

Bailiffs (Licensing) Bill [HL]

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B I L L

TO

Make provision for the licensing of activities involving the judicial or quasi-judicial seizure and sale of goods.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*The Bailiffs Licensing Authority***1 The Bailiffs Licensing Authority**

- (1) There shall be a body known as the Bailiffs Licensing Authority (in this Act referred to as “the Authority”).
- (2) The functions of the Authority shall be— 5
- (a) to carry out the functions relating to licensing and accreditation that are conferred on it by this Act,
 - (b) to ensure the carrying out of such inspections as it considers necessary of persons holding licences or accredited under this Act,
 - (c) to provide for, or procure the provision of, training and examinations, 10
 - (d) to keep under review generally the activities of Bailiffs and Agents,
 - (e) to supply information held by it to specified persons in accordance with the provisions of this Act,
 - (f) to keep under review the operation of this Act, and
 - (g) such other functions as may be prescribed in regulations by the Secretary of State. 15
- (3) The Authority may do anything that it considers is calculated to facilitate, or is incidental or conducive to, the carrying out of any of its functions.
- (4) The Authority shall not be regarded— 20
- (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown,
- and the property of the Authority shall not be regarded as property of, or property held on behalf of, the Crown.

- (5) The Secretary of State may by regulations make provision as to –
- (a) the status and constitution of the Authority,
 - (b) the appointment of its members,
 - (c) the payment of remuneration and allowances to its members, and
 - (d) such other matters in connection with its establishment and operation as he thinks fit. 5
- (6) Schedule 1 amends certain enactments in consequence of the establishment of the Authority.

2 Directions etc by the Secretary of State

- (1) In carrying out its functions the Authority shall comply with any general or specific directions given to it in writing by the Secretary of State. 10
- (2) Before giving any such directions the Secretary of State shall consult the Authority.
- (3) The Authority shall provide the Secretary of State with such information about its activities as he may request. 15

Scope of Act

3 Work to which this Act applies

The work to which this Act applies is –

- (a) the seizing and selling of goods pursuant to powers under High Court writs of execution, county court warrants of execution, certain magistrates' courts' warrants of distress, High Court writs and county court warrants of delivery and possession which contain a power to seize and sell goods; and 20
- (b) the seizing and selling of goods pursuant to any enactment listed in Schedule 2. 25

4 Acting as a Bailiff

- (1) This section defines what is meant in this Act by a person acting as a Bailiff.
- (2) A person acts as a Bailiff if he does work to which this Act applies.

5 Acting as an Agent

- (1) This section defines what is meant in this Act by a person acting as an Agent. 30
- (2) A person ("A") acts as an Agent if he supplies a worker to do work to which this Act applies for another person ("B").
- (3) For the purposes of subsection (2) it does not matter –
 - (a) whether the worker works under a contract with A or is supplied to him by another person, 35
 - (b) whether the worker is supplied directly under arrangements between A and B or indirectly under arrangements involving one or more intermediaries,

- (c) whether A supplies the worker himself or procures that the worker is supplied,
 - (d) whether the work is done under the control of A, B or an intermediary, or
 - (e) whether the work done for B is for the purposes of a business carried on by him or in connection with services provided by him to another person. 5
- (4) A person (“A”) acts as an Agent if he uses a worker to do work to which this Act applies in connection with services provided by him to another person.
- (5) A person (“A”) acts as an Agent if he uses a worker to do work to which this Act applies for the purposes of a business carried on by him. 10
- (6) For the purposes of subsection (4) or (5) A shall be treated as using a worker to do work to which this Act applies if he makes arrangements under which the worker does the work –
- (a) whether the worker works for A (or for another) or on his own account, and
 - (b) whether or not he works under a contract (with A or another). 15

Licensing and accreditation

6 Prohibition of unlicensed activities

- (1) A person shall not act as a Bailiff except under the authority of a licence. 20
- (2) A person shall not act as a Agent unless he has been accredited by the Authority.

7 Grant of licence

- (1) The Authority may grant a licence if it thinks fit.
- (2) A licence shall describe the activities authorised by it and shall be granted for such period as the Authority thinks fit. 25
- (3) A licence authorises activities by the holder of the licence only.
- (4) A licence shall be granted subject to such conditions as the Authority considers appropriate.

8 Grant of accreditation

- (1) The Authority may grant accreditation if it thinks fit.
- (2) Accreditation shall be granted for such period as the Authority thinks fit.
- (3) In the case of the accreditation being granted otherwise than to an individual, it shall be held with reference to whichever of the following provisions applies – 35
 - 16 (body corporate);
 - 17 (unincorporated association);
 - 18 (partnership that is regarded as legal).

- (4) Accreditation shall be granted subject to such conditions as the Authority considers appropriate.

9 General power of Authority to make rules

- (1) Subject to subsection (3), the Authority may make such rules as it thinks fit in connection with the licensing of persons acting as Bailiffs and the accrediting of Agents. 5
- (2) The rules may, in particular –
- (a) prescribe the form and contents of applications for licences and accreditation and other documents to be filed in connection with applications; 10
 - (b) regulate the procedure to be followed in connection with applications and authorise the rectification of procedural irregularities;
 - (c) prescribe time limits for doing anything required to be done in connection with an application and provide for the extension of any period so prescribed; 15
 - (d) prescribe the requirements which must be met before a licence or accreditation is granted;
 - (e) provide for the manner in which the meeting of those requirements is to be verified;
 - (f) allow for the grant of licences or accreditation on a provisional basis before it is determined whether the requirements for the grant of a licence are met and for the withdrawal of such licences or accreditation (if appropriate) if it appears that those requirements are not met; 20
 - (g) prescribe the form of licences and records of accreditation and the information to be contained in them; 25
 - (h) require the payment of such fees as may be prescribed or determined in accordance with the rules;
 - (i) provide that licences and accreditation are to be granted subject to conditions requiring the licence holder or accredited Agent to produce, in prescribed circumstances, evidence in a prescribed form of his being licensed or of his being accredited. 30
 - (j) describe the current best practice for the conduct of work to which this Act applies and for activities preliminary to and consequent upon that work, and provide for the variation of that practice in vulnerable situations, and require Bailiffs and Agents to work to those standards; 35
 - (k) describe current best practice for the form and content of information to be provided to persons whose goods may be, are or have been subject to seizure or sale, and require Bailiffs and Agents to work to those standards;
 - (l) prescribe training requirements and provide for the passing of examinations as a condition of being granted a licence or of accreditation; 40
 - (m) provide that licences and accreditation may be granted to experienced persons without requirements for prior training or examinations;
 - (n) require Bailiffs and Agents to obtain, and keep current, insurance of a prescribed form and amount; and 45
 - (o) require Bailiffs and Agents to pay compensation to injured parties and fines to the Authority as a result of the breaches of the rule.

- (3) The Authority may not make any rule which purports to alter the law on enforcement by taking control of goods.
- (4) The Authority must—
- (a) consult the Secretary of State before making any rules about fees, compensation or fines; 5
 - (b) consult such representatives of magistrates, Bailiffs, Agents, the credit industry, providers of advice about credit, and other interested parties as it shall consider appropriate before making any rules or changes to rules; and
 - (c) set fees with the objective of making a modest financial surplus over the longer term. 10
- (5) In subsection (2) “prescribed” means prescribed by the rules.

10 General power of Authority to conduct investigations

- (1) The Authority may (if it judges it to be appropriate) investigate complaints made to it by any person about breaches of the rules by Bailiffs or Agents. 15
- (2) The Authority must publish promptly information on all complaints received, on action taken in respect of such complaints, and on the results of complaints where it has completed its investigations.
- (3) Where as a result of an investigation the Authority decides to impose a requirement on a Bailiff or Agent to pay compensation or a fine, the Authority must, subject to subsection (4)— 20
- (a) set the level of any compensation taking into account the damage suffered; and
 - (b) set the level of any fine taking into account only the financial circumstances of the Bailiff or Agent, and the desirability of deterring future breaches of the rules. 25
- (4) Where other proceedings related to the matter complained of have resulted in payments by the Bailiff or Agent or to the complainant, the Authority may take that into account in setting the level of any fine or compensation under this section. 30

11 Modification or revocation of licences and accreditation

The Authority may, by notice in writing to the licensee or accredited Agent, modify or revoke any licence or accreditation granted to him (including any of the conditions of that licence)—

- (a) with the consent of the licensee, or 35
- (b) where it appears to the Authority that a condition of the licence or accreditation or any requirement of this Act has not been complied with.

12 Appeals

- (1) The Secretary of State shall by regulations make provision for an appeal against any decision of the Authority— 40
- (a) to refuse an application for a licence or accreditation,
 - (b) as to the conditions to which the grant of the licence or accreditation is subject,

- (c) to modify or revoke a licence or accreditation, or
 - (d) to impose a fine or a requirement to pay compensation.
- (2) The regulations shall make provision –
- (a) for and in connection with the appointment of a person to hear and determine such appeals (including provision for the payment of remuneration and allowances to such a person), and 5
 - (b) as to the procedure to be followed in connection with an appeal.

13 Register of licences and accreditation

- (1) The Authority shall establish and maintain a register of persons licensed or accredited under this Act. 10
- (2) The register shall contain such particulars as the Authority may determine of every person who for the time being holds a license or is accredited.
- (3) The Authority shall ensure that appropriate arrangements are in force for allowing members of the public conveniently to inspect the contents of the register without charge. 15

Offences

14 Offences: acting as a Bailiff, being in possession of false documents etc

- (1) A person commits an offence if he acts as a Bailiff in contravention of section 6 (prohibition of unlicensed activities).
For this purpose a person acting as a Bailiff does not contravene section 6 by reason only of the fact that he breaches a condition of the licence which authorises him to so act. 20
- (2) A person commits an offence if he has in his possession or under his control –
 - (a) a relevant document that is false and that he knows or believes to be false, 25
 - (b) a relevant document that was improperly obtained and that he knows or believes to have been improperly obtained, or
 - (c) a relevant document that relates to someone else,
with the intention of inducing another person to believe that he or another person acting as a Bailiff in contravention of section 6 is acting under the authority of a licence. 30
- (3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both;
- (4) A person guilty of an offence under subsection (1) or (2) is liable on conviction on indictment to imprisonment for a term not exceeding five years, or to a fine, or to both. 35
- (5) For the purposes of this section –
 - (a) a document is false only if it is false within the meaning of Part 1 of the Forgery and Counterfeiting Act 1981 (c. 45) (see section 9(1) of that Act), and 40
 - (b) a document was improperly obtained if false information was provided, in or in connection with the application for its issue or an

application for its modification, to the person who issued it or (as the case may be) to a person entitled to modify it, and references to the making of a false document include references to the modification of a document so that it becomes false.

- (6) In this section “relevant document” means – 5
- (a) a licence,
 - (b) any document issued by the Authority in connection with a licence, or
 - (c) any document required by the Authority to be in the possession of, or to be produced by, the Bailiff.

15 Offences: acting as an Agent 10

- (1) A person commits an offence if he acts as an Agent in contravention of section 6 (prohibition of unlicensed activities), or supplies a worker to do work to which this act applies who he knows, or ought to know, is not in possession of a valid licence. 15
For this purpose, a person acting as an Agent does not contravene section 6 by reason only of the fact that he breaches a condition of the accreditation which authorises him to so act.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both. 20
- (3) A person guilty of an offence under subsection (1) is liable on conviction on indictment to imprisonment for a term not exceeding five years, or to a fine, or to both.

Supplementary

16 Application of Act to bodies corporate 25

- (1) Accreditation under this Act may be granted to a body corporate.
- (2) If an offence under this Act committed by a body corporate is shown – 30
- (a) to have been committed with the consent or contrivance of an officer of the body corporate, or
 - (b) to be attributable to any neglect on his part,
- the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In subsection (2) “officer” means – 35
- (a) any director, manager, secretary or other similar officer of the body corporate, or
 - (b) any person purporting to act in such a capacity.
- (4) If the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

17 Application of Act to unincorporated associations

- (1) Accreditation under this Act may be granted to an unincorporated association (other than a partnership).
- (2) Proceedings for an offence under this Act alleged to have been committed by an unincorporated association may be brought against the association in the name of the association. 5
- (3) For the purposes of such proceedings –
- (a) rules of court relating to the service of documents have effect as if the association were a body corporate, and
 - (b) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) apply as they apply in relation to a body corporate. 10
- (4) A fine imposed on the association on its conviction of an offence shall be paid out of the funds of the association.
- (5) If an offence under this Act committed by an unincorporated association is shown – 15
- (a) to have been committed with the consent or connivance of an officer of the association, or
 - (b) to be attributable to any neglect on his part,
- the officer, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly. 20
- (6) In subsection (5) “officer”, in relation to any association, means –
- (a) any officer of the association or any member of its governing body, or
 - (b) any person purporting to act in such a capacity

18 Application of Act to partnerships

- (1) Accreditation under this Act may be granted to a partnership in the firm name. 25
- (2) Where the partnership is not regarded as a legal person under the law of the country or territory under which it is formed, the grant of accreditation to the partnership in the firm name –
- (a) continues to have effect notwithstanding a change of partners, so long as at least one of the persons who was a partner before the change remains a partner after it; and 30
 - (b) has effect as the grant of accreditation to those partners named in the licence.
- (3) If in the case of such a partnership an offence under this Act committed by a partner is shown – 35
- (a) to have been committed with the consent or connivance of another partner, or
 - (b) to be attributable to any neglect on the part of another partner,
- that other partner, as well as the first-mentioned partner, is guilty of the offence and liable to be proceeded against and punished accordingly. 40
- (4) Accreditation granted to a partnership that is regarded as a legal person under the law of the country or territory under which it is formed authorises activities carried on by the partnership through any partner.

- (5) Proceedings for an offence under this Act alleged to have been committed by such a partnership may be brought against the partnership in the firm name.
- (6) For the purposes of such proceedings—
- (a) rules of court relating to the service of documents have effect as if the partnership were a body corporate, and 5
 - (b) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) apply as they apply in relation to a body corporate.
- (7) A fine imposed on a partnership on its conviction of an offence shall be paid out of the funds of the partnership. 10
- (8) If an offence under this Act committed by a partnership is shown—
- (a) to have been committed with the consent or connivance of a partner, or
 - (b) to be attributable to any neglect on the part of a partner,
- the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly. 15
- (9) In subsections (3) and (8) “partner” includes a person purporting to act as a partner.

Miscellaneous and general

19 Annual report

The Authority shall each year lay a report before each House of Parliament on the operation of this Act. 20

20 Financial provision

- (1) The Secretary of State may make payments to the Authority of such amounts, at such times and on such conditions (if any) as he considers appropriate.
- (2) The Authority shall (unless the Secretary of State directs otherwise) pay to the Secretary of State all sums received by it in the course of, or in connection with, the carrying out of its functions. 25
- (3) Any sums received by the Secretary of State under subsection (2) shall be paid into the Consolidated Fund.

21 Regulations, rules and orders

- (1) In this Act, unless otherwise indicated, “prescribed” means prescribed by regulations made by the Secretary of State. 30
- (2) Any power to make regulations or rules under this Act includes power to make different provision for different cases.
- (3) Any power of the Secretary of State to make regulations or orders under this Act is exercisable by statutory instrument. 35
- (4) Any power of the Authority to make rules under this Act is exercisable by statutory instrument.
- (5) A statutory instrument containing regulations made by the Secretary of State under section 1(5) (regulations as to status, constitution, etc of the Authority) 40

must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

- (6) A statutory instrument containing—
- (a) regulations made by the Secretary of State under any other provision of this Act, or
 - (b) rules made by the Authority under section 8 (general power of Authority to make rules),
- is subject to annulment in pursuance of a resolution of either House of Parliament.
- 5

22 Commencement 10

The provisions of this Act come into force on such day as the Secretary of State may by order appoint.

23 Short title and extent

- (1) This Act may be cited as the Bailiffs (Licensing) Act 2007.
- (2) This Act extends to England and Wales. 15

SCHEDULES

SCHEDULE 1

Section 1

THE AUTHORITY: CONSEQUENTIAL AMENDMENTS OF ENACTMENTS

Public Records Act 1958

- | | | |
|---|---|---|
| 1 | In Schedule 1 to the Public Records Act 1958 (c. 51) (definition of public records), in Part 2 of the Table at the end of paragraph 3, at the appropriate place insert –
“Bailiffs Licensing Authority”. | 5 |
|---|---|---|

Parliamentary Commissioner Act 1967

- | | | |
|---|--|----|
| 2 | In Schedule 2 to the Parliamentary Commissioner Act 1967 (c. 13) (departments etc. subject to investigation), at the appropriate place insert –
“Bailiffs Licensing Authority”. | 10 |
|---|--|----|

Superannuation Act 1972

- | | | |
|---|--|----|
| 3 | In Schedule 1 to the Superannuation Act 1972 (c. 11) (kinds of employment to which that Act applies), at the appropriate place insert –
“Bailiffs Licensing Authority”. | 15 |
|---|--|----|

House of Commons Disqualification Act 1975

- | | | |
|---|---|----|
| 4 | In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies whose members are disqualified), at the appropriate place insert –
“Bailiffs Licensing Authority”. | 20 |
|---|---|----|

Freedom of Information Act 2000

- | | | |
|---|---|----|
| 5 | In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (bodies etc. that are public authorities for the purposes of this Act), at the appropriate place insert –
“Bailiffs Licensing Authority”. | 25 |
|---|---|----|

SCHEDULE 2

Section 3

ENACTMENTS INCORPORATING WORK TO WHICH THIS ACT APPLIES

Sections 4 and 16 of the Inclosure Act 1773 (c. 81)

Section 91 of the Lands Clauses Consolidation Act 1845 (c. 18)	
Sections 151 and 159 of the Inclosure Act 1845 (c. 118)	
Section 33 of the Railways Clauses Act 1863 (c. 92)	
Section 13 of the Compulsory Purchase Act 1965 (c. 56)	
Section 61 of the Taxes Management Act 1970 (c. 9)	5
Section 76 of the Magistrates' Courts Act 1980 (c. 43)	
Section 85 of the County Courts Act 1984 (c. 28)	
Section 62A of the Local Government Finance Act 1988 (c. 41)	
Section 35 of the Child Support Act 1991 (c. 48)	
Schedule 15, paragraph 12 of the Water Resources Act 1991 (c. 57)	10
Section 54 of the Land Drainage Act 1991 (c. 59)	
Section 121A of the Social Security Administration Act 1992 (c. 5)	
Section 14 of the Local Government Finance Act 1992 (c. 14)	
Section 51 of the Finance Act 1997 (c. 16)	
Schedule 12, paragraph 1A of the Finance Act 2003 (c. 14)	15

Bailiffs (Licensing) Bill [HL]

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To make provision for the licensing of activities involving the judicial or quasi-judicial seizure and sale of goods.

The Lord Lucas

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