



**Law  
Commission**  
Reforming the law

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## **Bills of Sale Call for Evidence**

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**October 2014**

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# THE LAW COMMISSION: HOW WE CONSULT

**About the Commission:** The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are: The Right Honourable Lord Justice Lloyd Jones (*Chairman*), Professor Elizabeth Cooke, Mr David Hertzell, Professor David Ormerod QC and Nicholas Paines QC. The Chief Executive is Elaine Lorimer.

**Topic:** This call for evidence covers bills of sale.

**Geographical scope:** England and Wales. This call for evidence does not cover Scotland.

**Duration of the consultation:** 10 October 2014 to 24 November 2014.

## How to respond

Send your responses either –

**By email to:** [bills\\_of\\_sale@lawcommission.gsi.gov.uk](mailto:bills_of_sale@lawcommission.gsi.gov.uk)

**By post to:** Sophia Hurst, Law Commission,  
1st Floor, Tower, Post Point 1.53, 52 Queen Anne's Gate, London SW1H 9AG

If you send your comments by post, it would be helpful if, where possible, you also sent them to us electronically (in any commonly used format).

**After the call for evidence:** We plan to publish a formal consultation paper in autumn 2015.

**Freedom of information:** We will treat all responses as public documents. We may attribute comments and publish a list of respondents' names. If you wish to submit a confidential response, it is important to read our Freedom of Information Statement below.

**Availability:** You can download this Call for Evidence and the other documents free of charge from our website at: <http://lawcommission.justice.gov.uk/areas/bills-of-sale.htm>.

## Freedom of Information statement

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (such as the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002 and the Data Protection Act 1998 (DPA)).

If you want information that you provide to be treated as confidential, please explain to us why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Law Commission.

The Law Commission will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

## **BILLS OF SALE: CALL FOR EVIDENCE**

- 1 The Law Commission is conducting a two year review of the Bills of Sale Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882 (the Bills of Sale Acts). The Treasury has asked the Law Commission:
  - (1) to consider the use which is currently made of the legislation and how far it meet the needs of users and third parties, and
  - (2) to make recommendations for reform, to ensure that the law in this area is it is up-to-date, fair, and effective.

### **WHAT IS A BILL OF SALE?**

- 2 A bill of sale is a way in which an individual may use their existing goods as security for a loan.<sup>1</sup> The use of bills of sale has grown dramatically this century, from 2,840 in 2001 to 50,656 in 2013. A contemporary example is the “log book loan”, by which the borrower transfers the ownership of their vehicle to the lender as security.
- 3 However, the legislation is wider than just log book loans. The Acts do not apply to loans to companies, but they can apply to partnerships, sole traders and consumers. Their use is not necessarily confined to cars, but could cover any goods used as security, as well as general assignments of book debts.
- 4 The law in this area dates from Victorian times. It is complex, arcane and difficult to understand. It is also costly, as bills must be registered at the High Court. The consequences of not following the exacting formality requirements are severe; an error can void the whole loan, as well as the lender’s security. The lack of protection for consumers also contrasts with modern consumer credit protections. Following default, the law allows a lender with a bill of sale to seize the property without a court order, which has been raised as a particular concern by consumer groups.

<sup>1</sup> Security bills of sale are by far the most common form of bill of sale; however there are also bills known as absolute bills of sale. See para 33 below.

## PREVIOUS REVIEWS

- 5 In 2002, the Law Commission published a consultation paper on security interests, which described the Victorian legislation on bills of sale as complicated, out-of-date and unfair.<sup>2</sup> Although our final report focused on company charges, rather than security given by individuals, we recommended that the Department of Trade and Industry should review bills of sale legislation as part of its review of consumer credit legislation.<sup>3</sup>
- 6 In December 2009 the Department for Business, Innovation and Skills (BIS) consulted on bills of sale.<sup>4</sup> In January 2011, the Government decided against statutory measures, on the grounds that “the industry should have an opportunity to put its own house in order first”.<sup>5</sup> The Government would review whether further reform or regulation was necessary at a later stage. The industry produced a voluntary code of practice under the auspices of the Consumer Credit Trade Association.<sup>6</sup>
- 7 In February 2014, Citizens Advice published a report based on the enquiries it received about bills of sale. It commented that this form of lending “can lead to instances of severe consumer detriment”.<sup>7</sup>

## THIS CALL FOR EVIDENCE

- 8 Our current focus is on collecting evidence about how the legislation is used and how far it meets the needs of users and third parties. We are particularly interested in talking to lenders, consumer groups and others about how bills of sale work in practice. Only once we have an understanding of these issues will we consider proposals for reform.
- 9 Our aim is to publish a consultation paper setting out proposals in autumn 2015. This will look at whether to replace the legislation with a new Act, intended to work side-by-side with regulation by the Financial Conduct Authority.

<sup>2</sup> Registration of Security Interests: Company Charges and Property other than Land (2002) Law Commission Consultation Paper No 164 at para 9.18

<sup>3</sup> Company Security Interests (2005) Law Com No 296 at para 1.53

<sup>4</sup> *A Better Deal for Consumers: Consultation on proposal to ban the use of bills of sale for consumer lending*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31481/a\\_20\\_better\\_20deal\\_20for\\_20consumers\\_20consultation\\_20on\\_20proposals\\_20to\\_20ban\\_20the\\_20use\\_20of\\_20bills\\_20of\\_20sale\\_20for\\_20consumer\\_20lending.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31481/a_20_better_20deal_20for_20consumers_20consultation_20on_20proposals_20to_20ban_20the_20use_20of_20bills_20of_20sale_20for_20consumer_20lending.pdf) (last visited 23 September 2014)

<sup>5</sup> *Government response to the consultation on proposals to ban bills of sale for consumer lending* at para 43  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31484/11-516-government-response-proposal-ban-bills-of-sale.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31484/11-516-government-response-proposal-ban-bills-of-sale.pdf) (last visited 23 September 2014)

<sup>6</sup> Consumer Credit Trade Association, *Bills of sale for consumer lending regulated under the Consumer Credit Act 1974*

<sup>7</sup> Citizens Advice, *Evidence on bills of sale consumer lending* (February 2014) page 3

- 10 We are interested in receiving comments about the Bills of Sale Acts generally. In addition, we welcome responses to the questions set out below.
- 11 **Responses should be sent by 24 November 2014 to the address on page ii.**

## **LOG BOOK LOANS**

### **The standard form and registration system**

- 12 The bill itself must be in a complex standard form that requires certain details and statements to be included in the bill. In particular, the goods must be described in a schedule to the bill, rather than in the main body, and the bill must be attested by a witness. Failure to comply with the legislative formalities makes the whole agreement void.<sup>8</sup>
- 13 Registration within seven days is compulsory; otherwise the security is void. Lenders must send to the High Court: the original bill of sale with attached schedule and a true copy, together with a sworn affidavit and a £25 fee.<sup>9</sup> If the necessary paperwork is not sent to the High Court within 7 days, lenders must pay an additional £75 court fee for an application before a Master to allow the registration out of time.
- 14 Lenders subscribing to the Consumer Credit Trade Association's (CCTA) Code of Practice must also register their interest with a commercially-run asset finance register, such as HPI, within 24 hours of making the agreement.<sup>10</sup>

**Question 1:** We welcome comments on the registration system.

Q1.1: Does the High Court register provide any benefits to lenders or borrowers? In particular, do lenders check the register before agreeing a loan?

Q1.2: What are the problems with the registration system? In particular, do the strict formality requirements cause problems in practice?

Q1.3: Do lenders always register with an asset finance register as well as the High Court? What are the costs and benefits of this double registration system?

Q1.4: Do lenders check the asset finance registers before taking security over the car?

<sup>8</sup> Section 9 and Schedule 1 of the Bills of Sale Act (1878) Amendment Act 1882 (The 1882 Act)

<sup>9</sup> Section 8 of the 1882 Act

<sup>10</sup> Consumer Credit Trade Association, *Bills of sale for consumer lending regulated under the Consumer Credit Act 1974* para 3.14.

## Enforcing the loan

- 15 Where the car is security for a loan regulated by the Consumer Credit Act 1974, as most log book loans will be, the lender must serve a default notice before enforcing its security.<sup>11</sup> The notice must give the consumer not less than 14 days to deal with that notice.
- 16 Once the default notice has expired the lender can seize the car without having to first obtain a court order. The only remaining restriction is section 13 of the 1882 Act, which requires the lender to wait five days following seizure before selling the car so that the borrower can apply to the court. The CCTA Code of Practice extends this period to 14 days.<sup>12</sup>
- 17 This contrasts with the position for certain protected agreements under the Consumer Credit Act 1974, such as hire purchase, where once a debtor has paid one third of the overall sum, the lender must obtain a court order before repossessing goods.
- 18 In February 2014, Citizens Advice commented that:

This encourages irresponsible lending and debt collection practices because there is no onus on the lender to negotiate when the consumer gets into payment difficulties because they can just seize the asset.

Citizens Advice report a borrower who was not allowed to remove possessions, and one who was left on the roadside, as examples of aggressive repossession practices.<sup>13</sup>

- 19 The CCTA code addresses this by stating:

Members shall regard the lawful seizure of a secured asset as a serious enforcement option, to be taken only when attempts have failed with the consumer to mutually agree a realistic and sustainable arrangement to clear arrears.<sup>14</sup>

- 20 The CCTA code also requires that members “ensure that any Debt Collection Agencies they employ shall be licensed under the Consumer Credit Act 1974”.<sup>15</sup> Lenders are required to monitor agencies to ensure that they comply with relevant codes of practice, though it is less clear how this applies when lenders use their own staff.

<sup>11</sup> Consumer Credit Act 1974 section 87 and 89, 1882 Act section 7A.

<sup>12</sup> Consumer Credit Trade Association, *Bills of sale for consumer lending regulated under the Consumer Credit Act 1974* para 4.8.9.

<sup>13</sup> Citizens Advice, *Evidence on bills of sale consumer lending* (February 2014) pages 3 to 4

<sup>14</sup> Consumer Credit Trade Association, *Bills of sale for consumer lending regulated under the Consumer Credit Act 1974* para 4.8.7.

<sup>15</sup> Above at para 6.1

**Question 2:** We welcome comments on the enforcement process

Q2.1 How often do lenders take possession of vehicles?

Q2.2: What protections do lenders provide?

Q2.3: Who do lenders use as enforcement officers? How does the appropriate monitoring take place?

Q2.4: How often do lenders receive court challenges following repossession?

Q2.4: Are there reasons why lenders should not be required to seek a court order before seizing vehicles?

**Purchasers**

- 21 A bill of sale in the standard form has the effect of transferring title to the lender for as long as the debt remains owing. Borrowers no longer own their car, so if they then try to sell the car on to a third party, they cannot give good title to the purchaser. This may result in lenders repossessing cars from third parties who have no knowledge of the prior dealings between the lender and the borrower.
- 22 The CCTA Code of Practice states that title shall transfer to the innocent purchaser if the member failed to register their interest in the vehicle with an asset finance register within 24 hours.<sup>16</sup> This does not alter the legal position, but may provide some practical comfort to purchasers.
- 23 In February 2014, Citizens Advice called for greater legal protections for innocent third party purchasers who buy a vehicle in good faith and without knowledge of the loan.<sup>17</sup>

**Question 3:** We welcome comments on protections for innocent purchasers

Q3.1: In practice, how easy is it for a purchaser to discover a bill of sale?

Q3.2: What protections do lenders provide?

Q3.3 Are further protections necessary?

<sup>16</sup> Consumer Credit Trade Association, *Bills of sale for consumer lending regulated under the Consumer Credit Act 1974* para 5.1

<sup>17</sup> Citizens Advice, *Evidence on bills of sale consumer lending* (February 2014) pages 6 to 8

### **Log book loans to purchase cars**

- 24 Sometimes, bills of sale are used as an alternative to hire purchase to purchase goods on credit. Several protections familiar to consumers under a hire purchase agreement do not apply if goods are acquired using a bill of sale. Under a hire purchase agreement, the borrower can end the loan agreement at any time by handing back the goods and paying 50% of the initial debt.<sup>18</sup> These “voluntary termination rights” are not available if goods are acquired using a bill of sale. Also, as we have seen, there is no parallel requirement to obtain a court order before repossessing goods once a third of their price has been paid.

**Question 4:** We welcome comments on the use of bills of sale to finance purchases.

Q4.1: How common is bills of sale lending as a means of financing purchases?

Q4.2: Why are log book loans used for this purpose, rather than hire purchase?

Q4.3: Do reasons exist for the differences in protection between a hire purchase agreement and a bill of sale used to acquire goods?

### **BILLS OF SALE ON GOODS OTHER THAN CARS**

- 25 The log book loan is just one example of a security bill of sale. The Acts apply to all “personal chattels”, so that borrowers may offer any goods they own as security for a loan.
- 26 A search of 2,200 bills of sale in the High Court registry revealed 11 bills on property other than cars, suggesting that there may be around 250 non-car bills of sale each year. Six of the bills we found were on wine. The others were one each on: a mobile home; art and antiques; hotel furniture and fittings; a vintage steam engine; and cows.
- 27 The value of these loans was typically much greater than for log book loans, with several exceeding £100,000. Some were clearly used for business lending, while other bills were granted by individuals guaranteeing the debts of their businesses.
- 28 The Bills of Sale legislation may impose constraints on using goods as security in this way. First, it may be difficult to fully describe the property. Secondly, the time and amount of the repayments is required to be fixed in advance, which may cause difficulties where an individual guarantees a company debt.

<sup>18</sup> Consumer Credit Act 1974 sections 99 and 100.



- 29 There are alternative ways of raising finance on goods. A business may be able to enter into an arrangement with a financier whereby it sells assets to the financier in return for an advance, and leases them back on payment of “rent”. The law in this area appears uncertain. A sale and leaseback will normally be upheld where it represents the true intention of the parties, but may risk being recharacterised as an unregistered bill of sale if it is a “sham” which mask the true nature of the agreement.<sup>19</sup>

**Question 5:** We welcome evidence from those who involved in negotiating bills of sale over goods other than cars.

Q5.1: Do the Bills of Sale Acts cause practical problems?

Q 5.2: How does the use of bills of sale compare with other ways to take security on goods? What are the respective benefits and problems of each?

### **ASSIGNMENTS OF RECEIVABLES REGISTERED AS BILLS OF SALE**

- 30 A business may also raise funds by selling the debts owed to it to a financier. There are specific registration requirements relating to this form of “receivables” financing. Section 344 of the Insolvency Act 1986 states that a general assignment of an individual’s existing or future book debts is void against the trustee in bankruptcy as regards book debts which were not paid before the presentation of the bankruptcy petition, unless the assignment has been registered as an “absolute” bill under the Bills of Sale Act 1878.
- 31 The costs associated with complying with section 344 appear significant. In particular this form of bill must be witnessed by a solicitor after explaining the effect of the transaction to the borrower.
- 32 So far, our search of the bills of sale register has not found any bills which relate to receivables.

**Question 6:** We welcome evidence from those involved in receivables financing.

Q6.1: How common is receivables financing for sole traders and partnerships?

Q6.2: Do consultees register general assignments? If not, why not? In particular, are transactions structured to avoid the costs of registration?

<sup>19</sup> See, for example, *Yorkshire Railway Wagon Company v MacClure* (1882) LR 21 Ch D 309 on the one hand, and *Polsky v S and A Services* [1951] 1 All ER 185; affirmed [1951] 1 All ER 102 on the other.

## **OTHER USES OF BILLS OF SALE**

- 33 The Bills of Sale Acts distinguish between bills of sale given to secure payment of a monetary obligation, which are known as security bills; and bills of sale given for other purposes, which are known as absolute bills. It appears that the vast majority of bills of sale are security bills; the uses of bills of sale over goods discussed above are all examples of security bills of sale. An assignment of receivables by an unincorporated trader is registered as if it were an absolute bill.

**Question 7:** We welcome evidence from those who use bills of sale in other ways.

Q7.1: Are there any other uses of bills of sale which are not covered in this Call for Evidence?

Q7.2: Apart from registering general assignments of receivables, do consultees use absolute bills for any other reason?