



**Certificated Enforcement Agents Association**

# **Enforcement Agent's, The Police and The Law**

**A guide to the law and the roles carried out by Enforcement Agents in England & Wales**





## **History of the Bailiff**

*Bailiff* was the term used by the Normans for what the Saxons had called a *reeve*: the officer responsible for executing the decisions of a court. The duty of the bailiff would thus include serving summonses and orders and executing all warrants issued out of the corresponding court. The district within which the bailiff operated was called his *bailiwick*, even to the present day. Bailiffs were outsiders and free men, that is, they were not usually from the bailiwick they were responsible for.

Throughout Norman England, the Saxon and Norman populations gradually mixed, and *reeve* came to be limited to shire-level courts (hence *sheriff* as a contraction of "shire-reeve"), while *bailiff* was used in relation to the lower courts. Primarily then, *bailiff* referred to the officer executing the decisions of manorial courts, and the hundred courts. Likewise, in Scotland a *bailie* was the chief officer of a barony (*baron bailie*), and in the Channel Islands they were the principal civil officers. With the introduction of Justices of the Peace (*magistrates*), magistrates' courts acquired their own bailiffs.

Historically, courts were not always concerned with legal matters, and often decided administrative matters for the area within their jurisdiction. A bailiff of a manor, therefore, would often oversee the manor's lands and buildings, collect its rents, manage its accounts and run its farms.

In the 19th century, the administrative functions of courts were mostly replaced by the creation of *elected local authorities (councils)*. Nevertheless, the term *bailiff* is retained as a title by the chief officers of various towns and the keepers of royal castles, such as the High Bailiff of Westminster and the Bailiff of Dover Castle.<sup>[1]</sup> In Scotland, *bailie* now refers to a municipal officer corresponding to an English *alderman*.

In the 20th century, the court system was drastically re-organised, with the assize courts taking some of the powers of the shire courts and becoming the *high court*; in turn, the remaining elements of the shire court took over the powers of the hundred courts, to form *County Courts*. The High Court acquired the sheriffs, the county court the bailiffs. Bailiffs were now appointed by a county court judge, and were removable by the Lord Chancellor

## **Introduction**

This is a guide to the work of Certificated Enforcement Agents, formally known as Bailiffs, they are now usually known as EA's or Enforcement Agents. Certificated Enforcement Agents are often thought to be debt collectors and "Repo men", but this is incorrect.

Certificated Enforcement Agents enforce court orders:

- Writs or warrants issued by a Court
- Liability Orders
- Warrants of Control for Commercial Landlords (for their own property)
- Warrants issued by Government officials (commonly HMRC staff or for Child support issues) or HMCTS Magistrates courts.

Although these are often to do with the recovery of debt, Certificated Enforcement Agents also evict and arrest people.

Certificated Enforcement Agents are the Law Enforcement Agents, responsible for enforcing the civil law. Certificated Enforcement Agents also exercise common law powers on behalf of landlords in evicting trespassers and repossessing property under trespass and Torts laws. A Certificated Enforcement Agents is a person with legal authority to enforce the payment of debts by seizing the debtor's goods. This process is known as 'taking control of goods'.

***Debt collectors do not have this authority.***

It is a Criminal Offence to impersonate an Enforcement Agent Tribunals Courts and Enforcement Act Part 3

## **ENFORCEMENT BY TAKING CONTROL OF GOODS CHAPTER 1 PROCEDURE**

### **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 (c. 39) (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.

## **Certificated Enforcement Agents and the Police**

There is legislation that determines how a Police Officer should deal with Enforcement Agents (Bailiffs) which is as follows:

The first of these is applicable to any EA enforcing debt warrants / writs and orders and that makes it an offence to obstruct an Enforcement Agent. Found as D21064 police national legislation database Tribunals, Courts and Enforcement Act 2007.

### **Tribunals Courts and Enforcement Act SCHEDULE 12 Part 2**

#### **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.

Section 99 Courts Act 2003 Schedule 7 when an EA (Certificated Enforcement Agent) or an HCEO (High Court Enforcement Officer) in person is executing any High or County Court warrants. Constable's duty to assist enforcement officers;

(5) It is the duty of every constable, at the request of—

- a) an enforcement officer, or
- b) a person acting under the officer's authority to assist the officer or that person in the execution of a writ.

This applies when any EA is enforcing warrants, writs and orders repossession of land and property. Obstruction of court officers executing process for possession against unauthorised occupiers.

(1) Without prejudice to section 8(2) of the Sheriffs Act 1887 but subject to the following provisions of this section, a person is guilty of an offence if he resists or intentionally obstructs any person who is in fact an officer of a court engaged in executing any process issued by the High Court or by any county court for the purpose of enforcing any judgment or order for the recovery of any premises or for the delivery of possession of any premises.

(2) Subsection (1) above does not apply unless the judgment or order in question was given or made in proceedings brought under any provisions of rules of court applicable only in circumstances where the person claiming possession of any premises alleges that the premises in question are occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation of the premises without the licence or consent of the person claiming possession or any predecessor in title of his.

(3) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he believed that the person he was resisting or obstructing was not an officer of a court.

(4) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

(5) A constable in uniform or any officer of a court may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of an offence under this section.

(6) In this section "officer of a court" means—

- (a) any sheriff, under sheriff, deputy sheriff, bailiff or officer of a sheriff; and
- (b) any bailiff or other person who is an officer of a county court within the meaning of the County Courts Act 1959.

There are also laid down procedures and case law that should be of note for Police officers in dealing with Certificated Enforcement Agents formally known as Bailiffs in particular concerning breach of the peace.

## **Breach of the Peace**



Certificated Enforcement Agents are sometimes arrested for provoking a breach of the peace because the debtor gets upset at the prospect of having his or her goods removed. It should be remembered that a Certificated Enforcement Agent is enforcing a Court Order or Warrant, and the issue of whether the money is properly due will have already been considered by a court or a government official or commercial landlord. A Certificated Enforcement Agent should not be prevented from enforcing just because someone is upset by the activity. There are however circumstances it is possible for a Certificated Enforcement Agent to behave in a wholly unreasonable way.

The Court of Appeal set out the circumstances when a Certificated Enforcement Agent could be arrested for a breach of the peace in *Bibby v the Chief Constable of Essex* (2000). They are:

- 1) There must be a clear, sufficiently real and present threat to breach the peace: As in *Foulkes v Chief Constable of Merseyside Police* (1998).
- 2) The threat must be coming from the person to be arrested: *Redmond-Bate v Director of Public Prosecution* (1999). It is important to note that if a debtor is preventing or threatening to prevent the Certificated Enforcement Agent from enforcing, the debtor is the source of the threat.
- 3) The conduct must clearly interfere with the rights of others (*Redmond-Bate*); A case established that a debtor cannot interfere with the Certificated Enforcement Agents right to enforce. The Certificated Enforcement Agent has a duty to enforce and the necessary legal authority to do it and may be liable to the creditor or court for not acting, especially if as a result of his failure the opportunity to enforce is lost. It has also been established that a police officer has an obligation to ensure a Certificated Enforcement Agent is not obstructed both in TCE 2007 and under the case law of: *R. v Clarke* (1835) and *Skidmore v Booth* (1854).

## **The Duties and Responsibilities of Enforcement Agents**

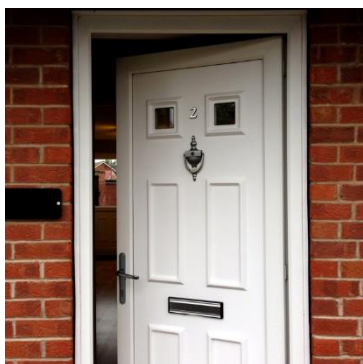
Certificated Enforcement Agents do not intimidate people although it is inevitable that some people who Certificated Enforcement Agents visit will feel intimidated. This is usually because the person has tried to ignore the debt in the hope that the problem will go away and the presence of the Certificated Enforcement Agents is itself perceived as a threat.

Certificated Enforcement Agents do not visit without warning; they only visit after

- 1) Enforcement Power has been issued (Warrant, Writ or Liability order)
- 2) A warning letter called a Notice of Enforcement must be served upon the debtor before a bailiff takes control of goods this may be personally served or may be served post.

Most companies choose to send by post or electronically. There is no requirement for proof of postage or to send by any type of registered mail.

## **Enforcement Agents (Bailiffs) can enter without warrant**



The law says that without any special warrant an Enforcement Agent (Bailiff) can enter a property.

They cannot use force against a person, and must enter by normal means i.e. walking through a door.

## **Tribunals, Courts and Enforcement Act 2007 Schedule 12 Part 2**

### **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.

## **Use of Reasonable Force for Entry Without a Warrant**

Where a warrant of control has been issued under section 76 of the Magistrates Courts Act an Enforcement Agent may use reasonable force to enter the premises.

Where a Writ of Control has been issued by the High Court/County Court the Enforcement Agent for the purpose of recovering a sum payable may use reasonable force to enter any commercial premises or any property that the Enforcement Agent reasonably believes that the debtor carries on a Trade or Business on the premises.

Note: Reasonable Force may not be used directly against a person.

## **Types of Bailiffs**

In England & Wales the main type of Bailiff is a Certificated Enforcement Agent.

The EA could work for a Private Company, The Ministry of Justice, A High Court Enforcement Officer's company or HMRC.

Quite often they are self-employed individuals working for a variety of companies and authorities. There are three other types of bailiff you may come across that do not have to hold a bailiff certificate to operate.

- An High Court Enforcement Officer appointed under the Courts Act 2003. There are about 42 of these people and they generally employ or delegate their authority to EA's to work at the sharp end.
- An employee of the Magistrates Court or County Court or the Ministry of Justice.
- An officer of a government department i.e. HMRC.

Each type of Certificated Enforcement Agent is responsible for all of the following:

- Enforcing debt payment
- Recovering goods
- Repossessing property
- Making arrests

## **Courts & Government Departments**

Before going into more detail about the law, it is useful to have a basic understanding of the official structure of whom is responsible for Certificated Enforcement Agents and bailiff legislation.

### **High Court**

Hears the more difficult and complex civil cases. There is only one High Court but it operates through District Registries located in major cities. Approximately 240 County Courts around the country handle the bulk of debt cases and orders to repossess property.

### **Magistrates' Courts**

HMCTS deal with a wide range of criminal and civil matters, including liability orders for debt. They also issue warrants of control and arrest warrants enforcing criminal fines and other non-custodial sentences.

### **The Ministry of Justice**

Responsible for developing the civil law, the administration of the High Court and the County Courts and for supporting Magistrates' Courts. The Lord Chancellor makes the regulations for CRAR, Traffic Management Act penalties and "sheriffs' High Court Enforcement Officer Regulations. He is also ultimately responsible for the County Court Bailiffs who are Civil Servants.

### **Her Majesty's Revenue & Customs**

HMRC is responsible for Income Tax; Value Added Tax.

Both these Government departments write their own enforcement law and have the power to issue warrants without the need to obtain a court order.

### **The Office of the Deputy Prime Minister**

Writes the enforcement law for local authorities to recover Council Tax and Non-Domestic Rates

### **Dept for Works & Pensions**

Responsible for the Child Support Agency and the enforcement of child maintenance payments.

### **Local authorities and the Child Support Agency**

Can recover arrears of unpaid money under Tribunals, Courts and Enforcement Act 2007 by using the Schedule 12 procedure of taking control of goods but must first obtain a liability order from the Magistrates' Court. Local authorities also issue warrants of execution for parking penalties after they have obtained a County Court order via the traffic Enforcement Centre at Northampton County Court.

### **Trinity House**

Responsible for Lighthouses and the recovery of revenue from unpaid Lighthouse Duty.

### **The Law**

Bailiff Law (Certificated Enforcement Agents) in England & Wales has been updated by The Tribunals, Courts and Enforcement Act 2007 which came in to effect on April 6th 2014.

The documents which authorise a Certificated Enforcement Agent to act are called Warrants, Writs or Liability Orders. They can be issued by courts (usually, Magistrates Courts, County Courts and the High Court), by certain central and local government organisations (for example, HMRC offices and local councils), by some other public sector organisations (for example, harbour authorities & Trinity House) and by some individuals (usually, commercial landlords).



The following are the most common types of debt enforcement undertaken by private bailiffs:

- Rent (commercial) also known as CRAR
- Magistrates Courts fines and orders
- Parking & Traffic Management Act penalties
- Income Tax
- Value Added Tax
- Council Tax
- Non-Domestic Rates (sometimes referred to as NNDR)
- Child Support Maintenance
- Lighthouse Duty

### **Basic Procedure**

For ease of reference, the term 'Enforcement Agents' refers to all types. The term Certificated Enforcement Agents covers all the different types of Certificated Enforcement Agents. Enforcement falls into three basic steps:

- Notice of Enforcement called Compliance Stage
- Taking control of goods called the Enforcement stage
- Removal & Sale, Called the Sale or Removal stage

To take control of the goods means to reserve them to pay the debt; 'taking them into the custody of the law'. A Certificated Enforcement Agent must enter peacefully the premises where the goods are (see below). The goods are not necessarily marked or removed.

With the exception of Commercial Rent Arrears Recovery enforcement, goods can be seized in this way at the debtors place of residence, place of business or on the highway.

The goods can be removed immediately but usually they are left with the debtor under a Controlled Goods Agreement.

In almost all cases; a Certificated Enforcement Agent cannot force entry to premises in order to take control without an extra order from the Court called a Warrant of Reasonable Force.

The main exceptions to this are that a force entry may be made on any magistrate courts fine debts, on High Court Writs against a commercial property or some debt types where there has been a signed controlled goods agreement and the debtor has breached this.

However the EA must first serve a Notice of Intention to re-enter giving 2 clear days notice.



### **Peaceful Entry**

Peaceful Entry means that a Certificated Enforcement Agent must go in without forcing open a door and without passing someone with the legitimate authority to refuse them entry. A Certificated Enforcement Agent can enter through a door that is closed but not locked (unlocked entrances imply invitation!).

### **Days & Times for Enforcement**

Days and times for taking control are on any day between 06.00 and 21.00 unless it is a business that operates outside these hours then any time is possible. In all types of debt, a Certificated Enforcement Agent can only take control of the debtor's goods.

### **Exempt Goods**

Certificated Enforcement Agents cannot take essential domestic items (e.g. a cooker, fridge, Bedding etc.).

These are defined in legislation. Items such as the television or hi-fi are not usually essential.

Tools of the trade are also exempt up to a value of £1350 - although a few years ago the High Court ruled that when enforcing High Court and County Court judgments and some other debts (including rent), tools of the trade were only exempt if they were for the exclusive use of the debtor. If a person objects to the Certificated Enforcement Agents taking control of certain goods, it is for the person (or the true owner of the goods) to apply to the court claiming that the taking control is illegal or irregular.

### **Control of Goods**

To take control of goods the EA can remove them, enter into a controlled goods agreement where the goods remain with the debtor to use but are in custody of the law and the debtor cannot sell or dispose of them without the EA's permission. The EA could also secure them with an immobilisation device where appropriate or remove and store them elsewhere. On commercial property the EA also has the right to lock up part or the whole of the property to secure the goods.

To remove and sell a debtors goods is the last resort for a Certificated Enforcement Agent.

With a few exceptions, sale must be at public auction. Certificated Enforcement Agents should always treat people with dignity but this may be difficult when faced with foul language and aggressive behaviour. A disturbed debtor can easily misunderstand a Certificated Enforcement Agent but the Certificated Enforcement Agent cannot simply withdraw - they must be firm, remain calm and carry out their duties.

### **Certificated Enforcement Agents Fees**

The fees a bailiff can charge the debtor for enforcing their debts against them vary for the 2 different types of debt i.e. Non High Court and High Court.  
Multiple cases enforced at same time Compliance Fee only but for purpose of % all added together.

## **SCHEDULE**

**Regulation 4**

### **Fees recoverable under regulation 4**

**Table 1**

**Enforcement other than under a High Court Writ**

| <i>Fee Stage</i>       | <i>Fixed Fee</i> | <i>Percentage fee<br/>(regulation 7):<br/>percentage of sum to<br/>be recovered<br/>exceeding £1500</i> |
|------------------------|------------------|---|
| Compliance stage       | £75.00           | 0%  |
| Enforcement stage      | £235.00          | 7.5%  |
| Sale or disposal stage | £110.00          | 7.5%  |

**Table 2**

**Enforcement under a High Court Writ**

| <i>Fee Stage</i>         | <i>Fixed Fee</i> | <i>Percentage fee<br/>(regulation 7):<br/>percentage of sum to<br/>be recovered<br/>exceeding £1000</i> |
|--------------------------|------------------|---|
| Compliance stage         | £75.00           | 0%  |
| First enforcement stage  | £190.00          | 7.5%  |
| Second enforcement stage | £495.00          | 0%  |
| Sale or disposal stage   | £525.00          | 7.5%  |

Please note: Cases enforced under a High Court Writ or A Landlord Warrant of Control (CRAR) may attract VAT at the current % rate.

£75 to be paid by the creditor if abortive.

### **Remedies available to the debtor**

If a person objects to the fees that are charged by a bailiff, the person should apply to the court for the fees to be reviewed by a Judge.

### **Certificated Enforcement Agents Misconduct**

Wrong action by the Certificated Enforcement Agent is covered under Tribunals, Courts and Enforcement Act 2007 SCHEDULE 12 Part 2

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.

### **Legislation & Guidance Notes relevant to Enforcement Agents**

Tribunals Courts & Enforcement Act 2007  
Taking Control of Goods Regulations 2013  
Taking Control of Goods (Fees) Regulations 2014  
Data Protection Act 1998  
Crimes & Courts Act 2013  
Social Security Administration Act 1992  
Courts Act 2003  
Criminal Justice Act 2003  
High Court Enforcement Officers Regulations 2004  
The Certification of Enforcement Agents Regulations 2014  
Magistrates Courts Act 1980  
National Standards for Enforcement Agents  
Civil Procedures (Amendment No2) Rules 2014  
Insolvency Act

# Background

## About The CEAA (Certificated Enforcement Agents Association)

Following the introduction of The Tribunals, Courts and Enforcement Act 2007, and The Taking of Control of Goods Regulations 2013, The Taking Control of Goods (Fees) Regulations 2014 and the Certification of Enforcement Agents Regulations 2014, the enforcement profession has seen many changes which evolve around the old Certificated Bailiff to the now Certificated Enforcement Agent.

Historically Enforcement Agents (Bailiffs) were represented by the once named Certificated Bailiffs Association of England and Wales (CBA), which subsequently dropped the England and Wales content. It initially represented the individual Certificated Bailiff.

The Association of Civil Enforcement Agents (ACEA) was then formed in 1996 as an alternative to CBA and evolved as an Association run by companies for companies but also representing those that held Certificates.

The CBA after the forming of ACEA then changed to Enforcement Services Association (ESA) and concentrated on company membership whilst still maintaining individual membership.

Following years of discussion ESA and ACEA merged as one professional Association representing the enforcement profession and whilst still maintaining individual membership, has concentrated on company membership and in the main the Executive has a majority of members that represent their companies.

The merging of both Associations left only one place for membership of a professional Association, a requirement of the majority of Tenders.

The voice of the individual over the past four years has diminished to a level that their requirements now appear to go unheard and find it difficult to keep up with the changes taking place.

The Tribunals, Courts and Enforcement Act has changed enforcement forever and whilst a long time coming, it is generally agreed it has been for the good of most involved but the needs of companies and those that enforce on the doorstep “**the Enforcement Agent**” are at times a long way apart.