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Protection of Freedoms Bill

**Memorandum submitted by the Civil Enforcement Association
(CIVEA) (PF 43)**

Introduction

1. The Civil Enforcement Association (CIVEA) has recently been formed through the merger of the Association of Civil Enforcement Agencies (ACEA) and the Enforcement Services Association (ESA), formerly the two trade associations representing private certificated bailiffs, and companies employing such individuals, operating in England and Wales. The new association is now, therefore, the sole representative for such companies, individuals and their activities.

Background to clamping by bailiffs

2. The Association's members are entrusted, inter alia, with the recovery of unpaid local and central taxes, unpaid parking penalties, unpaid magistrates' courts fines, unpaid child maintenance and other debts owed to public bodies.

3. The various Regulations governing these activities are set to be formalised within a single transparent Regulation under the Tribunals, Courts and Enforcement Act 2007 (TCE).

4. Under the various existing Regulations, bailiffs routinely seize goods to either sell at public auction to recover the sums due but more commonly, under walking possession agreements to secure payment arrangements to discharge the sums due over fixed periods of time.

5. Since the days of Community Charge when debtors were actively encouraged to deny bailiffs access to household goods, bailiffs were

required to find alternative goods to seize in order to encourage payment. This led to an increase in the seizure of vehicles which negated the need of entry to domestic premises.

6. Currently, bailiffs seizing vehicles under the various regulations often immobilise such vehicles at the point of seizure prior to their removal for sale. Immobilisation is undertaken for a number of reasons including health and safety. When a vehicle is seized, it is not unknown for the debtor/owner of the vehicle to try and move the vehicle to prevent it being taken and there have been incidents of the seized vehicle being used to ram the bailiff's vehicle or, in worst case scenarios, to threaten and injure the bailiff. Applying an immobilisation device (wheel clamp) prevents unauthorised access and inappropriate use of the vehicle.

7. It is also a fact that the initial seizure of a vehicle by way of immobilisation is a cheaper alternative for the debtor than its immediate removal by tow truck. It allows the debtor a window of opportunity to discharge the sums due at less cost before the tow truck is engaged.

8. The benefits of immobilisation have been recognised by Government and it is accordingly being included as a mandatory step in the enforcement process introduced by the TCE & Regulations. The provisions in the TCE Act have been formulated after 20 years of consultation and research and accordingly represent best practice and therefore immobilisation as part of the process of taking control of goods, to use TCE terminology, must be listed as a lawful activity under this Act.

Clause 54

9. Clause 54 of the Protection of Freedom's Bill is included to provide protection against rogue clampers dealing with cars parking without permission on private land. As with the Private Security Industry Act 2001, the focus, as noted by the then Home Office Minister Charles Clarke was on the *"unscrupulous behaviour of some wheel-clamping firms who prey on motorists."*

10. The debates regarding the PSI Bill all focused on 'parking on private land', 'rogue and cowboy clampers' and 'members of the public'; there was no mention of fines, bailiffs or debtors.

11. The Research Paper 11/20 regarding the Protection of Freedoms Bill notes that, "Wheel clamping on private land has been a major problem for some years. The legality of wheel clamping on public land is clearly set out in legislation but on private land, including car parks, it has not expressly been provided for in law. As a result there has been considerable controversy about the behaviour of some private wheel clamping companies and even about the legality of clamping vehicles on private land. The view of successive governments has been that owners of land must be able to take action against those who **park without permission** and that wheel clamping may be an effective way of dealing with such situations, but that any action must be carried out in a reasonable manner. Cases against wheel clampers are heard in the civil courts. The Coalition Programme of May 2010 stated that one of the Government's transport priorities was to "tackle rogue private sector wheel clampers".

12. Again, it is clear the focus of Clause 54 is in relation to unauthorised **parking** on private land rather than the use of clamping by bailiffs as an enforcement tool in executing court orders and warrants.

13. Clause 54 of the Bill will effectively make it a criminal offence to clamp (immobilise) a vehicle on private land except where one has the lawful authority to do so (for example, on behalf of a local authority, the DVLA or the police).

14. The commentary on Clause 54 states that the offence does not apply where a person is acting with **lawful authority** when immobilising, moving or restricting the movement of a vehicle.

15. It goes on to say that there are a number of bodies with statutory powers to immobilise or remove vehicles in specified circumstances, including: local authorities when enforcing road traffic contraventions on the public highway or local authority managed car parks; the police when enforcing road traffic contraventions or otherwise removing vehicles illegally, obstructively or dangerously parked; the police and local authorities when exercising their powers to remove abandoned vehicles from public and private land; the Driver and Vehicle Licensing Authority (DVLA) in respect of vehicles that have no road tax; the Department for Transport's Vehicle and Operator Services Agency in respect of vehicles that are not roadworthy; and the police and local authorities exercising their powers to remove vehicles forming part of an unauthorised traveller encampment.

16. In respect of bailiffs, it states that bailiffs have a mix of statutory and common law powers to immobilise and tow away vehicles for the purposes of enforcing debts (including those arising out of unpaid taxes and court fines).

17. However, aside from The Fines Collection Regulations 2006 which provides for the issue and execution of Clamping Orders there is no specific mention in any [enforcement] Regulation regarding the use of clamping or immobilisation.

18. Accordingly, there are already arguments that 'lawful authority' will derive from the relevant statute under which bailiffs are acting and as many do not expressly or implicitly endorse vehicle immobilisation, clamping in the enforcement of debt will no longer be lawful in those cases.

19. This will result in a sharp increase in the numbers of cases where vehicles are immediately removed [rather than clamped and de-clamped] denying the debtor an opportunity to pay the lesser costs. It will also undermine the enforcement of many debts where it is not possible to immediately remove a vehicle (or enter a household) and where clamping currently secures the bailiff's and the creditor's position. It will also increase the risks to the safety of bailiffs and other members of the public as noted in '6' above.

20. As [private] bailiffs recover in the region of £650 million of 'State Debt' annually and clamping is an important enforcement tool in promoting payment, it is essential that there is no ambiguity within the Bill regarding the lawful authority of bailiffs.

21. Accordingly, the Association requests that the Bill include an amendment to Clause 54 in the following form.

Insert:

54 (7) In this section 'lawful authority' includes a warrant or order issued from or authorised by a magistrates' court, a county court or the High Court for the seizure of goods.

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