



**POLICY AND RESOURCES SCRUTINY COMMITTEE –
4TH MARCH 2014**

SUBJECT: COUNCIL TAX AND BUSINESS RATE: CHANGES TO RECOVERY PROCEDURES USED BY ENFORCEMENT AGENTS (FORMERLY BAILIFFS)

REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND SECTION 151 OFFICER

1. PURPOSE OF REPORT

- 1.1 To inform Members of the introduction of new regulations by the UK Government through the Ministry of Justice in respect of the powers exercised and fees chargeable by bailiffs in respect of the collection and enforcement of High Court and non-High Court debts. This report concentrates on how the regulations affect the enforcement of non-High Court debts such as council tax, business rates and commercial rents. It should be noted that debts enforced by county court bailiffs, such as sundry debtors, are unaffected by these regulations.
- 1.2 These changes are being made with the aim of simplifying and clarifying the enforcement process and improving the accountability of bailiffs whilst modernising some of the terminology used in the current regulations that have been in place for many years.
- 1.3 The changes are due to come into effect from 6th April 2014.

2. SUMMARY

- 2.1 This report gives details regarding how the new regulations will impact on the collection and enforcement of council tax and business rates and seeks to explain the changes in procedures and fees payable by taxpayers whose cases are referred to bailiffs.

3. LINKS TO STRATEGY

- 3.1 Council tax and business rates are significant resources which assist the Council in achieving its various strategies.

4. THE REPORT

4.1 Changes In Terminology

- 4.1.1 The legislative amendments bring with them changes in the terminology used.
- 4.1.2 The following terms are changing:
 - 'bailiff' will become 'enforcement agent';
 - the process known as 'distress' is replaced with a new statutory code for 'taking control of goods'; and

- a 'walking possession agreement' will become known as a 'controlled goods agreement'.

4.2 Changes To Procedures And Fees Payable

- 4.2.1 Where a magistrates' court liability order has been issued and the Authority has also issued a notice to the taxpayer giving them 14 days to either pay or contact the Authority to arrange payment, but payment is not made nor payment arrangement agreed, as a method of last resort, the Authority instructs bailiffs to collect unpaid council tax. Although not legally required, a similar procedure is used for business rates where a 7-day letter is usually issued to the ratepayer before bailiffs are instructed.
- 4.2.2 The current regulations prescribe that certain fees are charged when the bailiff visits the home or business premises of a taxpayer and that certain procedures are followed at each stage of the process.
- 4.2.3 For information, the fees payable under the current regulations are set out in Appendix 1.
- 4.2.4 Members are advised that the fees payable in Wales to bailiffs under the current regulations have not been increased for inflation since 1st April 2004. Consequently, the UK Government has taken this opportunity to adjust the level of fees payable by the taxpayer to account for inflation over the ensuing time period.
- 4.2.5 The new regulations introduce a requirement that a 'notice of enforcement' must be issued by the enforcement agent or the agent's office giving at least 7 days' notice before an agent may take control of goods.
- 4.2.6 Further changes include a more comprehensive list of those goods exempt from the new process; there are also provisions as to how the agent should act when they believe that a taxpayer is a vulnerable person.
- 4.2.7 There will be a new set of fees (payable by the debtor) for non-High Court debts such as council tax and business rates:

Fee Stage	Fixed Fee	Percentage Fee (based on percentage shown where debt exceeds £1,500)
Compliance Stage	£75.00	0%
Enforcement Stage	£235.00	7.5%
Sale Stage	£110.00	7.5%

- 4.2.8 Members are advised that where council tax payers either pay in full or agree a payment arrangement and adhere to it before the Enforcement Stage commences, they will tend to pay less in fees than under the current regulations. However, once the Enforcement Stage fee is incurred, council tax payers will tend to pay more in fees under the new regulations.
- 4.2.9 The Compliance Stage commences when the Authority passes the court liability order to an enforcement agent. The agent will incur administrative costs in setting up the case details on its systems, instituting multiple letters (including the 'notice of enforcement') and telephone calls to the taxpayer requiring payment of the debt plus the £75.00 statutory fee to cover its expenses. This new approach should ensure that taxpayers are given every opportunity to arrange payment and resolve queries before an agent attends the property, at which time the Enforcement Stage fees will be charged.
- 4.2.10 For council tax debts, where necessary, it is envisaged that the Compliance Stage may take up to 30 days to complete. However, the 30-day period will not apply to business rate debts due to the reality that some businesses actively try to frustrate bailiffs by removing goods from their premises just before the bailiffs attend. It is therefore necessary for the approach to business rate debts to be more tailored to suit the circumstances of each case. Likewise, commercial rents debts will be enforced based upon the circumstances of each case.

- 4.2.11 The Enforcement Stage comprises all activities from the first visit at the property until the payment agreement is completed or broken. Where the agreement is broken, this stage includes activities up to but not including the Sale Stage. The Enforcement Stage fee payable by the taxpayer will be £235.00 plus 7.5% of the debt amount where the debt is more than £1,500.00.
- 4.2.12 The Sale Stage includes attendance at the property to transport goods to the place of sale, or from commencement of preparations for sale where the sale is to be held on the premises, until completion of the sale and associated responsibilities under the regulations. The Sale Stage fee payable by the taxpayer will be £110.00 plus 7.5% of the debt amount where the debt is more than £1,500.00.
- 4.2.13 In addition to the above fees, the agent may recover from the sale proceeds certain other disbursements including the cost of storing goods, hiring a locksmith, auctioneer's commission not exceeding 15% of the sum raised at sale or not exceeding 7.5% where premises other than the auctioneer's is used.
- 4.2.14 Where more than one liability order (enforcement power) is being enforced against the same taxpayer at the same time, a £75.00 Compliance Stage fee is payable in respect of *each* order (power). However, only one Enforcement Stage and one Sale Stage fee is payable, although the 7.5% fee, if relevant, is to be calculated on the total amount of the sums of all the orders (enforcement powers) being enforced.
- 4.2.15 Where the amount paid is less than the total amount outstanding, the regulations set out how the part-payment is to be allocated between the agent's fees and the debt due under the 'enforcement power'.
- 4.2.16 Further legislation is expected shortly regarding the certification and training of enforcement agents in respect of the new regulations.
- 4.2.17 Officers of the Authority are liaising with representatives from those firms who act on behalf of the Authority in respect of those debts that are subject to the changes set out in this report with a view to ensuring that the new regulations are correctly implemented from 6th April 2014 where appropriate.

5. EQUALITIES IMPLICATIONS

- 5.1 This report is for information purposes only, so the Council's full Equalities Impact Assessment process does not need to be applied.

6. FINANCIAL IMPLICATIONS

- 6.1 There are no direct financial implications to the Authority as the enforcement fees are payable by the taxpayer against whom the action needs to be taken.

7. PERSONNEL IMPLICATIONS

- 7.1 There are no personnel implications.

8. CONSULTATIONS

- 8.1 There are no consultation responses which have not been reflected in this report.

9. RECOMMENDATIONS

- 9.1 It is recommended that Members note the legislative and procedural changes outlined in this report.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To ensure that Members are informed about the forthcoming regulatory and procedural changes in respect of the enforcement of non-High Court debts such as commercial rents, council tax and business rates.

11. STATUTORY POWER

- 11.1 The Tribunals, Courts and Enforcement Act 2007 (as amended by the Crime and Courts Act 2013), The Taking Control of Goods Regulations 2013, The Taking Control of Goods (Fees) Regulations 2014.

Author: J. Carpenter, Council Tax & NNDR Manager
Tel: 01443 863421 E-mail: carpewj@caerphilly.gov.uk

Consultees: Nicole Scammell, Acting Director of Corporate Services and Section 151 Officer
Cllr K Reynolds, Deputy Leader/Cabinet Member for Corporate Services
Cllr H W David, Chairman - Policy & Resources Scrutiny Committee
Cllr Mrs J Summers, Vice-Chairman - Policy & Resources Scrutiny Committee
Stephen Harris, Acting Head of Corporate Finance
Terry Thomas, Principal Income Officer
Dan Perkins, Head of Legal Services

Background Papers:
Contact Council Tax and NNDR Manager (ext. 3421)

The legislation stated under point 11 of this report.
Ministry of Justice Consultation Response 'Transforming Bailiff Action'

Appendices:
Appendix 1 'Fees Payable Under Council Tax and Business Rate Regulations Until 6th April 2014'