

This guidance is tailored specifically for official receivers. It is discretionary and not designed for use by third parties. This version was the most up to date guidance available to official receivers as at 10 March 2020.

## 34. Stock, work in progress, plant and machinery and fixtures and fittings

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## **Frequently asked questions**

These FAQs are to assist official receivers in understanding the subject and should be read in conjunction with the more detailed guidance given in the chapter.

### **How will I know if the company, partnership or bankrupt has any stock, work in progress, plant, machinery or fixtures and fittings?**

The official receiver should establish if the company, partnership or bankrupt is trading shortly after the making of the order. This may be by telephone or by conducting an inspection. Where the business is still trading or stopped trading before the order the official receiver should determine whether there is any stock, work in progress, plant and machinery or fixtures or fittings that form part of the estate. Additional information may be obtained from the petitioning creditor, the insolvent's solicitors and/or accountants and by referring to any accounts.

### **How will I know if the director, partner or bankrupt has disclosed all stock, work in progress, plant, machinery or fixtures and fittings?**

The trading records, for example cash books, purchase ledger, invoices, bank statements etc., and any previous accounts should provide an indication of

- stock levels
- work in progress
- plant and/or machinery
- fixtures and fittings

## **What do I do if a third party claims entitlement to stock, work in progress, plant, machinery or fixtures and fittings?**

A third party may claim entitlement to stock, work in progress, plant, machinery or fixtures and fittings for a number of reasons, including:

- a fixed and floating charge
- a finance agreement
- retention of title
- a lien
- taking control of a debtor's goods

The validity of any such claim must be verified, for example by inspecting the charge, finance agreement or legal papers, and if valid arrange for the “owners” to collect the property.

## **What do I do if a bankrupt makes an exempt property claim?**

It is unlikely that a bankrupt would claim stock or work in progress as exempt property. It is more likely that plant, machinery or fixtures and fittings would be subject to such a claim. The official receiver should carefully consider any claim for property to be treated as exempt.

## **When do I value stock, work in progress, plant, machinery or fixtures and fittings?**

In most cases the official receiver will require a valuation by their agents. Valuations by a director, partner or bankrupt should be treated with caution. In some cases it should be obvious the property is worthless, for example, out of date stock or old office furniture. The books and records may have a reasonably accurate record of stock, work in progress, plant, machinery or fixtures and fittings and their book values.

## **Can I disclaim stock, work in progress, plant, machinery and fixtures and fittings**

## **that are worth less than the costs of realisation?**

To disclaim stock, work in progress, plant, machinery or fixtures and fittings the official receiver must also disclaim his/her interest in the land or buildings on or in which the property is situated. Before doing so the official receiver must ensure the land or buildings are of no value to the estate.

## **What are fixtures and are we entitled to claim them?**

Fixtures are usually considered to be part of the land or property and as a consequence belong to the mortgagee or landlord. If they can be removed without causing damage to the property they may form part of the estate (unless claimed as exempt property) and sold by the official receiver's agents. The official receiver should take care when deciding to remove fixtures from a property as they may be subject to a claim by the mortgagee or landlord.

## **What do I have to consider when selling stock?**

The official receiver must ensure that any stock sold is safe and of a satisfactory quality, free from faults, matches the description given and is fit for purpose. Legislation covers the sale of a number of specific items such as controlled drugs, medicines, firearms, explosives, flowers, food, livestock and pet animals.

## **Should I use an agent to sell stock?**

The official receiver will generally use agents to collect and sell stock. In most cases these will be his/her usual agents. However in some cases a specialist agent may need to be employed, for example to sell a painting by a well known artist.

## **What should I do if a creditor claims retention of title on some of goods used/needed for the work in progress?**

The official receiver must establish whether the retention of title claim is valid. The costs of meeting any retention of title claim will need to be taken into account when deciding to sell or complete work in progress.

## **What should I do with work in progress?**

The official receiver must decide whether work in progress should be completed. The costs of completing the work (for example, labour, materials, rent, insurances and utilities) should be compared with the likely value of the completed goods. Where there is unlikely to be a net benefit to the estate the work in progress should be sold, abandoned or otherwise disposed of.

## **What should I do if completing the work in progress would be of benefit to the estate?**

The official receiver should if possible seek the appointment of an insolvency practitioner as liquidator or trustee. The official receiver should consider whether sufficient suitable materials are available, the landlord will allow access to the premises, the former employees will be willing to complete the work and the need for a special manager. The official receiver should be aware, as far as possible, of any hidden costs that may arise.

## **What is plant and machinery?**

Generally speaking, plant and machinery is an asset that is used by a business for the purpose of carrying on the business that is not stock in trade, business premises or part of the business premises.

## **What should I do if a third party claims title to plant and machinery?**

The official receiver must establish whether the claim is valid. Third parties which may have a valid claim include: hire purchase or finance companies, mortgagees and landlords.

## **What should I do with plant and machinery that forms part of the estate?**

Before selling any plant and machinery the official receiver should ensure it is not

- claimed as exempt property (bankruptcy only)
- required to continue the business
- required to complete any work in progress

Where the proceeds exceed the costs of sale the official receiver may use their usual agents, unless specialist agents are required.

## **Background and key actions**

### **34.1 General**

This chapter gives advice on realising assets commonly encountered when dealing with a business – stock, plant and machinery, fixtures and fittings and work in progress.

The chapter does not give substantive advice on protecting the assets – which is covered by chapter 25, and the chapter should be read in conjunction with chapter 11, which gives advice on matters to be dealt with when dealing with the inspection of a business premises.

### **34.2 Dealing with stock, work in progress, plant and machinery and fixtures and fittings – General**

In most cases it should be possible to easily realise the insolvent's interest in stock and plant and machinery, following the guidance in this chapter, with the involvement of agents – possibly specialist agents.

Dealing with work in progress and fixtures is likely to be more difficult and, in many cases, it will be necessary to seek the appointment of an insolvency practitioner as liquidator or trustee. Nevertheless, guidance on those types of assets is given in this chapter.

### **34.3 Encountering stock, work in progress, plant and machinery and fixtures and fittings**

The official receiver is most likely to encounter stock, work in progress, plant and machinery and fixtures and fittings in the early stages of a case, whether that be during an inspection or as part of an initial enquiry following the making of an order.

Such initial enquiries should seek to establish the whereabouts of the items, the extent to which they are safely stored/located and whether they are adequately

insured. The enquiries should also seek to establish the extent to which there are third party claims over the items.

## **34.4 Sources of information regarding stock, work in progress, plant and machinery and fixtures and fittings**

Information concerning stock, work in progress, plant and machinery and fixtures and fittings may be available or forthcoming from the petitioning creditor, or other trade creditors/suppliers.

Reference should also be made to the last set of accounts (draft or otherwise), or accounting records, which may give an indication of stock/asset levels, and the value of that property at the time of the preparation of the accounts.

## **34.5 Valuation of stock, work in progress, plant and machinery and fixtures and fittings**

Unless the likely value of the stock, work in progress, plant and machinery and fixtures and fittings is apparent from the accounts/accounting records, the official receiver is likely to require a valuation from their agents. Many agents will provide an informal valuation for no charge.

Valuations received from the company directors, bankrupt or parties connected thereto should be treated with circumspection and the official receiver should arrange for their own valuation where there is doubt.

In some cases, it will be apparent that the property is worthless (such as old office furniture or obsolete stock), and the official receiver can use their discretion not to obtain a formal valuation.

## **34.6 Disclaimer of stock, work in progress, plant and machinery and fixtures and fittings**

In some cases it will be necessary to issue a disclaimer of stock, work in progress, plant and machinery and fixtures and fittings where, for example, the property has no value and there is an onerous obligation. An example of this may be potentially dangerous plant requiring public liability insurance.

The official receiver cannot disclaim such property without also disclaiming the land/property on/in which the property is situated, so it will be necessary to ensure that the land/property has no value to the estate.

Specific guidance on disclaiming items of stock is given below.

## **34.7 Third party claims over stock, work in progress, plant and machinery and fixtures and fittings**

The official receiver should establish whether any or all of the stock, work in progress, plant and machinery or fixtures and fittings have valid third party claims over them – such as a fixed or floating charge, finance agreement, retention of title or a lien.

The validity of such claims should, of course, be verified and, if valid, the official receiver should not seek to realise the items. Instead they should arrange for the ‘owners’ of the property to collect (where possible) the property.

## **34.8 Insurance of stock, work in progress, plant and machinery or fixtures and fittings**

Where the items require insurance, it should be arranged in line with the guidance in chapter 14. Where the value or existing cover of the items is uncertain, cover should still be arranged but cancelled if/when the items are discovered to be worthless or the property of a third party – notifying the third party of the whereabouts and possibly uninsured status of the property. When the items have been sold or otherwise disposed of or the case has been handed over to an insolvency practitioner appointed as liquidator or trustee the official receiver should cancel the policy.

Where the official receiver is dealing with potentially dangerous stock (such as explosives, firearms or drugs/medicines), they should inform the insurer that any insured premises contain these items.

## **34.9 Realisation of stock, work in progress, plant and machinery or fixtures and fittings**

Assuming there are no valid third party claims (including a claim for the items to be treated as exempt property) over the stock, plant and machinery or fixtures and fittings and the guidance in this chapter has been considered, the official receiver’s



usual agents should be instructed to sell the items. Where the assets are of an unusual or specialist nature the agents may, instead, suggest a specialist agent. Any sale price agreed should, of course, take into account the need to remove the items, as appropriate.

Work in progress is likely to require different treatment – following the guidance later in this chapter.

## **34.10 Sale to a connected party**

It may be the case that the official receiver's agents advise that the best price for the items may be achieved through a sale to a third party connected to the company officers or bankrupt. Indeed, this may be the most cost-effective method of realisation when the costs of removal are taken into account – particularly for specialist equipment.

Where, in such a sale, the purchaser maintains that the items have a low value, the official receiver should not be averse to seeking the employment of a specialist valuer, at the expense of the prospective purchaser, with the purchaser to provide the funds for the valuation in advance.

## **34.11 Prompt sale required**

It may be necessary to realise certain items of stock, work in progress, plant and machinery or fixtures and fittings promptly. Such circumstances may include:

- to avoid assets being lost if it is likely a landlord will distrain
- perishable or seasonal goods
- assets that would incur large storage costs in relation to their value
- livestock or other animals where the costs of foodstuffs and care may become prohibitive
- assets in premises that cannot be made secure, or where the costs of securing and insuring the premises would be prohibitive

where a good offer is subject to a time condition

## **34.12 Stock held in a bonded warehouse**

In brief, a bonded warehouse (also known as a customs warehouse) is a warehouse in which are stored goods that have been imported into this country from outside the EU and which it is intended will be exported to another country outside the EU without entering the UK market. The advantage for a trader of using a bonded warehouse is that duty or import-VAT is not payable on the goods imported to the UK, unless (until) they enter the UK market.

Such warehouses are tightly regulated and if the insolvent has goods in one it is likely that the assistance of the warehouse keeper and/or HMRC will be required to have the goods released for sale. If the goods are to be sold within the UK it will be necessary for the official receiver's agent to deal with the relevant VAT/duty implications.

## **Realising stock**

### **34.13 What is stock?**

'Stock' is generally taken to mean goods kept by a trader for sale to the consumer or another business, or may be materials to be turned into a product for sale. Materials to be turned into other products are often referred to as raw materials.

Anything that comes under this general definition may be considered to be stock, and may even include animals, in the case of a farm, for example. Stock does not include the equipment used by a business to process material, instead that would be 'plant and machinery'. Similarly, materials in a partially completed state would be considered to be work in progress.

### **34.14 General consumer protection legislation - Safety**

Guidance produced by the Trading Standards Institute states the following:

When goods are sold to customers they must be safe. If goods are unsafe and they cause death, injury or damage to property, the manufacturer, the retailer and/or anyone else in the supply chain may need to meet a claim for compensation.

Where goods that are unsafe are supplied and those goods cause injury or death, the person so injured (or their estate if deceased) has the right to make a claim against the supplier or the producer of the goods<sup>1</sup>.

If the injured party wishes to make a claim against the producer of the goods, they can compel the supplier to provide details of the producer. If that supplier fails to provide to the claimant, within a reasonable time, details of the producer of the goods, they are liable to a claim for compensation<sup>2</sup>.

Where the official receiver has sold goods and subsequently receives a request to supply the details of the producer, they should do so without delay.

In addition to civil sanctions, there are also criminal sanctions for the supply of unsafe goods<sup>3</sup>.

1. Consumer Protection Act 1987

2. Consumer Protection Act 1987 section 2(3)

3. Consumer Protection Act 1987 section 12

## 34.15 Agents instructed to check safety of goods before sale

It is likely that agents used by the official receiver will be aware of the various pieces of safety legislation. Where there is doubt, the official receiver should ensure that the general application of the relevant laws is brought to the attention of the agents and that the agent checks, in so far as is possible, the safety of the goods to be sold, with regard to the general regulations<sup>1</sup> or any regulations specifically applying to the goods ([product safety for manufacturers](#)).

1. General Product Safety Regulations 2005

## 34.16 General consumer protection legislation - Quality

Apart from the requirement to supply goods that are safe, a person supplying goods also has a duty to supply goods that are of satisfactory quality, are free from faults, match the description given and are fit for purpose<sup>1</sup>. If goods supplied do not meet those requirements, the supplier may be liable to take remedial action (such as replacing the goods or giving a refund), or to pay compensation.

Second hand goods will have a lower expectation as to what is satisfactory than new goods<sup>2</sup>.

1. Sale of Goods Act 1979 section 14

2. *Bernstein v Pamson Motors Ltd* [1987] RTR 384

## 34.17 Seasonal goods

Unless other regulations are applicable the only thing that the official receiver need bear in mind as regards seasonal goods is that their value is likely to (significantly) diminish once the relevant season has ended. In this case it is imperative that the official receiver act quickly to maximise the return to creditors. Examples of seasonal goods are as follows:

- greetings cards (Christmas, St Valentine's day, Mothering Sunday, Fathers' Day, etc.)

- Easter Eggs
- decorations for religious or cultural festivals (Christmas, Diwali, Halloween, Chinese New Year, etc.)
- Christmas gifts
- sun creams or other hot weather related products
- sledges, winter clothes, etc
- bedding plants/turf
- items related to sporting or national celebratory events

## Drugs and medicines

### 34.18 – Drugs and medicines - General

Stocks of drugs may be held by wholesalers or retail pharmacists. In addition, small stocks of drugs are likely to be found at the premises of doctors, dentists or veterinary surgeons. Similarly, hospitals, clinics and residential/nursing homes are all likely to hold some stock of medicines.

The law provides for controls over the sale of medicines, with the level of control or restriction dependant on the class of the medicine, as follows<sup>1</sup>:

- general sale list – medicines on this list can be sold by any retail outlet, provided that the premises at which the medicines are sold can be ‘closed off’ to the public. This would exclude, for example, car boot sales or market stalls.
- pharmacy only medicines – these medicines may only be sold through a pharmacy, with a pharmacist present
- prescription only medicines – these are subject to the same restrictions as pharmacy only medicines, with the additional restriction that they may only be sold in accordance with a prescription from a specified medical professional

1. The Human Medicines Regulations 2012 regulation 5

### 34.19 Sale of medicines

Following the restrictions outlined above, the official receiver’s agents may only sell those medicines on the general sale list. A wholesaler may agree to take back a stock of other types of medicines, in exchange for payment.

Where it is not possible for the medicines to be sold or returned, the official receiver should consider issuing a disclaimer of the medicines, served upon the local Primary Care Trust and the owner of the premises at which the medicines are stored. If the official receiver is retaining the premises for sale, it will not be possible to disclaim the medicines (as it will not be possible to disclaim the drugs without also disclaiming the underlying reversionary interest in the property (thereby losing the value of the property to the estate) and, instead the guidance below relating to disposal of medicines.

## 34.20 Disposal of medicines

Where it is not possible to sell or disclaim the insolvent's stock of medicines, the official receiver, as liquidator or trustee, will need to dispose of them.

The ([Sanitary Medical Disposal Services Association](#)), contains a list of members that are authorised to dispose of surplus/waste medicines.

Some of these companies do work on a contract-only basis, so it might be a case of ringing around to find a company that will do work on a 'supply and collect' basis. The arrangement will generally work on the basis of the company supplying specially marked tubs (called 'bins') into which are placed the drugs; the bins then being collected by the company.

The official receiver should discuss their requirements with the prospective company, but one difficulty for them is likely to be in that the drugs/medicines generally have to be sorted by category into bins for collection. Special procedures may be required for controlled drugs. It is anticipated that the insolvent may be able to assist in this.

## 34.21 Herbal medicines/remedies

From the point of view of the official receiver dealing with herbal medicines or remedies, the guidance for general list medicines may be followed as regards sale and disposal<sup>1</sup>.

1. The Human Medicines Regulations 2012 regulation 5(2)(c)

## 34.22 Controlled drugs

Dealings in certain types of drugs are controlled by legislation<sup>1,2</sup>, with the possession, supply and production of specified drugs a criminal offence. Some drugs are controlled only to the extent that records must be kept relating to their storage and use<sup>3,4</sup> links to notes no longer work, whereas the possession of some drugs is prohibited entirely, except for research purposes. Those drugs that are controlled are

specified in the legislation<sup>5</sup> and are classified in five groups depending on the level of control provided for in the legislation.

1. Misuse of Drugs Regulations 2001

2. Misuse of Drugs Act 1971 section 5

3. Misuse of Drugs Regulations 2001 regulation 23

4. Misuse of Drugs Regulations 2001 regulation 24

5. Misuse of Drugs Regulations 2001 regulation schedules 1 to 5

## **34.23 Storage and recording of controlled drugs**

The legislation provides that certain controlled drugs are stored in a prescribed manner<sup>1</sup>, and the movement and use of such drugs recorded<sup>2</sup>. This may assist the official receiver is assessing stock levels.

1. Misuse of Drugs (Safe Custody) Regulations 1973

2. Misuse of Drugs (Safe Custody) Regulations 1973 regulations 19 to 24A

## **34.24 Dealing with controlled drugs - General**

The restrictions on the sale (supply) of controlled drugs would prohibit the official receiver or their normal agents from selling the drugs. If the value of the drugs warrants it, the official should seek to appoint a specialist agent but, given that stocks of controlled drugs encountered by official receivers are likely to be small, it is more likely that the agent's costs in dealing with the drugs will exceed the value, and a disclaimer will be appropriate.

## **34.25 Dealing with controlled drugs - Disclaimer**

It will not be possible to disclaim the drugs unless the property in which the drugs are stored is also disclaimed and, of course, the official should not do this if the property has a value to the estate in excess of the cost of disposing of the drugs. In which case, the official receiver will have to arrange for the drugs to be disposed of (see above).

Where a disclaimer is appropriate, the official receiver should arrange for the drugs to be disclaimed, serving notice of the disclaimer on the owner of the premises, the local Primary Care Trust and the local Police drug liaison officer.

## Explosives

### 34.26 Explosives - General

The official receiver may encounter explosives when dealing with businesses that manufacture, store or sell the following types of goods:

- Christmas crackers
- party poppers
- toy gun caps
- mMarine flares
- car airbags
- car seatbelt tensioners

### 34.27 Sale of explosives

Strictly speaking, there are actually few restrictions on the sale of explosives, but there are strict rules regarding storage, which effectively act as controls over the sale.

The official receiver should confirm with the director or bankrupt that the explosives are being stored in line with the requirements of the legislation. In all events, it is likely the advice of the local trading standards department should be sought.

Assuming all is well with the storage of the explosives, the official receiver may instruct his regular agents to act in the sale – but, necessarily, the sale may only be from the premises originally used by the business unless the official receiver can be satisfied that the premises of the agent are equally suitable.

### 34.28 Licences for the storage of explosives

Licences for the storage of explosives are issued by the local licensing authority (usually the local authority) or [Health & Safety Executive](#) (HSE)<sup>1</sup>. The licence applies to the person, rather than the premises at which the explosives are stored, and ‘person’ can mean a company or an individual.

If a licensee goes into liquidation, or is made bankrupt, the official receiver, as liquidator or trustee is treated as the licensee<sup>2</sup>.

1. The Explosives Regulations 2014 regulation 13

2. The Explosives Regulations 2014 regulation 18

## 34.29 Restrictions on storage of explosives

The regulations relating to the storage of explosives are complex and vary depending on the nature of the explosive and the amount kept<sup>1, 2, 3</sup>. Suffice to say that any person storing explosives for commercial reasons is likely to require a licence or to be registered with the local authority.

Further information can be found at;

[Health & Safety Executive](#)

1. The Explosives Regulations 2014

2. Explosives Act 1875

3. Fireworks Act 2003

## 34.30 Restrictions on the sale of fireworks

The storage of explosives in quantities of up to 50kg is permitted without licence or registration. The storage of quantities of over 50kg but up to 250kg requires registration with the local authority, whilst quantities over 250kg require a licence.

In addition, a licence is required to sell fireworks outside of the following times<sup>1, 2</sup>:

- on the first day of the Chinese New Year and the three days immediately preceding it
- on the day of Diwali and the three days immediately preceding it
- during the period beginning on 15 October and ending on 10 November
- during the period beginning on 26 December and ending on 31 December

1. Fireworks Act 2003

2. Fireworks Regulations 2004

## 34.31 Seasonal nature of some explosives

Some explosives, such as fireworks or party poppers have a demand for them that will fluctuate seasonally. Where, for example, the official receiver is dealing with a



stock of fireworks every effort should be made to deal with the sale of the fireworks before November 5 or, as the case may be, 1 January.

## **34.32 Explosives with no realisable value**

If the explosives have no realisable value, the official receiver should arrange for them to be disclaimed but only if the underlying reversionary interest in the property in which they are stored has no value, serving notice of the disclaimer on the owner of the premises, the Health and Safety Executive, the local authority trading standards department and the local Police explosives liaison officer ([Health and Safety Executive](#)).

## **Farming stock**

### **34.33 Livestock – General**

Livestock is the term used to describe animals kept in connection with a farming business, or animals that are of a food-producing species.

Livestock units are often subject to strict biosecurity provisions and therefore advice should be sought from the Animal and Plant Health Agency prior to entry/action being taken.

### **34.34 Sale of livestock**

It is unlikely that the official receiver's normal agents will be able to assist in the sale of livestock, though they may be able to suggest a specialist agent. Useful points of contact may be the local livestock market or the local authority animal health team. Failing that, an internet search for 'livestock sales' should uncover agents that might be willing to assist.

Before formally instructing agents, the official receiver should ask the agent for an estimate of the value of the animals and their likely fees in dealing with the sale. Only if there is likely to be a realisable value should the official receiver proceed with the instruction. In reaching this decision, the official receiver will need to take into account the costs of housing and feeding the animals in the period leading up to the sale and the costs of complying with legal requirements. In this, it is accepted that the official receiver may need to outlay monies to pay for an inspection of the animals by the agent.

## **34.35 Sale of livestock – important legal considerations**

Both the official receiver and the agent must have regard to all legislative requirements surrounding the movement of livestock including disease control restriction, welfare in transport and identification/movement reporting requirements. It would be advisable to contact the Animal or Plant Health Agency or the relevant local authority in the first instance. Official receivers could potentially commit animal health and welfare offences if livestock are moved prior to advice being sought.

## **34.36 Livestock with no realisable value**

Where the official receiver is advised that the animals have no realisable value they should be offered to a reputable animal charity such as the RSPCA (a search of the internet using the term ‘farm animal rescue’, or similar may lead to details of a local organisation).

There may be legislative requirements in relation to the disposal of livestock and the Animal and Plant Health Agency should be contacted in the first instance.

If it is not possible to dispose of the animals through rehoming, advice may be available through the local authority animal health team or local animal collectors. It is possible that the official receiver will have to arrange for them to be destroyed at the expense of the estate, as a disclaimer is unlikely to be appropriate.

## **34.37 Disclaimer of livestock not appropriate**

Due to the requirements of the animal welfare legislation to, amongst other things, house, protect and feed animals appropriately<sup>1, 2</sup>, it is extremely unlikely to ever be appropriate to disclaim an interest in livestock. In short, the official receiver may be open to an allegation of animal cruelty as the last owner of the animals.

A disclaimer should be issued if requested by an animal welfare organisation, where it might be required to allow them to take possession of the animals.

1. Animal Welfare Act 2006

2. Welfare of Farmed Animals (England) Regulations 2007

## **34.38 Milk as farm stock**

By its very nature as a commodity that is produced and sold on a daily basis, it is unlikely that a dairy farmer will be carrying a large stock of milk.

Most (if not all) dairy farmers who supply milk are in sole supply contracts, also termed 'exclusive contracts'. There are two types of exclusive contract, those that provide for the farmer to supply all produced milk to the purchaser and the purchaser is obliged to collect all that is produced (these are called 'exclusive evergreen contracts') and those that 'cap' the volume at a certain level. In those second type of contracts the purchaser will buy the milk produced over the capped level at a significantly lower price. The 'capped' contract is usually used for producers of organic milk.

Where the farmer is in one of these type of exclusive contracts, it is possible that monies will be owing to the farmer in respect of milk already supplied. This should be dealt with as a book debt.

## **34.39 Sale of milk stock**

Due to restrictions on the sale of fresh food and drink, milk should not be sold directly to suppliers or end users and, instead, the arrangement entered into by the farmer should be continued with unless the official receiver's agents advise otherwise.

## **34.40 Arable farm produce (grain) as stock**

Grain is traded in 29t lorries, and a sales contract will typically be for multiples of a lorry (typically from one to, perhaps, ten), or for the farmer's entire produce of a variety, a crop species or all their crops via a grain pool.

Grain pools are typically where the tonnage harvested/committed before harvest is marketed by a cooperative. Some combinable crop farmers will be completely loyal to an individual coop or merchant for all combinable crops they grow.

Straw is not generally marketed by grain companies, but by hay and straw merchants or straw baling contractors. Some is purchased by power stations. Maize is almost all grown for forage, the small amount harvested for grain and traded is done the same way as other combinable crops.

Ideally, the crops should be dealt with as soon as possible. Where necessary, the official receiver should seek the advice of the company to whom the grain is to be sold regarding storage of the crops pending sale, to avoid the grain spoiling in the meantime.

## **34.41 Sale of grain stock**

So far as the official receiver is concerned, the most effective way to realise a stock of grain would be to continue with whatever arrangement has been entered into by the farmer, unless the official receiver's agents advise otherwise.

## **34.42 Seed as stock**

A seed merchant must hold a British Society of Plant Breeders (BSPB) sub-licence to be able to produce and trade in seeds of the protected varieties. The licence will specify the types of protected seed that they are allowed to trade in. In practice, any seed merchant active in the UK must hold a BSPB sub-licence. The sub-licence terminates immediately and automatically on insolvency.

It is the case, therefore, that, where an insolvency order is made against a seed merchant (or similar), no sale can take place of any seed that is held as stock, any as grown seed or any seed crop that is in the field without the rights holder's permission as there is no valid licence in place at that point.

## **34.43 Sale of seed stock**

The official receiver, as liquidator or trustee, should contact the ([BSPB](#)) to discuss the options that are available for the sale of seed stock and the BSPB will liaise with the relevant rights holder(s). In general, royalties will be payable on any sale of any of the seed but there will be a range of options that can be agreed as to who can hold the licence under which the seed will be sold and who will therefore be liable for the payment of the royalties to BSPB on it.

There have been previous instances in which the liquidator or trustee has been licensed by the BSPB to sell the seed and pay the royalty, and others in which seed and crops have been transferred or sold to other merchants who have taken on the obligation to pay the royalty.

# **Food and drink**

## **34.44 Food and drink - General**

For the purposes of food safety legislation, food is defined as 'any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans'<sup>1</sup>. Such definition would include drink and items not intended to be swallowed, such as chewing gum.

Food does not include animal feed, live animals (except those prepared for consumption – for example, oysters), plants prior to harvesting, medicines, cosmetics or tobacco or tobacco products.

1. EC General Food Law Regulation 178/2002 article 2

## 34.45 Fresh food and drink

For the purposes of this guidance, fresh food can be taken to mean food normally kept in fridges or freezers, fresh vegetables and/or fruit and food with a 'use-by' date.

## 34.46 Fresh food and drink (including frozen food) not to be sold or given away

The supply of food for human consumption is regulated by a number of pieces of legislation<sup>1, 2, 3, 4, 5</sup>. Of particular note is that it is an offence to sell food that does not comply with food safety requirements<sup>6</sup>. As it will be impossible for the official receiver to be satisfied that the fresh food stock of an insolvent business is safe for human consumption (for example, a freezer or fridge may have been turned off and turned back on again), such stock should be disposed of and not sold.

The legislation provides that the supply of food other than by sale is also to be deemed a sale of food<sup>7</sup>. In this case, it will not be possible for the official receiver to arrange for food to be given away.

1. Food Safety Act 1990

2. EC General Food Law Regulation 178/2002 article 2

3. General Food Regulations 2004

4. Food Safety and Hygiene (England) Regulations 2013

5. Food Safety and Hygiene (Wales) Regulations 2013

6. Food Safety Act 1990 section 8

7. Food Safety Act 1990 section (2)(1)(a)

## 34.47 Disposal of fresh food and drink

It should be possible for food to be disposed of through the normal local authority refuse collection system used by the business.

If it is not possible to dispose of the food waste through the normal refuse disposal system, the food should be disclaimed with the notice of disclaimer being served on the local environmental health department and the landlord. A disclaimer should not

be issued if the official receiver is retaining the business premises as an asset of the estate and, instead, a contractor should be employed to dispose of the waste. It is likely that the local environmental health officer will be able to suggest a suitable contractor.

## **34.48 Food and drink – grocery items**

Food that is not fresh (as in food that is not intended to be sold as fresh, such as tinned, food in jars or packaged food – generally, food with a ‘best-before’, rather than a ‘use-by’ date) is unlikely to have become unfit for consumption due to the less demanding storage requirements on that type of food. Assuming that the ‘best-before’ date has not passed and there is no obvious reason to suspect that the food has become in any way unfit (such as water contamination of broken/damaged packaging), it should be possible for the official receiver to arrange for their normal agents to remove and sell the food stock.

## **34.49 Alcoholic drinks**

A stock of alcoholic drinks (beer, lager, wines, spirits, etc.) held as stock by a public house (often known as ‘wet stock’) is likely to be held on a sale or return basis and will not be an asset in the insolvent estate.

If the drinks are not held on a sale or return basis, the official receiver may instruct their normal agents to sell the drinks provided they are licensed to do so<sup>1</sup>. If they are not so licensed, they may be able to suggest an agent who is.

1. Licensing Act 2003

## **Pet animals as stock**

### **34.50 Sale of pet animals by agents**

It is possible that the official receiver’s normal agents will be able to assist in the sale of pet animals. If not, they may be able to suggest a specialist agent.

Before formally instructing agents, the official receiver should ask the agent for an estimate of the value of the animals and their likely fees in dealing with the sale. Only if there is likely to be a realisable value should the official receiver proceed with the instruction. In reaching this decision, the official receiver will need to take into account the costs of housing and feeding the animals in the period leading up to the sale. In this, it is accepted that the official receiver may need to outlay monies to pay for an inspection of the animals by the agent.

The official receiver should ensure that their agent sells the animals only to a pet shop, dealer or breeder that has been licensed by the local authority<sup>1, 2, 3</sup>.

1. The Pet Animals Act 1951

2. Animal Welfare Act 2006

3. Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018

## **34.51 Pet animals with no realisable value**

Where the official receiver is advised that the animals have no realisable value they should be offered to a reputable animal charity such as the RSPCA, Blue Cross, PDSA, Dogs Trust. There may also be local or specialist sanctuaries that would be prepared to take on the animals. Alternatively, another local pet shop may be prepared to take the animals.

If it is not possible to dispose of the animals in this way, it is possible that the official receiver will have to arrange for them to be destroyed at the expense of the estate, as a disclaimer is unlikely to be appropriate.

## **34.52 Disclaimer of pet animals not appropriate**

Due to the requirements of the animal welfare legislation to, amongst other things, house, protect and feed animals appropriately<sup>1</sup>, it is extremely unlikely to ever be appropriate to disclaim an interest in pet animals.

A disclaimer should however be issued if requested by an animal welfare organisation, where it might be required to allow them to take possession of the animals.

1. Animal Welfare Act 2006

## **34.53 Animal stock other than pets or farm livestock**

The official receiver may encounter stock animals other than pets or farm livestock. Examples may be breeders of race horses or greyhounds or breeders of animals for the food of other animals.

Without going into detail here, the general principles as to how these animals should be dealt with would be the same as for pet animals – that is, they should be sold if they have a value and, if not, they should be re-homed or destroyed.

# Flowers

## 34.54 – Flowers - General

There are no special regulations regarding the sale of flowers, but the shelf life of flowers is, naturally, limited. Unless the official receiver's agents can suggest an avenue by which the flowers may be disposed of in bulk (perhaps, to a wholesaler), the official receiver may consider selling the flowers to another florist in the area or, even, attempting to sell the flowers to members of the public passing the business premises.

In dealing with flowers, the official receiver should attempt to establish if any of the flowers are special orders (for funerals or weddings, etc.) that have not yet been paid for and, if so, attempt to contact the customer to arrange for payment and collection. Flowers ordered to be made up into wreathes or bouquets, etc. may be considered to be work in progress and the advice below may be followed.

## 34.55 Disposal of flowers

It should be possible for flowers to be disposed of through the normal local authority refuse collection system used by the business.

If it is not possible to dispose of the flowers through the normal refuse disposal system, the flowers should be disclaimed with the notice of disclaimer being served on the local environmental health department and the landlord. A disclaimer should not be issued if the official receiver is retaining the business premises as an asset of the estate and, instead, a contractor should be employed to dispose of the flowers. It is likely that the local environmental health officer will be able to suggest a suitable contractor.

# Firearms and other offensive weapons

## 34.56 Firearms as stock

This paragraph deals only with firearms held as stock. Firearms held personally by the bankrupt are dealt with in chapter 25.

Advice and information on dealing with firearms (including illegally held firearms) when first encountered by the official receiver is contained in chapter 11).



It is an offence to be in possession of a firearm without the necessary certificate<sup>1</sup> and the dealing in firearms is controlled by the local police force<sup>2</sup>. Apart from the obligation to hold a certificate, there are a number of other regulations surrounding the transfer of firearms, particularly as regards record keeping<sup>3</sup> and the official receiver should ensure that any agents appointed to sell the firearms are registered [firearms dealers](#)

If there is any doubt when dealing with a firearm, the advice of the local police firearms liaison officer should be sought.

1. Firearms Act 1968 section 1

2. Firearms Act 1968 section 33

3. Firearms Act 1968 section 40

## 34.57 Offensive weapons as stock

There are restrictions on the sale of certain items that are, or may be used as, offensive weapons, such as knives, swords or crossbows<sup>1,2</sup>. Such restrictions generally relate to a minimum age of the buyer of the item.

Some items (such as flick-knives or similar) are banned for sale entirely<sup>3</sup>.

The official receiver's agents are likely to be aware of the various restrictions but, where there is doubt, this should be confirmed.

1. Criminal Justice Act 1988 section 141A

2. Crossbows Act 1987

3. Restriction of Offensive Weapons Act 1959 section 1

# Fuel

## 34.58 Fuel (petrol/diesel) as stock - General

Around two-thirds of the 9,500 petrol stations in the UK are independent of either the major fuel companies or the major supermarkets. Where the official receiver is dealing with an insolvency order against such a business, the advice in chapter 11 should be followed, with the official receiver's agents being instructed to liaise with the supplier over the return of the fuel and any refund for the fuel returned (a typical station's tank of fuel being capable of holding around £30,000 worth of fuel at cost price).

## **34.59 Fuel where premises rented, etc.**

Where the station is licensed, rented, etc. to the insolvent by a third party (probably, one of the major oil companies), the official receiver (or their agents) should liaise with the landlord over the return of the fuel or the site – ensuring that payment is received where the fuel has not been supplied on a sale or return basis. The official receiver should seek guidance from the fuel supplier in this regard, as it may be better that the fuel is sold in-situ, for safety reasons.

## **34.60 Heating fuel as stock**

The official receiver may encounter a supplier of heating oil and it is likely that the original supplier of the fuel will be the best avenue to realise the fuel.

## **34.61 Fuel not to be sold to end users/consumers**

Due to the various regulations regarding the sale of fuel (relating to health and safety, licensing, consumer protection and excise<sup>1, 2, 3, 4, 5, 6</sup>) the official receiver should not attempt to sell fuel to consumers/end users.

1. Control of Substances Hazardous to Health Regulations 2002

2. Dangerous Substances and Explosive Atmospheres Regulations 2002

3. Petroleum (Consolidation) Regulations 2014

4. Motor Fuel (Composition and Content) Regulations 1999

5. Finance Act 1999

6. Finance Act 2008

## **Motor vehicles, collectibles, art and scrap metal**

### **34.62 Motor vehicles as stock**

A stock of motor vehicles may be sold by the official receiver's normal agents, taking into account the general principles outlined in chapter 27.

## 34.63 Collectibles, memorabilia, antiques and works of art

When dealing with a stock of collectibles (such as comics, toys, etc.), antiques or works of art, the official receiver should consider whether the employment of a specialist agent may result in a better return to creditors than using their normal agents.

So far as concerns items of this type (particularly works of art), the official receiver should ensure that the insolvent is not merely acting as an agent for the owner of the items(s) in the shop premises.

The following trade associations may be able to assist in locating a specialist agent:

- [The British Antique Dealers Association](#)
- [London and Provincial Antiques Dealers Association](#)
- [The Antiquarian Booksellers Association](#)
- [The Society of Fine Art Auctioneer and Valuers](#)
- [Collectors Club of Great Britain](#)

## 34.64 Scrap metal

Scrap metal is a hazardous product and land that has been used for storing or processing scrap metal may be contaminated land. Any area used for storing scrap cars is considered contaminated, as battery and engine fluids may be present. Only a [licensed scrap metal dealer](#) can deal with the scrap metal<sup>1</sup> so specialist agents may be required for the disposal of any stock

1. Scrap Metal Dealers Act 2013

## Realising work in progress

### 34.65 Work in progress – general

Work in progress may be described as products and services in intermediate stages of completion. It is possible that work in progress could be realised without any further preparation, or it may be that extra costs have to be incurred before the work is saleable – or saleable at a greater sale price.

The following guidance is to assist official receiver in deciding whether to complete work in progress but, in most cases of this nature, the appointment of an insolvency

practitioner should be sought who will be able to obtain the necessary skills and expertise required to complete the work.

## **34.66 Retention of title on goods used/to be used in manufacturing process**

It is possible that raw materials supplied to the insolvent may be subject to a valid retention of title clause even after they have entered into a manufacturing process..

The existence of a valid retention of title clause will, obviously, be relevant to the official receiver's decision, as liquidator/trustee to complete work in progress.

## **34.67 Deciding if work in progress should be completed prior to realisation**

When considering whether additional expenditure should be incurred to complete work in progress, the official receiver, as liquidator/trustee, should take into account the costs of completing the work (taking into account costs such as labour, materials, rent, insurances and utilities) and the likely value of the goods in completed form against the value of the raw materials in unprocessed (or part processed form). It is likely that specialist agents will need to be employed to advise the official receiver – a quantity surveyor, for example, in the case of uncompleted building work.

Where there is any doubt that the completion of the work will result in a net benefit to the estate (or an increased benefit to the estate, as the case may be), the work in progress should be sold without further processing or abandoned/disposed of as appropriate.

## **34.68 Matters to be considered before completing work in progress**

The following matters, in particular, should be considered when deciding whether to complete work in progress:

- the availability of raw materials. The raw materials in the insolvent's possession may be subject to third-party claims, or of poor quality. Replacement materials may be costly
- access to the insolvent's premises and equipment may not be available
- the workforce may be unwilling, unable or unavailable to complete the work in progress. Skilled replacements may be costly and/or difficult to employ

## **34.69 Work in progress that should not be completed**

In certain cases, it will not be appropriate to complete the work in progress, even if there may be a financial benefit to the estate in doing so. These include:

- contract catering, or the preparation of buffets, etc. In such circumstances any uncompleted contracts should not be fulfilled as it will not be possible for the official receiver to be certain that the food has been stored properly or prepared hygienically. An insolvency practitioner may be prepared to take the case as liquidator or trustee to complete the work if the contract is particularly lucrative
- where the premises are unsafe, or the equipment dangerous
- where the insolvent was processing illegal goods – such as counterfeit clothes

## **34.70 Contract with a penalty clause**

Where a contract entered into by an insolvent contains a penalty clause against non-completion, steps should be taken to disclaim the contract unless it is decided that the work is worth completing.

## **34.71 Employing a special manager**

Where a business is likely to be sold as a going concern, or to protect work in progress in the period leading to the appointment of an insolvency practitioner as liquidator or trustee, it may be necessary to apply to court for the appointment of a special manager. This is a costly and expensive procedure which should only be considered if the work in progress is of a high value.

## **34.72 Accountant client files – work in progress**

Where the accountant has commenced working as instructed by a client and the work has not been completed, the official receiver should attempt to establish any amount due by the client, to the insolvent, in respect of the work undertaken and the book debt contractor should be contacted to deal with the collection of the debt. The official receiver should retain the file until the amount due has been settled. Once any outstanding bill has been settled the file should either be returned to the client or forwarded on request of the client to another accountant. Any papers belonging to the accountant should first be removed from the file.

## **34.73 Barrister's work in progress**

If a barrister has commenced working on a matter on which they have been instructed it will be necessary to establish the value of the work completed up to the date of the bankruptcy order. The barrister's clerk usually deals with the settlement of client bills and should be able to assist the official receiver in establishing any amounts due, though the fees may not be due to the estate<sup>1</sup>. Any money recovered from fees in relation to work completed prior to the bankruptcy will vest in the bankruptcy estate and the book debt contractor should be instructed to deal with the collection of the debt<sup>1</sup>. As it is generally expensive to instruct another barrister to take on a case it is likely that the barrister will seek to continue to act for the client post bankruptcy and in such circumstances the file should remain with the barrister.

1. *Gwinnutt v George* [2018] EWHC 2169 (Ch)

## **34.74 Solicitor's client files containing work in progress**

Where a file contains work in progress by the solicitor the official receiver needs to balance the need to return client files whilst seeking to preserve the estate by demanding settlement of overdue accounts. The file should remain with the official receiver as trustee until such time as any outstanding bill in respect of the work undertaken by the solicitor has been paid.

The accounting records of the solicitor should be examined to establish amounts due by clients and the book debt contractor should be instructed to deal with the collection of any outstanding fees.

The official receiver may encounter difficulties where the bankrupt's accounting records are incomplete and the amounts due for work undertaken by the solicitor are not known. Due to client confidentiality the official receiver should not peruse the file, without the client's consent, other than to establish whether it contains a time costs sheet to assist in the calculation of outstanding fees. When the bill for outstanding fees has been settled the file can then be returned to the client or sent on to another solicitor at the client's request to complete the work.

The Solicitor's Regulation Authority may be able to assist the official receiver, where there has been an intervention.

## **34.75 Growing crops as work in progress**

Where the official receiver is dealing with an insolvent farming business, it is highly unlikely that they will have the resources or expertise on hand to care for and harvest any growing crops.

In these circumstances, the early appointment of an insolvency practitioner as liquidator or trustee should be sought.

Guidance on dealing with a stock of grain or seed, or livestock is given in above.

## **Realising plant and machinery, fixtures and fittings and goods on hire**

### **34.76 – Plant and machinery - General**

Generally speaking, plant and machinery is an asset that is used by a business for the purpose of carrying on the business and is not stock in trade, the business premises or part of the business premises<sup>1</sup>. The difference between plant and machinery is that generally machinery will have moving working parts, and plant will not (though computers and similar electronic devices are considered to be machinery, despite have no moving parts). The working parts of a machine are also considered to be machinery.

A motor vehicle is ‘machinery’, but advice on dealing with motor vehicles is in chapter 27.

The last prepared accounts of the insolvent may assist the official receiver in identifying plant and machinery.

1. Wimpy International v Warland, Associated Restaurants Ltd v Warland [1989] STC 273

### **34.77 Plant and machinery or not?**

Much of the case law regarding whether something is plant (machinery is easier to define) or not<sup>1, 2, 3</sup> concerns tax legislation as there are capital allowances for items of plant and machinery. By way of an example, it has been held that items of a purely decorative nature can be considered to be plant if they are a fundamental part of the business (such as in a pub or hotel) – otherwise, the items would be considered part of the premises (though not necessarily a fixture)<sup>4</sup>.

In this regard, the distinction between something being plant and not being plant (being part of the business premises) is unlikely to be important to the official receiver as liquidator or trustee, and of more importance (in, for example, deciding if something is an asset of the insolvent or a third-party) is likely to be the case law relating to whether something has become a fixture, or not.

1. Yarmouth v France (1887) LR 19 QBD 647

2. *Benson (Inspector of Taxes) v Yard Arm Club Ltd* [1979] 1 WLR 347

3. *J Lyons & Co Ltd v Attorney General* [1944] Ch 281

4. *Inland Revenue Commissioners v Scottish and Newcastle Breweries Ltd* [1982] 1 WLR 322

## 34.78 Fixtures – General

Generally, a fixture is considered to be an item which has become so attached to the land or property to form, in law, part of the land or property. For the purpose of dealing with an insolvent estate it may be necessary for the official receiver to identify which of the insolvent's chattels or trade equipment constitute fixtures and which do not – as an item that has become a fixture may be property of the landlord or mortgagee.

The last prepared accounts of the insolvent may assist the official receiver in identifying fixtures.

## 34.79 Is an item a fixture?

Generally, something brought onto land will fall into one of three categories<sup>1</sup>:

- a chattel
- a fixture,
- something that becomes part of the land itself (such as bricks used to make a building)

Clearly, something that has become part of the land itself will belong to the owner of the land (the landlord or a mortgagee in possession, for example), and this would apply similarly to items which constitute fixtures. Whether an item is a fixture depends on the purpose of its attachment (or, annexation) to the land (or, more commonly, building/property), and whether it could be removed without doing irreparable damage to the property/land<sup>2</sup>. In respect of a leased property, the terms of the lease may give details regarding what is to be considered a fixture, and what is not.

1. *Elitestone Ltd v Morris and another* [1997] 1 WLR 687

2. *Botham v TSB Bank plc* (1997) 73 P&CR D1

## 34.80 Fixtures and mortgages

Where there is a mortgage the general principle is that, subject to any contrary intention, a mortgage of land comprises – without any express provision referring to them<sup>1</sup> – all fixtures which at the date of the execution of the mortgage were attached to the land and any that are subsequently annexed to the land<sup>2, 3, 4, 5</sup>.



1. *Simmons v Midford* [1969] 2 Ch 415
2. *Ellis v Glover and Hobson Ltd* [1908] 1 KB 388 CA
3. Law of Property Act 1925 section 62(1)
4. Law of Property Act 195 section 205(1)
5. *Botham v TSB Bank plc* (1997) 73 P&CR D1

## 34.81 Tenant's fixtures

Generally, items intended to be permanently fixed to the fabric of the building (such as a bathroom suite) are the property of the lessor, or the mortgagee if they are in possession, unless expressly excluded. Important exceptions to this rule have however arisen and fixtures which can be removed under these exceptions are known as 'tenant's fixtures'.

Under the principles relating to tenant's fixtures, a tenant may remove items that have been affixed for ornament or for the purposes of carrying on business, so long as there is no contrary provision in the lease, and they are capable of removal without irreparable damage to the land or property<sup>1, 2, 3, 4</sup>.

So far as deciding whether something is a tenant's fixture, or not, each case is likely to turn on its own merits and it is not possible to give blanket guidance, as each circumstance is likely to be different. In cases where there is a dispute of a material nature regarding the definition of fixtures the advice of the Senior Official Receiver's Office can be sought.

1. *Leschalles v Woolf* [1908] 1 Ch 641
2. *Bishop v Elliott* (1855) 156 ER 766
3. *Climie v Wood* (1869) LR 4 Exch 328
4. *Spyer v Phillipson* [1931] 2 Ch 183

## 34.82 Realising fixtures

Assuming that the fixtures are tenants' fixtures and are not exempt property, the official receiver's usual agents should be able to sell them. Alternatively, they may be able to suggest a specialist agent.

Any sale price agreed should, of course, take into account the need to remove the items. In this respect, it is likely to be more appropriate that the items are sold in-situ – perhaps to the landlord or a subsequent tenant, or disclaimed, as appropriate.

## 34.83 Goods on hire

Where the insolvent has hired property to others, details of the whereabouts of all the property, its value and the conditions of the hire should be obtained along with the contact details of the third party. Where the goods are of sufficient value to merit sale, they should be dealt with in the usual way, instructing agents if appropriate. If it is necessary to obtain insurance, the nature and whereabouts of the goods should be notified to the insurers and it should be made clear that they are not within the official receiver's control. This may affect the insurance premium payable and the likelihood of obtaining cover.

It may be possible to effect a sale of the goods to the hirer, though in this case the official receiver or their agents should attempt to recover any outstanding hire charges as part of the sale agreement if possible.

Alternatively, a competitor in the field might be willing to purchase the property and the benefit of the hire contract.

If the equipment cannot be dealt with by way of sale, it can be disclaimed in situ.