfaction of the court having jurisdiction in the winding up that its inability to pay its debts is due to circumstances directly or indirectly attributable to any person's performing or having performed a period of relevant service;

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.

In this subsection the expression " an exempt private company " shall be construed in accordance with subsection (4) of section one hundred and twenty-nine of the Companies Act, 1948.

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 with out 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—
- (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

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- (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

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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 nonpayment 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
 - (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 to which the Rent Restrictions Acts apply 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 paragraph (a) of the First Schedule to the Rent Act of 1933 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.
- (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.
- (4) Where the appropriate court refuses leave under subsection (4) of section two of this Act to take possession of goods let under a hire-purchase agreement or to execute a judgment or order for the delivery of such goods, or gives such leave subject to restrictions and conditions, and the hirer, before possession is taken or execution on the judgment or order is completed, pays the hire-purchase price, the owner's title to the goods, shall, notwithstanding any failure to pay the hire-purchase price at the times required by the agreement, vest in the hirer.
- (5) Where the owner of goods let under a hire-purchase agreement has taken possession of the goods, the appropriate court on an application made under paragraph (c) of subsection (1) of section three of this Act may, if it sees fit so to do, deal with the case as if he were proceeding to take possession of them and, if it makes an order under that paragraph, may direct accordingly that the goods shall be restored to the hirer; and if, after the owner 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 thereof is undisposed of, deal with the goods in such a way as to prejudice the powers of the appropriate court under this subsection.
- (6) In this section the expressions " hire-purchase agreement ", " hire-purchase price ", " owner " and " hirer " have the meanings respectively assigned to them by section twenty-one of the Hire Purchase Act, 1938:

Provided that the expression " hire-purchase agreement" includes an agreement for the sale of goods under which the price is payable by instalments and the property in the goods remains in the seller, notwithstanding that the buyer is in possession of the

goods, until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled, and the other expressions above referred to and the expression "let" shall be construed accordingly.

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) The Lord Chancellor may also make rules 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) Rules so made 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) Rules so made 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) Rules so made 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.
- (6) The power to make rules conferred by this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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;

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" 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.

Provisions as to Scotland

7 Application of sections eight to twelve

The five next following sections shall apply to Scotland only.

8 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 enforce, except with the leave of the appropriate court, a decree of any court (whether pronounced before or after the commencement of this Act) for the payment of a sum of money or for the recovery of possession of land:

Provided that nothing in this subsection shall apply to—

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- (a) any decree for damages in respect of loss or damage arising from any wrongful act or omission;
 - (b) any decree based upon a contract made after the relevant date;
 - (c) any decree for expenses ,
 - (d) any decree for aliment or any decree or order enforceable by virtue of any enactment in like manner as a decree for aliment, or any order for payment under subsection (2) of section three, or subsection (4) of section five, of the Guardianship of Infants Act, 1925 ; or
 - (e) any order made in criminal proceedings, or an order for the recovery of a penalty due in respect of a contravention of, or failure to comply with, any Act.
- (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 do any diligence (not being diligence used only on the dependence of an action or ad fundandam jurisdictionem);
 - (b) to enforce any irritancy, legal or conventional;
 - (c) to realise any security or forfeit any deposit;
 - (d) to exercise any power of sale conferred by a heritable security;
 - (e) to institute an action of maills and duties ; or
 - (f) to take or resume possession of any property by reason of any default by any person in the payment of money or the performance of any obligation:

Provided that this subsection shall not apply to any remedy or proceedings available in consequence of any 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) any right or power of pawnbrokers to deal with pledges; or
 - (ii) any remedy competent to a heritable creditor in possession of the security subjects at the relevant date ;
 - (iii) any right or power of a person to sell goods in his custody arising by reason of default in the payment of a debt.
- (3) If on any application for such leave as is required under this section for the enforcement of any decree or the exercise of any right or remedy mentioned in the foregoing provisions of this section, the appropriate court is of opinion that the person liable to implement such decree or perform the obligation in respect of which such right or remedy arises, 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 to enforce the decree or to exercise the right or remedy or give leave therefor subject to such restrictions and conditions as the court thinks proper.

Any order pronounced under this subsection may be suspended, rescinded or varied by a subsequent order.

- (4) The appropriate court, in determining for the purpose of the last foregoing subsection whether a person is unable immediately to implement the decree or 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 that person.

(5) Where—

- (a) a petition for sequestration has been presented against any debtor, and it is shown to the satisfaction of the court before which such petition depends 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; or
- (b) a winding-up petition has been presented against an exempt private company on the ground that it is unable to pay its debts, and it is shown to the satisfaction of the court before which such petition depends that its inability to pay its debts is due to circumstances directly or indirectly attributable to any person's performing or having performed a period of relevant service;

the court may sist the proceedings in the petition for such time and subject to such conditions as the court thinks fit.

In this subsection the expression " an exempt private company " shall be construed in accordance with subsection (4) of section one hundred and twenty-nine of the Companies Act, 1948.

9 Scope of protection

(1) Subject to the following provisions of this section, the provisions of subsection (1) or (2) of the last foregoing section shall apply to the exercise of any 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) where the person liable to implement the decree 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 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 any case where—
 - (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 implement the decree 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.

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- (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 enforce 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 any 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 implement the decree 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) Any reference in subsection (3) of the last foregoing section or subsection (1) of this section to the person liable to implement the decree 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 a remedy against a person shall include references to exercising it against property in which he has an interest or of which he is in possession.
- (7) For the purposes of the last foregoing section, a person in right of a decree who presents a petition for sequestration or a winding up petition founded on the non-payment of money due under the decree shall be deemed to be enforcing the decree.
- (8) 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 that 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 the proviso to subsection (2) of that section—
 - (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
 - (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.

10 Property in goods subject to hire-purchase agreement

- (1) Where the appropriate court refuses leave under subsection (3) of section eight of this Act to take or resume possession of goods let under a hire-purchase agreement or to do diligence on any decree for the delivery of any such goods, or gives such leave subject to restrictions, and conditions, and the hirer or purchaser, before possession

is taken or resumed or diligence is done, pays to the owner a sum equal to the total of the unpaid instalments, the property in the goods shall thereupon, notwithstanding any failure to pay any such instalment at the time required by the agreement, pass to the hirer or purchaser.

- (2) Where the owner of goods let under a hire-purchase agreement has taken possession of the goods, the appropriate court on an application made under paragraph (c) of subsection (1) of section nine of this Act may, if it sees fit so to do deal with the case as if he were proceeding to take possession of them and, if it makes an order under that paragraph, may direct accordingly that the goods shall be restored to the hirer; and if, after the owner 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 thereof is undisposed of, deal with the goods in such a way as to prejudice the powers of the appropriate court under this subsection.
- (3) In this section the expression " hire-purchase agreement " means any contract to which the Hire Purchase and Small Debt (Scotland) Act, 1932, applies or would apply if the limitation as to value contained in section one of that Act were omitted and the expressions " hirer " , " instalment " , " owner " and " purchaser " have the like meanings as in that Act.

11 Appropriate courts and procedure

- (1) The appropriate court for the purposes of any of the provisions of this Part of this Act applying to Scotland shall be such court as the Court of Session may by Act of Sederunt designate, and different courts may be designated in relation to different classes of proceedings.
- (2) The Court of Session may by Act of Sederunt make provision for requiring, or dispensing with, service of notice of any application under this Part of this Act upon persons who may be affected, whether by virtue of subsection (4) of section eight or subsection (5) of section nine of this Act or otherwise, and for enabling any such persons to be heard at the hearing, and may also make provision for the making of applications ex parte in such cases as may be prescribed by the Act of Sederunt.
- (3) Any power conferred on the Court of Session by the foregoing provisions of this section shall be exercisable by statutory instrument and the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing an Act of Sederunt made in the exercise of the said power in like manner as if the Act of Sederunt had been made by a Minister of the Crown.

12 Interpretation of sections eight to eleven

For the purposes of sections eight to eleven of this Act the expression " heritable security " includes a security constituted by ex facie absolute disposition.

Effect of failure to observe restrictions under Part I

13 Effect of failure to observe restrictions under Part I

- (1) Omission to obtain leave required under section two of this Act, failure to observe a restriction or condition subject to which leave so required was given, or contravention

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of the prohibition in subsection (5) of section four of this Act against dealing with goods, shall not render invalid, or alter the effect of—

- (a) anything which would have operated as a transfer of the title to any property or of the possession of any property if leave had not been required or the restriction, condition or prohibition had not been imposed ;
 - (b) any payment, receipt, appointment or other transaction ; or
 - (c) any legal proceedings.
- (2) In any action for damages for conversion or other proceedings which lie by virtue of any such omission, failure or contravention, the court may take account of the conduct of the defendant with a view, if the court thinks fit, to awarding exemplary damages in respect of the wrong sustained by the plaintiff.
- (3) If in any action or proceedings which lie by virtue of any such omission, failure or contravention the court is satisfied that the defendant acted honestly and reasonably, and ought fairly to be excused for it, the court may relieve the defendant from liability in respect thereof.
- (4) In so far as it appears to the appropriate court to be practicable to remedy the results of any such omission, failure or contravention as aforesaid specifically without prejudice to the interests of third parties, the court may give any such directions for restoration of property, repayment of money or other measures as may appear to the court to be requisite for that purpose.

In this subsection the expression " third parties " means persons other than—

- (a) in the case of such an omission or failure in connection with the enforcement of a judgment or order or the exercise of a remedy, the person proceeding thereto and any person acting in relation thereto on his behalf;
 - (b) in the case of an omission to obtain leave for instituting such proceedings as are mentioned in paragraph (b) of subsection (2) of section two of this Act or for taking a step in such proceedings, the person instituting the proceedings or taking the step in question;
 - (c) in the case of a contravention of the prohibition in subsection (5) of section four of this Act, the owner of the goods; and
 - (d) in any of the cases aforesaid, any person taking a transfer of the title to or possession of any property under a transaction in connection with which the omission, failure or contravention took place, if he took with knowledge of the circumstances which rendered what was done such an omission, failure or contravention.
- (5) In relation to an action or other proceedings tried by a judge and jury—
- (a) the references to the court in subsections (2) and (3) of this section shall be construed as references to the jury, but without prejudice to the power of the judge to give to the jury directions whether there is any evidence of facts justifying an award of exemplary damages on the one hand or the granting of relief on the other hand, or to give them advice as to the making of such an award or grant;
 - (b) the references to the court in subsection (4) of this section shall be construed as references to the judge alone.
- (6) This section shall apply to Scotland subject to the following modifications:—

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- (a) for references to section two or to subsection (5) of section four of this Act there shall be respectively substituted references to section eight or to subsection (2) of section ten of this Act;
- (b) paragraph (b) of subsection (4) of this section shall be omitted;
- (c) the expression " plaintiff " means pursuer and the expression " defendant " means defender and any reference to a judgment shall include a reference to a decree.