

IN THE KEYS

DEBT RECOVERY AND ENFORCEMENT BILL 2010

Explanatory Memorandum

1. This Bill is promoted by Mr. John Houghton MHK.
2. Part 1 gives the Bill its short title, provides powers for its commencement and defines certain terms.
3. Part 2 regulates the provision of debt collecting services. It requires persons taking steps, on behalf of a creditor, to procure the payment of a debt due to the creditor (“licensed debt collectors”) to be licensed by the Chief Registrar and provides a procedure for the grant and refusal of licences (*clauses 4 to 6*). *Clause 7* provides that the Chief Registrar must have regard to Treasury guidance in discharging his or her functions. The Treasury may publish a code of practice as to the conduct of licensed debt collectors, which may be taken into account by the Chief Registrar in deciding whether to suspend or revoke a licence or vary its conditions or by a Judicial Officer in deciding whether or not to grant an application under *clause 12* or *13*. There is also power for the Treasury to make regulations about the handling and retention of monies by licensed debt collectors. The Chief Registrar is to publish a report to be laid before Tynwald on their enforcement of judgments and he or she may require information for the report to be provided by the licensed debt collectors.
4. *Clause 8* makes provision for appeals from decisions of the Chief Registrar. *Clause 9* enables the Treasury to publish the maximum fees that may be charged by licensed debt collectors.
5. Part 3 is concerned with the enforcement of debts. *Clause 10* provides licensed debt collectors with powers to enforce executions and under *clause 11* regulations may enable them to enforce fixed penalties for road traffic offences. *Clause 12* enables a Coroner or a licensed debt collector to apply to a Judicial Officer for a creditors’ assistance order for the purposes of obtaining information from a body specified in the application as to the whereabouts of an execution debtor and discovering, seizing and retaining property which a deposit-taking institution specified in the application holds on behalf of an execution debtor. Furthermore, provision is made to enable licensed debt collectors to apply to a Judicial Officer for the issue of a warrant to enter

premises, to search for property belonging to the execution debtor and to seize and retain that property (*clause 13*). There is also a power for licensed debt collectors to apply to a Judicial Officer for a disposal order to dispose of the property that has been produced by a deposit-taking institution under clause 12 or seized and retained by virtue of a warrant issued under clause 13 (*clause 14*). *Clause 15* provides that the Judgements Register established and maintained under section 15 of the Administration of Justice Act 1981 must, where appropriate, indicate the priority of debts.

6. Part 4 creates certain offences. It is an offence for a person to carry on debt collecting services in contravention of a requirement to have a licence (*clause 16*). It is also an offence for a person to obstruct or impersonate a licensed debt collector (*clause 17*). The penalties are set out in *clause 18*, along with standard provisions about liability in respect of corporate bodies.

7. Part 5 enables the functions of the Chief Registrar to be transferred to another person or body using powers in the Government Departments Act 1987 (*clause 19*). The regulations made under the Act are to be laid before Tynwald (*clause 20*). *Clause 21* treats existing debt collectors as licensed for 12 months from commencement of the Act. This Part also makes amendments to other Acts (*clauses 22 to 26*). In particular, a power is given for the High Court to order that the recovery of possession of property (eviction) may be enforced by a licensed debt collector and action by a licensed debt collector taking reasonable steps to recover a debt is deemed to be reasonable conduct for the purposes of the Protection from Harassment Act 2000.

8. This Bill is not expected to have substantial resource implications.

9. In the view of the Member moving the Bill it is compatible with the Convention rights within the meaning of the Human Rights Act 2001.

Arrangement of Sections

Section

PART 1

OPENING PROVISIONS

- 1.** Short title
- 2.** Commencement
- 3.** Interpretation

PART 2

LICENSED DEBT COLLECTORS

- 4.** Requirement for a licence
- 5.** Application for a licence
- 6.** Grant or refusal of a licence
- 7.** Treasury guidance, code of practice, handling of monies and annual reports
- 8.** Appeals
- 9.** Fees

PART 3

ENFORCEMENT OF DEBTS

- 10.** Powers to enforce executions
- 11.** Powers in respect of fixed penalties for road traffic offences
- 12.** Creditors' assistance orders
- 13.** Powers to enter, search and seize, etc
- 14.** Disposal orders
- 15.** Priority of debts

PART 4

OFFENCES

16. Unlicensed debt collecting
17. Obstruction or impersonation of licensed debt collector
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PART 5

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19. Transfer of functions
20. Tynwald procedure
21. Transitional provision
22. Amendment of Preferential Payments Act 1908
23. Amendment of Landlord and Tenant Act 1954
24. Amendment of Money Lenders Act 1991
25. Amendment of High Court Act 1991
26. Amendment of Protection from Harassment Act 2000

A BILL

to provide for the licensing of debt collectors; to provide certain powers in respect of the recovery of debts; and for connected purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1

OPENING PROVISIONS

1. The short title of this Act is the Debt Recovery and Enforcement Act 2011. Short title

5 2. (1) This Act, other than section 1 and this section, comes into operation on such day or days as the Treasury may by order appoint. Commencement

(2) An order under subsection (1) may contain such consequential, supplementary, incidental and transitional provisions as the Treasury considers appropriate.

10 3. (1) In this Act — Interpretation

“debt collecting services” means the taking of steps, on behalf of a creditor, to procure the payment of a debt due to the creditor;

15 “Judicial Officer” has the same meaning as in section 3C of the High Court Act 1991; [c. 12]

“licence” means a licence granted in accordance with Part 2;

“licensed debt collector” means a person to whom a licence has been granted.

[c.8] (2) The following terms have the same meaning as in section 26(1) the Administration of Justice Act 1981 — **5**

- (a) execution;
- (b) execution debtor;
- (c) execution order.

PART 2 **10**

LICENSED DEBT COLLECTORS

Requirement for a licence **4.** (1) A person carrying on debt collecting services must hold a licence granted in accordance with this Part.

(2) However, no licence is required if the person —

- (a) is a Coroner; or **15**
- (b) is the creditor or an employee or relative of the creditor.

(3) In this section “relative” means husband, wife, civil partner, brother, sister, ancestor or lineal descendant.

Application for a licence **5.** (1) An application for a licence must be made to the Chief Registrar and be in such form as the Chief Registrar may require. **20**

(2) The application must be accompanied by such documents and information as the Chief Registrar may require together with such fee as the Treasury may publish.

Grant or refusal of a licence **6.** (1) The Chief Registrar must not issue a licence unless he or she is satisfied that the applicant — **25**

- (a) is a fit and proper person to carry on debt collecting services; and
- (b) has an adequate level of insurance cover in respect of the range of debt collecting services offered by him or her. **30**

(2) If the licence is granted the Chief Registrar may impose such conditions as he or she considers reasonable in the particular circumstances.

5 (3) If the licence is refused or if any conditions are imposed the Chief Registrar must give the applicant an opportunity to be heard and, when so requested by the applicant, must give reasons for the decision.

(4) The Chief Registrar, having given the licensed debt collector an opportunity to be heard, may at any time —

- 10 (a) make a licence subject to conditions or, as the case requires, further conditions;
- (b) suspend a licence;
- (c) revoke a licence; or
- (d) vary any condition to which a licence is subject,

15 and must give reasons for the decision.

(5) Where the Chief Registrar suspends a licence under subsection (4)(b), he or she must review the suspension at intervals of not less than 6 months and once the licence has been suspended for 2 years it is treated as being revoked.

20 7. (1) In discharging his or her functions under this Act the Chief Registrar must have regard to such guidance as the Treasury may publish as to the criteria to be applied in granting, suspending or revoking a licence, or imposing or varying the conditions of a licence.

Treasury guidance, code of practice, handling of monies and annual reports

25 (2) The Treasury may publish a code of practice with respect to the conduct of licensed debt collectors and such code may be taken into account —

- (a) by the Chief Registrar in deciding whether to suspend or revoke a licence, or vary its conditions;
- 30 (b) by a Judicial Officer in deciding whether or not to grant an application under section 12 or section 13.

(3) The Treasury may make regulations about the retention and handling of monies received by licensed debt collectors and may provide for any breach of the regulations to be an offence punishable on summary conviction by a fine not exceeding £5,000.

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(4) The Chief Registrar shall each year publish a report on the enforcement of judgments by licensed debt collectors to be laid before Tynwald, and may require information to be provided by licensed debt collectors for the purposes of the report.

Appeals **8.** A person aggrieved by a decision of the Chief Registrar under this Act may appeal to the Financial Services Tribunal as if the decision were a decision mentioned in section 32(3) of the Financial Services Act 2008. **5**
[c.8]

Fees **9.** (1) The Treasury may publish the maximum fees that licensed debt collectors may charge in respect of debt collecting services in the following categories — **10**

(a) a fee payable by the creditor on engaging the licensed debt collector;

(b) a fee payable in connection with such services on the part of the licensed debt collector as may be specified; **15**

(c) a fee based on such percentage of the debt to be recovered;

(d) an overall maximum fee that may be charged.

(2) The published maximum fees may provide for different maxima in different circumstances or cases. **20**

(3) Licensed debt collectors may charge fees in any or all of the categories mentioned in subsection (1) and may provide for fees in any category to be alternative to fees in any other category depending on the circumstances.

PART 3 **25**

ENFORCEMENT OF DEBTS

Powers to enforce executions **10.** (1) A licensed debt collector has the power to enforce an execution, or any warrant expressed to be enforceable in the same manner as an execution, in accordance with this Act and to recover from the execution debtor — **30**

(a) all sums due (including interest) and payable under the execution order;

(b) any further interest that a Coroner may have levied by virtue of section 9(5) of the Administration of Justice Act 1981; **35**
[c.8]

- (c) all fees which the licensed debt collector is entitled to charge by virtue of section 9 in connection with the enforcement together with any expenses reasonably incurred;
 - 5 (d) any costs charged by virtue of regulations made under section 14(2) (costs on disposal).
- (2) However, an execution debtor may, within 7 days of the order for execution, apply to the Chief Registrar for an order that the debt may be paid by instalments and where the Chief Registrar makes such an order and the execution debtor makes payments as required by the order, this Part shall not apply in respect of that debt.
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- (3) The Treasury may, by regulations, make additional provision about the enforcement of executions by licensed debt collectors.
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- 11.** The Treasury may, by regulations, provide for licensed debt collectors to enforce a sum payable in default which has been certified under paragraph 10 of Schedule 5A (fixed penalties) to the Road Traffic Regulation Act 1985 for enforcement against a defaulter.
- Powers in respect of fixed penalties for road traffic offences
- [c.20]
- 20 **12.** (1) A Coroner or licensed debt collector may apply to a Judicial Officer for an order under this section (to be known as a “creditors’ assistance order”) for the purposes of —
- Creditors’ assistance orders
- 25 (a) obtaining information from a body specified in the application as to the whereabouts of an execution debtor;
 - (b) discovering, seizing and retaining the property which a deposit-taking institution specified in the application holds on behalf of an execution debtor.
- (2) An application for a creditors’ assistance order must be supported by an affidavit setting out the grounds for the application.
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- (3) A creditors’ assistance order may require —
- (a) the body concerned to disclose the last known address of the execution debtor;
 - 35 (b) the deposit-taking institution concerned to disclose the property which the deposit-taking institution holds on behalf of an execution debtor and to produce all or some of that property to the Coroner or licensed debt collector.

(4) The property produced by virtue of a creditors' assistance order must be the lowest amount the value of which, in the opinion of the deposit-taking institution, meets the total amount recoverable from the execution debtor.

(5) Before granting a creditors' assistance order, the Judicial Officer must be satisfied that the interests of justice in granting the order significantly outweigh any detriment that the executor debtor may suffer as a result of it. **5**

(6) A creditors' assistance order must not authorise the seizure and retention of items subject to legal professional privilege. **10**

[c.8]
[VI p.405] (7) In this section "deposit-taking institution" means any person carrying on a business which is a deposit-taking business under the Financial Services Act 2008 and includes a building society established under the Industrial and Building Societies Act 1892 and a United Kingdom building society which is licensed to accept deposits under the Financial Services Act 2008. **15**

(8) This section does not limit the powers of a Coroner under any other enactment.

Powers to enter, search and seize, etc **13.** (1) A licensed debt collector may apply to a Judicial Officer for the issue of a warrant under this section for the purposes of enforcing an execution order. **20**

(2) An application for a warrant under this section must be supported by an affidavit setting out the grounds for the application.

(3) A warrant under this section may authorise the licensed debt collector at any reasonable hour — **25**

(a) to enter such premises as are specified in the warrant, using, if necessary, reasonable force;

(b) to search those premises for property belonging to the execution debtor; and **30**

(c) to seize and retain any property belonging to the execution debtor.

(4) The property seized and retained by virtue of a warrant under this section must be the lowest amount the value of which, in the opinion of the licensed debt collector, meets the total amount recoverable from the execution debtor. **35**

(5) Before issuing a warrant under this section, the Judicial Officer must be satisfied that the interests of justice in issuing it

significantly outweigh any detriment that the execution debtor may suffer as a result of it.

5 (6) A warrant under this section must not authorise the seizure and retention of items subject to legal professional privilege.

(7) No property mentioned in paragraph 2 of Schedule 1 to the Administration of Justice Act 1981 may be seized and retained by virtue of a warrant under this section. [c.8]

14. (1) Where —

Disposal orders

10 (a) A deposit-taking institution has produced property to a licensed debt collector under section 12(3)(b); or

(b) a licensed debt collector has seized and retained property by virtue of a warrant issued under section 13,

15 the licensed debt collector may apply to a Judicial Officer for an order (to be known as a “disposal order”) to enable him or her to dispose of the property in full or part satisfaction of the amount recoverable from the execution debtor.

20 (2) The Treasury may make regulations providing for the method by which property which is the subject of a disposal order may be disposed of, for an independent valuation of the property to be provided in appropriate circumstances and for the costs that may be charged in respect of the disposal to be prescribed in or in accordance with the regulations.

25 (3) The balance of any monies after payment of debts and any charges authorised by this Act is the property of the execution debtor.

30 15. The Judgments Register established and maintained by the Chief Registrar under section 15 of the Administration of Justice Act 1981 must, where appropriate, indicate the priority of debts in accordance with the Debtors Act 1820 and the Preferential Payments Act 1908. Priority of debts [c.8] [I p.414] [VIII p.143]

PART 4

OFFENCES

35 16. A person who carries on debt collecting services in contravention of section 4 is guilty of an offence. Unlicensed debt collecting

Obstruction or impersonation of licensed debt collector

- 17.** A person who —
- (a) wilfully obstructs or impedes a licensed debt collector in the performance of his or her duties; or
 - (b) with the intent to deceive, impersonates a licensed debt collector,
- is guilty of an offence.

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Penalties and supplementary provisions

- 18.** (1) A person who commits an offence under this Act is liable —
- (a) on conviction on information, to custody for not more than 2 years, a fine, or both;
 - (b) on summary conviction, to custody for not more than 6 months, a fine not exceeding £5,000, or both.
- (2) If an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) 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 or her functions of management as if that person were a director of the body corporate.

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PART 5

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CLOSING PROVISIONS

Transfer of functions

[c.13]

- 19.** (1) Schedule 2 to the Government Departments Act 1987 applies to the functions of the Chief Registrar under this Act as it applies to a Department, so as to enable the transfer of those functions to any Department, Statutory Board or other person or body as an order made under that Schedule may specify.
- (2) Accordingly, references in that Schedule to a Department shall be construed as including a reference to such a person or body.

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Tynwald procedure

- 20.** Regulations made under this Act must be laid before Tynwald.

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- 21.** Any person carrying debt collecting services on the commencement of section 16 are treated as holding a licence for 12 months from the date of such commencement (subject to section 6(4)). Transitional provision
- 5 22.** (1) Section 3 of the Preferential Payments Act 1908 is amended as follows. Amendment of Preferential Payments Act 1908
- (2) Before subsection (1) insert — [VIII p.143]
- “(A1) Where debts are payable in accordance with the priority of creditors —
- 10** (a) half of the money available to satisfy any debts shall be paid to creditors other than —
- (i) the Crown;
- (ii) a Department;
- (iii) a Statutory Board; or
- 15** (iv) a local authority or joint board (within the meaning of the Local Government Act 1985); [c.24]
- (b) the remainder shall be paid in accordance with the order specified in subsection (1).”.
- 20** (3) In subsection (1) for “Where debts” to “the following order —” substitute “(1) For the purposes of subsection (A1)(b) the order is as follows —”.
- 23.** After section 16 of the Landlord and Tenant Act 1954 insert — Amendment of Landlord and Tenant Act 1954
- 25** ^{“Supplementary power of High Court} **16A.** When making an order for the recovery of possession of any property the High Court may, if it thinks fit, provide that the order shall be enforced by a licensed debt collector within the meaning of section 3 of the Debt Recovery and Enforcement Act 2011.” [XVIII p.448]
- 24.** Section 7(3) of the Money Lenders Act 1991 is repealed. Amendment of Money Lenders Act 1991 [c.6]
- 30 25.** After section 46(4) of the High Court Act 1991 add — Amendment of High Court Act 1991
- “(5) This section does not limit the power of a licensed debt collector within the meaning of the Debt [c.12]

Recovery and Enforcement Act 2011, when enforcing an execution, to seize and retain money which is due to the execution debtor.”.

Amendment
of Protection
from
Harassment
Act 2000

[c.12]

26. After section 1(3) of the Protection from Harassment Act 2000 add —

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“(4) Where the person pursuing the course of conduct is a Coroner or a licensed debt collector within the meaning of the Debt Recovery and Enforcement Act 2011 and the person is taking reasonable steps to recover a debt on behalf of a creditor, the course of conduct shall be presumed to be reasonable.”.

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IN THE KEYS

Debt Recovery and Enforcement

A BILL

to provide for the licensing of debt collectors; to provide certain powers in respect of the recovery of debts; and for connected purposes.

Leave to introduce given in the House of Keys
8 December 2009.

MR. HOUGHTON

NOVEMBER 2010
