



Policy Finance and
Development
Committee

25 March 2014

**Matter for
Information and
Decision**

Title: **The Taking Control Of Goods Regulations 2013
(Changes to Bailiff procedures)**

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1. Introduction

1.1 Regulations are coming into force on 6 April 2014, which will fundamentally change the way in which bailiffs carry out their operations and set out certain prescribed scale fees. These Regulations set out the procedure Enforcement Agents must follow when taking control of goods for council tax and non domestic rates and, if necessary, selling them to recover a debt. The measures are part of a wider package of reforms which will implement Part 3 of the Tribunals, Courts & Enforcement Act 2007.

1.2 This report recommends to Members that the new hours of operation, (seven days a week - 6.00am to 9.00pm or business hours) are approved and that subsequent operational issues are delegated to the Head of Service in consultation with the Chief Financial Officer.

2. Recommendations

2.1 Members approve the New Hours of Operation.

2.2 Member approve that Operational issues are delegated to the Head of Service in consultation with the Chief Financial Officer.

3. Information

3.1 The changes were brought about due to pressure from the Law Commission, others groups and the Human Rights Act requiring that any interference with anyone's home and possessions was to be back by law.

3.2 The new regulations will simplify and standardise the law so debtors will not be confused as well as simplify and standardise the fees charged

3.3 New Terminology:-

- Bailiffs will now be know as Enforcement Agents
- Levying distress becomes Taking Control of Goods
- Walking possession agreement becomes a Controlled Goods agreement

3.4 The new measures set out:

3.4.1 What goods an Enforcement Agent can and cannot take.

3.4.2 What notice and information a debtor must be given before an Enforcement Agent can take control of goods or sell goods and how this notice must be given.

3.4.3 The circumstances in which an Enforcement Agent must not take control of goods (for example, if the debtor is a child or if the only people present are children or vulnerable people)

3.4.4 The days, hours (6.00am and 9.00pm – 7 days a week or the debtor's business hours) and circumstances where an Enforcement Agent can enter or re-enter premises and take control of goods.

3.4.5 The detail that must be contained in any "Controlled Goods Agreement" made between a debtor and the enforcement agent.

3.5 The government has focussed on reviewing the system of enforcement and this review started back in 1998 and the Tribunal, Courts and Enforcement Act was passed in 2007. There has been a long delay in regulations being laid down detailing how enforcement should be carried out.

3.6 The new rules and charging mechanism gives clarity to the debtor about the stages and fees charged per stage. However, the new charges could mean that for many debtors the costs could increase from £42.50 to £310.00 if enforcement action takes place, and more if the debt is over £1,500.

3.7 The Senior Recovery Officer will monitor the performance of the Enforcement Agents and these will be reviewed at formal review meetings with the account manager.

3.8 We are still awaiting clarification from the Government on the transitional arrangements.

3.9 Changes

3.9.1 The Enforcement Agents can work on any day between the hours of 6.00am and 9.00pm and must access the property by door or normal means of entry.

3.9.2 The new rules introduce set stages for enforcement and a clear fees strategy that debtors will be able to understand. The first stage is the administration stage. This results in a fee of £75 (instead of £42.50 first and second letter fees, as referred to 3.6.10 below) and gives the debtor notice of enforcement.

3.9.3 The notice period before any enforcement takes place is at least seven days and this will give the debtor time to negotiate a payment arrangement before enforcement action starts.

3.9.4 Prior to enforcement action the Council will send out a letter warning that unless suitable contact is made within 14 days enforcement action will be taken. This is already a statutory requirement and gives council tax payers the opportunity to make a payment arrangement with the Council and avoid further recovery action.

3.9.5 The second stage is the enforcement stage and this covers physical attendance at the debtor's property. Enforcement action must take place within 12 months of the notice of enforcement and a set fee of £230.00 covers all work carried out at the enforcement stage. This will stop any bailiff company generating unnecessary visits and costs.

3.9.6 The third stage of enforcement is the sale of goods stage. The costs that apply here are £105.00 plus 7.5% of any debt value over £1,500. The trigger for the fee is the removal of goods. The reasonable costs of selling the goods at internet or public auction, etc, can also be added to the debt. At least seven days must have elapsed from removing the goods before they can be sold and a notice of sale must be provided to the debtor.

3.9.7 Where the debtor is a vulnerable person, the fee due for the enforcement stage is not recoverable unless the enforcement agent has, before proceeding to remove goods which have been taken into control, given the debtor an adequate opportunity to get assistance and advice in relation to the exercise of the enforcement power. There is no specific reference to the definition of vulnerable but guidance from agencies around vulnerability suggest the things looked at should be around the client's ability to understand and retain information given to them; their ability to weigh up information and the choices they have and their ability to communicate. Each of these factors will be built into any service level agreement with bailiff companies.

3.9.8 The removal of goods is always a last resort and a course of action the Council and the bailiff try to avoid. In 2013/14 there has so far been no removal of goods carried out for council tax. Should such a situation arise adequate notice would have been provided and the Council advised before action is taken.

3.9.9 The Head of Service will be available to deal with any issues or concerns Members may have regarding these changes or from their constituents during normal working hours.

3.10 Fee Comparison:

Current Fee Structure:

		Cost
	First bailiff Visit	£24.50
	Second bailiff visit	£18.00
	Levy Fee	£41.00 (avg)
	Walking possession fee	£12.00
	Van Attendance	£130.00
	Header H of schedule 5 (admin fee)	£24.50
Potential Total		£250.00

New Fee Structure

		Cost
	Compliance fee	£75.00
	Enforcement stage	£235.00
	Removal Fee	£105.00
Potential Total		£415.00

Background papers:-

The Taking Control of Goods Regulations 2013
Part 3 of the Tribunals, Courts & Enforcement Act 2007.

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4. Implications

Implications	
Financial (PL)	There are no direct financial implications to the Council resulting from these changes. These fees are charges by the bailiff against the debtor.
Risk (AK)	A risk assessment has not been prepared in relation to the proposal in this report as there are no significant risks inherent in the proposals.
Equalities (KG)	Consultation on this has been considerable hence why it has taken so long for it to be incorporated into an Act of Parliament. The Ministry of Justice has undertaken the appropriate impact assessments and information and is available on their website. In any event, the collection and control of goods will apply universally to all members of the public, by the Enforcement Agents pursuant to the criteria laid out in Statute and exceptions are contained within, for vulnerable persons such as children and disabled persons.
Legal (KG)	Proposed changes are dictated by legislation