

EXPLANATORY MEMORANDUM TO
THE TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007 (CONSEQUENTIAL,
TRANSITIONAL AND SAVING PROVISION) ORDER 2014

2014 No. 600

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

2. Purpose of the instrument

2.1 The Tribunals, Courts and Enforcement Act 2007 (Consequential, Transitional and Saving Provision) Order 2014 makes consequential amendments to other subordinate legislation, together with transitional and saving provisions, which are necessary as a result of the implementation of Part 3 of, and Schedule 12 to, the Tribunals, Courts and Enforcement Act 2007 (the “TCEA 2007”) on 6th April.

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

3.1 None.

4. Legislative Context

4.1 Part 3 of, and Schedule 12 to, the TCEA 2007 replaces the existing laws relating to the seizure and sale of goods for most purposes, and the existing law of distress for rent, with a unified procedure to be followed by enforcement agents. This instrument is one of a number of instruments which will implement this legislation. It is made under section 145 of the TCEA 2007 and section 8 of the Law of Distress Amendment Act 1888 (for the latter, to the extent that certain rules made under section 8 after 2007, and so outside the scope of section 145, are revoked).

4.2 Three sets of regulations which underpin Part 3 and Schedule 12 to the TCEA 2007 have already been laid before Parliament. The first set of regulations, the Taking Control of Goods Regulations 2013¹, were laid in July 2013 and set out the procedure enforcement agents must follow when taking control of goods. The second set of regulations, the Taking Control of Goods (Fees) Regulations 2014² were laid on 9th January 2014 and set out the fees and disbursements an enforcement agent can recover from a debtor when carrying out enforcement action. The third set of regulations, The Certification of Enforcement Agents Regulations 2014³, were laid on 28th February 2014 and made detailed provisions for the certification of enforcement agents. In addition, related amendments to rules of court are made in the Civil Procedure (Amendment No. 2) Rules

¹ <http://www.legislation.gov.uk/uksi/2013/1894/made>

² <http://www.legislation.gov.uk/uksi/2014/1/contents/made>

³ <http://www.legislation.gov.uk/uksi/2014/421/contents/made>

2014⁴. The Government's complete package of reforms to bailiff law will come into force on 6th April.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government is committed to strengthening protection from rogue bailiffs who use unsafe, unsound and unfair methods, while at the same time making sure that debts can still be collected fairly⁵. This commitment will be delivered by a package of reforms which centre on the implementation of Part 3 of, and Schedule 12, to the TCEA 2007, together with the underpinning regulations set out in paragraph 4.2.

7.2 This Order makes changes which are necessary as a consequence of the implementation of this legislative package. It includes transitional and savings provisions to ensure that all enforcement cases are covered by the protections that are set out in the Government's reforms, during the change from the existing laws of seizure and sale of goods to the new procedure set out in Schedule 12. These provisions also ensure that the change from the old enforcement regime to the new system does not prevent the continued, effective collection of debt.

7.3 The TCEA 2007 replaces the power to distrain or to levy distress with the power to use the procedure set out in Schedule 12, renames certain warrants and writs and renames bailiffs as enforcement agents. Article 3 makes provision for any references to the previous terms or previous powers replaced and renamed under the TCEA 2007 to be read as the new terms or powers. This is to ensure that there is no break in the enforcement process which may arise, for example, if paperwork is reissued.

7.4 Section 66 of TCEA 2007 allows enforcement action to continue under the existing power if goods have been distrained or, executed against or where walking possession has occurred by the 6th April. Article (3)2 of this Order provides a saving provision to ensure that, for these cases, enforcement can continue under these powers and any amendments or revocations made by this Order do not apply. This reflects the need to ensure that effective enforcement is not interrupted or halted.

⁴ S.I. 2014/482

⁵ <https://www.gov.uk/government/publications/the-coalition-government-mid-term-review/the-coalition-together-in-the-national-interest-mid-term-review>

- 7.5 Section 66 of the TCEA 2007 does not, however, include cases where enforcement action has commenced prior to 6th April but has not reached the stage of distraint, execution or walking possession of goods. This includes cases where, for example, an informal payment arrangement may be in place. Article 4 makes provision for such cases by translating these cases onto an appropriate point on the new fee structure, reflecting that enforcement has begun and action has been undertaken. Without such a provision in place it would be necessary, on the 6th April, to begin enforcement action from scratch at the compliance stage. This would, unnecessarily in these cases, necessitate a notice of enforcement to be issued to the debtor and would attract, unnecessarily, a new compliance fee of £75 on top of any fees already paid by the debtor. As well as increasing the cost to the debtor, it would also result in a pause in enforcement of at least 7 days while the notice was issued.

Consolidation

- 7.6 None. These are the first Regulations to be made under this power. Where instruments are revoked by this Order, the opportunity has been taken to revoke instruments which amend the revoked instruments (particularly in the cases of the Distress for Rent Rules 1988 and the instruments amending those Rules).

8. Consultation outcome

- 8.1 The “Transforming Bailiff Action” consultation sought views on the proposed fee structure. The consultation, which ran from February 2012 to May 2012, received 254 responses. 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 from aggressive bailiff action. There was widespread agreement that the implementation of Part 3 of the TCEA 2007 was an appropriate solution although advice section respondents wished to see this complemented by the introduction of a new independent regulator.

9. Guidance

- 9.1 The Regulations will be published by the Stationery Office and will be available on the www.legislation.gov.uk before they come into force in April 2014.

10. Impact

- 10.1 An impact assessment was carried out to consider the implementation of Part 3 of the TCEA 2007 of which this instrument forms a part. This is available at: <https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action>. However, an impact assessment for this specific instrument was not carried out as no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

- 11.1 This Order applies to small business but is not anticipated to have a detrimental effect.

12. Monitoring & review

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

13. Contact

- 13.1 Louise Langston at the Ministry of Justice (Tel: 0203 334 4201 or email: louise.langston@justice.gsi.gov.uk) can answer any queries regarding the instrument.