

**EXPLANATORY MEMORANDUM TO
THE CERTIFICATION OF ENFORCEMENT AGENTS REGULATIONS 2014**

2014 No. 421

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 These Regulations make detailed provision for the certification of enforcement agents who undertake enforcement action by way of taking control of goods in accordance with the procedure set out in Schedule 12 of the Tribunals, Courts and Enforcement Act 2007 (the “TCEA 2007”) and the Taking Control of Goods Regulations 2013.

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

- 3.1 These Regulations form part of a package with the Taking Control of Goods Regulations 2013 (S.I. 2013/1894) and the Taking Control of Goods (Fees) Regulations 2014 (S.I. 2014/1), in relation to which the Committee has queried the absence of definition of “vulnerable person” and how training for enforcement agents in relation to situations involving vulnerable persons may be mandated. These Regulations set out the application process and the competence requirements an individual must demonstrate before they can be certificated to act as an enforcement agent. This includes demonstrating to a judge that they possess sufficient knowledge of the law and procedure relating to their powers of enforcement under the TCEA 2007. These Regulations will sit alongside provision in Part 84 of the Civil Procedure Rules and in the Practice Direction supporting that Part to form a certification package which will allow a judge to examine in depth the suitability of all applicants to act as an enforcement agent and to consider complaints against those already certificated. Consideration of applications will include consideration of the enforcement agent’s ability to deal with situations involving vulnerable individuals and consideration of complaints will also involve consideration of their ability to deal with vulnerable individuals if this is relevant to the complaint.

- 3.2 Training packages focusing on vulnerability issues have been developed by, amongst others, the Royal College of Psychiatrists and the Money Advice Trust in consultation with the Civil Enforcement Association to support applicants for certificates. These packages include training focusing on how enforcement agents should deal with individuals who may be vulnerable. They offer an in depth face-to-face course where trainees can practice different strategies for dealing with vulnerable individuals when

recovering debt. This will be preceded by an introductory e-learning course which focuses on raising awareness of mental health.

4. Legislative Context

- 4.1 Part 3 of (and, in particular Schedule 12 to) the TCEA 2007 replaces the existing laws relating to the seizure and sale of goods for most purposes, and the existing law of distress for rent, with a unified procedure to be followed by enforcement agents. These Regulations are made under section 64(3) of the TCEA 2007. Unless an individual is exempt under section 63(3) of the TCEA 2007, they must hold a certificate to act as an enforcement agent. These Regulations set out the application process and the requirements which must be satisfied for such a certificate to be issued, and provide for related matters including the duration of certificates; how they may be suspended or cancelled; and the complaints process to be followed where a certificated person, or an applicant for a certificate, is considered by a complainant not to be a “fit and proper” person to hold a certificate. These Regulations will come into force on 6th April 2014 and will (in particular) replace the provisions of the Distress for Rent Rules 1988 which will be separately revoked.
- 4.2 These Regulations set out the statutory structure and requirements of the certification process. Additional procedural detail relating to applications and complaints to the County Court is provided in the Civil Procedure Rules and their supporting Practice Directions, relevant amendments to which will also come into force on 6th April 2014.
- 4.3 This is the third and final statutory instrument of the main package which will underpin the Government’s reforms to bailiff law. The first set of Regulations, the Taking Control of Goods Regulations 2013¹, were laid in July 2013 and set out the procedure enforcement agents must follow when taking control of goods. The second set of Regulations, The Taking Control of Goods (Fees) Regulations 2014², were laid on the 9th January and set out the fees and disbursements which can be recovered from a debtor, by an enforcement agent, when carrying out enforcement-related services. Regulations containing consequential amendments and transitional and saving provisions will also be made to come into force on 6th April 2014.

5. Territorial Extent and Application

- 5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

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

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

7. Policy background

- 7.1 At present only those bailiffs enforcing certain debt types (distress for rent, road traffic, council tax and non-domestic rates) are obliged to obtain a certificate from the County Court in order to be authorised to act as bailiffs. The information these applicants are required to supply is very limited and relates only to their knowledge of the law of distress. For those bailiffs who are not, at present, required to hold a certificate there are no set competences at all. While some businesses have introduced their own training regimes to ensure that their bailiffs are aware of their responsibilities the quality varies from company to company. In the absence of a consistent set of competence standards across the industry some rogue bailiffs have carried out their work using unacceptable aggressive behaviour and tactics.
- 7.2 Currently, applications can be made to regional courts with hearings taking place at the same court. This has meant that some judges handle very few complaints or applications in comparison to those at other courts and therefore these are not always dealt with consistently. The number of court centres at which applications and complaints may be heard has been reduced (and the court centres in question will be set out in accompanying Practice Direction) to ensure judicial specialism is developed in those courts.
- 7.3 The existing application process requires an applicant to advertise their application for 90 days in newspapers local to the court to which they have applied; allowing for any objections to be made as to their fitness to hold a certificate. However, their certificate will allow them to operate anywhere in England and Wales, meaning that those who may be affected by the actions of these individuals may not be aware of the application or have the chance to object if necessary. In contrast, these Regulations will require details of all applications to be published on a HMCTS website which is available nationally. As it will be possible for members of the public to access this list instantly on the internet, the advertising time has been reduced from 90 days to 30 days.
- 7.4 At present, a complaint about an enforcement agent can be made to the court if the enforcement agent has acted in a way that calls into question whether they are a fit and proper person. However, this process has not always been used for this purpose and has in some cases turned into unnecessarily lengthy litigation, with the associated costs involved, over matters of procedure or fees which have separate complaint provisions. These Regulations provide the judge with the opportunity to dismiss, at an early stage and without significant costs having been generated, complaints which do not relate to an enforcement agent's fitness to hold a certificate.

Consolidation

- 7.5 There are no plans for consolidation, since these are the first Regulations to be made under this power, but they will replace a body of Distress for Rent Rules and Distress for Rent (Amendment) Rules (which will be separately revoked).

8. Consultation outcome

- 8.1 The Ministry of Justice's "Transforming Bailiff Action"³ consultation paper was published on 17 February 2012. The paper sought views on the Government's proposals for the certification of enforcement agents under the TCEA 2007. Most of the concerns about the Government's proposals came from the advice sector. They did not want the regulation of enforcement agents to be carried out by the court preferring the introduction of an independent regulator. Their key complaint of the existing process was that it was simply a rubber stamping exercise with nothing in place to prevent disreputable bailiffs who have lost their certificate from reapplying elsewhere. Where an independent regulator was not possible, these respondents wished to see a national database for certificates introduced instead. The Government believes that its package of bailiff reforms will address the root cause of complaints making the introduction of a new regulator a disproportionate response. The reduction in the number of hearing centres will ensure judges develop specialist knowledge and experience of dealing with applications and complaints relating to enforcement agents while the national register will ensure individuals or organisations are able to complain about an enforcement agent or an application for a certificate to act as one.

9. Guidance

- 9.1 The Regulations will be published by the Stationery Office and will be available on www.legislation.gov.uk before they come into force in April 2014. It is the Department's intention to update the National Standards for Enforcement Agents to reflect the changes in the law and to issue best practice guidance. It is the Department's view this will be the most appropriate way to address issues surrounding vulnerability. Updated information will also be available on gov.uk. These updates will be available before the implementation date of April 2014.

10. Impact

- 10.1 An Impact Assessment was carried out to consider the impact of the introduction of the full set of reforms, including those provisions introduced by this Statutory Instrument. This is available at: <https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action>.
- 10.2 The impact on business and the voluntary sector is estimated to be an annual average benefit of £5 million. The benefits of savings associated with the ongoing saving of doorstep visits, streamlining of the law, simplification of the system and fewer complaints were calculated to offset the costs such as familiarisation with the new system and ongoing certification and training costs.
- 10.3 The impact on the public sector is expected to be an increase in one-off costs, around £1 million, associated with the amendment to automated processes. There are not expected to be additional net costs.

³ <https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action>

11. Regulating small business

- 11.1 The legislation affects small business, but is not anticipated to have a detrimental effect.
- 11.2 The Ministry of Justice has not taken any specific steps to minimise the impact of the requirements on firms employing 20 people.

12. Monitoring & review

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

13. Contact

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