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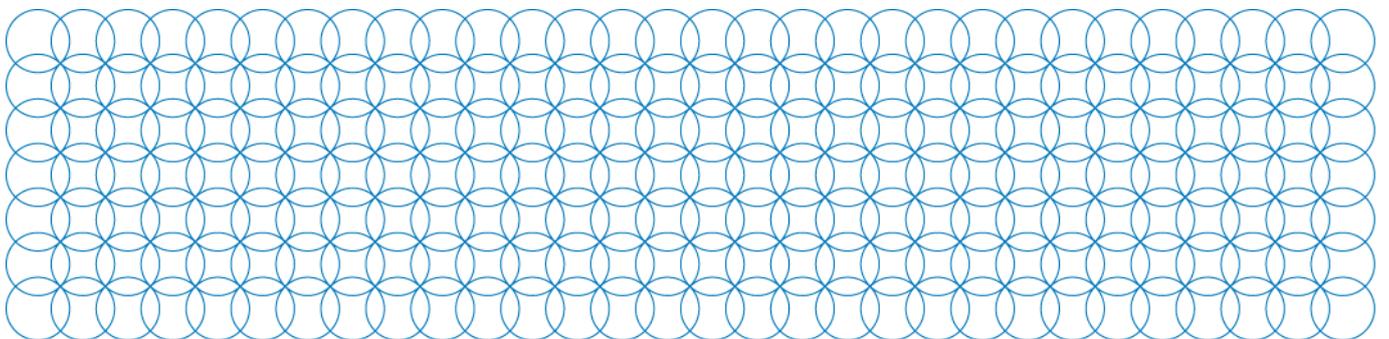
Transforming bailiff action

How we will provide more protection
against aggressive bailiffs and
encourage more flexibility in bailiff
collections

Consultation Paper CP 5/2012

This consultation begins on 17 February 2012

This consultation ends on 14 May 2012





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JUSTICE

Transforming Bailiff Action

How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections

A consultation produced by the Ministry of Justice. It is also available on the Justice website at www.justice.gov.uk

About this consultation

- To:** This consultation is aimed at the public, the enforcement industry, the legal profession, the judiciary, the advice sector involved in enforcement and all with an interest in this area in England and Wales.
- Duration:** From 17 February 2012 to 14 May 2012
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- Alternatively please send your response by 14 May 2012 to:
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- or by post to:
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or fax: 0870 739 4268
- Welsh language version:** A Welsh language version of this consultation paper is available at www.justice.gov.uk
- Response paper:** A response to this consultation exercise is scheduled to be published during October 2012 at: www.justice.gov.uk

Contents

Foreword	3
1 Introduction	5
2 Background	9
3 Non Regulatory Options	12
4 Clarifying the law	13
5 Costs of Enforcement Related Services	30
6 Regulatory Regime	35
7 Competence Requirements	39
8 Remedies and Complaints handling	41
9 High Court and County Court Jurisdiction Order 1991	44
10 Impact Assessment	46
11 Next Steps	47
Questionnaire	48
About you	53
Contact details/How to respond	54
The consultation criteria	55
Annex A – Part 3 of the Tribunals, Courts and Enforcement Act 2007	57
Annex B – Schedule 12 to the Tribunals Courts and Enforcement Act 2007	70
Annex C – Draft Regulations for Taking Control of Goods	92
Annex D – Proposed amendments to the Tribunals, Courts and Enforcement Act 2007	117
Annex E – Further regulations required for amendments to the Tribunals, Courts and Enforcement Act 2007	119
Annex F – List of Sample notices for the debtor	121
Annex G – Proposed Costs Structure	137
Annex H – Bailiffs and Enforcement Agent Council proposal	141
Annex I – Proposal for regulation of bailiffs and private parking operators	144
Annex J – Learning Outcomes and assessment criteria for enforcement agent basic training	147

Foreword



The need for a workable means to enforce the payment of debts and fines is one of those unpalatable but necessary facts of life. Without assurance that it is possible, with due process, to recoup money from debtors unwilling to pay, it would be too risky for creditors to lend. Without prompt and effective enforcement ensuring that offenders ultimately pay their fines, the authority of courts and public trust in their effectiveness would diminish.

Bailiffs are therefore one of the backstops of both our economy and justice system. They play an important role recovering money, and help create the conditions for a market economy and the rule of law to thrive.

It is a matter of regret then that, if asked, many members of the public might not hold bailiffs in high regard. The reason is that, alongside the responsible enforcement activity of many of those working in what is often a difficult role, a minority of bailiffs have used intimidating, aggressive and threatening behaviour. Clearly, bailiffs need to be able to enforce the law. But it is wrong that in some cases vulnerable people have been intimidated and mistreated by aggressive tactics.

This paper sets out how the Government proposes to tackle aggressive and unnecessary bailiff activity, without compromising proportionate and effective enforcement. It includes proposals to bring up to date centuries of archaic law that currently does more to hinder than help responsible bailiffs.

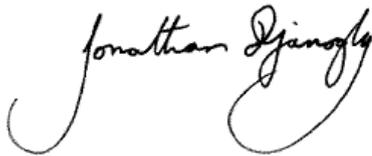
What debtors, creditors and bailiffs all need is a straightforward, effective and proportionate system, with a transparent and fair costs structure. The system needs to combine sensible powers to deal with deliberate evasion by some debtors, with stronger requirements for accountability and professionalism within the industry.

At the moment, there is a lack of clarity that is undermining the reputation of responsible and irresponsible practitioners alike. It is critical that all bailiffs have a clear understanding of the enforcement framework within which they are operating and are prepared and informed before knocking on doors. Currently, there are no set competence requirements. This is a significant gap.

The government has already published updated National Standards for Enforcement Agents. The proposal builds on these standards by transforming elements of the voluntary code into a legally-binding regime.

The hallmark of this package of proposals is balance. It seeks to respect both the competing rights of the creditor and the freedoms of the debtor. The reason effective and proportionate enforcement ultimately matters is because, one day, any one of us may need protection from aggressive bailiffs or may need to recover monies legitimately owed to us.

We welcome your views, and encourage all those with an interest to take part.

A handwritten signature in black ink, reading "Jonathan Djanogly". The signature is written in a cursive style with a large initial 'J' and a long, sweeping tail.

Jonathan Djanogly

Parliamentary Under Secretary of State for Justice

1 Introduction

1. This consultation paper sets out the proposals for transforming bailiff action and providing more protection against aggressive bailiffs. The aim of the proposals is to simplify and clarify the process, improve the accountability of enforcement agents and address unnecessary or inappropriate enforcement activity.
2. The consultation is aimed at the public, the enforcement industry, the legal profession, the judiciary, the advice sector involved in enforcement and all with an interest in this area in England and Wales.

Enforcement action

3. Enforcement action is necessary when a debtor fails to pay a debt or negotiate a reasonable instalment payment regime with the creditor. We need to ensure that creditors are paid the money to which they are properly entitled. Debtors should be protected from oppressive pursuit of their debt but should not be able to avoid facing their financial responsibilities by ignoring or failing to pay.
4. Debtors not paying their debts could result in creditors themselves facing financial difficulties. Unless there is prompt and effective enforcement the authority of the courts, the effectiveness of penalties and public confidence in the justice system are all undermined. Creditors are entitled to collect what they are owed and have several enforcement options depending on the type of debt.

Bailiff action

5. Creditors normally instruct bailiffs when there is no alternative enforcement option available. It could be that the debtor has not provided sufficient information for the creditor to consider possible alternatives or the debtor has completely ignored all reminders.
6. A creditor normally undertakes a range of debt collection activity before deciding to commence formal enforcement action. This may include:
 - issuing an invoice;
 - issuing a reminder;
 - issuing a letter before taking legal action; and
 - commencement of legal action.
7. In these situations the debtor has had four opportunities to settle the debt without the necessity of enforcement action.

8. If the debtor still has not paid, or made arrangements to pay, a bailiff may be instructed to collect payment of the debt and their costs. This is done by the bailiff seizing the debtor's goods and selling them; using the proceeds to settle the debt and costs.
9. This type of enforcement action is used to recover both criminal and civil debts. It is available for court debt, tax debt, local authority debt as well as recovery for the private individual.

Aggressive bailiff action

10. Bailiff action by its very nature is intrusive. It is necessary for a bailiff to be assertive and firm if they are to be effective. There is anecdotal evidence that some bailiffs may veer towards aggression in pursuit of effectiveness. It is these elements we need to address. This paper sets out the activities we consider to be aggressive. This unacceptable behaviour includes:
 - **Misrepresentation of their legal authority**
 - threatening the use of force.
 - inappropriately entering a property.
 - threatening to seize goods they are not entitled to.
 - seizing goods with a value disproportionate to the debt.
 - **Charging excessive fees**
 - charging for "phantom" visits.
 - charging for activities not carried out.
 - **Threatening behaviour**
 - unnecessary use of force.
 - pushing someone aside to get in the door.
 - threatening imprisonment.

What protection can be provided against aggressive bailiff action?

11. The Government believes that:
 - **Misrepresentation of their legal authority can be addressed by:**
 - implementing the Tribunals, Courts and Enforcement Act 2007 which will clarify the law; and
 - ensuring that all parties are aware of their rights and responsibilities.
 - **Charging excessive fees can be addressed by:**
 - a clear and transparent fee structure setting out the costs the bailiff can recover as provided by the Tribunals, Courts and Enforcement Act 2007; and
 - ensuring that the costs structure is publicly available and can be easily understood by all parties.

- **Threatening behaviour can be addressed by:**
 - a regulatory regime as provided by the Tribunals, Courts and Enforcement Act 2007 supported by:
 - training for bailiffs; and
 - a complaints process.
12. This paper sets out the need to balance all of the following objectives:
 - Providing more protection against aggressive bailiffs whilst spelling out the need for effective enforcement.
 - A fair, transparent and sustainable costs regime that provides adequate remuneration.
 - Minimising excessive regulation on business whilst ensuring effective protection for the vulnerable.
 13. Chapter 3 sets out the possible non regulatory options. Chapters 4 to 8 set out the Government plans to transform bailiff action. They cover the main proposals including the law, costs that can be charged, regulation, training and remedies and complaints. The key characteristic of our proposals is balance. We seek to ensure that a bailiff has all the tools necessary to carry out enforcement effectively and is adequately remunerated while at the same time providing assurance for the debtor that the bailiff is properly trained and authorised to carry out such work and that there are remedies available when mistakes are made.
 14. Chapter 9 seeks early views on possible changes in the future to offer creditors more choice in the jurisdiction of enforcement action from the county court.
 15. We will explore these issues more fully in this paper and consider proposals as to how they might be addressed. Whilst you are free to make comment as you see fit on the Draft Regulations for Taking Control of Goods, the paper sets out specific questions we would be grateful for you to consider.
 16. This consultation is conducted in line with Code of Practice on Consultation and falls within the scope of the Code. The consultation criteria, which are set out on page 58 have been followed.
 17. The Impact Assessment, which is published alongside this document, indicates that enforcement agents, enforcement businesses and debtors are likely to be most affected. Comments on the Impact Assessment including completion of the annex questionnaire are very welcome.

18. Copies of the consultation paper are being sent to:
- Advice UK
 - Age Concern
 - Association of District Judges
 - British Banking Association
 - British Parking Association
 - Chartered Institute of Public Finance and Accounting
 - Children's Society
 - Church Action on Poverty
 - Civil Court Users Association
 - Citizens Advice
 - Civil Enforcement Association
 - Civil Procedure Rule Committee
 - Commission for Local Administration in England
 - Credit Services Association
 - Criminal Procedure Rule Committee
 - Enforcement Law Reform Group
 - Equality & Human Rights Commission
 - Finance & Leasing Association
 - Her Majesty's Council of Judges
 - High Court Enforcement Officers Association
 - Information Commissioner
 - Institute of Credit Management
 - Institute of Money Advisers
 - Institute of Revenue Ratings and Valuation
 - Judicial Studies Board
 - Local Authority Civil Enforcement Forum
 - Local Government Association
 - London Motorist Action Group
 - MIND
 - Money Advice
 - Northern Ireland Court Service
 - Phoenix Consulting
 - Scottish Executive
 - Security Industry Authority
 - Senior Master
 - Transport for London
 - Welsh Assembly
 - Women's National Commission
 - Zacchaeus 2000 Trust

2 Background

19. At present, the law relating to 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 old fashioned. There are also different types of bailiffs and enforcement officers depending on the type of debt being recovered. This confusion can result in bailiffs and enforcement officers misrepresenting their legal authority.
20. Part 3 of the Tribunals, Courts and Enforcement Act 2007 (the TCE Act) has yet to be implemented and will unify the existing law relating to seizure and sale of goods for most purposes. It also replaces the current law of rent distress with a modified regime for recovering rent arrears in the commercial property sector only; abolishing the common law right to distrain for rent arrears. Part 3 of the TCE Act also describes bailiffs and enforcement officers as enforcement agents. Part 3 of the TCE Act is set out in Annex A for reference.
21. Schedule 12 to the TCE Act prescribes the new procedure to be followed by enforcement agents when seizing goods, to be known as taking control of goods. The Schedule prescribes the entire process to be followed by enforcement agents when taking control of and selling goods, from the serving of a notice, to taking control of goods (including which goods may be taken), powers of entry, care of goods seized, the sale of goods seized and the distribution of the sale proceeds. Schedule 12 is set out in Annex B for reference.
22. This paper includes the following Annexes which set out the full detail of all the proposals:
 - Annex C Draft Regulations for Taking Control of Goods
 - Annex D Proposed amendments to the TCE Act
 - Annex E Further regulations required for amendments to the TCE Act
 - Annex F Sample notices for the debtor
 - Annex G Proposed Costs Structure
 - Annex H Bailiffs and Enforcement Agent Council proposal
 - Annex I Proposal for regulation of bailiffs and private parking operators
 - Annex J Learning Outcomes and assessment criteria for enforcement agent basic training

Please note that all these documents are in draft form (they are not legal documents) and they are subject to change and amendment following the consultation exercise and subsequent consideration of responses.

23. Chapter 4 of this paper will explore the clarification of the law required to ensure that the process is clear and transparent without being over burdensome for all parties. The purpose of the Taking Control of Goods Regulations is to set out clearly the detail of the prescribed process that an enforcement agent should follow.
24. This consultation proposes that any new procedure to take control of goods by enforcement agents should seek to:
 - Clarify and simplify the law to address misrepresentation of powers by enforcement agents;
 - Unify the law to address the current complex range of primary and secondary legislations and common law, which may raise confusion;
 - Render the law consistent with Human Rights legislation;
 - Balance the sometimes competing rights and responsibilities of creditors and debtors;
 - Establish the use of less invasive ways to take control of goods; and
 - Verify the rights and responsibilities of debtors, creditors and enforcement agents when debts have to be enforced.
25. It is important to ensure that there are sufficient safeguards for both debtors and enforcement agents whilst ensuring effective and proportionate enforcement. Chapter 4 also covers proposed changes to the TCE Act and further regulations that would be required and sample notices that will ensure that debtors are fully aware of the consequences of their actions or inaction.
26. The current costs regime for enforcement agents is complex. 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. The costs structures themselves also 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.
27. Paragraph 62 of Schedule 12 to the TCE Act provides for regulations to make provision for the recovery from the debtor of amounts in respect of costs of enforcement related services. Chapter 5 of this paper will explore a new costs structure. The proposal is that the new structure should align more closely with the cost of the activity carried out by the enforcement agent, alter incentives to encourage more appropriate enforcement behaviour and be both clearer and fairer to debtors and enforcement agents.

28. Clarifying the law and a clear and transparent costs structure will go some way to address bailiff behaviour but there is still a need to ensure that there are sufficient remedies available to debtors to deal with the rogue element.
29. The current regulatory structure for bailiffs in England and Wales is very fragmented. Whilst there are some elements within the industry that are quite strictly regulated there are others that are only subject to informal regulation through trade associations. There is a strong argument for a single structure to regulate the industry, which would raise standards of professionalism within the industry and give the public greater confidence in it. Chapter 6 of this paper will explore and set out the proposals for better regulation to achieve this aim.
30. Currently there are no set training requirements for bailiffs. Some businesses have introduced their own training regime to ensure that their bailiffs are aware of their responsibilities. Chapter 7 of this paper will explore a proposed training programme for which will underpin the proposal for regulation. These proposals will ensure that there is an accountable and competent workforce. It is important that all enforcement agents have a clear understanding of what the enforcement business involves and are prepared and informed before commencing bailiff action.
31. There is confusion concerning who should deal with complaints about bailiffs and how they should be dealt with. Clarifying the law and developing a clear and transparent costs regime will address some of the complaints made concerning bailiffs behaviour. Chapter 8 of this paper will explore the remedies that will be available when a bailiff acts illegally or inappropriately and set out the options available to the debtor.
32. To aid more flexibility in bailiff collections Chapter 9 of this paper is seeking views on whether creditors should have more choice in how to enforce their small claims judgment debts by way of warrant or writ.

3 Non Regulatory Options

33. The Government published amended National Standards for Enforcement Agents on 13 January 2012. These were published partially as a reminder to creditors and enforcement agents of their responsibilities. They were developed with representatives of the enforcement industry trade bodies. We welcome your views on the contents of the National Standards.

Q1 Do you agree with the contents of the National Standards? If not, please supply proposals for inclusion or argument against inclusion

34. The amended National Standards have been developed to take into consideration some of the problems that have been identified. The National Standards are a voluntary code. Chapter 4 Clarifying the law includes some elements from the National Standards which would make them legally binding including:

- Times and hours;
- Exempt goods;
- Protection of children (under 16);
- Notices and warning letters;
- Certification.

Q2 Do you consider the existing law and the revised National Standards for Enforcement agents is sufficient to address the problems we have identified or do you consider there is still a need for further Government intervention as set out in the remainder of paper?

35. Alongside the revised National Standards the information available on DirectGov has been updated to provide guidance on bailiffs for debtors and creditors. This guidance also provides information on where people can go for help if they feel they have been a victim of unacceptable behaviours by bailiff.

Q3 Do you consider there are any gaps in the range of information available on DirectGov? If so, please supply proposals for inclusion.

4 Clarifying the law

Enforcement action and the power to use reasonable force

36. Legitimate creditors have the right to enforce their unpaid debts. Equally, debtors should be protected from the oppressive pursuit of their debts. The challenge is to achieve the right balance between these rights and freedoms. Powers of entry and the power to use reasonable force are two pivotal elements that require consideration to deliver the right balance.

Force against a person

37. The Government believes that force against any person should never be employed by an enforcement agent when taking control of goods and selling them in order to recover a debt through the TCE Act. The rights of the debtor are very important; there is no fairness or proportionality in using force against the person. Neither should force be warranted solely on the grounds of effectiveness.
38. Paragraphs 24(2) and 31(5) of Schedule 12 to the TCE Act contain regulation making powers which may be utilised to extend the power of reasonable force to include the use of force against persons. To provide more protection against aggressive bailiffs the Government intends to amend these provisions by removing such regulation making powers which will ensure the power to use force against persons can never be exercised by enforcement agents. A draft of the proposed amendment is set out in Annex D.

Q4 Do you agree enforcement agents should not be able to use force against a person? If not, please explain why, providing supporting argument and evidence of when it would be useful.

Forced entry

39. There is also no fairness in allowing the debtor to avoid their financial responsibilities by locking their door and refusing to open it. It is important to address non compliance and/or deliberate evasion by the debtor. It is our intention to continue to allow the use of reasonable force to gain access to a property but ensure that it is only used when absolutely necessary. These provisions underpin the right of the creditor to recover monies owed to them.
40. Reasonable force usually entails using a locksmith to drill a lock to allow the enforcement agent access to the premises. If the enforcement agent has used force he will also be responsible for ensuring that the premises are left secure.

41. The TCE Act distinguishes between a general power to use, if necessary, reasonable force and the powers that require prior judicial authority. Where the TCE Act provides for a general power to use reasonable force a number of safeguards are incorporated through restrictions on the type of premises and type of debt being recovered. Where prior judicial authority is required the regulations deliver safeguards through prescribed conditions.
42. When considering the regulations relating to the use of reasonable force it is important to recognise the difference between entry and re-entry. Entry occurs where enforcement agents enter a property in order to search for and take control of goods. Re-entry occurs when enforcement agents have already taken control of the debtor's goods and return to the property in order to inspect those goods or remove them for storage or sale.
43. It should also be noted that the purpose of controlled goods agreements is to allow the debtor to retain the use of their goods while they are repaying the debt as agreed with the enforcement agent. These agreements are seen as less intrusive and a more flexible form of enforcement action. They are discussed in more detail at paragraph 72.

General power of force

44. It is our intention to implement paragraphs 17 to 19 of Schedule 12 to the TCE Act. This sets out the general powers to use reasonable force i) to enter premises for enforcement of magistrates' courts fines and ii) to re-enter commercial premises for enforcement of High Court, county court and HMRC debts if they have already taken control of goods and are intending to inspect the goods or remove them for storage and sale.

Prior judicial authority for force – entry

45. It is our intention to implement paragraphs 20 to 22 of Schedule 12 to the TCE Act. This will allow the court, following application from the enforcement agent, to issue a warrant authorising the use, if necessary, of reasonable force to enter premises. To provide more protection we intend to introduce safeguards through a number of prescribed conditions set out in the regulations. The prescribed conditions will allow enforcement agents recovering a sum payable under a High Court or county court judgment to apply to the court to use reasonable force on entry to commercial premises and any other premises to which goods have been deliberately removed in order to avoid enforcement action. Enforcement agents recovering HM Revenue and Customs (HMRC) debts will also be able to apply for a warrant authorising the use, if necessary, of reasonable force on entry to any premises. Regulation 26 sets out the detail.

Q5 Do you agree there is a need for the court to be satisfied of certain conditions before they authorise the use of reasonable force to gain entry to premises and that the conditions should be prescribed in regulations? If not, please explain why.

Q6 Do you agree with the prescribed conditions set? If not, please supply proposals for inclusion or argument against inclusion.

46. There is concern, however, that the loss of the general power which currently exists for enforcement agents when recovering a sum payable under a High Court or county court judgment to use reasonable force on entry to commercial premises will undermine effective enforcement. The concern is that enforcement agents will be routinely denied peaceable entry to commercial premises and the goods will be removed while judicial authority is sought to force entry.
47. It has been argued that, where the creditor has already proven their case in court and secured a High Court or county court judgment, prior judicial authority to use reasonable force on entry to commercial premises should not be required to complete the enforcement action. To ensure effective enforcement it is our intention to amend the TCE Act, thereby allowing enforcement agents enforcing High Court writs or county court warrants to continue using, if necessary, reasonable force. Safeguard is delivered by restricting the provision to commercial premises; there will be no provision for domestic premises. A draft of the proposed amendment is set out in Annex D.

Q7 Do you consider an enforcement agent executing a High Court or county court debt should:

a) have to apply to the court to use reasonable force if necessary on entry to any business premises; or

b) should they have a general power?

Please explain your reason why, providing supporting argument.

Prior judicial authority for force – re-entry

48. The regulations will allow enforcement agents, irrespective of debt type, to apply to the court to use reasonable force, if necessary, on re-entry. The power, however, will be restricted to cases where:
- control has been taken of the goods via a controlled goods agreement and have not been removed by the enforcement agent; and
 - the debtor has failed to comply with the repayment terms of the controlled goods agreement.

49. Regulation 26 sets out the detail.

Q8 Do you agree there is a need for the court to be satisfied of certain conditions before they authorise the use of reasonable force to gain re-entry to premises and that the conditions should be prescribed in regulations? If not, please explain why.

Q9 Do you agree with the prescribed conditions set? If not, please supply proposals for inclusion or argument against inclusion.

50. There is concern that the restrictions on the general power of reasonable force on re-entry in the TCE Act and the regulations may discourage enforcement agents from entering into controlled goods agreements. There is also concern that they could provide possible avenues for the debtor to evade enforcement. The result will be that the enforcement agent will instead favour the removal of goods. This drives up the cost to the debtor and results in what will be seen as aggressive bailiff action.
51. The proposed requirement to apply to the court for permission to use reasonable force on re-entry will prevent the enforcement agent using reasonable force on re-entry until such permission is granted. This, again, may result in the debtor removing goods while judicial authority is sought.
52. If a debtor breaches a controlled goods agreement, prior judicial authority should not be required to complete the enforcement action. To ensure that we have the correct balance it is our intention to amend the TCE Act to give enforcement agents a general power of reasonable force on re-entry in the following restricted circumstances:
- where goods have been taken control of via a controlled goods agreement and have not been removed by the enforcement agent;
 - the debtor has failed to comply with the repayment terms of the controlled goods agreement; and
 - where the debtor has been given notice of the intention of the enforcement agent to re-enter the premises to inspect the goods or remove them for storage or sale.
53. A draft of the proposed amendment is set out in Annex D.
54. To ensure that the debtor is fully aware of the consequences the draft amendment states that the enforcement agent will be under an obligation to give notice to the debtor, prior to using reasonable force, to re-enter the premises. The detail of the notice will be set out in regulations. A draft of the proposed regulations is set out in Annex E.

Q10 Do you consider an enforcement agent should:
a) have to apply to the court to use reasonable force, if necessary, on re-entry in certain circumstances; or
b) should they have a general power?
Please explain your reason why, providing supporting argument.

55. The rest of this chapter will explore the process of taking control of goods step by step.

Categories of debt

56. The regulations define seven different categories of debts. These assist to clarify which debts the regulations apply to and also to make it clear where the power to use reasonable force, if necessary, is available when the enforcement agent is enforcing specific debts.

Time limit for taking control of goods

57. It is recognised that the option for the enforcement agent to take control of goods should not be available for an indefinite period as there is little overall merit in protracted enforcement action for the creditor or debtor. It is important, however, that the enforcement agent has the flexibility to allow the debtor further time to pay the debt and the costs of enforcement. Regulation 10 provides for a time limit of 12 months which may be extended by a further 12 months on application to the court.
58. The 12 month time limit commences with the date the notice of enforcement is given (notices of enforcement are discussed in more detail at paragraph 63). However, in order to encourage more flexibility in collections the enforcement agent may wish to enter into a repayment arrangement with the debtor without taking control of goods. This arrangement is not a controlled goods agreement as the enforcement agent will not have taken control of the debtor's goods. In these circumstances the 12 month period commences with the date the debtor breaches the terms of the repayment arrangement.

Q11 Do you agree with the 12 month time limit for taking control of goods? If not, please explain why, providing an alternative period with supporting argument.

59. The procedure for taking control of goods starts when the enforcement agent receives instruction from the creditor. It is important to note that as set out above by this time the debtor has already had several opportunities to settle the debt or come to some sort of arrangement with the creditor. The enforcement agent, therefore, does not have the authority to reduce the debt or withdraw the action; that is a matter for the creditor and/or the court. The enforcement agent is under an obligation to

collect the debt and is entitled to charge the allowable costs which are set out later in this paper at Chapter 5.

Administration/Compliance stage

60. Currently there is only a requirement to inform the debtor of the decision to take bailiff action in some cases but not all. When implemented, the TCE Act will provide that the debtor must be notified of the decision that enforcement action by taking control of goods has been made. Paragraph 7 of Schedule 12 to the TCE Act stipulates that an enforcement agent may not take control of goods unless the debtor has been given notice.
61. It is in the interest of all parties that adequate notice of any enforcement action is given. This gives the debtor one last chance to pay the debt before enforcement agents arrive at the premises to take control of the goods. The enforcement agent will charge the allowable costs which are covered in Chapter 5 of this paper.
62. The minimum period of notice as set out in regulation 7 is seven days except for Commercial Rent Arrears Recovery (CRAR). CRAR is an out of court remedy and therefore a minimum period of 14 days has been prescribed to allow for the intervention of the court, if necessary, as set out in section 78 of the TCE Act.
63. It is appreciated that in some cases the debtor is known to the enforcement agent and will try to avoid enforcement. Regulation 7(5) therefore gives the court the power to order a lesser period of notice. The regulations set out clearly that this may only be ordered by the court where there is a likelihood of the goods being removed or otherwise disposed of to avoid enforcement.
64. The purpose of the notice of enforcement is to ensure that the debtor is able to identify the debt; know what action they need to take to avoid further enforcement action; and is aware of the consequences of non-payment. Regulation 8 sets out the content of the notice and a sample is provided, Document 1 in Annex F.

Q12 Do you agree with the term for the minimum period of notice prior to taking control of goods? If not, please explain why, providing an alternative and supporting argument.

65. If the debtor ignores or fails to comply with the notice of enforcement the next step is for the enforcement agent to attend at the debtor's premises and take control of goods. This is the start of the enforcement stage and will result in further costs of the enforcement agent being added to the debt.

Enforcement Stage

66. In order to take control of goods the enforcement agent may have to attend and enter the debtor's premises. At this stage, however, the debtor has had numerous opportunities to make the necessary arrangements to settle the debt. The enforcement agent is under an obligation to identify goods that can be taken into control and that, if sold, would satisfy the debt and costs incurred.

Entry to property

67. Under our proposals it will no longer be possible to access a property through an open window or skylight which is currently permissible. An enforcement agent will only be able to enter or re-enter a property by any door or any usual means by which entry is gained to the property as set out in regulation 21. The purpose of the enforcement agent entering the premises is to identify goods that could be taken into control; negotiate a controlled goods agreement; or take control of goods and remove them for sale as the debtor has not settled the debt and costs.

Q13 Do you agree with the modes of entry and re-entry? If not, please explain why.

68. Currently the permitted days and hours of entry are misunderstood and confusing. The provisions are a mixture of statutory provisions and agreements including the National Standards for Enforcement Agents. Paragraph 24 of Schedule 12 provides for the power of entry to be subject to any restrictions imposed by regulations. Paragraph 25 requires regulations for permitted hours for entry. It has been argued that an enforcement agent should be able to enter a property on any day and at any time.
69. We considered placing restrictions on the days when an enforcement agent can enter a property (for example, not on religious days) but on balance have decided that including this in the regulations would prove unworkable. The enforcement agent would have to gather advance intelligence on the debtor in order to make a judgement as to which religious or cultural festival to observe and this could be open to litigation if incorrect. The regulations will therefore allow the enforcement agent to enter premises on any day of the week. This is set out in regulation 22.
70. As regards hours of the day we consider an enforcement agent should only be able to enter the premises between the hours of 6.00am and 9.00pm. This is with the exception of those premises that are not wholly residential and are used for the conduct of a trade or business and are open for trade or business at other times.
71. Another exception is where the enforcement agent has begun the process of taking control of goods, he will be permitted to complete the process even if this results in him remaining on the premises outside these times.

72. Fixing the times that an enforcement agent may enter a property provides protection to the debtor. It is accepted, however, there may be occasions where entry to a property outside these hours is justified. This particularly applies where the debtor works shifts, very long hours or is trying to evade enforcement. The regulations therefore allow an enforcement agent to apply to the court to enter premises to take control of goods outside these hours. Regulation 23 sets out the permitted hours of entry.

Q14 Do you agree that the enforcement agent should be able to enter premises any day? If not, please propose limits with accompanying argument.

Q15 Do you agree with the time limits of 6.00am and 9.00pm for entry in wholly residential premises? If not, please propose alternative limits with accompanying argument.

73. The TCE Act distinguishes between powers of entry and powers to take control of goods. Regulations 13 and 14 prescribe the permitted days for taking control of goods and the prohibited hours for taking control of goods. These regulations mirror the permissions on days and times in regulations 22 and 23 to ensure that where enforcement agents are permitted to enter a property they may also take control of goods.
74. Regulations 13 and 14 apply when taking control of goods by any of the ways listed under paragraph 13(1). This delivers added protection for the debtor as taking control of goods may not require entry to a property, for example taking control of a vehicle on the highway.

Q16 Do you agree that the enforcement agent should be able to take control of goods any day? If not, please propose limits with accompanying argument.

Q17 Do you agree with the time limits of 6.00am and 9.00pm for taking control of goods? If not, please propose alternative limits with accompanying argument.

Q18 Do you agree with allowing the enforcement agent to proceed outside the hours limit where the process has already commenced? If not, please explain why.

Goods which may be taken

75. Under our proposals we will clarify what goods may be taken into control. Paragraph 10 of Schedule 12 to the TCE Act prescribes that an enforcement agent may only take control of goods of the debtor. Paragraph 11 permits the protection of goods which are exempt. Paragraph 3 defines exempt goods as goods which have been described in the regulations as exempt goods.

Exempt goods

76. Providing an exemption for some goods is an essential provision which safeguards against taking control of goods which may result in considerable hardship or impact on domestic needs. All other goods of the debtor, including co-owned goods, may be taken into control.
77. Regulations 4 and 5 set out the exempt goods. The purpose of the provisions on exempt goods is to ensure clarity and consistency to combat the inadequacies of existing legislation, in particular, different goods are exempt for different debts. However, the range of goods must not be so great that it undermines the enforcement process.

Q19 Do you agree with the range of exempt goods? If not, please offer proposals for inclusion or argument against inclusion.

78. The Government has considered but rejected on balance the possibility of allowing the enforcement agent to take control of exempt goods in prescribed circumstances if the debtor is provided with replacements. It has become clear that this would add complexity to the provisions and could result in aggressive action by the enforcement agent in deciding which goods to remove.

Controlled goods agreement

79. The easiest way a debtor can stop an enforcement agent removing their goods and selling them is to pay the debt and any costs incurred. If that is not possible, the only alternative is to enter into a controlled goods agreement.
80. The purpose of the controlled goods agreement is to allow the enforcement agent to take control of the goods but leave them in the possession of the debtor. This means the enforcement agent will not remove or sell them providing the debt and the cost of enforcement are all paid by a specified date. The debtor must also agree not to remove or dispose of the goods.
81. Concern has been expressed that it is not always possible for the debtor to enter into a controlled goods agreement as they may not be at the premises. Where the debtor is contactable there is merit in allowing the debtor to authorise a person to enter into the agreement on their behalf.
82. The debtor may not always be immediately contactable, particularly where business debts are being recovered. Where a person is left in charge, or is in apparent authority on the premises, there is also merit in allowing that person to enter into a controlled goods agreement. This will avoid the goods being removed and the debtor incurring greater costs.
83. Regulation 15 sets out that the agreement will have to be signed by the enforcement agent and the debtor, or a person authorised by the debtor who is aged 18 years or over or the person in apparent authority.

84. Our proposed contents for the controlled goods agreement is set out in regulation 16. Document 2 in Annex F contains a sample of the controlled goods agreement.

Q20 Do you agree that the debtor should be able to authorise another person to enter into a controlled goods agreement? If not, please explain why.

Q21 Do you agree that a person in apparent authority should be able to enter onto a controlled goods agreement? If not, please explain why.

85. When the debtor does not comply with the controlled goods agreement or pay the outstanding debt and costs in the time set the enforcement agent is entitled to remove the goods for storage or sale.

Other ways of taking control of goods

86. Paragraph 13 of Schedule 12 to the TCE Act prescribes the ways to take control of goods. If the debtor is not willing to enter into a controlled goods agreement an enforcement agent must do one of the following:
- secure the goods on the premises on which he finds them;
 - if he finds them on a highway, secure them on a highway, where he finds them or within a reasonable distance; or
 - remove them and secure them elsewhere.

Secure the goods on the premises on which he finds them

87. In order to provide protection the regulations specify the steps that the enforcement agent needs to take when securing goods. Regulation 17 deals with goods to be secured on the premises where they are found. We considered the issue of securing the entire premises and concluded that this would be inappropriate for wholly residential premises. We have, however, allowed for securing the whole of the premises or such part of the premises that is occupied solely for the purpose of a trade or business.

Q22 Can you provide any recent evidence which supports or challenges the approach to empower enforcement agents to secure entire premises?

88. The Protection of Freedoms Bill will introduce a criminal offence to immobilise a vehicle, move a vehicle or restrict the movement of a vehicle without lawful authority. The provisions in the TCE Act will be the lawful authority permitting enforcement agents to immobilise and move a vehicle when taking control of the vehicle of a debtor.

89. The regulations also provide for immobilisation of goods on the debtor's premises, for example, a vehicle on the drive. As a protection a written warning must be affixed to the goods and contain the information listed in Regulation 17(4). Document 3 in Annex F is a sample of a warning of immobilisation.

Secure them on a highway

90. Paragraph 13(1)(b) of Schedule 12 to the TCE Act allows the enforcement agent to secure goods of the debtor on the highway either where he finds them or within a reasonable distance. Regulation 12 sets out certain circumstances where the enforcement agent must not take control of goods on the highway in particular where there is a risk to public health
91. The taking control of vehicles is commonplace and taking control on the highway removes the need for the enforcement agent to enter the debtor's property. The regulations require enforcement agents to secure goods taken into control on a highway which are vehicles by means of an immobilisation device. When a vehicle is immobilised it is important that the debtor is fully aware of the reason. A written warning must be affixed to the vehicle and contain the information listed in regulation 17(4).
92. It would be inappropriate for an enforcement agent to immobilise a vehicle on a highway that could result in the debtor contravening a prohibition or restriction imposed by or under any enactment. As paragraph 13(1)(b) of Schedule 12 to the TCE Act allows the enforcement agent to secure a vehicle within a reasonable distance, the regulations provide that a vehicle must be repositioned before the enforcement agent immobilises it if there would be a contravention. In these circumstances the regulation 19(6) includes a requirement for the enforcement agent to provide additional information to the debtor. Document 4 in Annex F is a sample of the warning of a vehicle being repositioned and immobilised.
93. Whilst we wish to support effective enforcement, we want to be fair to debtors. We will therefore provide that a vehicle must remain immobilised for 24 hours before it is removed to storage for sale. This allows the debtor to settle the debt and any cost already incurred without the additional costs for removal and storage.

Q23 Do you agree with the time limit that a vehicle must remain immobilised before being removed to storage? If not, please explain why, providing an alternative period with supporting argument.

Notice after entry or taking control of goods on the highway

94. When the enforcement agent takes control of goods either on the highway, or after entering premises, the regulations make it clear that the enforcement agent must supply the debtor with a notice setting out the

goods taken. The content of the notice is set out in regulation 27. This will ensure the debtor is fully aware of the action taken by the enforcement agent.

Inventory

95. We propose tightening of inventories provided when an enforcement agent takes control of goods. The current quality of many inventories is questionable at the very least. When the enforcement agent takes control of goods he is under an obligation under paragraph 34 of Schedule 12 to the TCE Act to provide the debtor with a written inventory of all the goods he has taken. The contents of the inventory are set out in regulation 30. Document 5 in Annex F is a sample of a combined notice after entry, or taking control of goods, and inventory of goods taken into control.

Remove the goods and secure them elsewhere

96. We propose that where the enforcement agent removes the goods of the debtor and secures them elsewhere this should, in normal circumstances, be within a reasonable distance from the place where the goods were taken. The detail is set out in regulation 20. This will make it easier, if the debtor pays the debt and costs, to collect the goods. The enforcement agent is under an obligation to take care of the goods that are removed to storage. The detail is set out in regulation 31.

Sale Stage

97. If the debtor fails to maintain any agreement with the enforcement agent, in accordance with the terms of the controlled goods agreement, or settle the debt and cost the enforcement agent has the option to remove the goods and arrange for their sale. Goods taken into control by the enforcement agent may be sold to settle the debt and costs. The sale of goods stage is a rare occurrence, happening in less than 3% of enforcement actions.
98. Under our proposals, before a sale takes place, the enforcement agent must provide a valuation in writing to the debtor and any co-owner. The enforcement agent may make the valuation or may instruct an independent qualified valuer.
99. The proposals also provide that a sale may not take place for a minimum period of seven days from when the goods were removed for sale. This is unless the goods would become unsaleable or their value would be substantially reduced, for example, perishable goods.
100. To ensure the debtor is fully aware of the steps of enforcement, the enforcement agent will be obliged to inform the debtor of the sale. He must do this at least seven days before the sale, unless it falls within the category that allows a sale to take place in less than seven days, for example, perishable goods. In this case, the debtor must receive notice at least the day before the sale.

101. The contents of the notice are set out clearly in regulation 36. Document 6 in Annex F is a sample of a notice of sale.

Q24 Do you agree with the term set for the minimum period before a sale may proceed? If not, please explain why, providing an alternative period with supporting argument.

102. We will provide greater protection for debtors by providing that an enforcement agent must sell or dispose of controlled goods for the best price that can reasonably be obtained. Ordinarily the sale of goods must take place in a public auction house which includes an electronic auction site. In certain circumstances, sales to cover High Court, county court and HMRC debts can be carried out on the premises where the goods were found, provided it is occupied purely for trade or business. The detail is set out in regulation 39.

103. A public auction may not allow the enforcement agent to obtain the best price; therefore paragraph 41 of Schedule 12 to the TCE Act allows the enforcement agent to apply to the court for an alternative method. The regulations confirm that this can include private contract, sealed bids and by advertisement. The court can also order another method that it considers appropriate.

Q25 Are there any methods of sale other than private contract, sealed bids or advertisement that should be included in the regulations? If so, please provide full details.

104. The application of proceeds of sale will be dealt with in the same manner as any other payment which will be covered more fully in Chapter 5 of this paper. The regulations do not currently deal with the situation where the proceeds of sale are insufficient to meet the debt and costs. We are seeking views on whether the cost of the auction should be paid first and the rest of the proceeds should be distributed on a pro rata divide between the creditor's debt and the enforcement agent's costs. The effect of this would be a just and equitable divide.

Q26 Do you agree with the method of dealing with the proceeds of sale? If not, please explain why, providing an alternative with supporting argument.

105. We will provide a further safeguard, that if the enforcement agent does not give the debtor or co-owner notice of sale within the permitted period, the goods are declared to have been abandoned by the enforcement agent. This will require the goods to be returned to the debtor. Where the debtors goods were removed by the enforcement agent, and they become abandoned, the enforcement agent must give notice to the debtor that the goods are available for collection. Document 7 in Annex F is an example of a notice of abandonment.

106. Goods will also be declared abandoned if they remain unsold. This will ensure that the enforcement agent removes goods that are appropriate for sale and that the sale is suitably arranged.
107. It is argued that the provisions in the TCE Act declaring unsold goods to be abandoned inadvertently conflicts with, in some rare cases, the protection afforded to the debtor that the enforcement agent will obtain the best possible price for the goods. We have therefore included a provision in the regulations to safeguard goods where the bid in an auction does not achieve the reserve price. It is also our intention to amend the TCE Act as set out in Annex D.
108. Paragraph 53(3) of Schedule 12 to the TCE Act provides that regulations may prescribe other circumstances in which controlled goods are abandoned. We have not identified any other circumstances in which controlled goods are abandoned and have therefore not produced any regulations on this.

Q27 Are there any other circumstances where goods may be deemed as abandoned? If so, please provide details.

Securities

109. The enforcement agent may take into control goods which are defined as property of any description other than land. Due to the unique nature of the item securities are dealt with separately in the regulations. In particular, how they should be held or disposed of. The detail is set out in regulations 44 and 45.

Vulnerability

110. There are circumstances where it would be inappropriate for an enforcement agent to take control of goods, most notably where vulnerability impacts on a debtor's capacity to engage with or understand the enforcement action. In addition it may be difficult for the debtor to make an informed decision on how best to address repayment of their debt. This could cause the debtor to come to an unfavourable decision resulting, ultimately, in their further detriment.
111. The enforcement agent is under an obligation to enforce the debt, as instruction has been given by the creditor that there is a debt that needs to be enforced. The enforcement agent is not able to change the debt as this rests with the creditor. The visit by the enforcement agent, however, may be the first occasion the debtor has acknowledged their financial situation. Particular attention needs to be paid to their individual circumstances. The primary purpose of the enforcement agent's visit is to obtain payment of the debt, or secure the debt by taking control of goods. However, he will also often be in a position to inform the creditor of the debtor's circumstances and where necessary negotiate an instalment plan.

112. The regulations are able to include a definition of vulnerable. However, it is important that this should be restricted to avoid the opportunity for debtors to feign vulnerability to avoid meeting their financial obligations. Regulations therefore do not currently deal with vulnerability as we are seeking views on possible workable definitions.
113. A list of the potentially vulnerable circumstances is not considered sufficient. One person with an illness, for example, may be affected greatly and incapable of dealing with any of their affairs whilst another with the same illness may be fully capable and willing to deal with the enforcement agent to organise repayment of the debt. Furthermore, there are many inter related triggers that cause vulnerability, some of which are only temporary.
114. We consider that the package of measures proposed will provide protection for vulnerable debtors. It will ensure that they are given an opportunity to come to an informed decision on how to address their indebtedness rather than evade repayment. We will, however, provide protection for vulnerable people in regulations by setting out the circumstances in which an enforcement agent must not take control of goods. The purpose of the restriction in these regulations is to protect both the enforcement agent and vulnerable people in society. We propose to protect children under the age of 16 and vulnerable persons, who are not the debtor, where they are the only persons present (whether more than one or a combination of both) in premises where goods are located. This is done in regulation 11. Similar provisions have been included for restrictions on entry, re-entry and remaining on the premises at regulation 24.
115. The enforcement agent will not be allowed to take control of goods where a vulnerable debtor does not understand the effect of the process. However, this does not prohibit the enforcement agent waiting until the debtor has sought advice and is capable of understanding the effect. This may be as simple as accessing foreign language telephone interpreting services.
116. It is accepted that a vulnerable person may not deal with the notice of enforcement. This will result in a visit by the enforcement agent and therefore trigger the right of the enforcement agent to recover the cost of that enforcement stage. However, this is considered more favourable than returning the debt unenforced to the creditor. The enforcement agent will be able to provide more information to the creditor about the debtor's circumstances and possibly provide assistance. This may well result in the debt being addressed and further distressing enforcement action and cost avoided.

Q28 Do you consider there is a need to define vulnerability in the regulations? If so, please provide a workable definition with supporting argument.

Commercial Rent Arrears Recovery

117. To provide more protection against aggressive bailiffs the Government proposes to commence section 71 of the TCE Act which abolishes the common law right to distrain for arrears of rent and will provide protection to residential tenants. We intend to commence section 72 of the TCE Act permitting a landlord under a lease of commercial premises to use the procedure of Schedule 12 to the TCE Act to recover from the tenant rent payable under the lease without the need for taking the matter to court.
118. The provisions covering Commercial Rent Arrears Recovery (CRAR) in the TCE Act require underpinning regulations which will cover:
- Landlord's authorisation;
 - Minimum rent;
 - Notices to sub-tenant.
119. To encourage more flexibility in bailiff collection the Government will implement section 73(8) of the TCE Act, allowing a landlord to authorise another person to take control of goods on the landlord's behalf. In order to ensure that all parties are aware of their rights and responsibilities our intention is that the authorisation must be in writing. Authorisation can only be for an enforcement agent to take control of goods; regulation 50 sets out the information it must contain.

Q29 Do you agree with the information required from a landlord for the authorisation of an enforcement agent to take control of goods? If not, please explain why, providing further information you consider should be included.

120. Our intention is to implement section 77(4) of the TCE Act and produce regulations to set the minimum amount of net unpaid rent before the landlord can exercise CRAR. The minimum net unpaid rent has been set as a period of time rather than a sum. The minimum period has been set as seven days in arrears.

Q30 Do you agree with the minimum rent period of seven days in arrears? If not, please explain why, providing an alternative and supporting argument.

121. Our intention is to implement section 81 of the TCE Act allowing the landlord to serve a notice on a sub-tenant requiring the sub-tenant to pay rent directly to the landlord. The regulations specify that such a notice will take effect 14 days after the notice has been served. The notice must be in writing and the contents are set out in regulation 53.

**Q31 Do you agree with the content of the notice to the sub-tenant?
If not, please explain why, providing further information you
consider should be included.**

Ensuring all parties are aware of their rights and responsibilities

122. Clarity of the law will go a considerable way to ensuring that parties are aware of their rights and responsibilities. Enforcement agents, legal advisers and the advice sector will be able to assist debtors in understanding the law.

123. The law will also introduce new notices, at every stage, to ensure that the debtor is fully aware of the consequences of their actions or inaction. However, it is important that the notices are kept simple and preferably limit information relevant to the next step. Annex F contains the following notices:

- Document 1 Notice of enforcement;
- Document 2 Controlled goods agreement;
- Document 3 Warning of immobilisation;
- Document 4 Warning of a vehicle being repositioned and immobilised;
- Document 5 Combined notice after entry or taking control of goods and inventory of goods taken into control;
- Document 6 Notice of sale;
- Document 7 Notice of abandonment.

**Q32 Do you agree with the content of the notices and warnings?
If not, please offer proposals for inclusion or argument
against inclusion.**

124. It is proposed that, in addition to the regulations and notices already covered in this paper, underlying rules of court may also be required. We will also work with the advice sector and other stakeholders to develop further leaflets and guidance. The aim will be to inform creditors, debtors and enforcement agents of their rights and responsibilities. These will be developed when the regulations and rules of court have all been finalised. It is our intention to make information available online to ensure it is publicly available and easy to access.

5 Costs of Enforcement Related Services

125. One of the most common complaints about bailiffs is the fees they charge. The Government needs to balance the requirement for a fair and transparent costs structure that can be easily understood with a sustainable structure that provides remuneration for all aspects of enforcement work. Enforcement is a difficult yet essential task and bailiffs must be fairly and adequately remunerated for the work they do.
126. The current costs regime for enforcement agents is complex. Each enforcement power brings with it a different costs structure. There are some legislative provisions, such as those relating to road traffic enforcement. Other provisions exist only within contractual arrangements drawn up between the enforcement agent company and its clients. The costs structures themselves also 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 open to abuse.
127. To deal with these problems the Government will invoke paragraph 62 of Schedule 12 to the TCE Act and provide for regulations to make provision for the recovery from the debtor of amounts in respect of costs of enforcement related services. The new structure will support the principles of transparency, consistency and proportionality. It will minimise fruitless activity and allow proper remuneration for the enforcement agent.
128. In order to achieve these objectives the Ministry of Justice conducted a detailed review of the enforcement industry looking specifically at:
- activities undertaken and the frequency with which they are performed;
 - overall cost of carrying out enforcement activity as well as the cost of each separate activity; and
 - required rate of return and the level currently obtained within the industry and associated groups.
129. The analysis on which the cost structure is constructed is the sole product of an external consultant commissioned by the Ministry of Justice. A copy of the report – Enforcement Fee Structure Review – A report by Alexander Dehayen for the Ministry of Justice 2009 is available on (Ministry of Justice website). The Ministry of Justice proposed initial modelling parameters within the report.
130. The purpose of these parameters was to guide the external consultant, and allow the necessary analysis to be undertaken for the proposed fee structure included in this consultation. These initial modelling parameters do not reflect any decisions having been made, but are necessary to

propose a cost structure that can be effectively consulted upon. Many of the parameters reflect views from previous consultations in this area.

131. The report has not been updated since it was written in 2009, and so may not reflect i) costs and volume of activities, and other factors affecting profitability that may have changed, and ii) that some assumptions may require updating. More generally, the report is based on data from a small sample of firms, and so the analysis may not be representative of the whole industry. We are seeking further data during the consultation process to address this.
132. The proposed costs structure encompasses a number of elements as detailed below. Annex G provides further detail of the structure proposed including the level of costs established using the data available in the sample.
133. The elements of the proposed structure are:
- Staged approach;
 - Fixed amounts and variable elements; and
 - Uniformity.

Staged approach

134. The structure is based on a set of core common elements that relate to all of the enforcement activity undertaken regardless of debt type. These activities have then been grouped together into stages with a defined trigger activity for each stage. Once that trigger activity has been undertaken the cost for the stage becomes payable.

Q33 Do you agree that the set of core activities in the costs structure cover all of the enforcement activity undertaken regardless of debt type? If not, please explain why, providing an alternative with supporting argument.

135. The staged approach is proposed in order to ensure that the enforcement agent is recompensed for the work undertaken and remove possible financial incentives for the agent to take unnecessary enforcement action. There will be three stages:
- Administration/Compliance stage;
 - Enforcement stage; and
 - Sale stage.
136. The use of a staged approach for costs supports the concept of early compliance and greater proportionality by providing the opportunity for the debtor to make payment at the Administration/Compliance stage. The debtor thereby avoids the attendance at the debtor's premises by the

enforcement agent, the possibility of goods being taken into control and incurring even more costs.

137. Our proposed staged approach also prevents abuse by the enforcement agent by only one cost being payable, per stage, regardless of the number of times an activity is undertaken (e.g. the end to numerous letters and phantom visits with an associated charge for each).
138. There is also agreement in principle that where it can be shown that the debtor is incapable, due to mental health issues, of engaging with the process at an early stage there may be a need for the enforcement stage fee to be removed and the level of costs remitted back to the administration/compliance charge.

Q34 Do you agree with the grouping, into stages, of these activities? If not, please explain why, providing an alternative with supporting argument.

Q35 Do you agree the activities are grouped correctly? If not, please explain why, providing an alternative with supporting argument.

Q36 Do you consider there is a need for remission? If so, please offer proposals as to the level of evidence required to prove that mental health has contributed to the lack of engagement.

Fixed amounts and variable elements

139. The fixed amounts are linked to the various stages proposed and allow a closer tie between the amount and the actual costs incurred by the enforcement agent for the activities required at a particular stage.

Q37 Do you agree that the fixed amounts attributed to each stage are appropriate? If not, please explain why.

140. Higher value debts due to their complexity may be more costly to enforce and so an additional percentage element to the enforcement and sale stages are proposed. For the enforcement and the sale stages the first £1000 of any debt will attract only a fixed cost. The balance of the debt over £1000 will attract an additional percentage cost.

Q38 Do you agree the percentage costs attributed to the relevant stages are appropriate and the threshold is correctly placed? If not, please explain why, providing an alternative with supporting argument.

141. The costs structure does allow for an application to the court for any extra costs to be charged, as many of the current fee regimes do. This has not been detailed as the proposed cost structure has been based on the premise that all costs have been incorporated into the structure. It has

been argued, however, that there is a need to cover instances where the enforcement activities are very costly by including a process that allows for an exceptional costs application to be made to the court. Examples of costly enforcement include high value debts and the removal of specialist or high value equipment.

Q39 Is there a need for an exceptional costs process? If so, please offer proposals how such a scheme would operate including the thresholds for such a process?

Uniformity

142. The rationale for uniformity is that many of the activities undertaken are similar across the different debt types. The new costs structure has prescribed uniform activities across all debt types.
143. In the course of the review, it became apparent that there was a difference in the way orders from the High Court were enforced over other types of debts. Enforcement of an order from the High Court is considerably more expensive to recover than other debt types as High Court Enforcement Officers have a personal liability to the creditor. They are under an obligation to secure every debt which is enforceable regardless of any payment arrangement. To ensure fairness and proportionality for those debtors the enforcement stage has been split in two, the obligatory enforcement activities are in stage one and the activities that will only be carried out if the debtor fails to comply are in stage two.
144. Another difference for High Court enforcement will be the requirement for the creditor to cover the Administration/Compliance cost if the debt is not collected from the debtor.

Q40 Do you agree with the differences in the costs structure between High Court and non High Court debt? If not, please explain why.

145. Action by an enforcement agent is the primary method of recovery where a non-domestic rates payer has failed to pay a bill, despite reminders, and a liability order has been granted. Concern has been expressed as to the effect on the enforcement and recovery rates for Non Domestic rates cases sent by Local Authorities in view of the very high value cases and the timing of enforcement activity.

Q41 Do you consider the costs structure will have an adverse effect on recovery of Non Domestic Rates cases? If so, please provide details.

146. We propose that where there is a partial payment, the monies recovered should be distributed on a pro rata basis between the creditor's debt and

the enforcement agent's costs. The effect of this would be a just and equitable divide of the monies collected and promote continued enforcement where possible.

Q42 Do you agree with the order for payment of monies on partial payments? If not, please explain why, providing an alternative with supporting argument.

147. The cost structure is based on a study conducted in 2009 using costs relating to 2007/2008. The amounts have not been changed to reflect current day costs.

Q43 Should the costs structure be updated to take account of inflation prior to implementation?

Q44 Should the costs structure be updated annually by indexing to a measure of inflation?

148. An evaluation and review of the costs structure will be undertaken within three years of implementation.

Q45 Is three years a suitable timeframe for the costs structure to be comprehensively reviewed and potentially recalibrated? If not, please explain why, providing an alternative with supporting argument.

149. In addition the regulations will also provide for the amount charged to the debtor, if disputed, to be assessed in accordance with rules of court. Provision for this has not yet been made in the regulations.

150. The costs structure will be published on the Justice website to ensure that creditors, debtors, enforcement agents, the legal profession and advice sector are all aware of the cost of enforcement.

6 Regulatory Regime

151. It is important that any regulation of the enforcement industry complies with the general principles of all regulation. The five principles are they should be transparent, accountable, proportionate, and consistent and targeted only at cases where action is needed. The Government is committed to freeing up business from red tape and wants to avoid unnecessary regulation. We have also made clear that as far as possible micro businesses should not be subject to any new regulation. It is necessary, however, to balance this with commitment on consumer protection. The Government is fully committed to tackling aggressive bailiffs and has therefore decided to take a targeted and proportionate approach to this issue.

152. There have been several calls made for regulation of the enforcement industry from various Government consultations and calls for evidence. The Advice Sector Law Reform Group argue that regulating bailiffs would not damage a fragile economy and reputable enforcement agent firms would welcome statutory regulation to ensure that their reputations are not sullied by rogue enforcement agents. It is considered therefore that to do nothing is not an option.

153. We have set out below the Government's preferred option we would, however, also consider exploring any alternatives to regulation or less regulatory options.

Q46 Do you consider there are alternative or less regulatory options that would be suitable for enforcement agents? If so, please provide proposals.

154. The TCE Act does not include provisions for establishing an independent regulator. Consideration was previously given to using the Security Industry Authority (SIA) for the regulation of the enforcement industry. On 14 October 2010, the Government announced that the SIA would no longer be an NDPB (Non-Departmental Public Body) and there will be a phased transition to a new regulatory regime for the private security industry. It is in the very early stages of development and therefore too soon to consider including the enforcement industry.

155. The Government believes it is important to balance the protection for consumers whilst minimising regulation on business. Therefore it is the Government's intention to implement section 64 of the TCE Act which provides for the Lord Chancellor to make regulations about certification of enforcement agents.

156. Currently there is only an obligation on bailiffs enforcing certain debt types to obtain a certificate from the county court. These debts include

distress for rent, road traffic debts, council tax and non-domestic rates. The information the applicant is required to supply is very limited and relates only on their knowledge of the law of distress. We are abolishing this process and will replace it with a newly improved certification process. Section 63 of the TCE Act describes enforcement agents and sets out the requirements before an individual can act as an enforcement agent and also creates an offence where a person acts as an enforcement agent without authority.

157. Under our proposals every enforcement agent who will be responsible for taking control of goods will be required to obtain a certificate from the county court, unless they are exempt under section 63 of the TCE Act for detail see Annex A. The new requirements for the certificate will include:

- Providing evidence that they have successfully achieved the necessary competence to work in the enforcement industry.
- Providing evidence of a satisfactory Criminal Record check.
- Providing evidence of liability insurance or providing security by way of a bond.
- Providing information about the types of debts they will be seeking to enforce.
- Advertising notice of the application. This will allow objections to the granting of the certificate to be lodged at the court by the general public.

158. The proposals for competence requirements are covered in Chapter 7 of this paper.

159. It is our intention that the enforcement agent will be required to lodge the application at the county court local to the area where they will be carrying out the main part of their business. However, they will be able to work anywhere in England and Wales. We will prescribe circumstances to allow the certificates to be issued by specialised District Judges who will consider whether a certificate should be issued to the enforcement agent.

Q47 Do you agree that the application for a certificate should be made by the enforcement agent at the court local to the area where they will be carrying out the main part of their business? If not, please explain why, providing an alternative with supporting argument.

Q48 Do you agree that the application for a certificate should be dealt with by specialised District Judges? If not, please explain why, providing supporting argument.

160. We will produce regulations which will comprise the structure and basis of the certification process as set out in section 64(3) of the TCE Act. In particular the provisions will include the suspension or cancellation of certificates on the grounds that the enforcement agent is no longer fit to hold a certificate. This is covered in Chapter 8 of this paper.

161. The Government believes that this certification process will significantly enhance protection. However, a number of parties have called for a statutory independent regulator to be created. The Government does not consider that this is appropriate at this time. It is, however, the intention to evaluate and monitor the certification provisions of the TCE Act and the complaints process covered in Chapter 8 to gather evidence whether further regulation is necessary.

162. The Ministry of Justice has received two separate submissions on possible statutory independent regulation both from the British Parking Association. Although the government has no immediate plans to introduce a regulator we consider that their proposals would benefit from further scrutiny. We have therefore included their proposals below and would welcome views on their feasibility.

163. The first is the proposal of the Bailiffs and Enforcement Agents Council (BEAC) (**Annex H**).

- Under this proposal the BEAC would licence individuals, approve service providers and accredit professional associations. They would also set standards of conduct and performance as well as education and training and investigate complaints and allegations of misconduct.
- Although it is essentially self regulation, independence would be guaranteed in three ways:
 - General oversight by the Privy Council;
 - The Secretary of State for Justice to appoint the regulatory body's Chair; and
 - A *majority* of the regulatory body's governing council to be appointed from *outside* the enforcement industry (including representatives from the advice sector).

164. The second is a more recent proposal and is an adaptation of BEAC to include the private parking industry (**Annex I**).

- Under this proposal in addition to the provisions from BEAC the Council would provide an Independent Complaints Appeals Service and an Approved Operator Scheme. It would cover the enforcement industry as well as the private parking industry.
- This proposition rests on the argument that regulation of the bailiff industry and the private parking industry should be combined since they share common problems and would provide economies of scale.

The proposal has also been sent by the British Parking Association to the Department for Transport for consideration.

165. These proposals would require primary legislation for the setting up of a new body and public funding.

Q49 Do you have any comments on either of the proposals submitted by the British Parking Association?

7 Competence Requirements

166. The Government want to raise the industry standard to ensure that all individuals and companies are exemplars of the profession rather than just the few. Currently, there are no set competence requirements for bailiffs. This is a significant gap. Some businesses have introduced their own training regimes to ensure that their bailiffs are aware of their responsibilities. The Ministry of Justice and the enforcement industry working with the Security Industry Authority have developed a Quality Credit Framework module as part of the competency standards and specific qualifications.

167. The proposed certification process proposed in Chapter 6 requires the enforcement agent to provide evidence that they have successfully achieved the necessary competence to work in the enforcement industry.

168. We have set out in Annex J the learning outcomes and assessment criteria that we consider should form part of the certification process. We consider that the minimum competence for an enforcement agent should be understanding:

- the role of the enforcement agent;
- the law and its relevance to the role of the enforcement agent;
- the practice of taking control of goods;
- the practice of removal and sale of goods;
- aspects of customer care relevant to an enforcement agent;
- how to recognise, assess, defuse, resolve and reduce risk in conflict situations.

The proposed criteria represents the basic level of knowledge and competence we consider necessary to commence work in the enforcement industry and obtain a certificate in the county court.

Q50 Do you agree the competence criteria is an acceptable level for entry into the profession? If not, please explain why, providing an alternative and supporting argument.

169. It is our preferred option that the proposed criteria are developed fully in to an accredited mandatory training package. Each enforcement agent applying for a certificate would undertake the fixed mandatory training and provide a certificate to the court as proof of competence. This will deliver consistency of standards across England and Wales for all enforcement agents.

170. As an alternative there could be flexibility as to how the enforcement agent provides evidence of competence to the judge. This could include:

- evidence of undertaking accredited training; or
- evidence of alternative training; or
- expert evaluation; or
- self assessment.

This option will still improve the current process but would not necessarily deliver a consistent standard

Q51 Do you consider that mandatory training is necessary to ensure an enforcement agent is fit and proper to hold a certificate? If not, please provide alternative proposals.

171. In addition the enforcement industry has been working with Skills for Security to produce National Occupational Standards. These standards will build on the required competences.

Q52 Do you consider an enforcement agent should undertake any further training or development after the granting of the certificate? If so, please provide proposals.

8 Remedies and Complaints handling

172. There is confusion concerning who should deal with complaints about bailiffs and how they should be dealt with. As with any other service there will be complaints, some require adjudication others can be dealt with more informally. The decision on which avenue to follow may ultimately, depend on what remedial action is being sought and the seriousness of the complaint or breach. In the first instance redress should at least be attempted with the enforcement agent involved.

173. We believe that there are already effective avenues of complaint. This Chapter proposes changes for further improvement. We intend to provide better and clearer information to the public and ensure organisations take their responsibilities seriously.

Dispute about the debt

174. Any dispute about the debt itself is a matter for the creditor or the court alone. As has already been stated in this paper the enforcement agent does not have the authority to withdraw the enforcement action. That is a matter for the creditor and/or the court.

Legal Remedies

175. We intend to provide legal safeguards by bringing into force paragraph 66 of Schedule 12 to the TCE Act which provides remedies available to a debtor against an enforcement agent who breaches the prescribed procedure for taking control of goods or acts under an enforcement power that is defective. Where the debtor chooses recourse through the court it may order goods to be returned to the debtor and order the enforcement agent or related party to pay damages for the loss suffered by the debtor.

176. We will also bring into force and implement paragraph 60 of Schedule 12 to the TCE Act which sets out the procedure to be followed where a third party claims the goods taken into control by the enforcement agent are his and not the debtor's.

177. The regulations make provision for the court to determine the amount the third party should pay into court in respect of an amount equal to the value of the goods and the enforcement agent's costs of retaining the controlled goods pending the court's decision on the claim. In addition, the regulations make provision about how any underpayment is to be determined. Regulations 47 and 48 set out the detail.

Complaints

178. The Government believes that, as with most complaints, an attempt should be made to resolve the issue with the enforcement agent and or employer in the first instance. In addition, most enforcement agent businesses belong to either the Civil Enforcement Association or the High Court Enforcement Officers Association.
179. All members of these bodies are required to comply with their respective associations' code of practice. The codes of practice include the requirement to have in place an 'in house' complaints procedure and to submit to the association's own complaints procedure where necessary.
180. There is a minority of enforcement agents who are not members of either association. They are usually very small firms or 'one man bands' who invariably obtain most of their work sub-contracting for one of the larger firms. As such, any complaint against them will go to the firm that sub-contracted them.
181. The Civil Enforcement Association and the High Court Enforcement Officers Association are working together with the advice sector to produce a bespoke complaints process that could be used across the industry. When this process is fully developed it will be openly available online.
182. The power to enforce council tax, non domestic rates and traffic debts rests with the relevant local authority. Most local authorities contract this work out. The responsibility of the process, however, still remains with the contracting local authority. Any complaint therefore can be made to the local authority.
183. The power to enforce magistrates' court fines rests with Her Majesty's Courts and Tribunals Service. Most of the warrant enforcement is contracted out. As with local authorities, the responsibility of the process remains with Her Majesty's Courts and Tribunals Service and any complaint should be made to them.

Enforcement Agent not fit to operate

184. As set out in Chapter 6 the enforcement agent will have to obtain a certificate to be able to take control of goods. The certificate will be granted by a judge in the county court. The judge will also have the power to suspend or cancel any certificate.
185. Regulations will provide that a complaint may be made to the court by any of the parties, the enforcement agent's employer or association. The purpose of the complaint will be limited. The court will only be able to consider whether the enforcement agent is still fit to hold the certificate or whether the certificate should be suspended. It is our intention to include in the provisions what action the enforcement agent needs to take whilst the certificate is suspended this could include some retraining.

186. Any complaint about the practice of the employer should be directed to either the associations or the instructing creditor on whose behalf they are acting.

187. Regulations will be developed following this consultation which will set out the process in more detail.

Stand alone/Supporting measures

188. In addition to all of the above, there are stand alone supporting measures. These include the Local Government Ombudsman, Parliamentary and Health Service Ombudsman and Members of Parliament or Government Minister.

189. The Local Government Ombudsman has a particular role to play if the debt being enforced by the enforcement agent is a local authority debt. It will, however, only become involved in the complaint if the matter is unresolved by the local authority.

Q53 Do you agree with our proposals on the complaints handling strategy? If not, please provide alternatives with supporting argument.

9 High Court and County Court Jurisdiction Order 1991

190. Chapters 4 to 8 set out the Government plans to transform bailiff action. As part of our proposal to encourage more flexibility in bailiff collections, this chapter seeks early views on possible changes in the future to offer creditors more choice in the jurisdiction of enforcement from the county court.
191. Under the present system, 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 Her Majesty's Courts and Tribunals Service (in respect of county court warrants of execution).
192. In relation to enforcement by a writ or warrant of execution we are seeking views on whether to increase the creditor's choice of where to enforce their judgment debt. At present a creditor may only choose to enforce where the debt is between £600 and £4999.
193. If the debt is £5,000 or more it must be enforced in the High Court by HCEOs. If the debt is less than £600 it must be enforced in the county court by county court bailiffs.
194. An exception to the above is where the judgment is a county court judgment in respect of a Consumer Credit Act (CCA) debt, which is only enforceable in the county court, even if the value of the judgment is above £600. CCA debts are subject to contractual interest rates and both case law and statute prohibit enforcement in the High Court to avoid compound interest being charged to debtors.
195. In addition, awards from Employment Tribunals and settlements brokered by ACAS can be enforced by HCEOs even if the value is under £600.
196. The procedure in the county court for a warrant of execution requires the creditor to make an application with the relevant court fee. The county court bailiff is required to enforce the warrant and collect the debt as well as the court fee from the debtor. No additional costs generally apply.
197. The procedure for enforcement by HCEOs will require an application to transfer the action to the High Court if it is a judgment in the county court. The creditor then makes an application for a writ of execution. The HCEO is required to enforce the writ and collect the debt, the court fee and their cost which are covered in Chapter 5 of this paper.

198. We welcome feedback from consumers and court users as to the specific impacts this would have for them.

Q54 Do you consider that the jurisdiction order should be amended? If so, please supply details and supporting argument.

10 Impact Assessment

199. The Government is mindful of the importance of considering the impact of these proposals on different groups, with particular reference to the providers of enforcement services and debtors who may be vulnerable. Our assessments of the potential impact of these proposals have been published alongside this document.

200. The information and data available to assess the impacts of the proposals is limited, particularly in relation to the impact on i) debtors and ii) the industry. The consultation exercise aims to address this and is seeking views on whether the range of impacts have been correctly identified, and what the scale of these impacts may be. However, for more in depth analysis, further evidence is required. A questionnaire is therefore annexed to the impact assessments accompanying this consultation. Respondents from the industry are encouraged to respond to this questionnaire, and provide evidence that can be used in the assessment of the impacts arising out of the proposals.

Q55 Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper? Please give reasons.

Q56 Do you agree that we have correctly identified the extent of impacts under these proposals? Please give reasons.

Q57 Do you have any evidence of equality impacts that have not been identified within the equality impact assessment? If so, how could they be mitigated?

11 Next Steps

201. The consultation will close at 12:00 noon on 14 May 2012. Following consultation, we intend to publish our formal response later in the year. We will, in the first instance, need to clarify and substantiate the full impacts on business, consumers and the third sector of the proposals we intend to take forward. The response will set out full details of all the proposals we intend to take forward and set timings on when they may be introduced.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

- Q1 Do you agree with the contents of the National Standards? If not, please supply proposals for inclusion or argument against inclusion.**
- Q2 Do you consider the existing law and the revised National Standards for Enforcement agents is sufficient to address the problems we have identified or do you consider there is still a need for further Government intervention as set out in the remainder of paper?**
- Q3 Do you consider there are any gaps in the range of information available on DirectGov? If so, please supply proposals for inclusion.**
- Q4 Do you agree enforcement agents should not be able to use force against a person? If not, please explain why, providing supporting argument and evidence of when it would be useful.**
- Q5 Do you agree there is a need for the court to be satisfied of certain conditions before they authorise the use of reasonable force to gain entry to premises and that the conditions should be prescribed in regulations? If not, please explain why.**
- Q6 Do you agree with the prescribed conditions set? If not, please supply proposals for inclusion or argument against inclusion.**
- Q7 Do you consider an enforcement agent executing a High Court or county court debt should:**
- a) have to apply to the court to use reasonable force if necessary on entry to any business premises; or**
 - b) should they have a general power?**
- Please explain your reason why, providing supporting argument.**
- Q8 Do you agree there is a need for the court to be satisfied of certain conditions before they authorise the use of reasonable force to gain re-entry to premises and that the conditions should be prescribed in regulations? If not, please explain why.**
- Q9 Do you agree with the prescribed conditions set? If not, please supply proposals for inclusion or argument against inclusion.**

Q10 Do you consider an enforcement agent should:

- a) have to apply to the court to use reasonable force, if necessary, on re-entry in certain circumstances; or
- b) should they have a general power?

Please explain your reason why, providing supporting argument.

Q11 Do you agree with the 12 month time limit for taking control of goods? If not, please explain why, providing an alternative period with supporting argument.

Q12 Do you agree with the term for the minimum period of notice prior to taking control of goods? If not, please explain why, providing an alternative and supporting argument.

Q13 Do you agree with the modes of entry and re-entry? If not, please explain why.

Q14 Do you agree that the enforcement agent should be able to enter premises any day? If not, please propose limits with accompanying argument.

Q15 Do you agree with the time limits of 6.00am and 9.00pm for entry in wholly residential premises? If not, please propose alternative limits with accompanying argument.

Q16 Do you agree that the enforcement agent should be able to take control of goods any day? If not, please propose limits with accompanying argument.

Q17 Do you agree with the time limits of 6.00am and 9.00pm for taking control of goods? If not, please propose alternative limits with accompanying argument.

Q18 Do you agree with allowing the enforcement agent to proceed outside the hours limit where the process has already commenced? If not, please explain why.

Q19 Do you agree with the range of exempt goods? If not, please offer proposals for inclusion or argument against inclusion.

Q20 Do you agree that the debtor should be able to authorise another person to enter into a controlled goods agreement? If not, please explain why.

Q21 Do you agree that a person in apparent authority should be able to enter onto a controlled goods agreement? If not, please explain why.

Q22 Can you provide any recent evidence which supports or challenges the approach to empower enforcement agents to secure entire premises?

- Q23 Do you agree with the time limit that a vehicle must remain immobilised before being removed to storage? If not, please explain why, providing an alternative period with supporting argument.**
- Q24 Do you agree with the term set for the minimum period before a sale may proceed? If not, please explain why, providing an alternative period with supporting argument.**
- Q25 Are there any methods of sale other than private contract, sealed bids or advertisement that should be included in the regulations? If so, please provide full details.**
- Q26 Do you agree with the method of dealing with the proceeds of sale? If not, please explain why, providing an alternative with supporting argument.**
- Q27 Are there any other circumstances where goods may be deemed as abandoned? If so, please provide details.**
- Q28 Do you consider there is a need to define vulnerability in the regulations? If so, please provide a workable definition with supporting argument.**
- Q29 Do you agree with the information required from a landlord for the authorisation of an enforcement agent to take control of goods? If not, please explain why, providing further information you consider should be included.**
- Q30 Do you agree with the minimum rent period of seven days in arrears? If not, please explain why, providing an alternative and supporting argument.**
- Q31 Do you agree with the content of the notice to the sub-tenant? If not, please explain why, providing further information you consider should be included.**
- Q32 Do you agree with the content of the notices and warnings? If not, please offer proposals for inclusion or argument against inclusion.**
- Q33 Do you agree that the set of core activities in the costs structure cover all of the enforcement activity undertaken regardless of debt type? If not, please explain why, providing an alternative with supporting argument.**
- Q34 Do you agree with the grouping, into stages, of these activities? If not, please explain why, providing an alternative with supporting argument.**
- Q35 Do you agree the activities are grouped correctly? If not, please explain why, providing an alternative with supporting argument.**

- Q36 Do you consider there is a need for remission? If so, please offer proposals as to the level of evidence required to prove that mental health has contributed to the lack of engagement.**
- Q37 Do you agree that the fixed amounts attributed to each stage are appropriate? If not, please explain why.**
- Q38 Do you agree the percentage costs attributed to the relevant stages are appropriate and the threshold is correctly placed? If not, please explain why, providing an alternative with supporting argument.**
- Q39 Is there a need for an exceptional costs process? If so, please offer proposals how such a scheme would operate including the thresholds for such a process?**
- Q40 Do you agree with the differences in the costs structure between High Court and non High Court debt? If not, please explain why.**
- Q41 Do you consider the costs structure will have an adverse effect on recovery of Non Domestic Rates cases? If so, please provide details.**
- Q42 Do you agree with the order for payment of monies on partial payments? If not, please explain why, providing an alternative with supporting argument.**
- Q43 Should the costs structure be updated to take account of inflation prior to implementation?**
- Q44 Should the costs structure be updated annually by indexing to a measure of inflation?**
- Q45 Is three years a suitable timeframe for the costs structure to be comprehensively reviewed and potentially recalibrated? If not, please explain why, providing an alternative with supporting argument.**
- Q46 Do you consider there are alternative or less regulatory options that would be suitable for enforcement agents? If so, please provide proposals.**
- Q47 Do you agree that the application for a certificate should be made by the enforcement agent at the court local to the area where they will be carrying out the main part of their business? If not, please explain why, providing an alternative with supporting argument.**
- Q48 Do you agree that the application for a certificate should be dealt with by specialised District Judges? If not, please explain why, providing supporting argument.**
- Q49 Do you have any comments on either of the proposals submitted by the British Parking Association?**

Q50 Do you agree the competence criteria is an acceptable level for entry into the profession? If not, please explain why, providing an alternative and supporting argument.

Q51 Do you consider that mandatory training is necessary to ensure an enforcement agent is fit and proper to hold a certificate? If not, please provide alternative proposals.

Q52 Do you consider an enforcement agent should undertake any further training or development after the granting of the certificate? If so, please provide proposals.

Q53 Do you agree with our proposals on the complaints handling strategy? If not, please provide alternatives with supporting argument.

Q54 Do you consider that the jurisdiction order should be amended? If so, please supply details and supporting argument.

Q55 Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper? Please give reasons.

Q56 Do you agree that we have correctly identified the extent of impacts under these proposals? Please give reasons.

Q57 Do you have any evidence of equality impacts that have not been identified within the equality impact assessment? If so, how could they be mitigated?

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (for example, member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please respond online by 14 May 2012 at:
www.justice.gov.uk/consultations/consultations.htm

Alternatively please send your response by email to:
EnforcementReform.TCE@justice.gsi.gov.uk, or by post to Judith Evers at:
Ministry of Justice, Postpoint 4.23, 4th Floor, 102 Petty France, London
SW1H 9AJ.

Publication of response

A paper summarising the responses to this consultation is scheduled to be published in October 2012. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

Responses to the consultation must go to the named contact under the How to Respond section.

However, if you have any complaints or comments about the consultation **process** you should contact the Ministry of Justice consultation co-ordinator at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Ministry of Justice
Consultation Co-ordinator
Better Regulation Unit
Analytical Services
7th Floor, 7:02
102 Petty France
London SW1H 9AJ**

Annex A – Part 3 of the Tribunals, Courts and Enforcement Act 2007

PART 3

ENFORCEMENT BY TAKING CONTROL OF GOODS

CHAPTER 1

PROCEDURE

62 Enforcement by taking control of goods

- (1) Schedule 12 applies where an enactment, writ or warrant confers power to use the procedure in that Schedule (taking control of goods and selling them to recover a sum of money).
- (2) The power conferred by a writ or warrant of control to recover a sum of money, and any power conferred by a writ or warrant of possession or delivery to take control of goods and sell them to recover a sum of money, is exercisable only by using that procedure.
- (3) Schedule 13—
 - (a) amends some powers previously called powers to distrain, so that they become powers to use that procedure;
 - (b) makes other amendments relating to Schedule 12 and to distress or execution.
- (4) The following are renamed—
 - (a) writs of fieri facias, except writs of fieri facias de bonis ecclesiasticis, are renamed writs of control;
 - (b) warrants of execution are renamed warrants of control;
 - (c) warrants of distress, unless the power they confer is exercisable only against specific goods, are renamed warrants of control.

63 Enforcement agents

- (1) This section and section 64 apply for the purposes of Schedule 12.
- (2) An individual may act as an enforcement agent only if one of these applies—
 - (a) he acts under a certificate under section 64;
 - (b) he is exempt;
 - (c) he acts in the presence and under the direction of a person to whom paragraph (a) or (b) applies.

- (3) An individual is exempt if he acts in the course of his duty as one of these—
 - (a) a constable;
 - (b) an officer of Revenue and Customs;
 - (c) a person appointed under section 2(1) of the Courts Act 2003 (c39) (court officers and staff).
- (4) An individual is exempt if he acts in the course of his duty as an officer of a government department.
- (5) For the purposes of an enforcement power conferred by a warrant, an individual is exempt if in relation to the warrant he is a civilian enforcement officer, as defined in section 125A of the Magistrates' Courts Act 1980 (c. 43).
- (6) A person is guilty of an offence if, knowingly or recklessly, he purports to act as an enforcement agent without being authorised to do so by subsection (2).
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

64 Certificates to act as an enforcement agent

- (1) A certificate may be issued under this section—
 - (a) by a judge assigned to a county court district;
 - (b) in prescribed circumstances, by a district judge.
- (2) The Lord Chancellor must make regulations about certificates under this section.
- (3) The regulations may in particular include provision—
 - (a) for fees to be charged for applications;
 - (b) for certificates to be issued subject to conditions, including the giving of security;
 - (c) for certificates to be limited to purposes specified by or under the regulations;
 - (d) about complaints against holders of certificates;
 - (e) about suspension and cancellation of certificates;
 - (f) to modify or supplement Schedule 12 for cases where a certificate is suspended or cancelled or expires;
 - (g) requiring courts to make information available relating to certificates.
- (4) A certificate under section 7 of the Law of Distress Amendment Act 1888 (c. 21) which is in force on the coming into force of this section has effect as a certificate under this section, subject to any provision made by regulations.

65 Common law rules replaced

- (1) This Chapter replaces the common law rules about the exercise of the powers which under it become powers to use the procedure in Schedule 12.
- (2) The rules replaced include—
 - (a) rules distinguishing between an illegal, an irregular and an excessive exercise of a power;
 - (b) rules that would entitle a person to bring proceedings of a kind for which paragraph 66 of Schedule 12 provides (remedies available to the debtor);
 - (c) rules of replevin;
 - (d) rules about rescuing goods.

66 Pre-commencement enforcement not affected

Where—

- (a) by any provision of this Part a power becomes a power to use the procedure in Schedule 12, and
- (b) before the commencement of that provision, goods have been distrained or executed against, or made subject to a walking possession agreement, under the power,

this Part does not affect the continuing exercise of the power in relation to those goods.

67 Transfer of county court enforcement

In section 85(2) of the County Courts Act 1984 (c. 28) (under which writs of control give the district judge, formerly called the registrar, power to execute judgments or orders for payment of money) for “the registrar shall be” substitute “any person authorised by or on behalf of the Lord Chancellor is”.

68 Magistrates' courts warrants of control

In the Magistrates' Courts Act 1980 (c. 43) after section 125 insert—

“125ZA Warrants of control

- (1) This section applies to a warrant of control issued by a justice of the peace.
- (2) The person to whom it is directed must endorse the warrant as soon as possible after receiving it.
- (3) For the purposes of this section a person endorses a warrant by inserting on the back the date and time when he received it.
- (4) No fee may be charged for endorsing a warrant under this section.”

69 County court warrants of control etc.

For section 99 of the County Courts Act 1984 substitute—

“99 Endorsement of warrants of control etc.

- (1) This section applies to—
 - (a) a warrant of control issued under section 85(2);
 - (b) a warrant of delivery or of possession, but only if it includes a power to take control of and sell goods to recover a sum of money and only for the purposes of exercising that power.
- (2) The person to whom the warrant is directed must, as soon as possible after receiving it, endorse it by inserting on the back the date and time when he received it.
- (3) No fee may be charged for endorsing a warrant under this section.”

70 Power of High Court to stay execution

- (1) If, at any time, the High Court is satisfied that a party to proceedings is unable to pay—
 - (a) a sum recovered against him (by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise), or
 - (b) any instalment of such a sum,

the court may stay the execution of any writ of control issued in the proceedings, for whatever period and on whatever terms it thinks fit.

- (2) The court may act under subsection (1) from time to time until it appears that the cause of the inability to pay has ceased.
- (3) In this section a party to proceedings includes every person, whether or not named as a party, who is served with notice of the proceedings or attends them.

CHAPTER 2

RENT ARREARS RECOVERY

Abolition of common law right

71 Abolition of common law right

The common law right to distrain for arrears of rent is abolished.

Commercial rent arrears recovery

72 Commercial rent arrears recovery (CRAR)

- (1) A landlord under a lease of commercial premises may use the procedure in Schedule 12 (taking control of goods) to recover from the tenant rent payable under the lease.

- (2) A landlord's power under subsection (1) is referred to as CRAR (commercial rent arrears recovery).

73 Landlord

- (1) In this Chapter "landlord", in relation to a lease, means the person for the time being entitled to the immediate reversion in the property comprised in the lease.
- (2) That is subject to the following.
- (3) In the case of a tenancy by estoppel, a person is "entitled to the immediate reversion" if he is entitled to it as between himself and the tenant.
- (4) If there are joint tenants of the immediate reversion, or if a number of persons are entitled to the immediate reversion as between themselves and the tenant—
 - (a) "landlord" means any one of them;
 - (b) CRAR may be exercised to recover rent due to all of them.
- (5) If the immediate reversion is mortgaged, "landlord" means—
 - (a) the mortgagee, if he has given notice of his intention to take possession or enter into receipt of rents and profits;
 - (b) otherwise, the mortgagor.
- (6) Subsection (5) applies whether the lease is made before or after the mortgage is created, but CRAR is not exercisable by a mortgagee in relation to a lease that does not bind him.
- (7) Where a receiver is appointed by a court in relation to the immediate reversion, CRAR is exercisable by the receiver in the name of the landlord.
- (8) Any authorisation of a person to exercise CRAR on another's behalf must be in writing and must comply with any prescribed requirements.
- (9) This Chapter applies to any other person entitled to exercise CRAR as it applies to a landlord.

74 Lease

- (1) "Lease" means a tenancy in law or in equity, including a tenancy at will, but not including a tenancy at sufferance.
- (2) A lease must be evidenced in writing.
- (3) References to a lease are to a lease as varied from time to time (whether or not the variation is in writing).
- (4) This section applies for the purposes of this Chapter.

75 Commercial premises

- (1) A lease (A) is of commercial premises if none of the demised premises is—
 - (a) let under lease A as a dwelling,
 - (b) let under an inferior lease (B) as a dwelling, or
 - (c) occupied as a dwelling.
- (2) The “demised premises” in this section include anything on them.
- (3) “Let as a dwelling” means let on terms permitting only occupation as a dwelling or other use combined with occupation as a dwelling.
- (4) Premises are not within subsection (1)(b) if letting them as a dwelling is a breach of a lease superior to lease B.
- (5) Premises are not within subsection (1)(c) if occupying them as a dwelling is a breach of lease A or a lease superior to lease A.
- (6) This section applies for the purposes of this Chapter.

76 Rent

- (1) “Rent” means the amount payable under a lease (in advance or in arrear) for possession and use of the demised premises, together with—
 - (a) any interest payable on that amount under the lease, and
 - (b) any value added tax chargeable on that amount or interest.
- (2) “Rent” does not include any sum in respect of rates, council tax, services, repairs, maintenance, insurance or other ancillary matters (whether or not called “rent” in the lease).
- (3) The amount payable for possession and use of the demised premises, where it is not otherwise identifiable, is to be taken to be so much of the total amount payable under the lease as is reasonably attributable to possession and use.
- (4) Where a rent is payable under or by virtue of Part 2 of the Landlord and Tenant Act 1954 (c. 56), the amount payable under the lease for possession and use of those premises is to be taken to be that rent.
- (5) This section applies for the purposes of this Chapter except sections 71 and 85.

77 The rent recoverable

- (1) CRAR is not exercisable except to recover rent that meets each of these conditions—

- (a) it has become due and payable before notice of enforcement is given;
 - (b) it is certain, or capable of being calculated with certainty.
- (2) The amount of any rent recoverable by CRAR is reduced by any permitted deduction.
 - (3) CRAR is exercisable only if the net unpaid rent is at least the minimum amount immediately before each of these—
 - (a) the time when notice of enforcement is given;
 - (b) the first time that goods are taken control of after that notice.
 - (4) The minimum amount is to be calculated in accordance with regulations.
 - (5) The net unpaid rent is the amount of rent that meets the conditions in subsection (1), less—
 - (a) any interest or value added tax included in that amount under section 76(1)(a) or (b), and
 - (b) any permitted deductions.
 - (6) Regulations may provide for subsection (5)(a) not to apply in specified cases.
 - (7) Permitted deductions, against any rent, are any deduction, recoupment or set-off that the tenant would be entitled to claim (in law or equity) in an action by the landlord for that rent.

78 Intervention of the court

- (1) If notice of enforcement is given in exercise (or purported exercise) of CRAR the court may make either or both of these orders on the application of the tenant—
 - (a) an order setting aside the notice;
 - (b) an order that no further step may be taken under CRAR, without further order, in relation to the rent claimed.
- (2) Regulations may make provision about—
 - (a) the further orders that may be made for the purposes of subsection (1)(b);
 - (b) grounds of which the court must be satisfied before making an order or further order.
- (3) In this section “the court” means the High Court or a county court, as rules of court may provide.

79 Use of CRAR after end of lease

- (1) When the lease ends, CRAR ceases to be exercisable, with these exceptions.
- (2) CRAR continues to be exercisable in relation to goods taken control of under it—
 - (a) before the lease ended, or
 - (b) under subsection (3).
- (3) CRAR continues to be exercisable in relation to rent due and payable before the lease ended, if the conditions in subsection (4) are met.
- (4) These are the conditions—
 - (a) the lease did not end by forfeiture;
 - (b) not more than 6 months has passed since the day when it ended;
 - (c) the rent was due from the person who was the tenant at the end of the lease;
 - (d) that person remains in possession of any part of the demised premises;
 - (e) any new lease under which that person remains in possession is a lease of commercial premises;
 - (f) the person who was the landlord at the end of the lease remains entitled to the immediate reversion.
- (5) In deciding whether a person remains in possession under a new lease, section 74(2) (lease to be evidenced in writing) does not apply.
- (6) In the case of a tenancy by estoppel, the person who was the landlord remains “entitled to the immediate reversion” if the estoppel with regard to the tenancy continues.
- (7) A lease ends when the tenant ceases to be entitled to possession of the demised premises under the lease together with any continuation of it by operation of an enactment or of a rule of law.

80 Agricultural holdings

- (1) This section applies to the exercise of CRAR where the premises concerned are an agricultural holding.
- (2) CRAR is not exercisable to recover rent that became due more than a year before notice of enforcement is given.
- (3) For the purposes of subsection (2), deferred rent becomes due at the time to which payment is deferred.
- (4) “Deferred rent” means rent the payment of which has been deferred, according to the ordinary course of dealing between

the landlord and the tenant, to the end of a quarter or half-year after it legally became due.

- (5) The permitted deductions under section 77(7) at any time include any compensation due to the tenant in respect of the holding, under the 1986 Act or under custom or agreement, that has been ascertained at that time.
- (6) In this section—
 - the “1986 Act” means the Agricultural Holdings Act 1986 (c. 5);
 - “agricultural holding” has the meaning given by section 1 of the 1986 Act.

Right to rent from sub-tenant

81 Right to rent from sub-tenant

- (1) This section applies where CRAR is exercisable by a landlord to recover rent due and payable from a tenant (the immediate tenant).
- (2) The landlord may serve a notice on any sub-tenant.
- (3) The notice must state the amount of rent that the landlord has the right to recover from the immediate tenant by CRAR (the “notified amount”).
- (4) When it takes effect the notice transfers to the landlord the right to recover, receive and give a discharge for any rent payable by the sub-tenant under the sub-lease, until—
 - (a) the notified amount has been paid (by payments under the notice or otherwise), or
 - (b) the notice is replaced or withdrawn.
- (5) A notice under this section takes effect at the end of a period to be determined by regulations.
- (6) Regulations may state—
 - (a) the form of a notice under this section;
 - (b) what it must contain;
 - (c) how it must be served;
 - (d) what must be done to withdraw it.
- (7) In determining for the purposes of this section whether CRAR is exercisable, section 77 applies with these modifications—
 - (a) if notice of enforcement has not been given, references to that notice are to be read as references to the notice under this section;
 - (b) if goods have not been taken control of, section 77(3)(b) does not apply.

- (8) In this section and sections 82 to 84—
 - (a) “sub-tenant” means a tenant (below the immediate tenant) of any of the premises comprised in the headlease (and “sub-lease” is to be read accordingly);
 - (b) “headlease” means the lease between the landlord and the immediate tenant.

82 Off-setting payments under a notice

- (1) For any amount that a sub-tenant pays under a notice under section 81, he may deduct an equal amount from the rent that would be due to his immediate landlord under the sub-lease.
- (2) If an amount is deducted under subsection (1) or this subsection from rent due to a superior sub-tenant, that sub-tenant may deduct an equal amount from any rent due from him under his sub-lease.
- (3) Subsection (1) applies even if the sub-tenant’s payment or part of it is not due under the notice, if it is not due because—
 - (a) the notified amount has already been paid (wholly or partly otherwise than under the notice), or
 - (b) the notice has been replaced by a notice served on another sub-tenant.
- (4) That is subject to the following.
- (5) Subsection (1) does not apply if the landlord withdraws the notice before the payment is made.
- (6) Where the notified amount has already been paid (or will be exceeded by the payment), subsection (1) does not apply (or does not apply to the excess) if the sub-tenant has notice of that when making the payment.
- (7) Subsection (1) does not apply if, before the payment is made, payments under the notice at least equal the notified amount.
- (8) Subsection (1) does not apply to a part of the payment if, with the rest of the payment, payments under the notice at least equal the notified amount.
- (9) Where the notice has been replaced by one served on another sub-tenant, subsection (1) does not apply if the sub-tenant has notice of that when making the payment.

83 Withdrawal and replacement of notices

- (1) A notice under section 81 is replaced if the landlord serves another notice on the same sub-tenant for a notified amount covering the same rent or part of that rent.
- (2) A notice under section 81 served on one sub-tenant is also replaced if—

- (a) the landlord serves a notice on another sub-tenant for a notified amount covering the same rent or part of that rent, and
 - (b) in relation to any of the premises comprised in the first sub-tenant's sub-lease, the second sub-tenant is an inferior or superior sub-tenant.
- (3) The landlord must withdraw a notice under section 81 if any of these happens—
- (a) the notice is replaced;
 - (b) the notified amount is paid, unless it is paid wholly by the sub-tenant.

84 Recovery of sums due and overpayments

- (1) For the purposes of the recovery of sums payable by a sub-tenant under a notice under section 81 (including recovery by CRAR), the sub-tenant is to be treated as the immediate tenant of the landlord, and the sums are to be treated as rent accordingly.
- (2) But those sums (as opposed to rent due from the immediate tenant) are not recoverable by notice under section 81 served on an inferior sub-tenant.
- (3) Any payment received by the landlord that the sub-tenant purports to make under a notice under section 81, and that is not due under the notice for any reason, is to be treated as a payment of rent by the immediate tenant, for the purposes of the retention of the payment by the landlord and (if no rent is due) for the purposes of any claim by the immediate tenant to recover the payment.
- (4) But subsection (3) does not affect any claim by the sub-tenant against the immediate tenant.

Supplementary

85 Contracts for similar rights to be void

- (1) A provision of a contract is void to the extent that it would do any of these—
 - (a) confer a right to seize or otherwise take control of goods to recover amounts within subsection (2);
 - (b) confer a right to sell goods to recover amounts within subsection (2);
 - (c) modify the effect of section 72(1), except in accordance with subsection (3).
- (2) The amounts are any amounts payable—
 - (a) as rent;
 - (b) under a lease (other than as rent);

- (c) under an agreement collateral to a lease;
 - (d) under an instrument creating a rentcharge;
 - (e) in respect of breach of a covenant or condition in a lease, in an agreement collateral to a lease or in an instrument creating a rentcharge;
 - (f) under an indemnity in respect of a payment within paragraphs (a) to (e).
- (3) A provision of a contract is not void under subsection (1)(c) to the extent that it prevents or restricts the exercise of CRAR.
- (4) In this section—
- “lease” also includes a licence to occupy land;
 - “rent” and “rentcharge” have the meaning given by section 205(1) of the Law of Property Act 1925 (c. 20).

86 Amendments

Schedule 14 makes minor and consequential amendments (including repeals of powers to distrain for rentcharges and other amounts within section 85(2)).

87 Interpretation of Chapter

In this Chapter—

- “landlord” has the meaning given by section 73;
- “lease” has the meaning given by section 74 (subject to section 85(4));
- “notice of enforcement” means notice under paragraph 7 of Schedule 12;
- “rent” (except in sections 71 and 85) has the meaning given by section 76;
- “tenant”, in relation to a lease, means the tenant for the time being under the lease.

CHAPTER 3

GENERAL

88 Abolition of Crown preference

Crown preference for the purposes of execution against goods is abolished.

89 Application to the Crown

- (1) This Part binds the Crown.
- (2) But the procedure in Schedule 12 may not be used—
 - (a) to recover debts due from the Crown,
 - (b) to take control of or sell goods of the Crown (including goods owned by the Crown jointly or in common with another person), or

(c) to enter premises occupied by the Crown.

90 Regulations

- (1) In this Part—
 - “prescribed” means prescribed by regulations;
 - “regulations” means regulations made by the Lord Chancellor.
- (2) The following apply to regulations under this Part.
- (3) Any power to make regulations is exercisable by statutory instrument.
- (4) A statutory instrument containing regulations under paragraph 24(2) or 31(5) of Schedule 12 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) In any other case a statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Regulations may include any of these that the Lord Chancellor considers necessary or expedient—
 - (a) supplementary, incidental or consequential provision;
 - (b) transitory, transitional or saving provision.
- (7) Regulations may make different provision for different cases.

Annex B – Schedule 12 to the Tribunals Courts and Enforcement Act 2007

SCHEDULE 12 TAKING CONTROL OF GOODS PART 1 INTRODUCTORY

The procedure

- 1 (1) Using the procedure in this Schedule to recover a sum means taking control of goods and selling them to recover that sum in accordance with this Schedule and regulations under it.
- (2) In this Schedule a power to use the procedure to recover a particular sum is called an “enforcement power”.
- (3) The following apply in relation to an enforcement power.
- (4) “Debt” means the sum recoverable.
- (5) “Debtor” means the person liable to pay the debt or, if two or more persons are jointly or jointly and severally liable, any one or more of them.
- (6) “Creditor” means the person for whom the debt is recoverable.

Enforcement agents

- 2 (1) In this Schedule “enforcement agent” means an individual authorised by section 63(2) to act as an enforcement agent.
- (2) Only an enforcement agent may take control of goods and sell them under an enforcement power.
- (3) An enforcement agent, if he is not the person on whom an enforcement power is conferred, may act under the power only if authorised by that person.
- (4) In relation to goods taken control of by an enforcement agent under an enforcement power, references to the enforcement agent are references to any person for the time being acting as an enforcement agent under the power.

General interpretation

- 3 (1) In this Schedule—
- “amount outstanding” is defined in paragraph 50(3);
- “control” (except in paragraph 5(4)(a)) means control under an enforcement power;
- “controlled goods” means goods taken control of that—

- (a) have not been sold or abandoned,
- (b) if they have been removed, have not been returned to the debtor (unless subject to a controlled goods agreement), and
- (c) if they are goods of another person, have not been returned to that person;

“controlled goods agreement” has the meaning given by paragraph 13(4);

“co-owner” in relation to goods of the debtor means a person other than the debtor who has an interest in the goods, but only if the enforcement agent—

- (a) knows that the person has an interest in the particular goods, or
- (b) would know, if he made reasonable enquiries;

“the court”, unless otherwise stated, and subject to rules of court, means—

- (a) the High Court, in relation to an enforcement power under a writ of the High Court;
- (b) a county court, in relation to an enforcement power under a warrant issued by a county court;
- (c) in any other case, a magistrates' court;

“disposal” and related expressions, in relation to securities, are to be read in accordance with paragraph 48(2);

“exempt goods” means goods that regulations exempt by description or circumstances or both;

“goods” means property of any description, other than land;

“interest” means a beneficial interest;

“money” means money in sterling or another currency;

“premises” means any place, and in particular includes—

- (a) a vehicle, vessel, aircraft or hovercraft;
- (b) a tent or movable structure;

“securities” includes bills of exchange, promissory notes, bonds, specialties and securities for money.

- (2) In this Schedule—
 - (a) references to goods of the debtor or another person are references to goods in which the debtor or that person has an interest, but
 - (b) references to goods of the debtor do not include references to trust property in which either the debtor or a co-owner has an interest not vested in possession.

Part 2

The procedure

Binding property in the debtor's goods

- 4 (1) For the purposes of any enforcement power, the property in all goods of the debtor, except goods that are exempt goods for the purposes of this Schedule or are protected under any other enactment, becomes bound in accordance with this paragraph.
- (2) Where the power is conferred by a writ issued from the High Court the writ binds the property in the goods from the time when it is received by the person who is under a duty to endorse it.
- (3) Where the power is conferred by a warrant to which section 99 of the County Courts Act 1984 (c. 28) or section 125ZA of the Magistrates' Courts Act 1980 (c. 43) applies, the warrant binds the property in the goods from the time when it is received by the person who is under a duty to endorse it under that section.
- (4) Where sub-paragraphs (2) and (3) do not apply but notice is given to the debtor under paragraph 7(1), the notice binds the property in the goods from the time when the notice is given.

Effect of property in goods being bound

- 5 (1) An assignment or transfer of any interest of the debtor's in goods while the property in them is bound for the purposes of an enforcement power—
 - (a) is subject to that power, and
 - (b) does not affect the operation of this Schedule in relation to the goods, except as provided by paragraph 61 (application to assignee or transferee).
- (2) Sub-paragraph (1) does not prejudice the title to any of the debtor's goods that a person acquires—
 - (a) in good faith,
 - (b) for valuable consideration, and
 - (c) without notice.
- (3) For the purposes of sub-paragraph (2)(a), a thing is to be treated as done in good faith if it is in fact done honestly (whether it is done negligently or not).

- (4) In sub-paragraph (2)(c) “notice” means—
 - (a) where the property in the goods is bound by a writ or warrant, notice that the writ or warrant, or any other writ or warrant by virtue of which the goods of the debtor might be seized or otherwise taken control of, had been received by the person who was under a duty to endorse it and that goods remained bound under it;
 - (b) where the property in the goods is bound by notice under paragraph 7(1), notice that that notice had been given and that goods remained bound under it.
- (5) In sub-paragraph (4)(a) “endorse” in relation to a warrant to which section 99 of the County Courts Act 1984 (c. 28) or section 125ZA of the Magistrates' Courts Act 1980 (c. 43) applies, means endorse under that section.

Time when property ceases to be bound

- 6 (1) For the purposes of any enforcement power the property in goods of the debtor ceases to be bound in accordance with this paragraph.
- (2) The property in any goods ceases to be bound—
 - (a) when the goods are sold;
 - (b) in the case of money used to pay any of the amount outstanding, when it is used.
- (3) The property in all goods ceases to be bound when any of these happens—
 - (a) the amount outstanding is paid, out of the proceeds of sale or otherwise;
 - (b) the instrument under which the power is exercisable ceases to have effect;
 - (c) the power ceases to be exercisable for any other reason.

Notice of enforcement

- 7 (1) An enforcement agent may not take control of goods unless the debtor has been given notice.
- (2) Regulations must state—
 - (a) the minimum period of notice;
 - (b) the form of the notice;
 - (c) what it must contain;
 - (d) how it must be given;
 - (e) who must give it.

- (3) The enforcement agent must keep a record of the time when the notice is given.
- (4) If regulations authorise it, the court may order in prescribed circumstances that the notice given may be less than the minimum period.
- (5) The order may be subject to conditions.

Time limit for taking control

- 8 (1) An enforcement agent may not take control of goods after the prescribed period.
- (2) The period may be prescribed by reference to the date of notice of enforcement or of any writ or warrant conferring the enforcement power or any other date.
- (3) Regulations may provide for the period to be extended or further extended by the court in accordance with the regulations.

Goods which may be taken

- 9 An enforcement agent may take control of goods only if they are—
 - (a) on premises that he has power to enter under this Schedule, or
 - (b) on a highway.
- 10 An enforcement agent may take control of goods only if they are goods of the debtor.
- 11 (1) Subject to paragraphs 9 and 10 and to any other enactment under which goods are protected, an enforcement agent—
 - (a) may take control of goods anywhere in England and Wales;
 - (b) may take control of any goods that are not exempt.
- (2) Regulations may authorise him to take control of exempt goods in prescribed circumstances, if he provides the debtor with replacements in accordance with the regulations.

Value of goods taken

- 12 (1) Unless sub-paragraph (2) applies, an enforcement agent may not take control of goods whose aggregate value is more than—
 - (a) the amount outstanding, and
 - (b) an amount in respect of future costs, calculated in accordance with regulations.
- (2) An enforcement agent may take control of goods of higher value on premises or on a highway, only to the extent necessary, if there are not enough goods of a lower value within a reasonable distance—

- (a) on a highway, or
 - (b) on premises that he has power to enter under this Schedule, either under paragraph 14 or under an existing warrant.
- (3) For the purposes of this paragraph goods are above a given value only if it is or ought to be clear to the enforcement agent that they are.
- (4) Sub-paragraph (1) does not affect the power to keep control of goods if they rise in value once they have been taken.

Ways of taking control

- 13 (1) To take control of goods an enforcement agent must do one of the following—
- (a) secure the goods on the premises on which he finds them;
 - (b) if he finds them on a highway, secure them on a highway, where he finds them or within a reasonable distance;
 - (c) remove them and secure them elsewhere;
 - (d) enter into a controlled goods agreement with the debtor.
- (2) Any liability of an enforcement agent (including criminal liability) arising out of his securing goods on a highway under this paragraph is excluded to the extent that he acted with reasonable care.
- (3) Regulations may make further provision about taking control in any of the ways listed in sub-paragraph (1), including provision—
- (a) determining the time when control is taken;
 - (b) prohibiting use of any of those ways for goods by description or circumstances or both.
- (4) A controlled goods agreement is an agreement under which the debtor—
- (a) is permitted to retain custody of the goods,
 - (b) acknowledges that the enforcement agent is taking control of them, and
 - (c) agrees not to remove or dispose of them, nor to permit anyone else to, before the debt is paid.

Entry without warrant

- 14 (1) An enforcement agent may enter relevant premises to search for and take control of goods.
- (2) Where there are different relevant premises this paragraph authorises entry to each of them.

- (3) This paragraph authorises repeated entry to the same premises, subject to any restriction in regulations.
- (4) If the enforcement agent is acting under section 72(1) (CRAR), the only relevant premises are the demised premises.
- (5) If he is acting under section 121A of the Social Security Administration Act 1992 (c. 5), premises are relevant if they are the place, or one of the places, where the debtor carries on a trade or business.
- (6) Otherwise premises are relevant if the enforcement agent reasonably believes that they are the place, or one of the places, where the debtor—
 - (a) usually lives, or
 - (b) carries on a trade or business.

Entry under warrant

- 15 (1) If an enforcement agent applies to the court it may issue a warrant authorising him to enter specified premises to search for and take control of goods.
- (2) Before issuing the warrant the court must be satisfied that all these conditions are met—
 - (a) an enforcement power has become exercisable;
 - (b) there is reason to believe that there are goods on the premises that the enforcement power will be exercisable to take control of if the warrant is issued;
 - (c) it is reasonable in all the circumstances to issue the warrant.
- (3) The warrant authorises repeated entry to the same premises, subject to any restriction in regulations.

Re-entry

- 16 (1) This paragraph applies where goods on any premises have been taken control of and have not been removed by the enforcement agent.
- (2) The enforcement agent may enter the premises to inspect the goods or to remove them for storage or sale.
- (3) This paragraph authorises repeated entry to the same premises.

General powers to use reasonable force

- 17 Where paragraph 18 or 19 applies, an enforcement agent may if necessary use reasonable force to enter premises or to do anything for which the entry is authorised.

- 18 This paragraph applies if these conditions are met—
- (a) the enforcement agent has power to enter the premises under paragraph 14 or 16 or under a warrant under paragraph 15;
 - (b) he is acting under an enforcement power conferred by a warrant of control under section 76(1) of the Magistrates' Courts Act 1980 (c. 43) for the recovery of a sum adjudged to be paid by a conviction;
 - (c) he is entitled to execute the warrant by virtue of section 125A (civilian enforcement officers) or 125B (approved enforcement agencies) of that Act.
- 19 (1) This paragraph applies if these conditions are met—
- (a) the enforcement agent has power to enter the premises under paragraph 16;
 - (b) he reasonably believes that the debtor carries on a trade or business on the premises;
 - (c) he is acting under an enforcement power within sub-paragraph (2).
- (2) The enforcement powers are those under any of the following—
- (a) a writ or warrant of control issued for the purpose of recovering a sum payable under a High Court or county court judgment;
 - (b) section 61(1) of the Taxes Management Act 1970 (c. 9);
 - (c) section 121A(1) of the Social Security Administration Act 1992 (c. 5);
 - (d) section 51(A1) of the Finance Act 1997 (c. 16);
 - (e) paragraph 1A of Schedule 12 to the Finance Act 2003 (c. 14).

Application for power to use reasonable force

- 20 (1) This paragraph applies if an enforcement agent has power to enter premises under paragraph 14 or 16 or under a warrant under paragraph 15.
- (2) If the enforcement agent applies to the court it may issue a warrant which authorises him to use, if necessary, reasonable force to enter the premises or to do anything for which entry is authorised.
- 21 (1) This paragraph applies if an enforcement agent is applying for power to enter premises under a warrant under paragraph 15.
- (2) If the enforcement agent applies to the court it may include in the warrant provision authorising him to use, if necessary, reasonable force to enter the premises or to do anything for which entry is authorised.

- 22 (1) The court may not issue a warrant under paragraph 20 or include provision under paragraph 21 unless it is satisfied that prescribed conditions are met.
- (2) A warrant under paragraph 20 or provision included under paragraph 21 may require any constable to assist the enforcement agent to execute the warrant.

Other provisions about powers of entry

- 23 Paragraphs 24 to 30 apply where an enforcement agent has power to enter premises under paragraph 14 or 16 or under a warrant under paragraph 15.
- 24 (1) The power to enter and any power to use force are subject to any restriction imposed by or under regulations.
- (2) A power to use force does not include power to use force against persons, except to the extent that regulations provide that it does.
- 25 (1) The enforcement agent may enter and remain on the premises only within prescribed times of day.
- (2) Regulations may give the court power in prescribed circumstances to authorise him to enter or remain on the premises at other times.
- (3) The authorisation—
- (a) may be by order or in a warrant under paragraph 15;
- (b) may be subject to conditions.
- 26 (1) The enforcement agent must on request show the debtor and any person who appears to him to be in charge of the premises evidence of—
- (a) his identity, and
- (b) his authority to enter the premises.
- (2) The request may be made before the enforcement agent enters the premises or while he is there.
- 27 (1) The enforcement agent may take other people onto the premises.
- (2) They may assist him in exercising any power, including a power to use force.
- (3) They must not remain on the premises without the enforcement agent.
- (4) The enforcement agent may take any equipment onto the premises.
- (5) He may leave equipment on the premises if he leaves controlled goods there.

- 28 (1) After entering the premises the enforcement agent must provide a notice for the debtor giving information about what the enforcement agent is doing.
- (2) Regulations must state—
- (a) the form of the notice;
- (b) what information it must give.
- (3) Regulations may prescribe circumstances in which a notice need not be provided after re-entry to premises.
- (4) If the debtor is on the premises when the enforcement agent is there, the enforcement agent must give him the notice then.
- (5) If the debtor is not there, the enforcement agent must leave the notice in a conspicuous place on the premises.
- (6) If the enforcement agent knows that there is someone else there or that there are other occupiers, a notice he leaves under sub-paragraph (5) must be in a sealed envelope addressed to the debtor.
- 29 If the premises are occupied by any person apart from the debtor, the enforcement agent must leave at the premises a list of any goods he takes away.
- 30 The enforcement agent must leave the premises as effectively secured as he finds them.

Goods on a highway

- 31 (1) If the enforcement agent applies to the court it may issue a warrant which authorises him to use, if necessary, reasonable force to take control of goods on a highway.
- (2) The court may not issue a warrant unless it is satisfied that prescribed conditions are met.
- (3) The warrant may require any constable to assist the enforcement agent to execute it.
- (4) The power to use force is subject to any restriction imposed by or under regulations.
- (5) The power to use force does not include power to use force against persons, except to the extent that regulations provide that it does.
- 32 (1) The enforcement agent may not exercise any power under this Schedule on a highway except within prescribed times of day.
- (2) Regulations may give the court power in prescribed circumstances to authorise him to exercise a power at other times.
- (3) The authorisation may be subject to conditions.

- 33 (1) If the enforcement agent takes control of goods on a highway or enters a vehicle on a highway with the intention of taking control of goods, he must provide a notice for the debtor giving information about what he is doing.
- (2) Regulations must state—
- (a) the form of the notice;
 - (b) what information it must give.
- (3) If the debtor is present when the enforcement agent is there, the enforcement agent must give him the notice then.
- (4) Otherwise the enforcement agent must deliver the notice to any relevant premises (as defined by paragraph 14) in a sealed envelope addressed to the debtor.

Inventory

- 34 (1) If an enforcement agent takes control of goods he must provide the debtor with an inventory of them as soon as reasonably practicable.
- (2) But if there are co-owners of any of the goods, the enforcement agent must instead provide the debtor as soon as reasonably practicable with separate inventories of goods owned by the debtor and each co-owner and an inventory of the goods without a co-owner.
- (3) The enforcement agent must as soon as reasonably practicable provide the co-owner of any of the goods with—
- (a) the inventory of those goods, and
 - (b) a copy of the notice under paragraph 28.
- (4) Regulations must state—
- (a) the form of an inventory, and
 - (b) what it must contain.

Care of goods removed

- 35 (1) An enforcement agent must take reasonable care of controlled goods that he removes from the premises or highway where he finds them.
- (2) He must comply with any provision of regulations about their care while they remain controlled goods.

Valuation

- 36 (1) Before the end of the minimum period, the enforcement agent must—
- (a) make or obtain a valuation of the controlled goods in accordance with regulations;

- (b) give the debtor, and separately any co-owner, an opportunity to obtain an independent valuation of the goods.
- (2) In this paragraph “minimum period” means the period specified by regulations under—
 - (a) paragraph 49, in the case of securities;
 - (b) paragraph 39, in any other case.

Best price

- 37 (1) An enforcement agent must sell or dispose of controlled goods for the best price that can reasonably be obtained in accordance with this Schedule.
- (2) That does not apply to money that can be used for paying any of the outstanding amount, unless the best price is more than its value if used in that way.

Sale

- 38 Paragraphs 39 to 42 apply to the sale of controlled goods, except where—
 - (a) the controlled goods are securities, or
 - (b) the sale is by exchange of one currency for another.
- 39 (1) The sale must not be before the end of the minimum period except with the agreement of the debtor and any co-owner.
- (2) Regulations must specify the minimum period.
- 40 (1) Before the sale, the enforcement agent must give notice of the date, time and place of the sale to the debtor and any co-owner.
- (2) Regulations must state—
 - (a) the minimum period of notice;
 - (b) the form of the notice;
 - (c) what it must contain (besides the date, time and place of sale);
 - (d) how it must be given.
- (3) The enforcement agent may replace a notice with a new notice, subject to any restriction in regulations.
- (4) Any notice must be given within the permitted period.
- (5) Unless extended the permitted period is 12 months beginning with the day on which the enforcement agent takes control of the goods.
- (6) Any extension must be by agreement in writing between the creditor and debtor before the end of the period.

- (7) They may extend the period more than once.
- 41 (1) The sale must be by public auction unless the court orders otherwise.
- (2) The court may make an order only on an application by the enforcement agent.
- (3) Regulations may make provision about the types of sale the court may order.
- (4) In an application for an order under sub-paragraph (2) the enforcement agent must state whether he has reason to believe that an enforcement power has become exercisable by another creditor against the debtor or a co-owner.
- (5) If the enforcement agent states that he does, the court may not consider the application until notice of it has been given to the other creditor in accordance with regulations (or until the court is satisfied that an enforcement power is not exercisable by the other creditor against the debtor or a co-owner).
- 42 Regulations may make further provision about the sale of controlled goods, including in particular—
- (a) requirements for advertising;
- (b) provision about the conduct of a sale.

Place of sale

- 43 (1) Regulations may make provision about the place of sale of controlled goods.
- (2) They may prescribe circumstances in which the sale may be held on premises where goods were found by the enforcement agent.
- (3) Except where the regulations provide otherwise, the sale may not be held on those premises without the consent of the occupier.
- (4) Paragraphs 44 to 46 apply if the sale may be held on those premises.
- 44 (1) The enforcement agent and any person permitted by him—
- (a) may enter the premises to conduct or attend the sale;
- (b) may bring equipment onto the premises for the purposes of the sale.
- (2) This paragraph authorises repeated entry to the premises.
- (3) If necessary the enforcement agent may use reasonable force to enable the sale to be conducted and any person to enter under this paragraph.

- 45 (1) The enforcement agent must on request show the debtor and any person who appears to him to be in charge of the premises evidence of—
- (a) his identity, and
 - (b) his authority to enter and hold the sale on the premises.
- (2) The request may be made before the enforcement agent enters the premises or while he is there.
- 46 The enforcement agent must leave the premises as effectively secured as he finds them.

Holding and disposal of securities

- 47 Paragraphs 48 and 49 apply to securities as controlled goods.
- 48 (1) Regulations may make provision about how securities are to be held and disposed of.
- (2) In this Schedule, references to disposal include, in relation to securities, realising the sums secured or made payable by them, suing for the recovery of those sums or assigning the right to sue for their recovery.
- (3) Regulations may in particular make provision for purposes corresponding to those for which provision is made in this Schedule in relation to the disposal of other controlled goods.
- (4) The power to make regulations under this paragraph is subject to paragraph 49.
- 49 (1) The creditor may sue in the name of the debtor, or in the name of any person in whose name the debtor might have sued, for the recovery of any sum secured or made payable by securities, when the time of payment arrives.
- (2) Before any proceedings under sub-paragraph (1) are commenced or the securities are otherwise disposed of, the enforcement agent must give notice of the disposal to the debtor and any co-owner.
- (3) Regulations must state—
- (a) the minimum period of notice;
 - (b) the form of the notice;
 - (c) what it must contain;
 - (d) how it must be given.
- (4) The enforcement agent may replace a notice with a new notice, subject to any restriction in regulations.
- (5) Any notice must be given within the permitted period.
- (6) Unless extended the permitted period is 12 months beginning with the time of payment.

- (7) Any extension must be by agreement in writing between the creditor and debtor before the end of the period.
- (8) They may extend the period more than once.

Application of proceeds

- 50
- (1) Proceeds from the exercise of an enforcement power must be used to pay the amount outstanding.
 - (2) Proceeds are any of these—
 - (a) proceeds of sale or disposal of controlled goods;
 - (b) money taken in exercise of the power, if paragraph 37(1) does not apply to it.
 - (3) The amount outstanding is the sum of these—
 - (a) the amount of the debt which remains unpaid (or an amount that the creditor agrees to accept in full satisfaction of the debt);
 - (b) any amounts recoverable out of proceeds in accordance with regulations under paragraph 62 (costs).
 - (4) If the proceeds are less than the amount outstanding, which amounts in sub-paragraph (3)(a) and (b) must be paid, and how much of any amount, is to be determined in accordance with regulations.
 - (5) If the proceeds are more than the amount outstanding, the surplus must be paid to the debtor.
 - (6) If there is a co-owner of any of the goods, the enforcement agent must—
 - (a) first pay the co-owner a share of the proceeds of those goods proportionate to his interest;
 - (b) then deal with the rest of the proceeds under sub-paragraphs (1) to (5).
 - (7) Regulations may make provision for resolving disputes about what share is due under sub-paragraph (6)(a).

Passing of title

- 51
- (1) A purchaser of controlled goods acquires good title, with two exceptions.
 - (2) The exceptions apply only if the goods are not the debtor's at the time of sale.
 - (3) The first exception is where the purchaser, the creditor, the enforcement agent or a related party has notice that the goods are not the debtor's.
 - (4) The second exception is where a lawful claimant has already made an application to the court claiming an interest in the goods.

- (5) A lawful claimant in relation to goods is a person who has an interest in them at the time of sale, other than an interest that was assigned or transferred to him while the property in the goods was bound for the purposes of the enforcement power.
- (6) A related party is any person who acts in exercise of an enforcement power, other than the creditor or enforcement agent.
- (7) “The court” has the same meaning as in paragraph 60.

Abandonment of goods other than securities

- 52 Paragraphs 53 and 54 apply to controlled goods other than—
- (a) securities;
 - (b) money to which paragraph 37(1) does not apply.
- 53 (1) Controlled goods are abandoned if the enforcement agent does not give the debtor or any co-owner notice under paragraph 40 (notice of sale) within the permitted period.
- (2) Controlled goods are abandoned if they are unsold after a sale of which notice has been given in accordance with that paragraph.
- (3) Regulations may prescribe other circumstances in which controlled goods are abandoned.
- 54 (1) If controlled goods are abandoned then, in relation to the enforcement power concerned, the following apply—
- (a) the enforcement power ceases to be exercisable;
 - (b) as soon as reasonably practicable the enforcement agent must make the goods available for collection by the debtor, if he removed them from where he found them.
- (2) Regulations may make further provision about arrangements under sub-paragraph (1)(b), including in particular provision about the disposal of goods uncollected after a prescribed period.
- (3) Where the enforcement power was under a writ or warrant, sub-paragraph (1) does not affect any power to issue another writ or warrant.

Abandonment of securities

- 55 Paragraphs 56 and 57 apply to securities as controlled goods.
- 56 (1) Securities are abandoned if the enforcement agent does not give the debtor or any co-owner notice under paragraph 49 (notice of disposal) within the permitted period.
- (2) Securities are abandoned if they are not disposed of in accordance with a notice of disposal under that paragraph.

- (3) Regulations may prescribe other circumstances in which securities are abandoned.
- 57
- (1) If securities are abandoned then, in relation to the enforcement power concerned, the following apply—
 - (a) the enforcement power ceases to be exercisable;
 - (b) as soon as reasonably practicable the enforcement agent must make the securities available for collection by the debtor, if he removed them from where he found them.
 - (2) Where the enforcement power was under a writ or warrant, sub-paragraph (1) does not affect any power to issue another writ or warrant.

Payment of amount outstanding

- 58
- (1) This paragraph applies where the debtor pays the amount outstanding in full—
 - (a) after the enforcement agent has taken control of goods, and
 - (b) before they are sold or abandoned.
 - (2) If the enforcement agent has removed the goods he must as soon as reasonably practicable make them available for collection by the debtor.
 - (3) No further step may be taken under the enforcement power concerned.
 - (4) For the purposes of this paragraph the amount outstanding is reduced by the value of any controlled goods consisting of money required to be used to pay that amount, and sub-paragraph (2) does not apply to that money.
- 59
- (1) This paragraph applies if a further step is taken despite paragraph 58(3).
 - (2) The enforcement agent is not liable unless he had notice, when the step was taken, that the amount outstanding had been paid in full.
 - (3) Sub-paragraph (2) applies to a related party as to the enforcement agent.
 - (4) If the step taken is sale of any of the goods the purchaser acquires good title unless, at the time of sale, he or the enforcement agent had notice that the amount outstanding had been paid in full.
 - (5) A person has notice that the amount outstanding has been paid in full if he would have found it out if he had made reasonable enquiries.

- (6) Sub-paragraphs (2) to (4) do not affect any right of the debtor or a co-owner to a remedy against any person other than the enforcement agent or a related party.
- (7) In this paragraph, “related party” has the meaning given by paragraph 65(4).

Third party claiming goods

- 60
- (1) This paragraph applies where a person makes an application to the court claiming that goods taken control of are his and not the debtor's.
 - (2) After receiving notice of the application the enforcement agent must not sell the goods, or dispose of them (in the case of securities), unless directed by the court under this paragraph.
 - (3) The court may direct the enforcement agent to sell or dispose of the goods if the applicant fails to make, or to continue to make, the required payments into court.
 - (4) The required payments are—
 - (a) payment on making the application (subject to sub-paragraph (5)) of an amount equal to the value of the goods, or to a proportion of it directed by the court;
 - (b) payment, at prescribed times (on making the application or later), of any amounts prescribed in respect of the enforcement agent's costs of retaining the goods.
 - (5) If the applicant makes a payment under sub-paragraph (4)(a) but the enforcement agent disputes the value of the goods, any underpayment is to be—
 - (a) determined by reference to an independent valuation carried out in accordance with regulations, and
 - (b) paid at the prescribed time.
 - (6) If sub-paragraph (3) does not apply the court may still direct the enforcement agent to sell or dispose of the goods before the court determines the applicant's claim, if it considers it appropriate.
 - (7) If the court makes a direction under sub-paragraph (3) or (6)—
 - (a) paragraphs 38 to 49, and regulations under them, apply subject to any modification directed by the court;
 - (b) the enforcement agent must pay the proceeds of sale or disposal into court.
 - (8) In this paragraph “the court”, subject to rules of court, means—
 - (a) the High Court, in relation to an enforcement power under a writ of the High Court;
 - (b) a county court, in relation to an enforcement power under a warrant issued by a county court;

- (c) in any other case, the High Court or a county court.

Application to assignee or transferee

- 61 (1) This Schedule applies as follows where an interest of the debtor's in goods is assigned or transferred while the property in the goods is bound for the purposes of an enforcement power, and the enforcement agent—
- (a) knows that the assignee or transferee has an interest in the particular goods, or
 - (b) would know, if he made reasonable enquiries.
- (2) These apply as if the assignee or transferee were a co-owner of the goods with the debtor—
- (a) paragraph 34 (inventory);
 - (b) paragraph 36 (valuation);
 - (c) paragraphs 39 to 41 (sale);
 - (d) paragraph 59(6) (remedies after payment of amount outstanding).
- (3) If the interest of the assignee or transferee was acquired in good faith, for valuable consideration and without notice, paragraph 50(6) applies as if “co-owner” included the assignee or transferee.
- (4) If the interest of the assignee or transferee was not acquired in good faith, for valuable consideration and without notice, the enforcement agent must pay any surplus under paragraph 50(5) to the assignee or transferee and to the debtor (if he retains an interest).
- (5) If the surplus is payable to two or more persons it must be paid in shares proportionate to their interests.
- (6) Paragraph 5(3) and (4) (“good faith” and “notice”) apply for the purposes of this paragraph.

Costs

- 62 (1) Regulations may make provision for the recovery by any person from the debtor of amounts in respect of costs of enforcement-related services.
- (2) The regulations may provide for recovery to be out of proceeds or otherwise.
- (3) The amount recoverable under the regulations in any case is to be determined by or under the regulations.
- (4) The regulations may in particular provide for the amount, if disputed, to be assessed in accordance with rules of court.
- (5) “Enforcement-related services” means anything done under or in connection with an enforcement power, or in connection with

obtaining an enforcement power, or any services used for the purposes of a provision of this Schedule or regulations under it.

Limitation of liability for sale or payment of proceeds

- 63 (1) Any liability of an enforcement agent or related party to a lawful claimant for the sale of controlled goods is excluded except in two cases.
- (2) The first exception is where at the time of the sale the enforcement agent had notice that the goods were not the debtor's, or not his alone.
- (3) The second exception is where before sale the lawful claimant had made an application to the court claiming an interest in the goods.
- (4) A lawful claimant in relation to goods is a person who has an interest in them at the time of sale, other than an interest that was assigned or transferred to him while the property in the goods was bound for the purposes of the enforcement power.
- 64 (1) Any liability of an enforcement agent or related party to a lawful claimant for paying over proceeds is excluded except in two cases.
- (2) The first exception is where at the time of the payment he had notice that the goods were not the debtor's, or not his alone.
- (3) The second exception is where before that time the lawful claimant had made an application to the court claiming an interest in the goods.
- (4) A lawful claimant in relation to goods is a person who has an interest in them at the time of sale.
- 65 (1) Paragraphs 63 and 64—
- (a) do not affect the liability of a person other than the enforcement agent or a related party;
- (b) do not apply to the creditor if he is the enforcement agent.
- (2) The following apply for the purposes of those paragraphs.
- (3) The enforcement agent or a related party has notice of something if he would have found it out if he had made reasonable enquiries.
- (4) A related party is any person who acts in exercise of an enforcement power, other than the creditor or enforcement agent.
- (5) "The court" has the same meaning as in paragraph 60.

Remedies available to the debtor

- 66 (1) This paragraph applies where an enforcement agent—
- (a) breaches a provision of this Schedule, or
 - (b) acts under an enforcement power under a writ, warrant, liability order or other instrument that is defective.
- (2) The breach or defect does not make the enforcement agent, or a person he is acting for, a trespasser.
- (3) But the debtor may bring proceedings under this paragraph.
- (4) Subject to rules of court, the proceedings may be brought—
- (a) in the High Court, in relation to an enforcement power under a writ of the High Court;
 - (b) in a county court, in relation to an enforcement power under a warrant issued by a county court;
 - (c) in any other case, in the High Court or a county court.
- (5) In the proceedings the court may—
- (a) order goods to be returned to the debtor;
 - (b) order the enforcement agent or a related party to pay damages in respect of loss suffered by the debtor as a result of the breach or of anything done under the defective instrument.
- (6) A related party is either of the following (if different from the enforcement agent)—
- (a) the person on whom the enforcement power is conferred,
 - (b) the creditor.
- (7) Sub-paragraph (5) is without prejudice to any other powers of the court.
- (8) Sub-paragraph (5)(b) does not apply where the enforcement agent acted in the reasonable belief—
- (a) that he was not breaching a provision of this Schedule, or
 - (b) (as the case may be) that the instrument was not defective.
- (9) This paragraph is subject to paragraph 59 in the case of a breach of paragraph 58(3).

Remedies available to the creditor

- 67 If a debtor wrongfully interferes with controlled goods and the creditor suffers loss as a result, the creditor may bring a claim against the debtor in respect of the loss.

Offences

- 68 (1) A person is guilty of an offence if he intentionally obstructs a person lawfully acting as an enforcement agent.
- (2) A person is guilty of an offence if he intentionally interferes with controlled goods without lawful excuse.
- (3) A person guilty of an offence under this paragraph is liable on summary conviction to—
- (a) imprisonment for a term not exceeding 51 weeks, or
 - (b) a fine not exceeding level 4 on the standard scale, or
 - (c) both.
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), the reference in sub-paragraph (3)(a) to 51 weeks is to be read as a reference to 6 months.

Relation to insolvency provisions

- 69 This Schedule is subject to sections 183, 184 and 346 of the Insolvency Act 1986 (c. 45).

Annex C – Draft Regulations for Taking Control of Goods

STATUTORY INSTRUMENTS

200[] No. 0000

ENFORCEMENT, ENGLAND AND WALES

The Taking Control of Goods Regulations 20[]

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - ***

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 73(8), 77(4), 81(5) and (6) and 90(3), (6) and (7) of and Schedule 12 to the Tribunals, Courts and Enforcement Act 2007^(a).

PART 1

INTRODUCTORY

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Taking Control of Goods Regulations 20[] and come into force on [date].
- (2) These Regulations extend to England and Wales only.

Interpretation

General interpretation

2. In these Regulations—

“the Act” means the Tribunals, Courts and Enforcement Act 2007;

“child” means a person under the age of 16;

“clear days” means that in computing the number of days the day on which the period begins is not included;

^(a) 2007 c. 15.

“controlled goods” has the meaning given in paragraph 3(1) of Schedule 12 (general interpretation);

“co-owner” has the meaning given in paragraph 3(1) of Schedule 12 (general interpretation);

“CRAR” has the meaning given in section 72 of the Act;

“creditor” has the meaning given in paragraph 1(6) of Schedule 12 (the procedure);

“debtor” has the meaning given in paragraph 1(5) of Schedule 12 (the procedure);

“disabled person” means a person (i) whose sight, hearing or speech is substantially impaired, (ii) who has a mental disorder or (iii) who is physically substantially disabled by any illness, any impairment present since birth, or otherwise;

“enforcement agent” has the meaning given in paragraph 2(1) of Schedule 12 (enforcement agents);

“net unpaid rent” has the meaning given in section 77(5) of the Act (the rent recoverable);

“older person” means a person aged 65 or over;

“premises” has the meaning given in paragraph 3(1) of Schedule 12 (general interpretation);

“relevant premises” has the meaning given by paragraph 14(4) and (6) of Schedule 12 (entry without warrant);

“Schedule 12” means Schedule 12 to the Act;

“securities” has the meaning given in paragraph 3(1) of Schedule 12 (general interpretation);

“specified premises” means premises specified by the court for the purposes of paragraph 15(1) of Schedule 12 (entry under warrant);

“the sum outstanding” means the outstanding debt together with interest, if any, and the costs of enforcement to date, if any;

“taking control of goods” has the meaning given by paragraph 13(1) of Schedule 12 (ways of taking control); and

“vulnerable [person]” means [.....].

Categories of debts

3. For the purposes of these Regulations, debts which are recoverable in accordance with the procedure in Schedule 12 are categorised as follows—

(a) “Category A debts” are enforceable under—

- (i) High Court writs of control which confer a power to recover a sum of money;
- (ii) High Court writs of delivery which confer a power to take control of goods and sell them to recover a sum of money;
- (iii) High Court writs of possession which confer a power to take control of goods and sell them to recover a sum of money;
- (iv) county court warrants of control pursuant to section 85 of the County Courts Act 1984^(b) except such warrants that are issued to recover a

^(b) 1984 c. 28.

- traffic contravention debt as defined by section 82 of the Traffic Management Act 2004^(c);
- (v) county court warrants of delivery which confer a power to take control of goods and sell them to recover a sum of money; or
 - (vi) county court warrants of possession which confer a power to take control of goods and sell them to recover a sum of money;
- (b) “Category B debts” are debts enforceable under magistrates’ court warrants of control pursuant to section 76 of the Magistrates’ Court Act 1980^(d);
- (c) “Category C debts” are debts enforceable under section 127 of the Finance Act 2008^(e);
- (d) “Category D debts” are debts enforceable under—
- (i) sections 4 and 16 of the Inclosure Act 1773^(f);
 - (ii) sections 151 and 159 of the Inclosure Act 1845^(g);
 - (iii) section 91 of the Lands Clauses Consolidation Act 1845^(h);
 - (iv) section 33 of the Railways Clauses Act 1863⁽ⁱ⁾;
 - (v) section 13 of the Compulsory Purchase Act 1965^(j);
 - (vi) section 35 of the Child Support Act 1991^(k);
 - (vii) section 14 of the Local Government Finance Act 1992^(l); or
 - (viii) section 218 of the Planning Act 2008^(m);
- (e) “Category E debts” are county court warrants of control pursuant to section 85 of the County Courts Act 1984 that are issued to recover a traffic contravention debt as defined by section 82 of the Traffic Management Act 2004;
- (f) “Category F debts” are debts enforceable under—
- (i) section 62A of the Local Government Finance Act 1988⁽ⁿ⁾;
 - (ii) section 54 of the Land Drainage Act 1991^(o); or
 - (iii) paragraph 12 of Schedule 15 to the Water Resources Act 1991^(p); and
- (g) “Category G debts” are debts enforceable under section 72 of the Act.

Exempt goods: general

4. Subject to regulation 5, for the purposes of these Regulations, the following goods of the debtor are “exempt goods”—

- (a) for Category A, B, C, D, E and G debts, any item or equipment (for example, tools, books, telephones, computer equipment and vehicles) which is necessary

(c) 2004 c. 18.
(d) 1980 c. 43.
(e) 2008 c. 9.
(f) 1773 c. 81.
(g) 1845 c. 118.
(h) 1845 c. 18.
(i) 1863 c. 92.
(j) 1965 c. 56.
(k) 1991 c. 48.
(l) 1992 c. 14.
(m) 2008 c. 29.
(n) 1988 c. 41.
(o) 1991 c. 51.
(p) 1991 c. 57.

for use personally by the debtor in the debtor's employment, business, trade, vocation, study or education;

- (b) such clothing, bedding, furniture, household equipment, items and provisions as are reasonably required to satisfy the basic domestic needs of the debtor and every member of the debtor's household, including (but not restricted to)—
 - (i) a cooker or microwave;
 - (ii) a refrigerator;
 - (iii) a washing machine;
 - (iv) a dining table large enough, and sufficient dining chairs, to seat the debtor and every member of the debtor's household;
 - (v) beds and bedding sufficient for the debtor and every member of the debtor's household;
 - (vi) any mobile, landline and internet telephone used by the debtor or a member of the debtor's household;
 - (vii) any item or equipment reasonably required for—
 - (aa) the medical care of the debtor or any member of the debtor's household;
 - (bb) safety in the dwelling-house; or
 - (cc) the security of the dwelling-house (for example, an alarm system) or for security in the dwelling-house (for example, a safe);
 - (viii) any appliance providing lighting, heating or washing facilities; and
 - (ix) any item or equipment reasonably required for the care of—
 - (aa) a person under the age of 18;
 - (bb) a disabled person; or
 - (cc) an older person;
- (c) assistance dogs (including guide dogs, hearing dogs and dogs for disabled persons), sheep dogs, guard dogs or domestic pets;
- (d) a vehicle on which a valid disabled person's badge is displayed or in relation to which there are reasonable grounds for believing that it is used for the carriage of a disabled person;
- (e) a vehicle (whether in public ownership or not) used for police, fire or ambulance purposes; and
- (f) a vehicle displaying a valid British Medical Association badge or other health emergency badge.

Exempt goods: goods which are also premises and are occupied as only or principal home

5. Where any goods of the debtor are also premises and are occupied by the debtor or another person as the debtor's or that person's only or principal home, those goods are exempt goods.

Application

Application of these Regulations

- 6.—(1) These Regulations only apply when taking control of goods and selling them to recover a debt specified in regulation 3.
- (2) These Regulations apply to all Categories of debts listed under regulation 3 unless otherwise specified.

PART 2

PROCEDURE FOR TAKING CONTROL OF GOODS

Notice of enforcement prior to taking control of goods

Minimum period of notice

- 7.—(1) For Category A, B, C, D, E and F debts the notice of enforcement required by paragraph 7(1) of Schedule 12 must be given to the debtor not less than 7 clear days before the enforcement agent takes control of the debtor's goods.
- (2) For Category G debts the notice of enforcement must be given to the debtor not less than 14 clear days before the enforcement agent takes control of the debtor's goods.
- (3) Where the period referred to in paragraph (1) or (2) includes a Sunday, bank holiday, Good Friday or Christmas Day that day does not count in calculating the period.
- (4) The court may order that a specified lesser period of notice be given to the debtor.
- (5) The court may only make an order under paragraph (4) where it is satisfied that, if the order is not made, it is likely that goods of the debtor will be moved to premises other than relevant premises, or otherwise disposed of, in order to avoid the goods being taken into control by the enforcement agent.

Form and contents of the notice

- 8 The notice of enforcement required by paragraph 7(1) of Schedule 12 must be in writing, and set out—
- (a) the name and address of the debtor;
 - (b) the reference number or numbers;
 - (c) the date of the notice;
 - (d) details of the court judgment or order or enforcement power by virtue of which the debt is enforceable against the debtor;
 - (e) the following information about the debt—
 - (i) sufficient details of the debt to enable the debtor to identify the debt correctly;
 - (ii) the amount of the debt including any interest due as at the date of the notice;
 - (iii) the amount of any enforcement costs incurred up to the date of the notice; and
 - (iv) the possible additional costs of enforcement if the sum outstanding should remain unpaid as at the date mentioned under paragraph (h);

- (f) how and between which hours and on which days payment of the sum outstanding may be made;
- (g) a contact telephone number and address at which the enforcement agent or the enforcement agent's office may be contacted and between which hours and on which days; and
- (h) the date and time by which the sum outstanding must be paid to prevent goods of the debtor being taken into control and sold and the debtor incurring additional costs.

Method of giving notice and who must give it

- 9**—(1) The notice of enforcement required by paragraph 7(1) of Schedule 12 must be given—
- (a) by post addressed to the debtor at the place, or one of the places, where the debtor usually lives or carries on a trade or business;
 - (b) by fax or other means of electronic communication;
 - (c) by delivery by hand through the letter box of the place, or one of the places, where the debtor usually lives or carries on a trade or business;
 - (d) where there is no letterbox, by affixing the notice at or in the place that it is likely to come to the attention of the debtor;
 - (e) to the debtor personally, where the debtor is an individual; or
 - (f) where the debtor is not an individual (but is, for example, a company, corporation or partnership), by delivering the notice to—
 - (i) the place, or one of the places, where the debtor carries on a trade or business; or
 - (ii) the registered office of the company or partnership.
- (1) The notice must be given by the enforcement agent or the enforcement agent's office.

Taking control of goods

Time limit for taking control of goods

- 10**—(1) Subject to paragraph (2), the enforcement agent may not take control of goods of the debtor after the expiry of a period of 12 months beginning with the date of the notice of enforcement given under paragraph 7(1) of Schedule 12.
- (2) Where—
- (a) after giving notice of enforcement under paragraph 7(1) of Schedule 12, the enforcement agent enters into an arrangement with the debtor for the repayment, by the debtor, of the sum outstanding by instalments; and
 - (b) the debtor breaches the terms of the repayment arrangement,
- the period in paragraph (1) begins with the date of the debtor's breach of the repayment arrangement.
- (3) The court may order that the period in paragraph (1) be extended by a further 12 months.
- (4) The court may make such an order only—
- (a) on application by the enforcement agent or the creditor;

- (b) on one occasion; and
- (c) if the court is satisfied that the applicant has reasonable grounds for not taking control of goods of the debtor during the period referred to under paragraph (1).

Circumstances in which the enforcement agent must not take control of goods

11. The enforcement agent must not take control of goods of the debtor by any of the ways listed under paragraph 13(1) of Schedule 12 where—

- (a) the debtor is a child;
- (b) a child or vulnerable person (whether more than one or a combination of both) are the only persons present in the relevant or specified premises in which the goods are located; or
- (c) the goods are also premises in which a child or vulnerable person (whether more than one or a combination of both) are the only persons present.

Circumstances when goods on a highway cannot be taken into control

12.—(1) The enforcement agent must not take control of goods of the debtor, under paragraph 13(1)(b) of Schedule 12, where the goods are—

- (a) animals or livestock; or
- (b) any goods which the enforcement agent believes to be or to include—
 - (i) hazardous goods or materials; or
 - (ii) perishable goods or materials,

and where there is a risk to public health if the animals, livestock, goods or materials are taken into control and the enforcement agent is or ought to be aware of the risk.

(2) Where paragraph (1) applies the enforcement agent must not take control of a debtor's vehicle in which such goods are contained.

(3) In this regulation—

- (a) "hazardous goods or materials" includes—
 - (i) nuclear matter;
 - (ii) radioactive waste; and
 - (iii) any other article or substance that has been and remains contaminated (whether radioactively or chemically); and
- (b) "livestock" includes cattle, sheep, pigs, horses or poultry.

Days for taking control

13. The enforcement agent may take control of goods of the debtor by any of the ways listed under paragraph 13(1) of Schedule 12 on any day of the week.

Prohibited hours for taking control

14.—(1) This regulation is subject to regulation 13.

(2) Subject to paragraph (3), the enforcement agent must not take control of goods of the debtor by any of the ways listed under paragraph 13(1) of Schedule 12 before 6 a.m. or after 9 p.m.

(3) Paragraph (2) does not apply where—

- (a) goods are located on the debtor's or another person's premises which are used (whether wholly or partly) to carry on a trade or business and the premises (or part of the premises) are open for the conduct of that trade or business during prohibited hours;
- (b) the enforcement agent has begun to take control of goods during hours that are not prohibited under paragraph (2) or hours permitted under sub-paragraph (a) or (c) and to complete taking control of goods it is reasonably necessary for the enforcement agent to continue to do so during prohibited hours provided the duration of time spent in taking control of goods is reasonable; or
- (c) the court, on application by the enforcement agent, orders otherwise.

Who may enter into a controlled goods agreement

15.—(1) Subject to paragraph (2), a controlled goods agreement, as defined by paragraph 13(4) of Schedule 12, may only be entered into by an enforcement agent and—

- (a) a debtor who is aged 16 or over;
- (b) a person, aged 18 or over, authorised by the debtor to enter into a controlled goods agreement on the debtor's behalf; or
- (c) a person in apparent authority who is on the premises.

(2) The enforcement agent must not enter into a controlled goods agreement with the debtor or another person who, it appears (or ought to appear) to the enforcement agent does not understand the effect of, and would not be capable of entering into, such an agreement.

Controlled goods agreement

16.—(1) This regulation applies where a controlled goods agreement is entered into under paragraph 13(1)(d) of Schedule 12.

(2) The agreement must be in writing and signed by the enforcement agent and—

- (a) the debtor;
- (b) the person authorised by the debtor in accordance with regulation 15(1)(b); or
- (c) the person in apparent authority.

(3) The agreement must set out—

- (a) the name and address of the debtor;
- (b) the reference number or numbers and the date of the agreement;
- (c) the names of the persons entering into the agreement;
- (d) a contact telephone number and address at which the enforcement agent or the enforcement agent's office may be contacted and between which hours and on which days;
- (e) a list of the goods taken into control with a description to enable the debtor to identify the goods correctly, including, where applicable—
 - (i) the manufacturer, model and serial number of the goods;
 - (ii) in the case of a vehicle, the manufacturer, model, colour and registration mark of the vehicle; and
 - (iii) the material, colour and usage of the goods or any other identifying characteristic; and

- (f) the terms of the arrangement entered into between the enforcement agent and the debtor for the repayment, by the debtor, of the sum outstanding.
- (4) At the time of entering into the agreement, the enforcement agent must give a copy of the signed agreement to the person who signed it under paragraph (2).
- (5) Where the enforcement agent enters into the agreement with a person on the debtor's behalf or a person in apparent authority, the enforcement agent must also provide the debtor with a copy of the signed agreement by—
 - (a) leaving it in a conspicuous place on the relevant or specified premises, where the enforcement agent has taken control of the goods on such premises; or
 - (b) delivering it to any relevant premises, in a sealed envelope addressed to the debtor, where the enforcement agent has taken control of the goods on a highway.
- (6) Where the enforcement agent leaves a copy of the agreement on the relevant or specified premises under paragraph (5)(a) and the enforcement agent knows that there is someone else there or that there are other occupiers, the copy must be left in a sealed envelope addressed to the debtor.
- (7) Paragraph (3)(e) is complied with if—
 - (a) the enforcement agent provides the debtor with a list of goods taken into control under regulation 27(2)(f)(i) or regulation 30(1)(e) at the same time as entering into the controlled goods agreement; and
 - (b) the goods taken into control are the same as those listed under regulation 27(2)(f)(i) or regulation 30(1)(e).

Ways of securing goods

Securing goods of the debtor on premises where found

- 17.** —(1) Subject to paragraphs (2) and (3), where the enforcement agent is proceeding under paragraph 13(1)(a) of Schedule 12, the enforcement agent may secure goods of the debtor—
- (a) in a cupboard, room, garage or outbuilding;
 - (b) in the case of goods on premises (or on a part of the premises) which are not occupied for residential purposes, by the enforcement agent remaining on the premises to guard the goods of the debtor of which the enforcement agent has taken control;
 - (c) by fitting an immobilisation device which must be provided by the enforcement agent; or
 - (d) by securing—
 - (i) the whole of the premises, where the premises are occupied solely for the purpose of a trade or business; or
 - (ii) such part of the premises, where the premises are occupied for residential and trade or business purposes, that is occupied solely for the purpose of a trade or business.
- (2) The enforcement agent must not secure goods in any of the ways listed under paragraph (1)(a) to (c) where any person (whether or not the debtor) in occupation of the premises, or any part of the premises, would, as a result, be deprived of adequate access to essential facilities, including exempt goods, or adequate means of entering and leaving the premises, including means of emergency entry and escape.
- (3) Premises may only be secured under paragraph (1)(d) if it is not practicable—

- (a) to secure the goods in any of the other ways listed under paragraph (1); and
 - (b) to take control of the goods under paragraph 13(1)(c) of Schedule 12.
- (4) Where the goods are secured by fitting an immobilisation device under paragraph (1)(c), the enforcement agent must, at the time of immobilising the goods, provide a written warning to the debtor, signed by the enforcement agent, to be affixed in a prominent position on the immobilised goods, which must set out—
- (a) that the enforcement agent has immobilised the goods;
 - (b) the date and time of immobilisation;
 - (c) that the goods have been immobilised as the debtor has failed to pay the sum outstanding;
 - (d) a telephone number, which is available 24 hours every day, for enquiries; and
 - (e) the reference number or numbers.

Securing goods of the debtor on a highway or elsewhere

- 18.**—(1) Subject to paragraph (3), where the enforcement agent is proceeding under paragraph 13(1)(b) or (c) of Schedule 12, the enforcement agent may secure goods of the debtor by fitting an immobilisation device.
- (2) Where the goods are secured by fitting an immobilisation device, the enforcement agent must—
- (a) provide the immobilisation device; and
 - (b) provide a written warning to the debtor in accordance with regulation 17(4).
- (3) This regulation does not apply where the goods to be secured on a highway under paragraph 13(1)(b) of Schedule 12 are a vehicle.

Securing goods of the debtor on a highway and removal: vehicles

- 19.**—(1) Where the enforcement agent is proceeding under paragraph 13(1)(b) of Schedule 12 and the goods to be secured are a vehicle, those goods must be secured in accordance with this regulation.
- (2) The vehicle must be secured by an immobilisation device, unless the debtor voluntarily surrenders the keys to the vehicle to the enforcement agent.
- (3) The immobilisation device must be provided by the enforcement agent.
- (4) Subject to paragraph (6), at the time of immobilising the goods, the enforcement agent must provide a written warning to the debtor in accordance with regulation 17(4).
- (5) If the vehicle is so positioned that there would be at any time a contravention of any prohibition or restriction imposed by or under any enactment, the enforcement agent must, before the vehicle is immobilised, reposition it to the nearest place where there would be no such contravention.
- (6) Where a vehicle is repositioned, the enforcement agent must provide an additional written warning to the debtor, signed by the enforcement agent, which must—
- (a) be placed at or near the original position of the vehicle; and
 - (b) set out—
 - (i) the information required by regulation 17(4);
 - (ii) that the enforcement agent has repositioned the vehicle; and
 - (iii) the location where the vehicle has been so repositioned.

(7) A vehicle must remain immobilised where it is positioned or repositioned for a period of not less than 24 hours from the time of immobilisation unless the sum outstanding is paid or an agreement to release the vehicle, on part payment of the sum outstanding, is made between the enforcement agent and the debtor.

(8) On expiry of the period of time referred to under paragraph (7), the enforcement agent may remove the vehicle to storage.

(9) Where a vehicle is removed to storage, the enforcement agent must comply with the requirements of regulation 31 (care of controlled goods).

Removal and securing goods of the debtor: location

20. Subject to regulation 31 (care of controlled goods), where the enforcement agent takes control of the goods of the debtor under paragraph 13(1)(c) of Schedule 12, the enforcement agent must, save in exceptional circumstances, remove the goods and secure them in or at a place which is within a reasonable distance from the place where the goods were taken into control.

Entry

Mode of entry or re-entry to premises

21. The enforcement agent may enter premises under paragraphs 14 or 15 of Schedule 12 or re-enter premises under paragraph 16 of Schedule 12, only by —

- (a) any door, or any usual means by which entry is gained to the premises (for example, a loading bay to premises where a trade or business is carried on); or
- (b) any usual means of entry, where the premises are a vehicle, vessel, aircraft, hovercraft, a tent or other moveable structure.

Days of entry

22.—(1) This regulation applies where the enforcement agent is—

- (a) entering or remaining on relevant or specified premises under paragraph 14 or 15 of Schedule 12 to search for and take control of goods; or
- (b) re-entering or remaining on premises under paragraph 16 of Schedule 12 to inspect controlled goods or to remove them for storage or sale.

(2) The enforcement agent may enter, re-enter or remain on the premises on any day of the week.

Hours of entry

23.—(1) This regulation is subject to regulation 22.

(2) This regulation applies where the enforcement agent is—

- (a) entering or remaining on relevant or specified premises under paragraph 14 or 15 of Schedule 12 to search for and take control of goods; or
- (b) re-entering or remaining on premises under paragraph 16 of Schedule 12 to inspect controlled goods or to remove them for storage or sale.

(3) Subject to paragraphs (4) to (6), the enforcement agent may only enter, re-enter or remain on the premises after 6 a.m. and before 9 p.m.

(4) Where premises are used (whether wholly or partly) for a trade or business, the enforcement agent may enter, re-enter or remain on the premises (or part of the premises

so used) during any hours when the premises (or part of the premises) are open for the conduct of that trade or business.

(5) Where the enforcement agent has, during hours permitted under paragraph (3), (4) or (6), already entered or re-entered premises, the enforcement agent may, outside such permitted hours, remain on the premises, if it is reasonably necessary for him to continue to search for and take control of goods, inspect controlled goods or remove controlled goods for storage or sale, provided the duration of time spent is reasonable.

(6) The court may authorise the enforcement agent to enter, re-enter or remain on premises during times other than those permitted by paragraph (3), (4) or (5) only if an application for authorisation is made to the court by the enforcement agent.

Restrictions on entry, re-entry and remaining on premises

24.—(1) This regulation applies where the enforcement agent is entering, re-entering or remaining on premises in the same circumstances as listed under regulation 22(1).

(2) The enforcement agent may enter, re-enter or remain on the premises only if—

- (a) the debtor is not a child; or
- (b) a child or vulnerable person (whether more than one or a combination of both) are not the only persons present in the premises which the enforcement agent proposes to enter or re-enter.

Restrictions on repeated entry (with or without warrant) to premises

25.—(1) This regulation applies where the enforcement agent, having entered premises under paragraph 14 or 15 of Schedule 12 has determined that there are no or insufficient goods of the debtor on the premises which can be taken into control that will pay the sum outstanding.

(2) The enforcement agent may enter the premises on a second or subsequent occasion only if the enforcement agent has reason to believe that, since the occasion of the enforcement agent's last entry, there have been brought on to the premises further goods of the debtor which have not yet been, but which could be, taken into control.

Entry with Reasonable Force

Issue of warrant authorising enforcement agent to use reasonable force

26.—(1) This regulation prescribes the conditions of which the court must be satisfied before it—

- (a) issues a warrant under paragraph 20(2) or 31(1) of Schedule 12; or
- (b) includes provision in a warrant under paragraph 21(2) of that Schedule.

(2) Where the enforcement agent is entering the premises under paragraph 14 or 15 of Schedule 12, the prescribed conditions are—

- (a) the debt the enforcement agent is attempting to recover is a Category A or C debt;
- (b) the premises are—
 - (i) for Category A debts—
 - (aa) where the debtor solely carries on a trade or a business; or
 - (bb) any other premises to which goods of the debtor have been deliberately removed in order to avoid them being taken into control; and
 - (ii) for Category C debts, any premises;

- (c) there are, or are likely to be, goods of the debtor on the premises of which control can be taken;
 - (d) the enforcement agent has explained to the court—
 - (i) the likely means of entry, and the type and amount of force that will be required to make the entry successfully; and
 - (ii) how, after entry, the enforcement agent proposes to leave the premises in a secure state; and
 - (e) in all the circumstances an authorisation ought to be given, having regard to (among other matters)—
 - (i) the sum outstanding; and
 - (ii) the nature of the debt.
- (3) Where the enforcement agent is re-entering premises under paragraph 16 of Schedule 12, the prescribed conditions are—
- (a) the enforcement agent has taken control of the goods by entering into a controlled goods agreement with the debtor;
 - (b) the debtor has failed to comply with the repayment terms of the controlled goods agreement relating to payment, by the debtor, of the sum outstanding;
 - (c) the general powers to use reasonable force under paragraphs 17 to 19 of Schedule 12 do not apply;
 - (d) the enforcement agent has explained to the court—
 - (i) the likely means of entry, and the type and amount of force that will be required to make the entry successfully; and
 - (ii) how, after entry, the enforcement agent proposes to leave the premises in a secure state; and
 - (e) in all the circumstances an authorisation ought to be given, having regard to (among other matters)—
 - (i) the sum outstanding; and
 - (ii) the nature of the debt.
- (4) Where the enforcement agent is taking control of goods on a highway, the prescribed conditions are—
- (a) the debt the enforcement agent is attempting to recover is a Category A, B or C debt;
 - (b) the enforcement agent has explained to the court the type and amount of force that will be required to take control of the goods; and
 - (c) in all the circumstances an authorisation ought to be given, having regard to (among other matters)—
 - (i) the sum outstanding; and
 - (ii) the nature of the debt.

Notice after entry and taking control of goods

Form and contents of notice after entry or taking control of goods on a highway

27.—(1) This regulation applies to—

- (a) the notice required by paragraph 28(1) of Schedule 12; and

(b) the notice required by paragraph 33(1) of that Schedule.

(2) Subject to regulations 28 and 29, the notice must be in writing, signed by the enforcement agent and set out—

- (a) the name and address of the debtor;
- (b) the enforcement agent's name, the reference number or numbers and the date of the notice;
- (c) that the enforcement agent has done one or more of the following—
 - (i) entered the premises;
 - (ii) taken control of goods on a highway; or
 - (iii) entered a vehicle on a highway with the intention of taking control of goods;
- (d) the address of the premises which the enforcement agent has entered or the location on the highway where the enforcement agent has taken control of goods or entered a vehicle;
- (e) the manufacturer, model, colour and registration mark where a vehicle on a highway has been entered with the intention of taking control of goods; and
- (f) whether or not the enforcement agent has taken control of goods of the debtor and, if so, the location where and the time when the goods have been taken into control and—
 - (i) a list of the goods taken into control with a description to enable the debtor to identify the goods correctly, including, where applicable—
 - (aa) the manufacturer, model and serial number of the goods;
 - (bb) in the case of a vehicle, the manufacturer, model, colour and registration mark of the vehicle; and
 - (cc) the material, colour and usage of the goods or any other identifying characteristic;
 - (ii) the amount of the sum outstanding as at the date of the notice;
 - (iii) the date and time by which the sum outstanding must be paid to prevent the controlled goods being sold;
 - (iv) how and between which hours and on which days payment of the sum outstanding may be made; and
 - (v) that the controlled goods will be released on payment in full (or may be released on part payment) of the sum outstanding.

(3) The requirement to provide notice under paragraphs 28(1) and 33(1) of Schedule 12 does not apply where the enforcement agent is re-entering premises under paragraph 16 of Schedule 12 to inspect goods previously taken into control.

(4) Paragraph (2)(f)(i) is complied with if—

- (a) the enforcement agent provides the debtor with a list of goods taken into control under regulation 16(2)(e) or regulation 30(1)(e) at the same time as the notice; and
- (b) the goods taken into control are the same as those listed under regulation 16(2)(e) or regulation 30(1)(e).

Additional notice requirements where goods are immobilised

28.—(1) Subject to paragraph (2), where goods of the debtor are taken into control under any of the ways listed under paragraph 13(1) of Schedule 12 and the goods have been immobilised the notice under regulation 27(1) must also set out the information required by regulation 17(4) (written warning on immobilisation).

(2) Where goods are taken into control under paragraph 13(1)(b) of Schedule 12 and the goods are a vehicle which are immobilised, the notice under regulation 27(1) must also set out the information required by regulations 17(4) and 19(6) (written warning on immobilisation).

Additional notice requirements where goods are removed for storage or sale

29.—(1) Where goods of the debtor are taken into control under paragraph 13(1)(c) of Schedule 12 or controlled goods are removed to storage or for sale, the notice under regulation 27(1) must also set out—

- (a) that the enforcement agent has removed controlled goods to secure storage or for sale;
- (b) a list of the goods so removed if different to the list of goods specified under regulation 27(2)(f)(i);
- (c) the date of removal of the goods to storage or for sale;
- (d) the address, telephone number and days and hours of opening of the storage premises, where the goods are removed to storage;
- (e) the daily or weekly storage charge payable, where the goods are removed to storage; and
- (f) the procedure for collection by or on behalf of the debtor of goods taken into control on payment of the sum outstanding or on part payment of the sum outstanding where an agreement is made between the enforcement agent and the debtor.

(2) Where any of the information required by paragraph (1) is not known to the enforcement agent at the time of providing the notice to the debtor under regulation 27(1) the enforcement agent must provide such information, in writing, to the debtor, as soon as reasonably practicable.

(3) Paragraph (1)(b) is complied with if the enforcement agent provides the debtor with a copy of the inventory, required by paragraph 34 of Schedule 12, at the same time as the notice, which describes all goods removed to storage or for sale.

Inventory

Inventory of goods taken into control: form and contents

30.—(1) The inventory required by paragraph 34 of Schedule 12 must be in writing, signed by the enforcement agent and set out—

- (a) the name and address of the debtor;
- (b) the enforcement agent's name, the reference number or numbers and the date of the inventory;
- (c) the name and address of the co-owner, if any;

- (d) that the enforcement agent has taken control of the goods of the debtor or the co-owner as specified in the inventory; and
- (e) a list of the goods taken into control with a description to enable the debtor or the co-owner to identify the goods correctly, including, where applicable—
 - (i) the manufacturer, model and serial number of the goods;
 - (ii) in the case of a vehicle, the manufacturer, model, colour and registration mark of the vehicle; and
 - (iii) the material, colour and usage of the goods or any other identifying characteristic.

(2) The inventory may be combined with a controlled goods agreement under regulation 16(1) or the notice required by paragraph 28(1) or 33(1) of Schedule 12 if—

- (a) the enforcement agent provides the debtor with the inventory at the same time as the controlled goods agreement or the notice; and
- (b) the goods taken into control are the same as those listed under regulation 16(3)(e) or regulation 27(2)(f)(i).

Dealing with controlled goods

Care of controlled goods

31.—(1) Where the enforcement agent removes controlled goods, other than securities, from premises or a highway where the enforcement agent has found them or repositioned them (in the case of a vehicle under regulation 19(5))—

- (a) the enforcement agent must keep the controlled goods, so long as they remain in the enforcement agent's control, in a similar condition to that in which the enforcement agent found them immediately prior to taking them into control;
- (b) the goods must be removed to storage, unless the goods are removed for sale; and
- (c) the storage must be secure where the conditions are such as to prevent damage to or deterioration of the goods for so long as they remain in the enforcement agent's control.

(2) Controlled goods must not be removed to a place where there would be at any time a contravention of any prohibition or restriction imposed by or under any enactment.

(3) This regulation is subject to regulation 20 (removal and securing goods of the debtor: location).

Valuation

Valuation of controlled goods

32.—(1) This regulation applies where an enforcement agent makes or obtains a valuation of controlled goods required by paragraph 36(1) of Schedule 12.

(2) Where the enforcement agent makes the valuation—

- (a) the valuation must be in writing, signed by the enforcement agent and set out—

- (i) the enforcement agent's name, the reference number or numbers and the date of the valuation; and
 - (ii) where appropriate, a separate value for each item of goods taken into control; and
 - (b) the enforcement agent must provide a copy of the written valuation, once made, to the debtor and any co-owner.
- (3) Where the enforcement agent obtains the valuation the enforcement agent must—
- (a) only instruct a qualified, independent valuer;
 - (b) instruct the valuer to make a written valuation and, where appropriate, to value each item of goods separately; and
 - (c) provide a copy of the written valuation, once made by the valuer, to the debtor and any co-owner.

PART 3

SALE OF CONTROLLED GOODS

Application of this Part

33. This Part does not apply to controlled goods which are securities.

Notice of sale

Minimum period before sale

- 34.** The minimum period before sale, required by paragraph 39 of Schedule 12, is—
- (a) 7 clear days from removing controlled goods for sale; or
 - (b) the day after removing controlled goods for sale where, if the sale were to take place after the expiry of the period of time referred to under paragraph (a), the goods would become unsaleable, or their sale value would be extinguished or substantially reduced due to their nature or any characteristic.

Minimum period of notice of sale

- 35.** The minimum period of notice of the date, time and place of sale, required by paragraph 40 of Schedule 12, is—
- (a) 7 clear days before the sale of the goods; or
 - (b) the day before the sale of the goods where, if the sale were to take place after the expiry of the period of time referred to under paragraph (a), the goods would become unsaleable, or their sale value would be extinguished or substantially reduced due to their nature or any characteristic.

Form and contents of notice of sale

- 36.**—(1) The notice of the date, time and place of the sale required by paragraph 40 of Schedule 12 must be in writing, signed by the enforcement agent and set out—
- (a) the name and address of the debtor;
 - (b) the enforcement agent’s name, the reference number or numbers and the date of the notice;
 - (c) the name and address of the co-owner, if any;
 - (d) that the controlled goods may be sold as the debtor has failed to pay the sum outstanding;
 - (e) a list of the controlled goods that may be sold with a description to enable the debtor or the co-owner to identify the goods correctly, including, where applicable—
 - (i) the manufacturer, model and serial number of the goods;
 - (ii) in the case of a vehicle, the manufacturer, model, colour and registration mark of the vehicle; and
 - (iii) the material, colour and usage of the goods or any other identifying characteristic;
 - (f) that the sale of the controlled goods is conditional on—
 - (i) an offer to purchase the goods being made; and
 - (ii) the reserve price on the controlled goods being met;
 - (g) that if the conditions in paragraph (f) are not met the date, time and place of sale will be set out in a further notice;
 - (h) the amount of the sum outstanding as at the date of the notice;
 - (i) the date and time by which the sum outstanding must be paid to prevent the controlled goods being sold;
 - (j) how and between which hours and on which days payment of the sum outstanding may be made; and
 - (k) the procedure for collection by or on behalf of the debtor or co-owner of goods taken into control on payment of the sum outstanding or on part payment of the sum outstanding where an agreement is made between the enforcement agent and the debtor.
- (2) Where the conditions in paragraph (1)(f) are not met and a further notice is given to the debtor and any co-owner, the notice must—
- (a) comply with the requirements of regulation 35;
 - (b) set out the information required by paragraph (1); and
 - (c) set out that it is a further notice.
- (3) The enforcement agent may replace the notice with a new notice, within the meaning of paragraph 40(3) of Schedule 12, only if—

- (a) the date, time or location of the sale has had to be re-arranged;
- (b) the minimum period of notice of the date, time and place of sale in the new notice is of the same period as in the notice which is to be replaced; and
- (c) the new notice sets out—
 - (i) the information required by paragraph (1);
 - (ii) that it is a new notice;
 - (iii) that it replaces the last notice given to the debtor or co-owner; and
 - (iv) the date of the notice which it replaces.

Method of giving notice of sale

37. The method of giving the notice of the date, time and place of sale required by paragraph 40 of Schedule 12 is the method required under regulation 9(1) (method of giving notice) and for the purposes of this regulation, references in that regulation to a debtor include a co-owner.

Sale

Methods of sale

38.—(1) Where an enforcement agent applies to the court, under paragraph 41(2) of Schedule 12, for an order that the sale be by a method other than public auction, the types of sale the court may order include, sale by—

- (a) private contract;
- (b) sealed bids;
- (c) advertisement; and
- (d) such other method as the court considers appropriate.

(2) The notice of application required by paragraph 41(5) of Schedule 12 must—

- (a) be in writing, signed by the enforcement agent and set out—
 - (i) the name and address of the debtor; and
 - (ii) the enforcement agent's name, the reference number or numbers and the date of the notice;
- (b) attach a copy of the enforcement agent's application to the court; and
- (c) be given to the creditor—
 - (i) by the enforcement agent; and
 - (ii) by a method required under regulation 9(1) (method of giving notice).

(3) For the purposes of paragraph (2)(c)(ii), references in regulation 9(1) to a debtor include a creditor.

Place of sale

39.—(1) Subject to paragraph (2), every sale of controlled goods must be held in a public auction house.

(2) The sale may be held on premises where goods were found by the enforcement agent where—

- (a) the debt the enforcement agent is attempting to recover is a Category A or C debt;
- (b) the premises are occupied solely for the purposes of a trade or business;
- (c) due to the size, nature, characteristics, number or amount of the controlled goods which are to be sold, it would be impractical or disproportionately costly to sell the goods in a public auction house; and
- (d) the costs of transporting the goods to an available public auction house, which is within a reasonable distance from the premises, is disproportionate to the sum outstanding.

(3) In this regulation, “public auction house” includes an online or internet auction site.

Conduct of sale

40. Where controlled goods are sold by public auction, the auction must be conducted by—

- (a) a qualified auctioneer; or
- (b) a reputable provider, where the auction takes place online or on an internet auction site.

PART 4

APPLICATION OF PROCEEDS

Order of application of proceeds

41. Where the proceeds from the exercise of an enforcement power are insufficient to pay the amount outstanding within the meaning of paragraph 50(3) of Schedule 12, the proceeds must be applied in the following order, after first paying any share due to any co-owner under paragraph 50(6)(a) of that Schedule—

- (a) [.....];
- (b) [.....].

Disputes as to share of proceeds payable to co-owner

42. Where the creditor, debtor or co-owner disputes the share of proceeds payable to the co-owner under paragraph 50(6)(a) of Schedule 12, that person may apply to the court to determine the amount of the co-owner’s share.

PART 5

SECURITIES OF THE DEBTOR

Application of this Part

43. This Part only applies to controlled goods which are securities.

Holding of securities

44.—(1) The enforcement agent may hold securities until they mature.

(2) While holding securities, the enforcement agent must ensure each security has the same protection in every respect (for example, from damage, destruction, theft or unauthorised or fraudulent interference) which the security had the benefit of immediately before the enforcement agent took it into control.

Disposal of securities

45.—(1) Before the creditor commences proceedings under paragraph 49(1) of Schedule 12, or the securities are otherwise disposed of, the enforcement agent must give not less than 7 clear days notice of the disposal to the debtor and any co-owner of the security.

(2) Subject to paragraph (3), the notice must be in writing, signed by the enforcement agent and set out—

- (a) the name and address of the debtor;
- (b) the enforcement agent's name, the reference number or numbers and the date of the notice;
- (c) the name and address of the co-owner, if any;
- (d) for each security, sufficient details of the security to enable the debtor or any co-owner to identify the security correctly;
- (e) that the securities may be disposed of by—
 - (i) realising the sums secured or made payable by them;
 - (ii) the creditor issuing proceedings in the name of the debtor (or in the name of any person in whose name the debtor might have sued) for the recovery of any sum secured or made payable by securities, when the time of payment arrives; or
 - (iii) the creditor assigning the right to sue for the recovery of such sums to another person;
- (f) the date and time when the sums will be realised, where sub-paragraph (e)(i) applies;
- (g) the amount of the sum outstanding as at the date of the notice;
- (h) the date and time by which the sum outstanding must be paid to prevent the securities being disposed of;
- (i) how and between which hours and on which days payment of the sum outstanding may be made; and

- (j) the procedure for release to the debtor or co-owner of the securities taken into control on payment of the sum outstanding or on part payment of the sum outstanding where an agreement is made between the enforcement agent and the debtor.
- (3) Where paragraph (2)(e)(ii) or (iii) applies, the notice must also set out—
- (a) the name and address of the applicant to the proceedings;
 - (b) the names and addresses of the defendants to the proceedings; and
 - (c) the amount of the claim—
 - (i) in respect of each security; and
 - (ii) in total.
- (4) The enforcement agent may replace the notice with a new notice, within the meaning of paragraph 49(4) of Schedule 12, only if—
- (a) the method of disposal under paragraph (2)(e) has changed; or
 - (b) the date or time of the disposal under paragraph (2)(f) has had to be re-arranged,
- and the new notice complies with the requirements of paragraph (5).
- (5) Where the notice is replaced with a new notice under paragraph (4)—
- (a) the minimum period of notice given in the new notice must be of the same period as in the notice which is to be replaced; and
 - (b) the new notice must set out—
 - (i) the information required by paragraph (2);
 - (ii) the information required by paragraph (3), where paragraph (2)(e)(ii) or (iii) applies;
 - (iii) that it is a new notice;
 - (iv) that it replaces the last notice given to the debtor or co-owner; and
 - (v) the date of the notice which it replaces.
- (6) The method of giving the notice is the method required under regulation 9(1) (method of giving notice) and for the purposes of this regulation, references in that regulation to a debtor include a co-owner.

PART 6

ABANDONMENT OF GOODS

Abandonment of goods other than securities

46.—(1) This regulation applies where, pursuant to paragraph 54(1)(b) of Schedule 12, the enforcement agent makes controlled goods, which are abandoned, available for collection by the debtor.

(2) Where the goods are immobilised, the enforcement agent must on (but not before) collection by the debtor, remove all immobilisation devices from the goods.

- (3) Where the enforcement agent removed the goods from where they were found the enforcement agent must give the debtor a written notice, as soon as reasonably practicable, signed by the enforcement agent, which must set out—
- (a) the name and address of the debtor;
 - (b) the enforcement agent's name, the reference number or numbers and the date of the notice;
 - (c) that the controlled goods are abandoned and the reason why;
 - (d) a list of the abandoned goods with a description to enable the debtor to identify the goods correctly, including, where applicable—
 - (i) the manufacturer, model and serial number of the goods;
 - (ii) in the case of a vehicle, the manufacturer, model, colour and registration mark of the vehicle; and
 - (iii) the material, colour and usage of the goods or any other identifying characteristic;
 - (e) that the goods are available for collection by the debtor;
 - (f) the procedure for collection of the goods by the debtor; and
 - (g) that if the debtor fails to collect the goods within 28 days from when the goods were made available for collection, the enforcement agent will make an application to the court for determination of how the uncollected goods are to be disposed of.
- (4) The method of giving the notice is the method required under regulation 9(1) (method of giving notice).
- (5) Where the debtor fails to collect the controlled goods within 28 days from when the goods were made available for collection, the enforcement agent must make an application to the court for determination of how the uncollected goods are to be disposed of.
- (6) On application by the enforcement agent under paragraph (5), the court may make one of the following orders—
- (a) that during a further period of time, to be determined by the court, the goods are to be made available for collection by the debtor;
 - (b) that the goods are to be—
 - (i) given to a charitable organisation nominated by the court; or
 - (ii) destroyed; or
 - (c) that the goods are to be made available for collection by the debtor during a further period of time (to be determined by the court) and, if not collected during that period, are to be—
 - (i) given to a charitable organisation nominated by the court; or
 - (ii) destroyed.

PART 7

THIRD PARTY CLAIMING CONTROLLED GOODS

Payments into court by third party

47.—(1) This regulation and regulation 48 apply where a person makes an application to the court claiming that goods taken into control are that person's and not the debtor's.

(2) The amount of required payments the third party is to make into court in respect of the enforcement agent's costs of retaining the controlled goods shall be determined by the court.

(3) Any required payments under paragraph (2) must be paid by the third party at times determined by the court.

Payments into court by third party: underpayments

48.—(1) Any underpayment to be determined by reference to an independent valuation under paragraph 60(5) of Schedule 12 must be undertaken by a qualified independent valuer.

(2) Any underpayment determined by the qualified independent valuer must be paid at a time determined by the court.

PART 8

COSTS OF ENFORCEMENT-RELATED SERVICES

PART 9

COMMERCIAL RENT ARREARS RECOVERY (CRAR)

General

Application of this Part

49. This Part only applies to Category G debts.

Authorisation by landlord to another to exercise CRAR on landlord's behalf

50. Where a landlord gives authorisation under section 73(8) of the Act to a person to exercise CRAR on the landlord's behalf, the authorisation must—

- (a) only authorise an enforcement agent; and
- (b) be in writing, signed by the landlord and set out—
 - (i) the date of authorisation;
 - (ii) the landlord's name and contact details;

- (iii) the name and contact details of the person authorised to act on behalf of the landlord; and
- (iv) sufficient detail to enable the authorised person to identify the commercial premises in respect of which CRAR may now be exercised on the landlord's behalf.

Minimum amount of net unpaid rent for CRAR to become exercisable

51. The minimum amount of net unpaid rent under section 77 of the Act is any amount of rent which has become due and payable by a tenant under a lease and that is 7 days in arrears.

Right to rent from sub-tenant

Notice to sub-tenant: when notice takes effect and service

52.—(1) A notice served on any sub-tenant under section 81(2) of the Act takes effect 14 clear days after the notice is served on that sub-tenant.

(2) The notice must be served on the sub-tenant by a method required under regulation 9(1) (method of giving notice).

Notice to sub-tenant: form and contents

53. The notice must be in writing, signed by the landlord and set out—

- (a) the landlord's name, reference and contact details and the date of the notice;
- (b) the amount of rent the landlord has the right to recover from the immediate tenant by CRAR (the notified amount);
- (c) that while the notified amount remains unpaid, the sub-tenant must pay his rent directly to the landlord instead of the immediate tenant, as a discharge for any rent payable by the sub-tenant under the sub-lease, until—
 - (i) the notified amount has been paid (by payments under the notice or otherwise); or
 - (ii) the notice is replaced or withdrawn; and
- (d) that the landlord may withdraw the notice in accordance with regulation 54.

Notice to sub-tenant: withdrawal of notice

54. A notice served on any sub-tenant under section 81(2) of the Act is withdrawn if the landlord provides written notice to the sub-tenant who received that notice that it is withdrawn.

Annex D – Proposed amendments to the Tribunals, Courts and Enforcement Act 2007

1. Powers of enforcement agents in relation to reasonable force etc.

[Draft Clause]

(1) Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (procedure for taking control of goods) is amended as follows.

(2) In paragraph 17 (general powers to use reasonable force), for “or 19” substitute “, 18A, 19 or 19A.”

(3) After paragraph 18 insert.

“18A(1) This paragraph applies if these conditions are met.

(a) the enforcement agent has power to enter the premises under paragraph 14;

(b) the enforcement agent reasonably believes that the debtor carries on a trade or business on the premises;

(c) the enforcement agent is acting under a writ or warrant of control issued for the purpose of recovering a sum payable under a High Court or county court judgment;

(d) the sum so payable is not a traffic contravention debt.

(2) .Traffic contravention debt. has the meaning given by section 82(2) of the Traffic Management Act 2004..

(4) After paragraph 19 insert.

“19A(1) This paragraph applies if these conditions are met.

(a) the enforcement agent has power to enter the premises under paragraph 16;

(b) the enforcement agent has taken control of the goods by entering into a controlled goods agreement with the debtor;

(c) the debtor has failed to comply with any provision of the controlled goods agreement relating to the payment by the debtor of the debt;

(d) the debtor has been given notice of the intention of the enforcement agent to enter the premises to inspect the goods or to remove them for storage or sale;

(e) neither paragraph 18 nor paragraph 19 applies.

(2) For the purposes of a notice under sub-paragraph (1)(d), regulations must state.

- (a) the minimum period of notice;
- (b) the form of the notice;
- (c) what it must contain;
- (d) how it must be given;
- (e) who must give it.

(3) The enforcement agent must keep a record of the time when a notice under sub-paragraph (1)(d) is given.

(4) If regulations authorise it, the court may order in prescribed circumstances that the notice given may be less than the minimum period.

(5) The order may be subject to conditions.”

(5) In paragraphs 24(2) and 31(5) (no power to use force against persons except to extent provided in regulations), omit “, except to the extent that regulations provide that it does.”

(6) In paragraph 53, omit sub-paragraph (2) (controlled goods to be treated as abandoned if unsold after a sale).

(7) In paragraph 56, omit sub-paragraph (2) (securities to be treated as abandoned if not disposed of in accordance with notice of disposal).

Annex E – Further regulations required for amendments to the Tribunals, Courts and Enforcement Act 2007

200[] No. 0000

ENFORCEMENT, ENGLAND AND WALES

The Taking Control of Goods Regulations 20[]

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 73(8), 77(4), 81(5) and (6) and 90(3), (6) and (7) of and Schedule 12 to the Tribunals, Courts and Enforcement Act 2007^(a).

PART 2

PROCEDURE FOR TAKING CONTROL OF GOODS

Entry with Reasonable Force

Minimum period of notice when intending to use reasonable force to re-enter premises

- 1.—(1) The notice of the enforcement agent's intention to use reasonable force to re-enter premises required by [paragraph 19A(1)(d) of Schedule 12] must be given to the debtor not less than 2 clear days before the enforcement agent re-enters the premises.
- (2) Where the period referred to in paragraph (1) includes a Sunday, bank holiday, Good Friday or Christmas Day that day does not count in calculating the period.
- (3) The court may order that a specified lesser period of notice be given to the debtor.
- (4) The court may only make an order under paragraph (3) where it is satisfied that, if the order is not made, it is likely that goods of the debtor will be moved to premises other than relevant premises, or otherwise disposed of, in order to avoid the goods being inspected or removed for storage or sale.

^(a) 2007 c. 15.

Form and contents of the notice of re-entry

2. The notice of the enforcement agent's intention to use reasonable force to re-enter premises required by [paragraph 19A(1)(d) of Schedule 12] must be in writing, signed by the enforcement agent and set out—

- (a) the name and address of the debtor;
- (b) the reference number or numbers;
- (c) the date of the notice;
- (d) sufficient details of the controlled goods agreement, the repayment terms of which the debtor has failed to comply with, to enable the debtor to identify the agreement correctly;
- (e) how the debtor has failed to comply with the repayment terms of the controlled goods agreement;
- (f) the amount of the sum outstanding as at the date of the notice;
- (g) how and between which hours and on which days payment of the sum outstanding may be made;
- (h) a contact telephone number and address at which the enforcement agent or the enforcement agent's office may be contacted and between which hours and on which days;
- (i) the date and time by which the sum outstanding must be paid to prevent the controlled goods being inspected or removed for storage or sale; and
- (j) that the enforcement agent may, if necessary, use reasonable force to re-enter the premises to inspect the goods or remove them for storage or sale.

Method of giving notice of re-entry and who must give it

3.—(1) The notice of the enforcement agent's intention to use reasonable force to re-enter premises required by [paragraph 19A(1)(d) of Schedule 12] must be given—

- (a) by fax or other means of electronic communication;
- (b) by delivery by hand through the letter box of the place, or one of the places, where the debtor usually lives or carries on a trade or business;
- (c) where there is no letterbox, by affixing the notice at or in the place that it is likely to come to the attention of the debtor;
- (d) to the debtor personally, where the debtor is an individual; or
- (e) where the debtor is not an individual (but is, for example, a company, corporation or partnership), by delivering the notice to—
 - (i) the place, or one of the places, where the debtor carries on a trade or business; or
 - (ii) the registered office of the company or partnership.

(2) The notice must be given by the enforcement agent.

Annex F – List of Sample notices for the debtor

Document 1	Notice of enforcement
Document 2	Controlled goods agreement
Document 3	Warning of immobilisation
Document 4	Warning of a vehicle being repositioned and immobilised
Document 5	Combined notice after entry or taking control of goods and inventory of goods taken into control
Document 6	Notice of sale
Document 7	Notice of abandonment

Notice of enforcement

This notice must be given by the enforcement agent or the enforcement agent's office.

Please read this notice - it is important

Name of Debtor

Address

Date notice issued

/ /

Reference number
or numbers

About this notice You have been sent this notice of enforcement because you have not paid money that you owe.

Who you owe money to

The amount you owe them

Enforcement details

Details of the court judgment or order or enforcement power by virtue of which the debt is enforceable

Sum outstanding

Debt

Interest

Enforcement costs

**TOTAL sum
outstanding**

(as at the date of this notice)

When to make payment

You must pay this amount by:

Date / /

Time

If you do not pay

If you do not pay (by the date above) your goods can be seized and sold to pay the amount you now owe. The action of seizure is called 'taking control of goods'. If this is done, the amount you will have to pay in enforcement costs will increase. These additional costs are outlined at the end of this notice.

How to pay what you owe

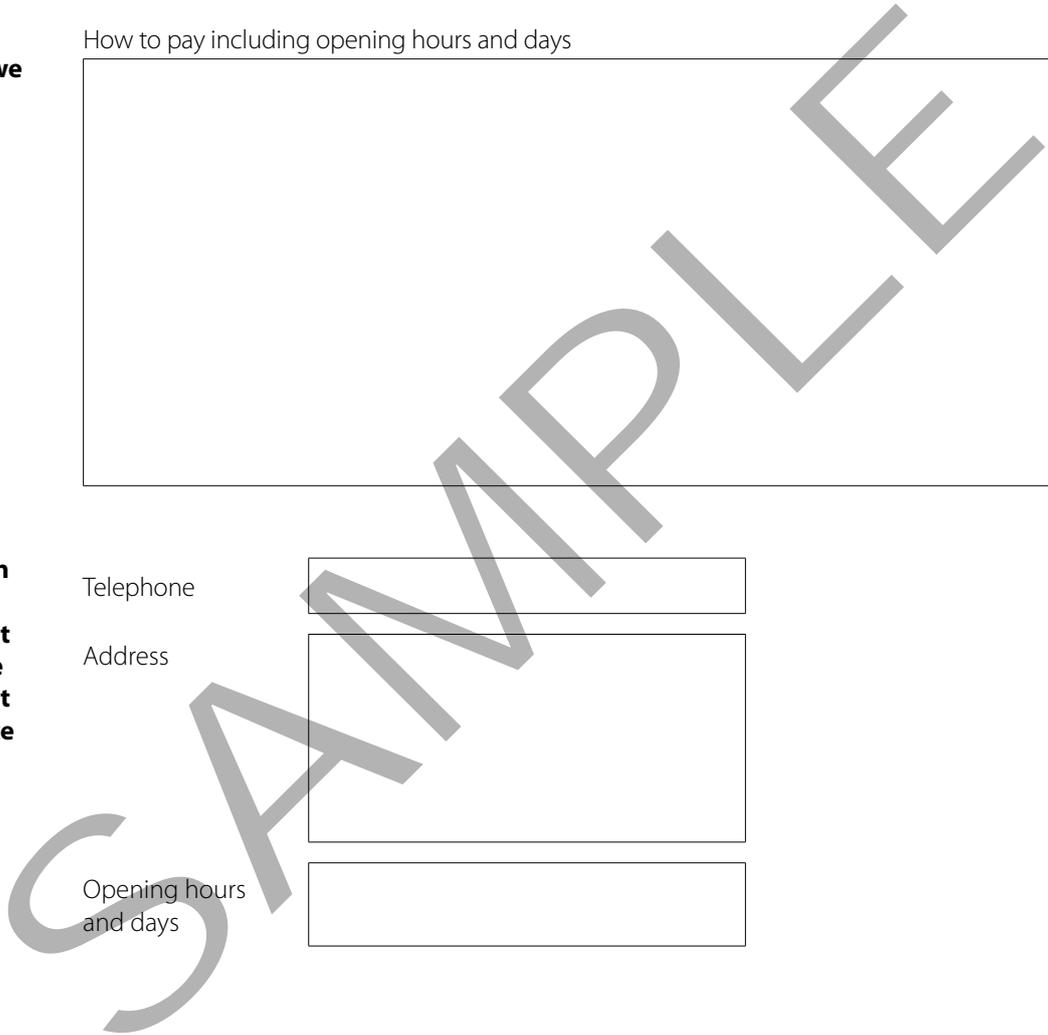
How to pay including opening hours and days

How you can contact the enforcement agent or the enforcement agent's office

Telephone

Address

Opening hours and days



Cost of enforcement
outline

SAMPLE

Controlled goods agreement

Name of Debtor

Address

Reference number
or numbers

About this agreement

Under this agreement the debtor is permitted to retain custody of the goods taken into control by the enforcement agent.

The debtor acknowledges that the enforcement agent is taking control of the goods (as listed below) and agrees that they will not remove or dispose of the goods taken into control or allow anyone else to until the debt is paid.

Goods taken into control

Description of item (eg. Computer, television, car etc.)	Manufacturer	Model	Serial number (or Registration mark if a vehicle)	Material, colour and usage of the goods or any other identifying characteristics

Arrangement terms

Terms of the arrangement entered into between the enforcement agent and the debtor for the repayment by the debtor of the sum outstanding.

Signature

Date //

.....
Debtor, person authorised by the debtor or
person in apparent authority

Print name

.....

Signature

Date //

.....
Enforcement Agent

Print name

.....

**How you can
contact the
enforcement
agent or the
enforcement
agent's office**

Telephone

Address

Opening hours
and days

SAMPLE

Warning of immobilisation

Please read this warning - it is important

This is to tell you that I have fitted an immobilisation device to secure your goods/vehicle(s).

**Date and
time of
immobilisation**

Date / /

Time

I have done this because you have not paid the sum outstanding.

**Further
information**

To discuss this matter please telephone

quoting reference or reference numbers

Signature

.....
Enforcement Agent

Warning

Vehicle has been repositioned and immobilised

Please read this warning - it is important

This is to tell you that I have repositioned and fitted an immobilisation device to secure your vehicle(s).

Location of the vehicle(s)

Date and time of immobilisation

Date / /

Time

I have done this because you have not paid the sum outstanding.

Further information

To discuss this matter please telephone

quoting reference or reference numbers

Signature

.....
Enforcement Agent

(04.10)

Notice after entry or taking control of goods on a highway and inventory of goods taken into control

Please read this notice - it is important

Name of Debtor

Address

Date notice issued / /

Reference number or numbers

Name of Enforcement Agent

Sum outstanding

Debt

Interest

Enforcement costs

TOTAL sum outstanding

(as at the date of this notice)

Transforming bailiff action Consultation paper

As you have still not paid what you owe, I have, as enforcement agent, now:

Action taken

entered premises

address

entered a vehicle on a highway with the intention of taking control of goods

Details of vehicle entered

Manufacturer	Model	Colour	Registration mark

Location of vehicle on the highway

taken control of goods on a highway

Location on highway

Goods taken into control

I have not taken control of any goods

I have taken control of the following

Description of item (eg. Computer, television, car, etc.)	Manufacturer	Model	Serial number (or Registration mark if a vehicle)	Material, colour and usage of the goods or any other identifying characteristics	Location and time

When to make payment

To avoid the goods taken into control being sold payment of the sum outstanding must be paid by

Date / /

Time

The goods will be released on payment in full (or may be released on part payment) of the sum outstanding.

**How to pay
what you owe**

How to pay including opening hours and days

Signature

.....
Enforcement Agent

SAMPLE

Notice of sale

Please read this notice - it is important

Name of Debtor

Address

Date notice issued

/ /

Reference number
or numbers

Name of
Enforcement Agent

Because you have not paid the sum outstanding *(detailed below)*,
the goods listed over the page may be sold.

Sum outstanding

Debt

Interest

Enforcement costs

**TOTAL sum
outstanding**

(as at the date of this notice)

**How to pay
what you owe**

How to pay including opening hours and days

**How to collect
your goods**

If you pay (or part pay as agreed with the enforcement agent) the amount you owe, you will be able to collect your goods by
(describe procedure in bullet point form)

Signature

.....
Enforcement Agent

Transforming bailiff action Consultation paper

Reason why goods were abandoned

This is because:

- I was unable to sell these goods at auction
- You/co-owner were not given a notice of sale within the period required by law

If you do not collect the goods within 28 days, from / / I will make an application to the court for it to decide how the uncollected goods should be disposed of.

(Give full details)

How to collect your goods

(This area is currently blank, overlaid with a large diagonal watermark reading "SAMPLE")

Signature

.....
Enforcement Agent

Annex G – Proposed Costs Structure

The stages themselves are compiled from a set of common enforcement activities that are allocated to different stages to reflect the work of the different parts of the industry.

A trigger activity to activate the costs for each stage has been set.

Core Activity	High Court Stage Allocation	Bailiff Stage Allocation
1 Receive instructions from client - create case file and administrative processing.	Administration / Compliance Stage	Administration / Compliance Stage
2 Confirm debtor details (address/ company searches)		
3 Produce status report (probability of debt recovery)		
4 Insolvency report		
5 Trigger Point for Administration / Compliance Stage Issue notice of enforcement		
6 Compliance contact with debtor		
7 Receiving, reading, and processing and scanning (where appropriate) all incoming communications, including letters, emails, faxes and telephone calls from both Creditors, Debtors, third party agencies and other interested parties and legal notices		
8 Process payment including receipting to debtor and distributing to creditor when relevant time period has elapsed		
9 Liaising with client/creditor		
10 Dealing with complaints from debtors, claimants, legal representatives, advice agencies including any court attendance		
11 Administration relating to case completion and return of warrant		
12 Managing Payment by Instalment Plans including correspondence with creditor and debtor	Enforcement Stage One	

Core Activity	High Court stage allocation	Bailiff stage allocation		
<p>13 Trigger point for Enforcement Stage and Enforcement Stage One Attend premises – first visit</p>	<p>Enforcement Stage One</p>			
14 Discuss repayment options with Debtor				
15 Take control of goods – controlled goods agreement, secure goods on premises, secure goods on the highway				
16 Issue inventory				
17 Issue notice to debtor giving information about what the Enforcement Agent is doing if entered premises or taking control of goods on a highway or entering a vehicle with the intention of taking control of goods				
18 Manage process for controlled goods agreement including revisits to inspect goods				
19 Reporting back to Creditor				
<p>20 Trigger point for Enforcement Stage Two Reassign Officer if payment arrangement defaults or Remove goods and secure them elsewhere if identified at risk</p>			<p>Enforcement Stage Two</p>	<p>Enforcement Stage</p>
21 Arranging for removal van to attend with or without auctioneer and ensuring Enforcement Officer in attendance to supervise removal				
22 Attendance with a view to remove goods but not removing				
23 Undertake DVLA and Hire Purchase checks on any vehicle which is seized				
24 Managing Vehicle Immobilisation Process including actual clamping and unclamping				
25 Managing Insolvency Issues and legal applications including processes for corporate and individual insolvency including winding up/bankruptcy/IVA/CVA/Administration/Administrative Receivers/Administration Orders/Debt Relief Orders, injunctions, stays, etc.				

Core Activity	High Court stage allocation	Bailiff stage allocation
26 Manage Liability disputes, third party Claims or Claims for Tools of Trade and progressing claims through Court	Enforcement Stage Two	Enforcement Stage
27 All subsequent attendances		
28 Communication with debtor at various times		
29 Reporting back to Creditor at all stages		
30 Trigger point for Sale Stage Transport of goods to place of sale or commencing sale activity if sale to be held on site		
31 Make or obtain valuation / Give the debtor and separately any co-owner an opportunity to obtain an independent valuation		
32 Issue notice of the date, time and place of the sale to debtor and any co-owner		
33 Arranging any specialist contractors such as hauliers, removal agents, locksmiths		
34 Ensuring adequate insurance is in place for high value goods and notifying insurers where necessary		
35 Liaising with auctioneer on sale arrangements whether on or off auctioneers premises		
36 General sale preparation		
37 Checking pre-auction activities e.g. advertised in accordance with legislation		
38 Being able to respond to any last minute application for a stay or third party claim both in and outside normal office hours		
39 Arranging for return of seized goods where ordered to do so		
40 Managing receipt of funds from auctioneer and pay over to Judgment Creditor – handling any VAT issues arising from sale	Sale Stage	Sale Stage
41 Reporting back to Creditor at all stages		

The proposed costs for each stage are:

Proposed Costs for non-High Court (Bailiff) Enforcement

Stage	Fixed Costs	Additional Percentage	
		£0–£1,000	>£1,000
Administration/Compliance	£75.00	0%	0%
Enforcement	£230.00	0%	7.5%
Sale	£105.00	0%	7.5%

Proposed Costs for High Court Enforcement

Stage	Fixed Costs	Additional Percentage	
		£0–£1,000	>£1,000
Administration/Compliance	£75.00	0%	0%
Enforcement 1	£185.00	0%	7.5%
Enforcement 2	£480.00	0%	0%
Sale	£510.00	0%	7.5%

Annex H – Bailiffs and Enforcement Agent Council proposal

BRITISH PARKING ASSOCIATION

DRAFT PROPOSAL FOR A

THE BAILIFFS AND ENFORCEMENT AGENTS COUNCIL (BEAC)

INTRODUCTION

1. This is a revision of a proposal first prepared as part of the response by the British Parking Association to the Government consultation paper, *Regulation of Enforcement Agents*, published in January 2007. It has been revised in the light of comments in the post-consultation report published in March 2008 and because of on-going concerns both within the enforcement industry and elsewhere (including the advice sector) about the proposal to split the regulation of bailiffs between the Security Industry Authority that will issue licences and one or more other bodies responsible for complaint handling.
2. The earlier draft of this proposal was criticised as a form of self-regulation rather than independent but industry-funded regulation. We have taken account of this and it should be noted from the outset that the independence of the form of regulation proposed below is guaranteed in three ways:
 - General oversight by the Privy Council.
 - The Secretary of State for Justice to appoint the regulatory body's Chair.
 - A *majority* of the regulatory body's governing council to be appointed from *outside* the enforcement industry (including representatives from the advice sector).
3. There are precedents for the proposed form of regulation, including:
 - The Nursing and Midwifery Council.
 - The Health Professionals' Council.
 - The Architects' Registration Board.

PROPOSAL

4. We propose that the Government establish compulsory independent regulation for all private sector bailiffs and enforcement agents engaged in enforcing a sum of money following a court order or warrant issued by a Government official (that is, all those who will be using the procedure

in Schedule 12 of the Tribunals, Courts & Enforcement Act 2007 when it is implemented) through the creation of a Bailiffs' and Enforcement Agents' Council (BEAC).

5. The BEAC would be responsible to the Privy Council for regulating the industry and protecting the public by ensuring that bailiffs and enforcement agents provide high standards of performance and conduct.
6. The BEAC would be responsible for:
 - Licensing bailiffs and enforcement agents.
 - Approving businesses that wish to offer enforcement services.
 - Maintaining a public register of license holders and approved businesses.
 - Setting standards of conduct and performance (including a public Code of Conduct).
 - Setting standards of education and training, both before licensing and as part of mandatory Continuous Professional Development, designed to raise further standards across the industry.
 - Investigating complaints and allegations of misconduct.
 - Introducing an Approved Contractor Scheme (in much the same way as the DVLA, in conjunction with the DfT, has developed 'Accredited Trade Association' status in respect of access to its register of keeper details).
7. The Council would be self-financed from the fees charged to license holders and approved businesses and from its own income-generating activities (see below).
8. The BEAC will be made up as follows:
 - A chair appointed by the Secretary of State for Justice.
 - Eight (8) representatives elected from within the enforcement industry and approved by the Privy Council.
 - Ten (10) representatives from external bodies, including nominees from the advice sector, appointed by Privy Council.
 - Only the Chair would be salaried, although reasonable expenses would be paid to council members.
9. The BEAC would be a regulator that is not a Government Department, nor an executive agency nor an individual (for example, a Commissioner). It would be an independent Council made up of professional and lay members appointed by the Privy Council. The regulation would be statutory (that is, set by law) and the organisation would be independently managed by a small secretariat that need not be based in London.

10. Overall responsibility to the Privy Council would ensure a degree of independence from central and local Government, easily the single biggest user of bailiff services.

PROTECTION OF TITLE

11. Only licensed practitioners would be able to act as such and only approved businesses would be able to offer the enforcement services covered by the licences. The title and activity would thus be protected and those found to be acting outside a Code of Conduct could and would have their status revoked. Approved businesses would risk their status by promoting businesses practices that did not comply with the Code of Conduct.
12. The public would be protected from unscrupulous practitioners and practitioners would be able to demonstrate accountability and good conduct.

FINANCING

13. While a comprehensive business plan needs to be developed, we are confident that setup costs can be funded from within the enforcement industry. There would, inevitably, be some initial cost to Government for creating the legislative framework and appointing the BEAC Chair and council members.
14. We anticipate that initial annual cost to licence holders to be around £400 – much lower than the existing costs and charges associated with obtaining a bailiff's certificate.

TIMESCALE

15. The new organisation could be set up and operational in a year.

ADVANTAGES

16. The main advantages of this proposal are that it:
 - Would be comprehensive, independent regulation formed by statute.
 - Would be self-financing.
 - Would be modest and not overly burdensome administratively.
 - Could be introduced quickly.

Keith Banbury
Chief Executive
British Parking Association

October 2008

Annex I – Proposal for regulation of bailiffs and private parking operators



DRAFT

PROPOSAL FOR REGULATION OF BAILIFFS AND PRIVATE PARKING OPERATORS

INTRODUCTION

1. Both the bailiff industry and the private parking industry need regulation. Both suffer from the existence of rogue operators in their midst which gather unsavoury media attention that affects the entire industry including the majority which are acting reasonably, lawfully and fairly. There is a need therefore to regulate these two sectors in order to eliminate the rogue operator, but also to provide better protection for the public.
2. In 2008 the BPA produced a draft proposal for a Bailiff and Enforcement Agents Council which set out a method of independent regulation through the Privy Council with the Secretary of State for Justice appointing the Chair. With the announcement of a total ban on wheel clamping and towing away on private land in August 2010, the BPA produced a further proposal for parking on private land.
3. This paper recognises the similarity between the two and draws these together to produce a combined regulatory solution which achieves an economy of scale whilst not compromising the robustness of the regulatory framework needed.
4. It also recognises the twin challenges in both sectors of the need to properly address customer complaints. While the nature of the complaints is often different, the mechanism to guarantee independent consideration of those complaints is not. This paper sets out a possible solution for that issue too.

PROPOSAL

5. We propose that the government establish compulsory independent regulation for all private sector bailiff and enforcement agents and for all parking operators of private land. This should be achieved through the creation of a Parking and Enforcement Council (PEC).
6. The EAC would be responsible for:
 - Licensing bailiffs and enforcement agents

- Licensing private parking operators
 - Approving businesses that wish to offer enforcement services
 - Maintaining a public register of license holders and approved businesses
 - Setting standards of conduct and performance (including a public Code of Practice)
 - Setting standards of education and training both before licensing and as part of mandatory continuous professional development designed to raise standards across the industry
 - Investigating complaints and allegations of misconduct
 - Setting up an independent Appeals mechanism
7. The Council would be self-financed from the fees charged to the license holders and approved businesses and from its own income generating activities.
8. The Council would be made up as follows:
- A Chair appointed by government
 - Representatives elected from within the parking and enforcement sectors
 - Representatives from external bodies including nominees from the advice sector and consumer and motorist organisations
 - The PEC would be a regulator that is not a Government Department nor an executive agency nor an individual. It would be an independent Council made up of professional and lay members. The regulations would be statutory (that is, set by law) and the organisation would be managed by a small secretariat funded through the license fee.
9. The body could acquire Accredited Trade Association (ATA) status similar to that awarded by the DVLA for the release of Keeper data to applicant companies. The ATA status could be expanded to cover the whole bailiff and parking sector with accreditation being given by the responsible government department.

APPEALS AND COMPLAINTS

10. To ensure that a complaints body is seen to be independent, the Council would appoint Adjudicators or Ombudsmen to sit with judicial independence to consider complaints referred to it from member organisations. Members would be required as a requirement of membership of the scheme to have in place a robust dispute resolutions process which offers to the complainant, if their complaint is turned down, an appeal to an independent Adjudicator whose decision is final and binding on both parties. Whilst the PEC would have administrative responsibility for appointing Adjudicators, the Adjudicators would not be accountable judicially to the Council but their decisions can be challenged through judicial review if necessary. Evidence from existing Adjudication models indicates that judicial reviews are extremely rare in such circumstances.

PROTECTION OF TITLE

11. Only licensed practitioners would be able to act as such and only approved businesses would be able to offer the enforcement services covered by the license. The title and activity would thus be protected and those found to be acting outside the Code of Practice could and would have their status revoked. Approved businesses would risk their status by promoting business practices that did not comply with the Code of Practice. Audit and sanctions within the BPA's Approved Operator Scheme are established and could be used to exert pressure on any such operator that falls below the standards of the Code.
12. The public would be protected from unscrupulous practitioners and practitioners would be able to demonstrate accountability and good conduct.

FUNDING

13. While a comprehensive Business Plan needs to be developed, we are confident that set-up costs can be funded from within the industries. The existing Approved Operator Scheme is now well established and forms a robust foundation for the establishment of the Council. However, there will be some initial costs to government for creating the legislative framework and appointing the Council Chair and members.
14. A separate worksheet is available setting out the costs to both industries and how such costs would be covered by income.

TIMESCALE

15. The new organisation could be set up and operational in a year.

ADVANTAGES

16. The main advantages of this proposal are:
 - Comprehensive independent regulation formed by statute
 - Self-financing
 - Modest and not over burdensome administratively
 - Could be introduced quickly
 - It would deliver an independent Complaints and Appeals Service at minimal cost
 - Build on the success of the Approved Operator Scheme.

Keith Banbury OBE
British Parking Association
Council Member

Patrick Troy
Chief Executive
British Parking Association

Annex J – Learning Outcomes and assessment criteria for enforcement agent basic training

Learning Outcomes and assessment criteria for enforcement agent basic training

Learning Outcomes

Understanding the role of the Enforcement Agent within the enforcement profession

Assessment Criteria

- Outline the key developments of the enforcement profession
- Describe the structure of the enforcement sector
- Explain the purposes of the enforcement profession
- Describe how the Enforcement Agent's role fits into the legal process
- Describe the key functions of Enforcement Agents
- Explain the meaning of current terminology commonly used in the enforcement profession, for example:
 - creditor/claimant
 - debtor/defendant
 - enforcement
 - Enforcement Agent business
 - Enforcement Agent
 - Warrant and Writs of Control
 - taking control of goods
 - possession
 - committal and arrest
 - Liability Order
- Describe the role of the police when called by the Enforcement Agent or debtor
- Explain how fees and charges are applied at various stages
- Explain the importance of correct handling of payments

Learning Outcomes

Understanding the law and its relevance to the role of the Enforcement Agent

Assessment Criteria

- Identify the powers and obligations conferred by the Tribunals, Courts and Enforcement Act 2007 and associated regulations
- Identify aspects of Human Rights legislation that are relevant to the enforcement profession
- Describe the Enforcement Agents obligations in respect of the current Data Protection legislation
- State possible consequences of not complying with current legislation relevant to the Enforcement Agent role

Learning Outcomes

Understanding the practice of taking control of goods

Assessment Criteria

- Identify the categories of legally exempt goods
- Explain the Enforcement Agent's rights of entry and re-entry
- Describe the common types of ownership and exemption disputes that can occur
- Describe how to deal with the common types of ownership and exemption disputes that can occur
- Explain the process for taking control of goods, including:
 - the different ways of taking control of goods
 - the obligations of the Enforcement Agent
 - the obligations of the debtor
- Identify the documentation that must be completed when taking control of goods

Learning Outcomes

Assessment Criteria

- Describe the importance of accurate and legible completion of documentation
- Explain the importance of providing information about payment opportunities and the consequences of non-payment

Learning Outcomes

Understanding the practice of removal and sale of goods

Assessment Criteria

- Describe the process for the removal of controlled goods
- Describe the process for the sale of controlled goods
- Describe duty of care when removing and selling controlled goods
- Identify the documentation that must be completed when removing and selling controlled goods
- State the Enforcement Agent's responsibilities for making or obtaining a valuation of controlled goods
- Explain the methods of selling removed controlled goods under current legislation
- Explain the responsibilities for selling removed controlled goods under current legislation
- Describe the implications of the sale of controlled goods on those involved, including:
 - debtor
 - purchaser
 - enforcement agent
 - auctioneer

Learning Outcomes

Understanding aspects of customer care relevant to an enforcement agent

Assessment Criteria

- Identify who the Enforcement Agent's customers are
- Describe how an Enforcement Agent can deliver good customer care
- Describe the requirements of the National Standards for Enforcement Agents relating to:
 - Professionalism and conduct
 - Complaints/discipline
 - Information and confidentiality
 - Time & hours
 - Vulnerable situations
- Identify people who might be vulnerable during the enforcement process
- Identify actions to take in situations where vulnerable people are involved
- Describe the Enforcement Agent's obligations for dealing with real and potential complaints
- Identify to whom complaints can be escalated

Learning Outcomes

Understanding how to recognise, assess, defuse, resolve and reduce risk in conflict situations

Assessment Criteria

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