



Crime and Courts Bill [HL] - reform of bailiffs

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Enforcement action is necessary when a debtor fails to pay a debt or negotiate a reasonable instalment payment regime with the creditor. There are various debt enforcement methods, including instructing bailiffs to collect payment. A bailiff will collect payment of a proven debt by seizing the debtor's goods and selling them at auction; using the sale proceeds to settle the debt and associated costs. This type of enforcement action is used to recover both criminal and civil debts.

It is generally recognised that the current law on bailiff debt enforcement by the seizure and sale of goods is complex, unclear and confusing. It is contained in numerous statutes, secondary legislation and common law and its language is archaic. This lack of clarity can result in some bailiffs misrepresenting their legal authority. The issue of aggressive bailiff action and the need to protect vulnerable people in society is frequently raised. This has led to a number of significant Government initiatives. In particular, Part 3 of the *Tribunals Courts and Enforcement Act 2007* (TCEA 2007) provides for a new procedure, 'taking control of goods', to replace existing bailiff powers. However, Part 3 is not yet in force.

A consultation paper, '[Transforming bailiff action](#)', was published on 17 February 2012. Amongst the issues addressed in this consultation were Government proposals to amend Part 3 of the TCEA 2007 in order to rectify some inadequacies. It is now the Government's intention to use the *Crime and Courts Bill* [HL], which is currently progressing through Parliament, to give effect to these amendments. Once these changes are made, the Government will be able to bring Part 3 into force and with it a new framework for the regulation of bailiffs.

This note provides a summary of the problems identified with the current regulatory system for bailiffs and the background to bailiff reform. It also provides an outline of the Government's proposed reforms as set out in its consultation paper, '[Transforming bailiff action](#)'. Importantly, it considers the new bailiff provisions embodied in 'enforcement by taking control of goods' in the *Crime and Courts Bill*, which seek to amend Part 3 and Schedule 12 of the TCEA 2007.

A second Library standard note provides an outline of the '[Current regulation of bailiffs](#)', SN/HA/4103.

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1 Introduction

The term ‘bailiffs’ and ‘enforcement agents’ are interchangeable. Although the public generally use the term ‘bailiff’, in some legislation and Government documents, the term ‘enforcement agent’ is used to mean all types of bailiffs and enforcement officers.

Enforcement action is necessary when a debtor fails to pay a debt or negotiate a reasonable instalment payment regime with the creditor. There are various debt enforcement methods, including: an attachment of earnings order¹; a charging order on the debtor’s property²; or a third party debt order.³ Alternatively, bailiffs may be instructed to collect payment. A bailiff must be legally authorised to collect the debt on behalf of the creditor. This authority is normally known as a ‘warrant’ (or ‘warrant of execution’) if the bailiff is recovering money owed under a County Court judgment. Bailiffs used by the Magistrates Court to collect unpaid council tax, outstanding fines, compensation or unpaid maintenance will be acting on either a ‘distress warrant’ or a ‘liability order’ issued by the Magistrates Court. A bailiff will collect payment of a proven debt by seizing the debtor’s goods and selling them at auction; using the sale proceeds to settle the debt and associated costs. This type of enforcement action is used to recover both criminal and civil debts.

¹ If granted by the court, an attachment of earnings order allows for monies to be deducted directly from the debtor’s salary by an employer, who then forwards the money to the court.

² With a charging order the debt is paid on the eventual sale of the debtor’s property. In most cases, a charging order will be obtained against a debtor’s interest in land (freehold or leasehold) but it could also be against stocks or shares owned by the debtor.

³ A third party debt order is usually made to stop the judgment debtor taking money out of a bank or building society account. The money owed to the judgment creditor is then paid to them from that account.

2 Problems with the current regulatory system

It is generally recognised that the current law on debt enforcement by the seizure and sale of goods is complex, unclear and confusing. It is contained in numerous statutes, secondary legislation and common law and its language is archaic.⁴

An obvious complication is that there are different types of bailiffs and enforcement officers depending on the type of debt being recovered. For instance, enforcement by way of execution against goods (seizure and sale of debtor's goods to recover judgment debt) is delivered by a mixture of High Court Enforcement Officers (HCEOs) (in respect of High Court writs of execution) and directly employed staff of HM Courts and Tribunals Service (in respect of County Court warrants of execution). According to the Government, this confusion can result in bailiffs and enforcement officers misrepresenting their legal authority.⁵

The current regulatory structure for bailiffs is fragmented.⁶ Whilst some bailiffs are quite strictly regulated there are others that are only subject to informal regulation through trade associations. According to the Government, there is a strong argument for a single regulatory structure, which would raise standards of professionalism within the industry and give the public greater confidence in it.⁷

Another criticism of the current system of regulation is that there are no set competence requirements for bailiffs. This is a significant gap. Some businesses have introduced their own training regime to ensure that their bailiffs are aware of their responsibilities – but this is not a widespread practice.

One of the most common complaints about bailiffs is the fees they charge. The current law and costs regime for enforcement agents is complex.⁸ Each enforcement power brings with it a different costs structure. There are some legislative provisions (such as those relating to road traffic offences), other provisions exist only within contractual arrangements drawn up between the enforcement agent company and its clients. It is the Government's view that the costs structures lack clarity:

The costs structures [...] are difficult to interpret in some instances and do not provide adequate remuneration for all aspects of enforcement work. These factors combine to make the current charging process prone to abuse.⁹

Whilst the Government accepts that bailiff action by its very nature is intrusive, anecdotal evidence would suggest that some bailiffs use unacceptable methods, including:

- Misrepresenting their legal authority - such as threatening the use of force; inappropriately entering a property; threatening to seize goods they are not entitled to; or seizing goods with a value disproportionate to the debt.
- Charging excessive fees - such as charging for 'phantom' visits or charging for activities not carried out.

⁴ Ministry of Justice, 'Transforming bailiff action – How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections', 'consultation paper CP 5/2012, 17 February 2012, <http://www.justice.gov.uk/downloads/consultations/transforming-bailiff-action-consultation.pdf>

⁵ Ibid

⁶ Ministry of Justice, 'Transforming bailiff action – How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections', 'consultation paper CP 5/2012, 17 February 2012,[Online] (accessed 14 February 2013)

⁷ Ibid

⁸ Ibid

⁹ Ibid, paragraph 26, Page 10

- Using threatening behaviour – such as the unnecessary use of force; pushing someone aside to get in the door; or threatening imprisonment.¹⁰

3 Background to bailiff reform

The issue of aggressive bailiff action and the need to protect vulnerable people in society has been frequently raised. This has led to the implementation of a number of Government measures, all of which are outlined below.

3.1 Measures implemented by the previous Government

Part 3 of the TCEA 2007 – not yet in force

Schedule 12 to Part 3 of the *Tribunals Courts and Enforcement Act 2007* (TCEA 2007) provides for a new procedure, '*taking control of goods*', to replace existing bailiff powers. This procedure would govern, among other things:

- when and how a bailiff can enter somebody's premises;
- what goods they can and cannot seize and sell; and
- what fees they can charge

This procedure would also be underpinned by independent regulation of the enforcement industry. In effect, Part 3 would codify the current disparate legislation and common law in relation to bailiff activities and provide clarity for debtors and certainty for creditors. A written ministerial statement to this effect was placed in the House on 17 March 2009:

Part 3 of the 2007 Act makes a number of important reforms to bailiff law which will remove archaic and complex legislation. The majority of these reforms received cross-party support during its passage. The changes will help debtors, creditors, bailiffs and the police understand what their rights and responsibilities are when debts are enforced. Provisions under the Act will clarify the existing law and introduce a comprehensive code governing, among other things:

- when and how a bailiff can enter somebody's premises;
- what goods they can and cannot seize and sell; and
- what fees they can charge

This will provide clarity for debtors and certainty for creditors and be underpinned by independent regulation of the enforcement industry. Regulation will not only improve the efficiency and effectiveness of both civil and criminal enforcement but it will also offer protection to vulnerable debtors, who genuinely cannot pay, and reduce the scope for abuse of the system. A formalised structure to regulate the industry would raise standards of professionalism within the industry and give the public greater confidence in it.¹¹

However, Part 3 is not yet in force (see below).

Certificated bailiff register

On 17 March 2009, the previous Government implemented the following measures in advance of full independent regulation of bailiffs:

¹⁰ *Ibid*

¹¹ HC Deb 17 March 2009 c 46-47WS

- an online [certificated bailiff register](#) allowing debtors to check bailiffs' certification status;
- an extension to the certification process to ensure that all bailiffs provide a Criminal Records Bureau check with their application; and
- requiring minimum training requirements and skills as part of the certification process

3.2 Measures implemented by the Government

National Standards for Enforcement Agents

The Coalition Agreement included a commitment to provide more protection against aggressive bailiffs while at the same time making sure debts could still be collected fairly and proportionately. In the Mid-Term Review, the Government reaffirmed this commitment.

On 13 January 2012, the Government updated the voluntary '[National Standards for Enforcement Agents](#)'.¹² According to the Ministry of Justice, this code sets out the minimum standards of behaviour expected by bailiffs, in order to protect people from rogue bailiffs who use unsound, unsafe or unfair methods:

Additions to the National Standards tackle intimidating and threatening behaviour, prevent bailiffs from misrepresenting their powers, and reinforce rules about how firms should resolve complaints about rogue agents. Councils and other authorities will adopt the standards which will be used to set rules for any bailiffs working for them.¹³

Consultation – 'Transforming bailiff action'

On 17 February 2012, Jonathan Djanogly, then Justice Minister, announced the publication of a consultation paper, '[Transforming bailiff action](#)':

Too many people have experienced intrusive, expensive and stressful bailiff action and more often than not the public do not hold bailiffs in high regard, despite the fact most bailiffs carry out their work professionally.

Last month we announced the first stage of reforms with updated national standards and we are now unveiling plans for legally-binding changes that will clamp down on bad practices.

We want to restore balance to the system, improve clarity for both debtors and creditors, strengthen protection for vulnerable people and ensure that individuals, business and government are able to collect the debts they are owed – but in a way that is fair and regulated by law.¹⁴

It is the Government's view that Part 3 of the TCEA 2007 contains some inadequacies which need to be rectified before it can be brought into force. The proposed amendments were amongst the issues addressed in this consultation. The consultation period closed on 14 May 2012.

On 25 January 2013, Helen Grant, the Parliamentary Under-Secretary of State for Justice made a Written Ministerial Statement in which she announced the publication of the [Government's response](#) to the Transforming Bailiff Action consultation paper. She said:

¹² Ministry of Justice press notice, [Bailiff rules tightened in first step of reform](#), 13 January 2012, [online] (accessed 13 February 2013)

¹³ Ministry of Justice press notice, [Bailiff rules tightened in first step of reform](#), 13 January 2012

¹⁴ Ministry of Justice press notice, [Government announces legal regulation of bailiffs](#), 17 February 2012, [online] (accessed 13 February 2013)

Bailiffs are necessary for both the economy and the justice system, carrying out a difficult role in challenging circumstances. While the majority operate in a responsible and proportionate manner, a significant few use unsafe, unsound and unfair methods of collection, casting a shadow over the reputations of respectable bailiffs. The Government remains clear that subjecting debtors – who are already in distressing situations – to such intimidating behaviour is completely unacceptable. At the same time we are also clear that legitimate creditors should be able to collect the money that is owed to them in a fair and responsible manner. The measures set out in the Government’s consultation response strike this balance between the rights of debtors and the rights of creditors.

We will sweep away the antiquated and confusing laws which can thwart effective and proportionate enforcement, introducing in their place new laws which are fit for today’s society. We will provide clarity over the powers of bailiffs and introduce a clear, fair, charging regime which will tackle the root causes of aggressive bailiff action.

Bailiffs will be banned from entering debtors homes late at night without first seeking permission from the court or when only children are present and new safeguards will prevent them from using force against people who owe money. The enforcement process and procedure will be defined clearly in legislation setting out how bailiffs can enter a property, what goods can and cannot be seized for sale, and crucially, what costs a bailiff can charge. These changes will be set against effective and targeted regulation which will ensure that bailiffs are fit to carry out this work by introducing a mandatory training scheme, competence requirements and certification for all bailiffs.

These much needed reforms will ensure that individuals, businesses and bailiffs will all benefit from our changes and we will work to implement these swiftly.¹⁵

The [Government’s response](#) sets out a number of proposed amendments to Part 3 (and Schedules 12 and 13) of the TCEA 2007.¹⁶ It is now the Government’s intention to use the *Crime and Courts Bill*, currently progressing through Parliament, to give effect to these amendments. Specifically, new bailiff provisions are contained in new clause 23 of the Bill, *Enforcement by taking control of goods*. Once these changes are made, the Government will be able to bring Part 3 into force and with it a new framework for the regulation of bailiffs.¹⁷

4 *Crime and Courts Bill - ‘Enforcement by taking control of goods’*

4.1 House of Lords amendment

As originally drafted, bailiff reform was not part of the *Crime and Courts Bill* [HL]. However, an amendment on bailiffs moved by Baroness Meacher at Third Reading was agreed on division (then clause 26 - *Enforcement Services*).¹⁸

In moving this amendment, Baroness Meacher said her objective was to provide protection for vulnerable people (such as the disabled or mentally ill, or mothers with young children or the elderly) from aggressive bailiffs. The amendment would provide complainants with

¹⁵ [HC Deb 25 January 2013 c.27-28WS](#)

¹⁶ ‘[Transforming bailiff action – How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections – The Government Response](#)’, response to Consultation CP(R) 12/2013, 25 January 2013, [online] (accessed 1 February 2013) . The Impact Assessment published alongside this consultation was also updated to take account of evidence gained during and following the consultation period.

¹⁷ Memorandum submitted by Ministry of Justice, ‘[Crime and Courts Bill: Government amendments for commons Committee Stage](#)’, 30 January 2013

¹⁸ On Report, Baroness Meacher had moved a more ambitious amendment that would have introduced independent regulation, but this was not pressed

access to the Legal Ombudsman if bailiffs' internal complaints processes fail to resolve a dispute. Baroness Meacher assured the House that the Legal Ombudsman was both able and willing to take on this role.¹⁹

The amendment attracted a great deal of debate during Third Reading. For instance, Lord Lucas, who is also chair of the Enforcement Law Reform Group, argued that the bailiff industry itself wants proper regulation and a complaints system.²⁰ Lord Kirkwood argued that it was essential to have in place a competent complaints service, a proper appeals system and licences that can be withdrawn if bailiffs abuse the rules.²¹ Lord Bishop of Lichfield argued that the current system of certification of private bailiffs by County Courts fails to monitor behaviour; it is intimidating and costly for vulnerable people to bring complaints and there is no power for a court to award redress.²²

Baroness Meacher had been willing to withdraw her amendment if the Minister made a commitment that an independent appeals process would be quickly introduced to cover bailiffs.²³ In his response, Lord McNally, said that he could make no such commitment. In giving his reasons, he said that the Government was already looking to tackle problem of aggressive bailiffs and had set out its proposals in the '*Transforming Bailiff Action*' consultation paper.²⁴ He said that it was important to await the response to the consultation, as its proposed reforms have the best chance of delivering long-term success. In asking the House not to press this amendment, he acknowledged that there would be an onus on him to make rapid progress on this issue, but he declined to suggest a timescale.²⁵

Further, the Minister said that this amendment would not address the issue of aggressive bailiffs, nor would it supply debtors with an independent complaints process which would meet their needs. He argued that the *Legal Services Act* contemplates a service relationship between professionals, such as solicitors and their clients, which is not present between bailiffs and debtors. Under this amendment, debtors would not be able to complain to the Legal Ombudsman because the bailiff is not providing them with a service as required for complaints under the Act. In his view, it was neither appropriate nor sensible to try to force the regulation of bailiffs into this framework, since it was not constructed to address the circumstances in question.²⁶ This assessment was refuted by Baroness Meacher and the amendment was agreed on division.

4.2 Second Reading in the House of Commons

During the Bill's Second Reading in the Commons, there was no debate on bailiff reform. However, Yvette Cooper expressed her hope that the Government would accept the Lords amendment on the regulation of bailiffs.²⁷

The Government is of the view that the introduction of a statutory complaints regime for bailiffs is unnecessary and disproportionate. Accordingly, it sought to replace clause 26 (*Enforcement Services*) whilst the Bill was still in Committee with its own amendments to introduce bailiff reform. On 25 January 2013, Jeremy Browne tabled a tranche of Government amendments embodied under the heading '*Enforcement by taking control of goods*'.

¹⁹ HL Deb 18 December 2012 c1475

²⁰ HL Deb 18 December 2012 c1477

²¹ HL Deb 18 December 2012 c1479

²² HL Deb 18 December 2012 c 1480

²³ HL Deb 18 December 2012 c1477

²⁴ Ministry of Justice, '*Transforming bailiff action – How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections*', 'consultation paper CP 5/2012, 17 February 2012

²⁵ HL Deb 18 December 2012 c 1484-1485

²⁶ HL Deb 18 December 2012 c 1484-1485

²⁷ HC Deb 14 February 2013 c647

The Government believes that by amending, and then implementing, Part 3 of the TCEA 2007 (and introducing the other non-legislative reforms set out in the consultation response) it will deal with the great majority of the concerns in relation to aggressive bailiffs and thus remove the case for a statutory complaints regime.²⁸ Damian Green gave the Government's position as follows:

Part 3 of the 2007 Act codifies the current disparate legislation and common law in relation to bailiff activities. However, it contains some inadequacies which need to be rectified before we can bring these provisions into force – the proposed changes were amongst the issues addressed in the consultation. As currently worded the Act provides bailiffs with the power to use force against a person, removes existing powers to use reasonable force on entry or re-entry to a property without prior specific judicial authority and creates an overly restrictive definition of abandonment. Without resolving these inadequacies, we would be introducing the opportunity for commercial debtors to avoid enforcement action, undermining the effectiveness of the system, and may discourage bailiffs from negotiating agreements with any debtor leading to the possibility of increased aggressive behaviour.²⁹

4.3 As amended in Public Bill Committee

Clause 26 (*Enforcement Services*) as the Bill went into committee was deleted and replaced by the Government's proposed new clause 23, *Enforcement by taking control of goods*. Clause 23 seeks to amend Part 3 of the TCEA 2007 by introducing the following provisions:

- Subsection (3) inserts a new paragraph 18A into Schedule 12. This creates a statutory power to use reasonable force on entry to commercial premises to take control of goods for the enforcement of debts under a High Court or County Court judgment.
- Subsection (4) inserts a new paragraph 19A into Schedule 12. This creates a statutory power to use reasonable force on re-entry to all premises where the enforcement agent has already taken control of the debtor's goods (i.e. where a controlled goods agreement has already been entered into) in order to inspect the controlled goods or to remove them for storage or sale.
- Subsection (5) repeals the provisions empowering regulations to enable the use of force against the person.
- subsections (6) and (7) repeal the two provisions which create the possibility that the definition of "abandonment" of goods might lead – contrary to the common law position and the policy intention - to controlled goods unsold at auction being deemed to be abandoned and no longer subject to control.

Importantly, the amendments to Schedule 12 include the creation of two new delegated powers to be used by the Lord Chancellor. New paragraph 19A makes provision in relation to the power of an enforcement agent to re-enter premises following a controlled goods agreement (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 that the debtor has been given notice of the enforcement agent's intention to enter for this purpose.³⁰ New paragraph 19A(2) requires regulations to stipulate the following:

²⁸ Memorandum submitted by Ministry of Justice, '[Crime and Courts Bill: Government amendments for commons Committee Stage](#)', 30 January 2013

²⁹ *Ibid*

³⁰ Sub-paragraph 1(e)

- 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 notice³¹

The power to make these regulations is exercisable by the Lord Chancellor³² by statutory instrument subject to negative resolution procedure.³³

In addition, new paragraph 19A(4) of Schedule 12 to the TCEA 2007 confers on the Lord Chancellor a power to authorise the court to order that this notice period may be less than the minimum stated in the regulations, and to prescribe the circumstances in which the court may make such an order. This new power is also exercisable by the Lord Chancellor by statutory instrument subject to the negative resolution procedure.³⁴

The Bill is expected to have its Report Stage on 13 March 2013.

4.4 Compatibility with the ECHR

A [Supplementary Memorandum](#)³⁵ submitted by the Ministry of Justice on 30 January 2013 considered the compatibility of the new bailiff provisions embodied in '*Enforcement by taking control of goods*' with the following Articles of the European Convention on Human Rights (ECHR):

- Article 1 of the First Protocol (the right to peaceful enjoyment of possessions);
- Article 6 (the right to a fair hearing before an independent tribunal); and
- Article 8 (the right to respect for private and family life and the home)

The Government considers that the provisions are compatible with the Convention rights. The relevant arguments and case law taken into account by the Government in arriving at this view are outlined in detail in the Supplementary Memorandum.

³¹ The provision relating to the notice of intention to re-enter mirrors that in paragraph 7(2) of Schedule 12 to the TCEA 2007, which provides in sub-paragraph (1) that the enforcement officer may not take control of goods unless the debtor has been given notice (this requirement is mirrored by the new paragraph 19A(1)(e)), 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))

³² Section 90(1)

³³ Section 90(5)

³⁴ 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)

³⁵ [Supplementary Memorandum](#), submitted by Ministry of Justice, *Crime and Courts Bill* [HL], European Convention on Human Rights, 30 January 2013, [online], (accessed 27 February 2013)