

Crime and Courts Bill

Delegated Powers – Supplementary Memorandum by the Ministry of Justice

The Government has tabled a new clause to the Crime and Courts Bill for Commons Committee which amends Schedule 12 to the Tribunals, Courts and Enforcement Act 2007. The amendments to Schedule 12 include two new delegated powers. This supplementary memorandum explains why these delegated powers are considered appropriate and the reason for the procedure selected.

New Clause *Enforcement by taking control of goods*, subsection (4) - new paragraph 19A(2) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007: Requirement to state minimum period of notice, etc., for notice of intention to enter premises to inspect goods or remove them for storage or sale

Power conferred on: Lord Chancellor

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative resolution

1. Subsection (4) of the new clause inserts a new paragraph 19A into Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”), which makes provision in relation to the power of an enforcement agent to re-enter premises following a controlled goods agreement (colloquially known as “walking possession”) for the purpose of inspecting the goods subject to the agreement or removing them for storage or sale. One of the conditions for the new paragraph 19A to apply is (sub-paragraph (1)(e)) that the debtor has been given notice of the enforcement agent’s intention to enter for this purpose; and sub-paragraph (2) of the new paragraph 19A requires regulations for the purposes of such a notice to state the minimum period of notice; the form of the notice; what the notice must contain; how the notice must be given; and who must give the notice.

2. The provision relating to the notice of intention to re-enter mirrors that in paragraph 7(2) of Schedule 12 to the 2007 Act, which provides in sub-paragraph (1) (mirrored by the new paragraph 19A(1)(e)) that the enforcement officer may not take control of goods unless the debtor has been given notice, and then in sub-paragraph (2) (mirrored by the new paragraph 19A(2)) that regulations must state the matters there listed (identical to the list in the new paragraph 19A(2)).

3. The powers to make regulations for the purposes of Schedule 12 to the 2007 Act are (with two exceptions, both of which concern regulations made under a power which is removed by subsection (5) of the new clause), by virtue of section 90 of that Act, exercisable by the Lord Chancellor (section

90(1)) by statutory instrument subject to negative resolution procedure (section 90(5)). Given how closely the present power mirrors that in the existing paragraph 7(2), it seems appropriate for it to be exercised subject to the same, negative resolution, procedure.

New clause *Enforcement by taking control of goods*, subsection (4) - new paragraph 19A(4) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007: Power to authorise the court to order that period of notice may be less than the minimum stated in the regulations, and to prescribe circumstances in which the court may so order

Power conferred on: Lord Chancellor

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative resolution

4. This power, contained in sub-paragraph (4) of the new paragraph 19A which the new clause inserts into Schedule 12 to the 2007 Act, is linked to the requirement in sub-paragraph (2)(a) of that new paragraph for regulations to state the minimum period of notice which must be given of the intention to re-enter to inspect or remove goods. Under the power, regulations may authorise the court to order, in circumstances prescribed by the regulations, that the notice given may be less than that minimum period.

5. This power exactly mirrors that in the existing paragraph 7(4), and bears to paragraph 19A(2) exactly the same relationship as paragraph 7(4) bears to paragraph 7(2). The power in the new paragraph 19A(4) is, like that in paragraph 7(4), exercisable by the Lord Chancellor by statutory instrument subject to negative resolution procedure (section 90(1) and (5) of the 2007 Act). Given the precise congruence of the present power with that in the existing paragraph 7(2), it seems appropriate for it to be exercised subject to the same, negative resolution, procedure.

**Ministry of Justice
25 January 2013**