

### 1 What does 'enforcement' mean in civil and commercial matters?

#### Enforcement cases under the Enforcement Code (*utsökningsbalken*)

Enforcement is where an executive authority compels compliance with an obligation decided upon by a court or other body. Enforcement generally relates to an obligation to pay money or to move out of a home. Another type of enforcement relates to sequestration or other security measures.

Enforcement that relates to an obligation to pay is implemented through attachment. Attachment allows property belonging to the debtor to be seized. If the obligation requires a person to move, for example out of a home, enforcement is effected by way of eviction. Otherwise, enforcement generally takes the form of the enforcing authority ordering the person against whom enforcement has been requested to do something or to comply with an injunction or some other ruling. The enforcing authority may impose a fine.

#### Enforcement cases under the Children and Parents Code (*föräldrabalken*)

Enforcement under the Children and Parents Code relates to measures to carry out in practice something arising from a decision or agreement on custody, residence, contact with or surrender of children. The court that rules on enforcement may impose a fine or order collection by the police. The same rules on enforcement apply when foreign decisions are enforced pursuant to Council Regulation (EC) No 2201/2003 (the Brussels II Regulation) if the enforcement concerns the person of the child. However, if the enforcement concerns the child's property or legal costs, the Enforcement Code applies.

### 2 Which authority or authorities are competent for enforcement?

Enforcement is effected by the Swedish Enforcement Service (*Kronofogdemyndigheten*). The Enforcement Service therefore decides on, for example, attachment. A senior enforcement officer bears the overall legal responsibility for the action, while the actual enforcement is usually handled by other officials (enforcement administrators).

### 3 What are the conditions under which an enforceable title or decision may be issued?

#### 3.1 The procedure

##### Enforcement cases under the Enforcement Code

For enforcement to be effected, there must be a judgment or other enforceable title.

The following enforceable titles may form the basis for enforcement:

a court judgment, verdict or decision,

a settlement that is confirmed by a court, or a mediation agreement which has been declared enforceable by a court

an approved criminal penalty order, an approved payment injunction or an approved order to pay a breach of regulations fine,

an arbitration award,

a written undertaking, witnessed by two people, concerning maintenance payments under the Marriage Code (*äktenskapsbalken*) and the Children and Parents Code (*föräldrabalken*),

a decision from an administrative authority to be enforced under a specific provision,

a document which is enforceable under a specific provision,

a verdict or decision from the Enforcement Service relating to an order for payment or enforcement assistance, and European orders for payment which have been declared enforceable by the Enforcement Service.

Once an enforceable title has been issued, there is no need for any further decision by a court or other authority in order for enforcement to be initiated.

A significant part of the work of the Enforcement Service consists in obtaining information on the debtor's assets. The debtor is required to provide details of his/her assets and to confirm in a schedule or under questioning, on pain of criminal charges, that the information he/she has provided is accurate. The authority may also order the debtor to provide this information on pain of a fine. The fine will be decided by the district court at the request of the Enforcement Service.

The application for enforcement may be made orally or in writing. An oral request requires the applicant (the person requesting enforcement) to appear before the Enforcement Service. A written application must be signed by the applicant or their representative.

The costs to the State in enforcement cases (administration costs) are covered by charges (enforcement fees). The administration costs are generally charged to the respondent in the case (the applicant's counterparty) when enforcement is effected, where this is possible. However, the applicant is generally liable to the State for the costs. Exceptions to the rule on the applicant's liability may be made, for example for most demands for maintenance payments.

The general rule is that a basic charge will be made for each enforceable title for which enforcement is sought. In an enforcement case relating to a claim under private law, the basic charge is SEK 600.

Other charges that may be made are preparation fees, sales charges and special charges.

##### Enforcement cases under the Children and Parents Code

Enforcement may be based on a decision of an ordinary court on custody, residence, contact with or surrender of children. Enforcement may also be based on an agreement on custody, residence or contact entered into by the parents and approved by the social welfare board. Foreign decisions may also be enforced in Sweden, for example a decision which is enforceable pursuant to the Brussels II Regulation.

Decisions on enforcement are taken by the district courts. The application for enforcement is usually made to the district court in the place where the child lives. If the child is not resident in Sweden, the application must be made to Stockholm district court (*Stockholms tingsrätt*).

The application may be submitted by, for example, a parent that the child is to move to or have contact with.

In dealing with the case, the court may issue a special instruction to someone in the social services to try to persuade the person who has care of the child to do what is specified in the decision or agreement voluntarily. If the matter is pressing, the court or police authority may decide that the child should be taken care of immediately. The court may impose a fine or order collection by the police in order to effect enforcement.

No charge is made for an application for enforcement under the Children and Parents Code. Either party may, however, be required to pay the other party's costs in the case. A party who has caused costs to be incurred for collecting or taking care of the child may be made to pay these costs to the State.

#### 3.2 The main conditions

## **Enforcement cases under the Enforcement Code**

In some instances, there may be impediments to enforcement. This will be the case, for example, if the enforceable title is so vague that it cannot be used as a basis for enforcement.

Another scenario could be where the person ordered to do something by a judgment has discharged the obligation imposed by that judgment, for example to pay a given amount.

Another case could be where the person ordered to do something has a counterclaim against the applicant, i.e. lodges a set-off objection. Set-off constitutes an impediment to enforcement if the enforcement service finds that the counterclaim has been lodged by way of a valid enforceable title or is based on a written certificate of claim.

If the debtor asserts that some other matter between the parties constitutes an impediment to enforcement and this objection cannot be dismissed out of hand, enforcement may not take place either. One example might be objections to a limitation period.

If an enforceable title is revoked by a court, enforcement must be stopped immediately.

In some cases, a court may also order that an ongoing enforcement procedure should lapse (this is known as inhibition).

## **Enforcement cases under the Children and Parents Code**

The assumption is that what is stipulated in a decision or agreement is in the best interests of the child. The court cannot re-examine the decision or agreement as part of the enforcement review, and the main alternative is to bring about voluntary compliance. If any compulsory measure is needed, the imposition of a fine is the most likely option. Physical collection can only be used as a last resort.

There may sometimes be impediments to enforcement, such as where the child is ill.

If the child has reached an age and level of maturity such that its wishes have to be taken into account, enforcement may not be effected against the child's will except where the court finds this necessary in the child's best interests. The court should also refuse enforcement if it is clear that it would be contrary to the child's best interests.

## **4 Object and nature of enforcement measures**

### **4.1 What types of assets can be subject to enforcement?**

#### **Enforcement cases under the Enforcement Code**

In order for property to be attached, certain conditions must be met. The property must belong to the debtor;

be transferable;

have some monetary value.

Attachment may be used to claim property of any kind. The rules on beneficial property generally apply only to natural persons. Both fixed and movable property may be attached.

Movable property means not only personal possessions (e.g. cars, boats and other effects) but also assets (e.g. bank balances) and rights of different kinds (e.g. rights of use or shares in a deceased's estate).

Earnings, pensions etc. may also be subject to attachment.

Some property cannot be attached. This is the case with beneficial property. The rules on beneficial property generally apply only to natural persons.

Beneficial property refers, for example, to

clothes and other items for the debtor's personal use, of reasonable value,

furniture, domestic appliances and other equipment needed to run and maintain a home,

tools and other equipment necessary to the debtor's livelihood or professional training,

personal belongings such as medals and sporting trophies which are of such great personal value to the debtor that it would be unreasonable to attach them.

Property may also be protected against attachment under specific regulations. This could be the case with, for example, compensation.

Attachment of earnings may only apply over and above the amount that the debtor needs to maintain him/herself and his/her family.

In this regard, some claims have precedence over others. A claim relating to maintenance payments will take precedence over other claims.

### **4.2 What are the effects of enforcement measures?**

#### **Enforcement cases under the Enforcement Code**

Once property has been attached, the debtor will not have the same control over it as before. The debtor may not make use of the property to the detriment of the applicant by way of transfer or in any other way unless the Enforcement Authority has allowed this on specific grounds after consulting the applicant.

Anyone who unlawfully makes use of attached property may face criminal penalties.

A decision on attachment confers priority rights to the property.

In an enforcement case, a third party must state whether the debtor has claims or other affairs with him or her that may be of relevance for the assessment of the extent to which the debtor has attachable property. A duty of disclosure also applies to any third party who is in possession of the debtor's property through, for example, a pledge or deposition. A bank is required, for example, to provide details of the debtor's bank accounts, safety deposits boxes or other property in the custody of the bank. Relatives and friends of the debtor also have a duty of disclosure.

Information from third parties may be requested orally or in writing and, if necessary, third parties can be called for questioning. They may be compelled to comply on pain of a fine or imprisonment.

Attached property may be compulsorily sold by the Enforcement Authority without delay. Compulsory sales are generally made through public auctions, but may sometimes be arranged privately.

Monies received in enforcement cases must be reported and paid to the applicant as quickly as possible.

### **4.3 What is the validity of such measures?**

#### **Enforcement cases under the Enforcement Code**

There is no maximum time limit to the validity of a decision on attachment. The legislation assumes, however, that attached property will be sold without delay; see 3.2.

If possible, eviction should take place within four weeks of the necessary documents reaching the Enforcement Authority.

## **Enforcement cases under the Children and Parents Code**

A decision on enforcement takes effect immediately unless stated otherwise. It applies until determined otherwise. The order of a fine normally states that an action must be taken within a certain time, for example the child must be handed over to the applicant. A decision on enforcement in relation to contact usually states when contact may take place, and normally applies for a few months ahead.

A decision in the enforcement matter does not prevent a new application from being examined.

## **5 Is there a possibility of appeal against the decision granting such a measure?**

### **Enforcement cases under the Enforcement Code**

Decisions by the Enforcement Authority are generally subject to appeal. An appeal to a district court should be submitted to the Enforcement Authority. The person whom the decision concerns may appeal against the decision of the Enforcement Authority if it has gone against him or her. Decisions on attachment of earnings may be appealed against without limitation to a particular period. Decisions on attachment of other assets may be appealed against within three weeks of being served. Third parties may appeal against this attachment without limitation to a particular period. The district court may decide that no enforcement action should be taken for the time being (this is called inhibition) or, if it finds specific grounds for this, that an action already taken should be revoked.

#### **Enforcement cases under the Children and Parents Code**

The decision of the district court on enforcement may be brought before the court of appeal. Appeals must be lodged in writing and submitted to the district court. The time limit for appeals is three weeks.

#### **6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?**

The Enforcement Code contains provisions limiting the possibility of enforcement, for example to protect the debtor. To a limited extent, the debtor can prevent enforcement taking place by objecting to it, for example because it has become time-barred. The most common examples of restrictions on enforcement are that some property and some assets are excluded from attachment out of consideration for the needs of the debtor. The attachment of material goods may, for example, exclude what is known as a 'beneficium' ('non-attachable property') such as a flat which is the debtor's permanent home and money which the debtor needs for his/her immediate maintenance. The attachment of earnings will exclude a 'reserve amount' to cover normal living expenses and the debtor's housing costs.

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