



Bailiff Reform

What it means to you as the debtor

The publicised reform will provide additional consistency throughout debt collection carried out by Civil Enforcement Agents while at the same time making sure businesses and authorities can still collect debts fairly. Bailiff law is covered by a number of different pieces of legislation and old Case Law dating back to 1600 or earlier. However as from 6th April 2014 bailiff law will be consolidated under one main piece of legislation and various sets of regulations. No matter whether the debt is for parking or council tax, there will be uniformity across the board as to enforcement and fees.

New Legislation / Regulations:

- Tribunals, Court and Enforcement Act 2007 (In particular Schedule 12)
- The Taking Control of Goods Regulations 2013
- The Taking Control of Goods (Fees) Regulations 2014

There will also be minor amendments made to:

- The Civil Procedure Rules 1998 (Part 75 – Traffic Enforcement)
- The Enforcement of Road Traffic Debts Order 1993 & Amendment Order 2001

The following piece of legislation will be revoked in its entirety:

- The Enforcement of Road Traffic Debts (Certificated Bailiffs) Regulations 1993 – There will be a new process for certification

New Terminology:

- Warrant of execution will be called a *warrant of control*.
- The bailiff will be called an *Enforcement Agent*.
- Walk-in possession will be known as a *Controlled Goods Agreement*.
- *Controlled Goods* means goods taken control of.

- *Exempt Goods* means goods that regulations exempt by description or circumstances or both.
- *Goods* means property of any description, other than land.
- *Premises* means any place, and in particular includes a vehicle, vessel, aircraft or hovercraft; a tent or movable structure.
- *Securities* includes a bill of exchange, promissory notes, bonds, specialities and securities for money.
- *Co-Owner* means in relation to goods of the debtor a person other than the debtor who has an interest in the goods but only if the enforcement agent knows that person has an interest in the particular goods or would know, if he made reasonable enquiries.

What will the new fees be?

There is a radical departure from the previous regime – fees will be chargeable by and due to the enforcement agent and not the council.

The compliance fee is £75 – This will be payable as soon as the warrant has been passed to the bailiff company.

The enforcement fee is £235 in addition to 7.5% of the debt if the overall debt is over £1,500 – This is payable when the Enforcement Agent first attends the relevant premises.

The sale fee is £110 in addition to 7.5% of the debt if the overall debt is over £1,500 – This is payable when the first attendance has been made for the purpose of transporting goods to place of sale.

The fees are payable by the debtor, and once the fees have been triggered, the fee will be payable even if all possible activity under that stage has not been completed.

Can the Enforcement Agent charge anything else?

The Enforcement Agent can claim 'Permissible Disbursements' which are limited to:

- Storage fees following removal.
- Locksmith charges.
- Court fees on application.
- Auctioneer fees – see below.
- Exceptional costs – following an application to the Court.

No other fees or costs are permitted, e.g. credit / debit card fees.

Auctioneers fees: Where goods are sold by public auction, the enforcement agent may recover the costs related to the auction.

Where sale held on premises provided by the auctioneer:

- A sum in respect of commission not exceeding 15% of the sum realised.
- Out of pocket expenses.
- Reasonable expenses incurred in respect of advertising.

Where the sale is held on other premises:

- A sum in respect of commission (not exceeding 7.5% of the sum realised).
- Out of pocket expenses.
- Reasonable expenses incurred in respect of advertising.

Internet auction or other means:

7.5% of the sum realised.

Information to be provided by the Enforcement Agent:

The Enforcement Agent must provide to the debtor and co-owner a copy of all receipts for disbursements (except internet sale).

If the debtor pays or seeks to pay, the Enforcement Agent must provide a statement of the disbursements recoverable and a statement of fixed and percentage fees charged.

If goods are sold:

The Enforcement Agent must also provide an itemised list of goods and a statement of the sum received in relation to each item, the proceeds, the application of proceeds, the disbursements recoverable.

What are the new stages?

The first stage will be known as the ‘Compliance Stage’

- The Enforcement Agent must issue a Notice of Enforcement – This will include how and when payment may be made, a contact number for the Enforcement Agent, and a date and time by which payment must be made.
- 7 clear days must be allowed for payment.
- The Enforcement Agent has 12 months to take control of goods.

The second stage will be known as the ‘Enforcement Stage’

- This is the actual attendance by the Enforcement Agent.
- Only a person certificated in accordance with The Tribunals, Courts and Enforcement Act provisions may take control of goods.
- Only one fee per stage can be applied regardless of the number of visits required.

- A Notice of Enforcement must be issued and the debtor must be given 7 clear working days (includes Saturdays) from the date of service to pay.

Where can the Enforcement agent take control of goods?

An Enforcement Agent can take control of goods, provided they are not exempt goods anywhere in England and Wales, if located:

- On the highway – Goods must be left on the highway for 2 hours prior to removing.
- On premises that there is a power to enter.

An Enforcement Agent may enter premises to search for and take control of goods if it is a place where the debtor:

- Usually lives.
- Carries on trade or business.

When can an enforcement agent visit?

Hours of entry:

- After 6:00am or before 9:00pm

Exceptions:

- Court Orders.
- Trade or business premises – any hours where the premises are open for the conduct of trade or business.
- The Enforcement Agent has commenced taking control of goods.

What can be taken?

The Enforcement Agent may take control of the debtor's goods, which includes goods of any description, including those in which he has an interest.

Only goods to the value of the debt and costs can be taken into control. If there are insufficient goods of a lower value available, then a higher value item may be taken.

What are exempt goods?

These are detailed in Regulation 4

- Tools of the trade to an aggregate value of £1,350.
- Clothing, bedding, furniture and household equipment to satisfy basic domestic needs for the debtor and family.

- Disabled badge displayed and vehicle used for, or reasonable grounds to believe used for, carriage of a disabled person.
- Enforcement Agent may not take control of goods where debtor is a child (aged under 16).
- May not take control of goods if the only person present is a vulnerable person.
- Item in use (in hand, or operated by) and taking control likely to cause a breach of the peace.

Power of entry

- The Enforcement Agent has the power to enter relevant premises to search for and take control of goods.
- Once goods have been taken control of, there is the power to re-enter to inspect or remove.

What ways can an enforcement agent take control of goods?

- Secure the goods on the premises.
- Secure on a highway.
- Remove.
- Enter into a Controlled Goods Agreement.

What must a Controlled Goods Agreement contain?

- Must be in writing and signed by the Enforcement Agent and debtor, or authorised person 18 years or over, or by a person in apparent authority.
- Agreement must set out:
 - Name and address of the debtor.
 - Reference number & date made and by whom.
 - Detailed list of goods.
 - Terms of the arrangement.
 - Contact details.
 - A copy must be provided to the debtor and given to the person who signs it.

The Third Stage will be known as the 'Sale or Disposal Stage'

- Places a duty to sell for the best prices.
- Once goods are removed, a duty of care is placed on the Enforcement Agent.
- 7 clear days must be given to the debtor before the sale of goods and a valuation must be given to the debtor for their goods.
- The debtor must be provided with a notice prior to the sale.
- Public auction to be used unless a Court orders an alternative method.
- Sale must occur within 12 months of goods taken control, unless agreement is reached to extend.

What is 'vulnerability'?

The regulations do not prevent enforcement, however they seek to ensure that escalation does not occur unless advice has been obtained:

“A vulnerable customer is one who by virtue of their personal situation; personal circumstances, or the conduct of creditors and their agents is unable to understand, engage or participate in the recovery process.”

There is a provision to 're-wind' the process back to the Compliance stage.

Are there any transitional arrangements?

Section 90(6), Part 3, Chapter 1 paragraph 66 of the Act (TCE Act 2007):

Provisions under Schedule 12 of the above Act states prior to the commencement of the Act coming into force if goods have been executed against, or made subject to a walking possession agreement, then enforcement can continue under existing provisions.

If the enforcement agent has sent a first letter (prior to the 6th April 2014) and the debtor is in a payment arrangement, it will remain under the existing system all the time the arrangement is in place.

If the letter of intended action is issued prior to the 6th April 2014, and the debtor was in an arrangement and breaches the arrangement, then the new arrangements from the 6th April 2014 apply.

What happens with multiple cases?

- The Enforcement Agent may recover the Compliance fee **in respect of each warrant.**
- The Enforcement Agent must, unless it is impracticable to do so, take control of goods in relation to all warrants – Charges:
 - The fixed fee for each stage (Enforcement/Sale stage) may be recovered **only once.**
 - The percentage fee for each stage is applied to the total sum to be recovered.
 - The Enforcement Agent must minimise disbursements.

Other considerations:

- The Traffic Enforcement Centre & Ministry of Justice advised on the 20/2/2014 that, even if Councils documentation refers to warrants of execution or bailiff, this will not make the warrant invalid as the regulations provide the new meanings.