

Bailiffs: Contents

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Bailiffs: Overview

1991/48 Section 35 of the Child Support Act 1991

1992/1989 Regulations 30 to 32 and Schedule 2 of the Child Support (Collection and Enforcement) Regulations 1992

Note: There is no discernible supporting legislation as bailiff law is spread over a variety of legislation and common law. The bailiff powers have been brought together in one piece of legislation within the Tribunals, Courts and Enforcement Act 2008 (but this has not yet been commenced)

What is Bailiff Action?

Bailiff action can be taken in respect of a liability order (LO) debt and involves making a referral to a bailiff company to attempt to:

- collect the money owed under the LO; or
- to remove and sell goods to the value of the debt. This is called levying distress.

Useful Terms:

- **distress and distraint**

This refers to the process of removing, or threatening to remove goods, in order to enforce a debt.

- **impounding**

This is the process by which bailiffs obtain legal control over the goods they have seized. In other words: the process of impounding, gives the bailiff the power to return to the premises, remove and sell the goods. Goods could be impounded by immediate removal, or by leaving a bailiff in 'close possession' of the goods: i.e. on the premises. However, the most common method of impounding is by way of a 'walking possession'.

- **levy**

This relates to the action of a bailiff to seize goods under a warrant of execution. The levied goods are then considered to be in the custody of the law.

- **seizure**

This refers to the process whereby the bailiff would identify the goods which can be taken in payment of the outstanding debt.

- **walking possession**

This is the form of impounding which is most commonly used for the enforcement of domestic debt. Once goods have been seized, they remain on the debtor's (non-resident parent) premises, and therefore available for the debtor's use, on the understanding that they will not be removed. Once a bailiff has obtained walking possession, usually via a signed written agreement, the bailiff has the right to return to the premises, forcing entry if necessary, and to remove and sell the goods. There is a fee that the bailiff will charge for entering into a walking possession.

The fees that can be charged by bailiffs to the non-resident parent are set in Schedule 2 of the Child Support (Collection and Enforcement) Regulations 1992.

- **warrant**

As in 'warrant of distress' - this is the authorisation which allows the certificated bailiff to carry out the process of distress.

- **warrant of execution**

This is a method of enforcement which authorises the certificated bailiff to sell sufficient goods to pay for the debt that he is instructed to enforce together with the fees for doing.

- **warrant expiry**

A warrant has a "life" of just 12 months from the date of issue. It cannot be enforced beyond that date. Debtor's (non-resident parent) may insist on seeing a copy of the warrant.

When should Bailiff Action be considered?

Bailiff action should be considered in all cases where:

- a liability order has been granted; and
- the non-resident parent has failed to pay or make a suitable agreement / arrangement to pay.

UNLESS another civil enforcement action takes priority. For example: there is an imminent sale of the non-resident parent's property, in which case charging order action would take priority.

An attempt **must** be made to make an agreement with the non-resident parent before making a bailiff referral. However, there is no requirement to advise the non-resident parent that a bailiff referral is being made.

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Introduction

The main aim of bailiffs is to:

- try to gain payment in full; or
- to obtain an effective agreement with the non-resident parent to pay their arrears.

However, if the non-resident parent refuses to co-operate, the process whereby the bailiff would identify the goods which can be taken in payment of the outstanding debt is to "levy distress" (seize and sell the non-resident parent's goods at auction).

For the bailiff to levy distress on behalf of the CMG, the bailiff is legally required to carry with him the written authorisation (notice of distraint) of the Secretary of State. It is therefore important that the generic notice of distraint is held by the contracted bailiff firm. This is required in accordance with Regulation 30(2) of the Collection and Enforcement Regulations 1992. The letter of authorisation must be shown to the non-resident parent if requested.

In addition the bailiff shall hand to the non-resident parent or leave at the premises where the distress is conducted:

- copies of regulation 30, 31 and Schedule 2 of the Child Support (Collection and Enforcement) Regulations 1992;
- a memorandum setting out the amount which is the appropriate amount for the purposes of section 35(2) of the Child Support Act 1991;
- a memorandum setting out details of any arrangement entered into regarding the taking of possession of the goods distrained; and
- a Notice setting out the liable person's rights of appeal under regulation 31 giving the Secretary of State's address for the purposes of any appeal.

Bailiffs Receive Referral: Initial Action

When bailiffs receive a referral from the CMG, they will write to the non-resident parent within 3 working days informing them that:

- the bailiff has been authorised to collect the debt on behalf of the CMG; and
- the outstanding balance should be paid in full; and
- that the bailiff will visit the non-resident parent if they fail to pay in full or to contact the bailiffs to make an acceptable payment agreement.

If the non-resident parent contacts the bailiffs and makes payment in full, they will notify the CMG of this outcome. The bailiff will also arrange for payments received by them to be forwarded to the CMG within the timescales agreed under the contract terms and conditions.

If the non-resident parent contacts the bailiffs and makes an acceptable payment offer, bailiffs will retain the case and monitor the payments, until the debt and their fees are collected in full.

Where the non-resident parent fails to contact the bailiffs / make an acceptable agreement / fails to adhere to an agreement, the bailiffs will visit the non-resident parent.

Bailiff Visits to a Non-Resident Parent: Overview

If the non-resident:

- does not respond to the bailiff's letter; or
- responds, but will not make an acceptable payment agreement

Bailiffs will attempt to visit the non-resident parent at their home, business premises or at their place of employment. As much information as possible must be provided to the bailiffs to increase the chances of a successful outcome.

Bailiffs levy distress by visiting the debtor's (non-resident parent) home with the intention of obtaining payment in full or levying (impounding) goods (see the section on Bailiff Visits for further information about the number of visits that bailiffs will attempt and the timescales for these). If a payment agreement is made, the bailiff would make a walking possession without levy of goods. This effectively impounds the goods but leaves them at the non-resident parent's premises.

If the non-resident parent defaults and fails to bring payments up-to-date under the terms of the walking possession agreement, the bailiff can after obtaining approval from the CMG remove the goods listed in the walking agreement (levy of goods).

If the levy has not taken place at the time of entering into walking possession agreement and the non-resident parent defaulted, then the bailiff would need to return to levy distress. The preferred method therefore is that the bailiff should levy at the point the arrangement is made as this secures the arrangement against the goods.

If the bailiffs are unable to make contact with the non-resident parent or if they do not have any goods that are suitable for seizure, then the bailiffs will normally return the case to the CMG with a "Nulla Bona" (see the section on Nulla Bona for further information about this).

Bailiff visits

If the non-resident parent:

- does not reply to the bailiff's letter; or
- replies, but will not make an acceptable payment agreement

Then bailiffs will visit the non-resident parent. The aim of these visits will always be to secure full payment / a payment agreement, but if this is not possible, the bailiff may levy upon any suitable goods.

Note: the bailiff can take part payment and agree a payment schedule if the non-resident parent signs up to a walking possession agreement (without levy of goods).

- The bailiff's initial visit will be within 14 days of their notification letter. If the non-resident parent is not at home, the bailiff will leave a letter advising the non-resident parent that they will visit again within 10 calendar days.
- If contact cannot be made at the second visit, the bailiffs will leave a letter advising the non-resident parent that they will visit again within 7 calendar days.
- If the non-resident parent is unable to make contact or make an agreement / levy distress at the third visit, then any further visits are at the bailiff's discretion.

NOTE: bailiffs should normally only retain cases for a 90 day period. They should then be returned to the CMG, unless:

- a payment agreement has been successfully put in place. In these circumstances, bailiffs will retain the case and monitor payments; or
- bailiffs think it is appropriate to retain the case. E.g. because they have reason to believe that further visits / contact will be successful. In these circumstances, bailiffs MUST contact the CMG at least 2 days before expiry of the 90 day period, to request approval for the case to be retained.

With the exception of the above scenarios, cases will normally be returned to the CMG if:

- the bailiff has been unable to levy distress because there are no / insufficient suitable goods; or

- the bailiff has been unable to contact the non-resident parent after three visits (the case will be retained for seven days following the final visit in case of contact).

Refer to the guidance on Nulla Bona (below) for advice on the process that is followed where this applies.

The bailiff may charge the debtor (non-resident parent) a statutory fee, which may include VAT, for making the levy.

Bailiff visit times

The contracted bailiff firm apply the National Guidelines for Enforcement Officers (bailiff) when making visits. This restricts visits to between 06:00 and 21:00 Monday to Saturday and must not take place on:

- Sundays
- Bank Holidays
- Good Friday
- Christmas Day, and
- must show respect for other religions and cultures by avoiding visits on appropriate festivals and holidays.

Contractually the bailiff will make at least one visit outside of Monday - Friday 08:30 - 17:30. In practice the bailiff makes this visit outside of these times but within the limits of the National Guidelines.

Also, contractually there is a limit to processing of warrants to between Monday - Saturday 07:00 - 21:00, with visits outside of these hours requiring approval from the CMG.

Vulnerable persons

The bailiff must use discretion when dealing with vulnerable persons. The National Guidelines for Enforcement Officers (bailiff) state that those who might be potentially vulnerable include:

- the elderly
- people with a disability
- the seriously ill
- the recently bereaved
- single parent families

- pregnant women
- unemployed people, and
- anyone who has obvious difficulty in understanding, speaking or reading English

The National Standards also state that Enforcement Officers must withdraw from domestic premises if the only person present is, or appears to be under the age of 18, but can ask when the debtor will be home - if appropriate. If the only person/s present are children under the age of 12, the bailiff must withdraw without making enquiries.

Contractually the bailiff, when serving arrest warrants will not arrest any person that is, or appears to be within a vulnerable group as defined by the National Standards for Enforcement Officers.

Nulla bona

Nulla Bona means "no goods". Where the non-resident parent does not have any goods that can be distrained, the bailiff cannot levy distress.

A Nulla Bona certificate will be issued when:

- the bailiff is unable to contact the non-resident parent after 3 visits, and there has been no contact within 7 days of the final visit (unless the bailiffs have requested an extension to the 90 day normal retention period), or
- there are insufficient goods against which distress can be levied
- the bailiff is refused peaceable entry

If the bailiff cannot trace the non-resident parent, the case will be returned, but will not be classed as a genuine Nulla Bona. Further tracing should be carried out to try and establish a confident address and a re-referral can then be considered.

Note: a Nulla Bona is required for cases where commitment/disqualification from holding or obtaining a driving licence is being considered.

Payment agreements / walking possession agreements

Note: the contract with the bailiff company advises that any payment agreements are to be repaid within two years (i.e. within the terms of the of the debt steer).

Additionally, the contract advises that an agreement cannot be made where the debt will not be repaid within 2 years, unless there is prior agreement from the CMG.

When the bailiff visits a non-resident parent, they may be able to make an acceptable payment agreement. If this is the case, it will be up to the bailiffs to decide whether this should be with "walking possession" or not.

A payment agreement without walking possession is no different to any other payment agreement. Bailiffs will monitor payments to ensure they are made on time, and may take further action if the non-resident parent defaults.

However, a walking possession agreement is a legal document signed by the non-resident parent and the bailiff which confirms that goods listed in the agreement have been "seized". This means they have been reserved by the bailiff and can be sold to pay the outstanding debt if the non-resident parent defaults on the payment agreement (refer to the guidance on Levying Distress for further information about goods that are suitable for this action).

If the bailiff is making a walking possession agreement with the non-resident parent, they must hand them the following documents, or leave them at the premises where the distress is levied:

- a copy of Regulation 30, 31 and Schedule 2 of the Child Support (Collection and Enforcement) Regulations 1992;
- any other documents needed to satisfy statutory / common law requirements and

Any relevant documents supplied by the CMG, which may include (but are not limited to):

- a memorandum setting out the debt outstanding against the liability order and the charges associated with the distress;
- a memorandum setting out details of the walking possession agreement; and
- a notice setting out the non-resident parent's rights of appeal, including the address of the Secretary of State.

Walking possession agreements must be confirmed in writing within 5 working days. This means the bailiff must provide the non-resident parent with a written copy of the agreement and ask them to confirm the details. Within 2 working days of the non-resident parent's response, the bailiffs will notify the CMG of the outcome. This will then retain the case and monitor the payments until the debt has been repaid.

If the non-resident parent defaults on a walking possession agreement, the bailiffs will write to them within 2 working days of the date the missed payment was due, notifying them of the default. If the non-resident parent fails to resume their payments or to contact the bailiffs within 5 working days, a further letter will be issued by the bailiffs before close of business on the 6th working day.

If the non-resident parent still fails to bring their payments up to date, the bailiffs will request the CMG's permission to remove and sell the non-resident parent's goods.

NOTE: where there are sufficient goods to discharge the debt, including any court awarded cost and the additional costs that will be incurred in removing the goods, the bailiff will attempt to collect the shortfall. For example; the debt is £1,000 and there are only £900 worth of goods the bailiff will attempt to collect £100 from the non-resident parent.

- Discharge the outstanding debt, including any court awarded costs and the bailiff fee; and
- Pay any additional costs that will be incurred in removing the goods.

Refer to the section on Levying Distress for further advice about cases where goods need to be removed and sold. Refer to the section on Forcing Entry for cases where a walking possession agreement has been broken and the non-resident parent is not at home.

Forcing entry

The first entry to a non-resident parent's premises must be made peaceably. Forced entry can only be used where the visit is necessary to remove goods following a levy being completed.

It is crucial that bailiffs must contact the CMG to seek approval to force entry. If approval is given, the bailiff can employ the services of a locksmith, who will gain entry to the non-resident parent's premises with minimum damage.

On entry, the bailiff will identify and remove goods that have previously been levied, where the CMG has given permission for this action to be taken.

When this action has been completed, the bailiff must remain with the locksmith until the premises have been secured and locked.

If goods have been removed, the bailiff will leave the non-resident parent a letter informing them what has happened and what they need to do to get their possessions back. The bailiff will then securely store the items for 14 days, to allow the non-resident parent time to pay their arrears and retrieve their possession. If the non-resident parent fails to do this, their goods can be sold at public auction after this period has elapsed.

Non-resident parent will not make an agreement

If the non-resident parent will not make an agreement, the bailiffs will check whether they have goods that are suitable for "distraint" (i.e. goods that can be seized and then sold).

- If there are no or insufficient suitable goods, the bailiffs will issue a Nulla Bona certificate and return the case to the CMG;

- If there are suitable goods, the bailiff will seek authorisation from the CMG and if received will normally proceed to "levy distress". Refer to the section on Levying Distress for further information about this process.

Levying Distress: Process Overview

The process of levying distress initially involves the bailiffs identifying suitable goods owned by the non-resident parent, which can potentially be seized / distrained, and with the CMG authorisation the goods can be removed to be sold at auction, with the funds being used towards the non-resident parent's arrears and the bailiff's costs.

NOTE: If the non-resident parent has goods that can be distrained the bailiffs may make an agreement with them that the relevant goods will not be removed and sold, providing the non-resident parent makes and adheres to an acceptable payment agreement. This is referred to as a walking possession agreement. Refer to the guidance above for further advice about this type of agreement.

If goods are distrained (seized), bailiffs must adhere to current law relating to distress proceedings as to what goods can / cannot be removed. Bailiffs are limited as to what they can distrain under S.35 of the Child Support Act 1991.

Bailiffs must not distrain on the following goods:

- tools, books, vehicles and other items of equipment that are necessary to the non-resident parent for their personal use in their employment / business (refer to the additional guidance below on vehicles / stock in relation to this point);
- money bonds or bank notes, bills of exchange, promissory notes, specialties belonging to the non-resident parent;
- goods in respect of which there is a Hire Purchase agreement outstanding, until the final purchase payment has been made. This is due to Hire Purchase being different from other types of borrowing because the debtor does not own the goods until they have paid in full. Under a Hire Purchase agreement, the goods are hired and then paid by an agreed instalment amount. The bailiff will insist on seeing the Hire purchase agreement;
- clothing, bedding, furniture, household equipment and provisions that are necessary to satisfy the basic domestic needs of the non-resident parent and the family with whom they reside (refer to the additional guidance below on basic domestic needs in relation to this point).

Basic domestic needs

Basic domestic needs in this context are defined as:

- clothes reasonably required for the non-resident parent and their family;

- medical aids and equipment such as first aid boxes;
- educational and training articles reasonably required for the non-resident parent and their family (NOTE: this does not include home / personal computers and associated equipment such as printers);
- toys of a child;
- articles for the care / upbringing of a child, such as prams / high chairs;
- articles for the care of someone who is physically or mentally handicapped, such as wheelchairs or other aids;
- articles used for cleaning, mending or pressing clothes, such as washing machines / irons;
- articles used for the cleaning of the dwelling, such as vacuum cleaners;
- bed and bedding required by the members of the household, including any non-resident children who stay from time to time;
- household linen;
- one table and a chair for each member of the family unless a breakfast bar is available;
- food;
- lights or light fittings, except when free standing;
- heating appliances, except when free standing unless they are the only form of heating in the dwelling or specific areas of the dwelling or they are required specifically for a child, elderly or infirm person;
- curtains;
- floor coverings where the bare floor such as exposed floorboards or a concrete base would be left;
- cooking utensils, refrigerators, a cooker (excluding a microwave which is not the only form of cooking);
- any articles used for the safety of persons living in the dwelling;
- tools used within the household that are reasonably required for domestic repairs

Vehicles

Bailiffs can levy against any vehicle owned by the non-resident parent. However, there are some restrictions on vehicles used for business purposes.

Bailiffs cannot levy on a company car or vehicle provided for the non-resident parent's use (e.g. a leased car). Where the non-resident parent claims they do not own a vehicle or e.g. that it is a company vehicle, the bailiff will ask the non-resident parent to provide proof. The bailiff can also carry out a DVLA search to check ownership.

They can levy against any vehicle owned by the non-resident parent, if they use it for travel to / from work or for occasional work related activities.

If the non-resident parent is self-employed or runs a business, bailiffs cannot levy against a vehicle used to run the business, for example: a works van. However, if the non-resident parent runs a business that owns a fleet of vehicles, which are all in the non-resident parent's name, then bailiffs can levy on up to 75% of the fleet. In these circumstances, the non-resident parent can continue to trade using the remaining vehicles.

If the bailiff has levied on a vehicle, they may wheel clamp it while waiting for a tow truck to remove it. The vehicle may be clamped outside the non-resident parent's home, or at their place of work. Bailiffs will ensure that all the legal requirements associated with wheel clamping are fulfilled.

Stock

Bailiffs can levy on any stock. This is not considered to be business equipment, as it is continually being replaced in the normal course of the business.

If the non-resident parent runs a shop using two or more counters / tills, the bailiff may levy on one of the tills, as the second would not be essential to the operation of the business. However, the till must be empty of cash as currency cannot be levied against.

If the non-resident parent owns a public house, the bailiff may levy on 75% of the tables and chairs.

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[Bailiffs: Decision Making Guidance](#)

The following guidance provides advice on the points you may need to consider:

- when you are deciding whether to refer a case to bailiffs and
- at various stages in the bailiff process.

When should a referral to Bailiffs be considered?

A referral to bailiffs should be considered if:

- a liability order has been obtained; and
- the non-resident parent has failed to pay the arrears or make an acceptable payment agreement;
- consider whether the case is suitable for this type of action.

A referral to bailiffs must be made where commitment/disqualification from holding or obtaining a driving licence proceedings are necessary, as a Nulla Bona is required to allow commitment/disqualification action to be taken.

Is the case suitable for a referral to Bailiffs?

Before submitting a referral to bailiffs, appropriate information must be collected and checked to ensure the case is suitable for this type of action.

REMEMBER: the CMG is financially liable for costs incurred if the case is recalled from bailiffs. It is therefore important that only appropriate referrals are made.

A bailiff referral should not be submitted if:

- there is ongoing action that may affect the debt for the relevant period (for example: there are changes of circumstances relating to the debt period outstanding);
- there are exceptional circumstance relating to the case that mean this type of action could lead to adverse publicity / criticism. For example: the non-resident parent is known to have mental health issues;
- the debt has been recognised under Scottish law. However, a referral can be made if the liability order is registered in a magistrates' court in the area in which the non-resident parent now resides;
- there is information held indicating that the non-resident parent has funds held by a third party or is about to put their property up for sale (in these circumstances a third party debt order / charging order application should take priority);
- a DEO or deduction order is appropriate;
- bailiff action was taken in the last 6 months and a Nulla Bona certificate was issued UNLESS there is evidence of a subsequent change in circumstances. For example: the non-resident parent is known to have inherited assets.

NOTE: it is not necessary to confirm that a non-resident parent has suitable assets before submitting a referral to bailiffs. However, if asset details are known, these must be included on the referral.

In addition to the above points, you should also consider:

- the welfare of any child potentially affected by the decision whether or not to refer the case to bailiffs;
- any information known about the non-resident parent's income. If it is known that the non-resident parent does not have the means to pay, then a bailiff referral will not be appropriate;
- any additional information known about the non-resident parent. For example: are they known to have any serious health issues?

IMPORTANT NOTE: cases where a non-resident parent is known to be potentially violent can still be referred to bailiffs, but this information **MUST** be brought to the attention of the bailiffs.

Recording the referral decision

If you have considered referring a case for bailiff action, you must record the outcome of your decision and the reasons for it. This requirement applies whether you have decided to refer the case or not.

REMEMBER: deciding whether to refer a case for bailiff action is a discretionary decision. You must record full details of the information and evidence you have taken into account in making your decision and ensure you confirm that the welfare of any child potentially affected by your decision has been considered.

Refer to the guidance on [Discretionary Decision Making](#) for further advice about making and recording these types of decisions.

Bailiff action is appropriate: making the referral

If you decide to refer the case to bailiffs, you should make a referral to the bailiff company, ensuring you include:

- details of all addresses held for the non-resident parent, if we hold more than one;
- any other useful information that may help the bailiff make successful contact. For example: details of times the non-resident parent is likely to be at home; details of any aliases / known as names they may have; and
- details of the non-resident parent's compliance history. This may help the bailiff company decide whether any payment agreement should be with "walking possession" or not;
- details of any vehicles owned by the non-resident parent, including make, model, colour and registration number;
- details of any relevant business activities: such as the name and addresses of firms and the non-resident parent's status within them; and

- details of any assets that the non-resident parent owns.

Disputes against Bailiff Action

Non-resident parents can appeal against:

- distress (e.g. the fact that goods have been seized and removed) if they believe the levy was irregular; and
- taxation of the costs of distress (e.g. the fact that they are required to pay the bailiff costs, or the costs charged are excessive).

Non-resident parents can also make a claim for damages (through an action in trespass) if they believe they have sustained special damage as a result of an irregularity in the levying process.

- appeals against distress must be made to the magistrates' court;
- appeals against costs and actions in trespass must be made to the county court.

If we are informed that an appeal / application of this type has been made, the case should be immediately referred to Advice & Guidance/Policy.

Where a summons is served against the contractor (bailiff) in relation to an attempt or actual levy, the contractor is responsible for its own legal representation and costs and the implementation of the court's decision including the costs of implementation.

Where a debtor lodges an appeal against the CMG in relation to the attempt or actual levy of distress, then it would be for the CMG to defend the action.

Non-resident parent does not own the goods

Where the non-resident parent claims that they do not own the goods in the property, the non-resident parent would need to provide a copy of the receipt or hire purchase agreement to prove that they were not the owner of the goods. If this was not available then the non-resident parent would need to complete a signed affidavit to confirm the goods do not belong to him/her.

Complaints

Where the non-resident parent complains about the bailiff action, the complaint will be dealt with by the contracted bailiff.

Where the complaint is against the CMG e.g. making the bailiff referral, the bailiff will refer the complaint to the CMG for a response to be drafted and issued.

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