

**EXPLANATORY MEMORANDUM TO**  
**THE TAKING CONTROL OF GOODS REGULATIONS 2013**  
**2013 No. 1894**

1. This explanatory memorandum has been prepared by the Ministry of Justice (MoJ) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 These regulations supplement Part 3 of the Tribunals, Courts and Enforcement Act 2007 by making detailed provision for operation of the procedure which enforcement agents - who are acting under powers conferred by enactment, or under a warrant or writ of control or under instructions from a landlord of commercial premises who is owed rent arrears - must follow when taking control of goods and selling them to recover a sum of money.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 Part 3 of the Tribunals, Courts and Enforcement Act 2007 (the "TCEA 2007") replaces the existing laws relating to the seizure and sale of goods for most purposes, and the existing law of rent distress, with a unified procedure to be followed by enforcement agents when taking control of and selling goods to recover a debt. Schedule 12 of the TCEA 2007 sets out the new procedure and provides for various matters relating to the operation of the procedure to be prescribed in regulations. These regulations are made under those provisions and provide for those matters.

4.2 This is the first of three Statutory Instruments which will be laid before Parliament in 2013 under Part 3 of the TCEA 2007. The second set of regulations, to be made under paragraph 62 of Schedule 12 to the TCEA 2007, will set out what the costs of enforcement related services will be and how these will be recovered from the debtor. The third set of regulations, to be made under section 64(2) of the TCEA 2007 (which together with section 63 requires enforcement agents, other than those such as officers of Revenue and Customs who are exempt, to have a certificate to act as enforcement agent), will set out the certification process and related matters including the conditions to which certificates will be subject.

**5. Territorial Extent and Application**

5.1 This instrument extends to England and Wales.

## 6. European Convention on Human Rights

- 6.1 As the regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

## 7. Policy background

### What is being done and why

- 7.1 At present, the law and cost structure relating to enforcement by the seizure and sale of goods is complex, unclear and confusing. It is contained in a mixture of numerous statutes, secondary legislation and common law, much of the language of which is archaic. This can result in enforcement agents misrepresenting their legal authority to the detriment of debtors. The current costs structures lack clarity, 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 and as a result there have long been calls to clarify the law, to introduce a transparent fee structure and to regulate the industry.
- 7.2 In 2003, the Lord Chancellor's Department published the White Paper "*Effective Enforcement, a single piece of bailiff law and a regulatory structure for enforcement*"<sup>1</sup>. This set out proposals for the reform of civil enforcement, building on some of the recommendations made by Professor J Beatson QC in his *Independent Review of Bailiff Law*<sup>2</sup>, published in 2000. The White Paper's proposals included the introduction of a single piece of bailiff law which would, amongst other things, govern through regulations the actions taken by an enforcement agent when taking control of and selling goods to recover a debt. These proposals were carried forward into Part 3 of the TCEA 2007. The TCEA received Royal Assent in July 2007 but Part 3 has yet to be implemented.
- 7.3 This Statutory Instrument is part of a wider package of reforms which will underpin Part 3 of the TCEA 2007 (in particular Schedule 12) and deliver the Coalition's commitment to provide protection against aggressive and rogue bailiffs<sup>3</sup>, as set out in the 2010 *Programme for Government* and 2013 *Mid-Term Review*. The package of reforms is intended to respect both the rights of debtors by protecting them from the oppressive pursuit of their debt, as well as the rights of creditors by ensuring an effective enforcement system.
- 7.4 This Instrument will underpin one part of these reforms. It will supplement Schedule 12 to introduce a comprehensive code which will apply to all debt streams and will set out, amongst other things; when and how enforcement agents can enter a debtor's premises; when and how they can enter into a

---

<sup>1</sup> The Department for Constitutional Affairs, *White Paper: Effective Enforcement*, March 2003, [www.webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/enforcement/wp/index.htm](http://www.dca.gov.uk/enforcement/wp/index.htm)

<sup>2</sup> Professor J Beatson, *Independent Review of Bailiff Law*, June 2000, [www.webarchive.nationalarchives.gov.uk/.../enforcement/beatson.pdf](http://www.webarchive.nationalarchives.gov.uk/.../enforcement/beatson.pdf)

<sup>3</sup> *Programme for Government*, May 2010, [www.gov.uk/government/publications/the-coalition-documentation](http://www.gov.uk/government/publications/the-coalition-documentation) & *Mid-Term Review*, January 2013, [www.midtermreview.cabinetoffice.gov.uk](http://www.midtermreview.cabinetoffice.gov.uk)

repayment scheme with the debtor; what goods they can and cannot take; and how these can be sold should the debt remain unpaid. By setting this out clearly in legislation all interested parties will be aware of their rights and responsibilities and what would constitute a breach of these rules. The scheme includes protections for vulnerable debtors, by introducing provisions which will allow them time to seek further advice, and protections for creditors by ensuring that they are still able to enforce the collection of debt effectively.

## **Consolidation**

7.5 None: these are the first regulations to be made under these powers.

## **8. Consultation outcome**

8.1 The Ministry of Justice's "*Transforming Bailiff Action: How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections*" consultation paper was published on 17 February 2012. The paper set out and sought views on the Government's assertion that the implementation of Part 3 and Schedule 12 of the TCEA 2007 would address the majority of the root causes of aggressive bailiff action. In particular, the proposals set out the need for a clear enforcement process, one fee structure regardless of debt type and regulation through a mandatory certification system and training. The consultation paper also included an earlier draft of this Statutory Instrument on which views were invited. The consultation period ran until 14 May 2012 and received 254 responses. It was aimed at the public, the enforcement industry, creditors, the free debt advice sector and all those with an interest in civil enforcement in England and Wales. Copies of both the consultation paper and the Government's response are on the Ministry of Justice website at: <https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action>. Details of the consultation responses are set out in the analysis section of the response report.

8.2 In summary, the consultation responses re-affirmed that the current legislation, which governs the actions of enforcement via the seizure and sale of goods, can lead to abuses of the system by some enforcement agents and delivers little protection against aggressive bailiff action. There was widespread support for reform and general agreement that the implementation of Part 3 and Schedule 12 of the TCEA 2007 would be an appropriate solution.

8.3 The majority of respondents were in favour of the proposals suggested in the consultation paper and taken forward in this Statutory Instrument. The only proposals, relating to this Instrument, with which the majority of respondents disagreed were those relating to Commercial Rent Arrears Recovery (CRAR), specifically the minimum amount of rent arrears which should be owed before enforcement takes place and the period of notice which should be given before enforcement action under CRAR takes place.

8.4 The consultation document suggested that the minimum amount of commercial rent arrears should be expressed as a period of time, rather than a sum, and an amount equivalent to a period of seven days arrears was

proposed. The respondents who disagreed with this proposal were not united on an alternative period. Alternative suggestions ranged from arrears equivalent to 1 day's rent up to arrears equivalent to 14 day's rent. It was decided that the seven day rent arrears proposal would remain as the minimum amount of rent arrears required before enforcement action. Consultation responses indicated that this would most appropriately balance the rights and needs of the debtor with those of the creditor, eliminating the possibility of a landlord initiating enforcement action for a nominal amount whilst preventing large arrears from building up.

- 8.5 As to the period of notice required before enforcement under CRAR can take place, the consultation paper suggested 14 days. Again there was a mixed response with some respondents arguing that this was too short a period while others argued it was far too long. As a result it was decided that a period of seven days' notice would be required. This aligns the notice period with that of the other debt streams, which should avoid confusion. This was seen as the most balanced approach, allowing the debtor an additional opportunity to pay without introducing a lengthy delay in payment to the creditor.

## **9. Guidance**

- 9.1 The Regulations will be published by the Stationery Office and will be available on the Ministry of Justice website when they come into force in April 2014. The National Standards for Enforcement Agents will be updated to reflect the changes to the law and the information about the powers of bailiffs, available on gov.uk, will be also be updated.

## **10. Impact**

- 10.1 An Impact Assessment was carried out to consider the impact of the introduction of the full set of reforms, including those provisions introduced by this Statutory Instrument. This is available at: <https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action>.
- 10.2 The impact on business and the voluntary sector is estimated to be an annual average benefit of £5 million. The benefits of savings associated with the ongoing saving of doorstep visits, streamlining of the law, simplification of the system and fewer complaints were calculated to offset the costs such as familiarisation with the new system and ongoing certification and training costs.
- 10.3 The impact on the public sector is expected to be an increase in one-off costs around £1 million, associated with the amendment to automated processes, however there are expected to be no additional net costs are anticipated.

## **11. Regulating small business**

- 11.1 The legislation applies to small business, but is not anticipated to have a detrimental effect.

- 11.2 The Ministry of Justice has not taken any specific steps to minimise the impact of the requirements on firms employing up to 20 people.
- 11.3 The regulations do not impose any additional regulatory burdens on small firms.

## **12. Monitoring & review**

- 12.1 As set out in the Government's response to the "*Transforming Bailiff Action*" consultation, a post-implementation review will take place at one year, three years and if necessary five years after these provisions come into force.

## **13. Contact**

Louise Blundell at the Ministry of Justice Tel: 020 3334 4201 or email: [louise.blundell@justice.gsi.gov.uk](mailto:louise.blundell@justice.gsi.gov.uk) , can answer any queries regarding the Instrument.