

GUIDE TO THE RECOVERY OF PROPERTY, LAND AND MONEY FOR LOCAL AUTHORITIES



**HIGH COURT
ENFORCEMENT
GROUP®**

Version 1.2 May 2024

Disclaimer: Please note that this guide does not constitute legal advice. The author has used his best endeavours to make this guide as accurate and complete as possible, but requests that the reader be aware that the law of England and Wales frequently changes. The author strongly advises the reader to take legal advice before embarking on any enforcement action.

A guide to the recovery of property, land and money for local authorities

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Introduction

This guide has been prepared for use by local authorities (LA), covering the recovery of land, property and debt by an authorised High Court Enforcement Officer (HCEO).

It is written with both in-house legal teams and department managers in mind. If you have any questions not covered in this guide, please do not hesitate to contact us on 08450 999 666.

There are five areas covered in this guide:

- Traveller and trespasser removal – covering both Common Law evictions (Halsburys) and those under a High Court writ of possession
- Recovery of sundry debt by an HCEO – supporting local authorities with the enforcement of judgments, for all debts above £600 and not covered by a consumer credit agreement, under a High Court writ of control
- CRAR – commercial rent arrears recovery enabling locally authorities to recover rent arrears from tenants in LA owned commercial property
- Forfeiture – where the local authority wishes to end the lease and remove tenants from LA owned commercial property due to non-payment of rent arrears
- Eviction of residential tenants by an HCEO – when the local authority needs to remove tenants from LA owned residential property and needs to do so quickly and efficiently, particularly if there are delays with local County Court Bailiffs

To find out more

If you would like to know more or instruct High Court Enforcement Group on a matter, please contact us on **08450 999 666**.

You can also find out more on our website: <https://hcegroup.co.uk>

Recovery of business restitution claims

During the Covid-19 pandemic, one Government initiative was to support businesses by providing grants based on rateable value.

As a consequence of these grants, it is now emerging that some businesses have been provided grants they were not entitled to and local authorities are obligated to recover this money.

Restitution claim

When a business does not repay the money due on demand, local authorities can recover payment by way of a simple restitution claim.

Some local authorities are already pursuing unjust payments using the restitution process through the County Courts and obtaining a judgment (CCJ) against the debtor.

This is demonstrating that local authorities are dealing with the recovery of these debts robustly.

Quick and efficient recovery

As this is dealt with as a civil matter and we have a well-established process, we can assist you in recovering these types of debts.

We are already dealing with these types of cases for several other local authorities, undertaking the court transfer process from CCJ to High Court writ, removing the need for your staff to spend any time on the transfer process.

The enforcement process

Once the local authority has processed the claim through the County Court and received the order for restitution, you simply send us a copy of this, and we will transfer the matter to the High Court for enforcement.

Once the High Court writ has been issued, we will send the notice of enforcement to the debtor. This stage will see a high receipt of payments.

For debtors who do not pay or refuse to pay, we will instruct one of our (PAYE) salaried enforcement agents to visit the debtor and enforce the writ for payment in full or to negotiate a payment plan which is agreeable to you.

Enforcement fees

There is a court fee to transfer the judgment to the High Court. This is recoverable, along with subsequent enforcement fees, from the debtor. Should enforcement not be successful, there is a compliance fee payable by the claimant. You can view the [court fees and enforcement fees](#) on our website.

Enforcement of landlord housing offences

In March 2017, through the Housing and Planning Act 2016 - Schedule 9, the Government introduced amendments to the Housing Act 2004, including the ability to apply a financial penalty as an alternative to prosecution.

Local authorities are now able to impose financial penalties, under Section 249a of the Housing Act 2004, on a person if satisfied beyond reasonable doubt that the person's conduct amounts to a relevant housing offence in respect of premises in England. These fall into five categories:

1. Section 30 (failure to comply with improvement notice)
2. Section 72 (licensing of HMOs) (houses in multiple occupation)
3. Section 95 (licensing of houses under Part 3)
4. Section 139(7) (failure to comply with overcrowding notice)
5. Section 234 (management regulations in respect of HMOs)

Generating a financial penalty

The amount of a financial penalty imposed under this section is to be determined by the local housing authority and can be up to £30,000. A local authority officer will generate a civil penalty, which is recovered as a debt and transferred into a money judgment. The debtor will be required to satisfy payment of the monetary value of the penalty.

Successfully recovering the debt

As this is a money judgment, we can assist you in recovering these types of debts. We are already dealing with these types of cases for other local authorities who have obtained their judgments, and we have the procedures in place to transfer these to enforcement, removing the need for your staff to undertake the transfer process.

The enforcement process

Once the local authority has processed this penalty through the County Court and obtained a money judgment, this needs to be sent to us. We will then transfer the debt up to the High Court for enforcement and obtain a writ of control. Once the High Court writ has been issued, we will send the notice of enforcement to the debtor.

For debtors who do not pay or refuse to pay, we will instruct one of our salaried enforcement agents to visit the debtor and enforce the writ for payment in full or to negotiate a payment plan.

Enforcement fees

There is a court fee to transfer the judgment to the High Court. This is recoverable, along with subsequent enforcement fees, from the debtor. Should enforcement not be successful, there is a compliance fee payable by the claimant.

Traveller and trespasser removal

“Persons unknown” may be removed from land either under Common Law or under a writ of possession. This is most commonly to remove travellers, trespassers, squatters or activists from their property.

Whilst obtaining a writ will take longer and may cost more than acting under Common Law; it does provide the landowner with more protection. Should the same trespassers, for example travellers, return, the HCEO can remove them again under a writ of restitution (a writ in support of another writ) without the need to restart the full court process.

Persons unknown in property must be removed under a writ or order of possession.

In this section we will cover the removal of travellers and trespassers under both Common Law and a writ of possession.

Evicting trespassers from land under Common Law

The main advantage of evicting under Common Law is that you can act straight away and do not need to go to court. However, we do find that, on some occasions, the Police can be reluctant to support the removal if it is done under Common Law and without a court order.

Eviction under Common Law is normally undertaken by Certificated Enforcement Agents (EA), previously known as Certificated Bailiffs.

The advantages of this are that the Certificated EAs will know the relevant law and procedure and will act within those laws. They will also know how to conduct a risk assessment and follow health and safety procedure before and during the eviction. Finally, they will have the necessary resources and manpower available to conduct the eviction.

Many HCEOs can act on your behalf under Common Law as all their enforcement agents must be certificated.

The process

The Certificated EA can be instructed by the landowner or their agent. The EA will serve eviction notices, giving a maximum timescale (often 24 hours) to vacate the site, returning when this is up to ensure the trespassers have left.

If they remain, the Certificated EA can remove them and their vehicles from the site using tow trucks if necessary. They will also remove animals from site, where they are found, following the procedures set out in the relevant legislation.

You may need to have a clean-up team on stand-by to remove any detritus left behind.

Obtaining a writ and then choosing to act under Common Law

Landowners can obtain a court order and still choose to remove the trespassers under Common Law. Halsbury's Laws of England (Paragraph 1400, Volume 45, 4th Edition) state that:

"If a trespasser peaceably enters or is on land, the person who is in or entitled to possession may request him to leave, and if he refuses to leave, remove him from the land using no more force than is reasonably necessary. This right is not ousted if the person entitled to possession has succeeded in an action at law for possession but chooses not to sue out his Writ."

Removal under a writ - where to start proceedings

In the majority of cases, the claimant will be required to start the claim in the County Court. The claim can be issued in any County Court, rather than the Court in the same district as the property to be repossessed.

However, under exceptional circumstances, the claimant may be able to apply through the High Court. These circumstances include:

- Complicated disputes of fact
- Points of law of general importance
- A claim against trespassers where there is a substantial risk of public disturbance or serious harm to persons or property

Previous cases such as the removal of protestors in Parliament Square, the Dale Farm eviction and Occupy at St Paul's would most probably meet the third criterion. The value of the property is not, on its own, enough justification to start a claim in the High Court.

If a claim is wrongly started in the High Court, it may be struck out or transferred to the County Court. This will cause delays and extra costs, which will probably be unrecoverable.

Court process

There are two types of possession order against trespassers: general form of possession and interim possession proceedings.

The court process is largely the same except the interim possession order (IPO) is in two stages – an interim possession order, then a final possession order. You must apply for both and a final order for possession will normally be made at a hearing shortly after the interim possession order has been made.

You can apply for an interim possession order if the squatters are occupying, without your consent, a building, a part of a building, or the land next to a building. It does not cover open land.

You also have to have an immediate right to possession of the premises being occupied (and have had that right for the whole time the premises were illegally occupied), and you need to make your claim for possession within 28 days of the date on which you first knew your premises were being occupied without your consent.

You can still apply for the possession order, even if you do not know the squatters' names – you can refer to the defendant as 'Persons unknown'.

Serving notice of the interim order or notice of hearing

When the court issues your application for an interim possession order, you must serve the documents to the squatters within 24 hours by putting a copy on the door of the premises and putting them through the letterbox in a sealed, transparent envelope addressed to 'the occupiers'. The same process applies when issuing a general form of possession and normal service applies between serving the notice of hearing and the actual hearing date.

Once you get your interim possession order and date for the hearing for a final possession order, you must serve it within 48 hours (in the same way you served the notice of application). The squatters can plead their case at the hearing, but if your claim is upheld, you will be awarded an order for possession, which instructs the squatters to leave. The trespassers can be removed 24 hours after the final order is served.

The main advantage of the IPO is the penal notice attached that in theory can be enforced by the local constabulary; however, the general form of possession is far swifter and a writ can normally be obtained within 3-7 days of serving the claim pack, whereas an IPO would typically take 14-28 days.

Transfer up procedure

If the squatters do not leave of their own volition once the County Court possession order has been awarded, the order can be transferred to the High Court (using form N293A) for enforcement by an HCEO under a writ of possession. Leave from the court is NOT required to transfer to the High Court.

Your HCEO will normally manage the transfer up process on your behalf.

- You must have a final order for possession, not an interim order
- Apply for the transfer using Form N293A – most HCEOs will manage the transfer up process on your behalf for no fee
- Send payment for the court fee, payable to HMCTS
- The writ of possession is then applied for by the HCEO on your behalf, using Form 66 which is sent to the High Court of District Registry for sealing

Where the possession order was awarded in the High Court, this will be enforced by an HCEO under a writ of possession without the need to transfer up. Form PF86a should be sealed in the High Court when applying for Writ No. 66.

Giving notice of eviction

There is no requirement for the HCEO to give notice of eviction. The trespassers will have already been served notice of the interim or general possession order. In the case of activists and protesters, the element of surprise will normally be useful to prevent lock-ons, barricades and booby traps.

Types of writ

Writ of possession

The writ of possession is issued by the High Court after a judgment or order for possession of either property or land against “persons unknown” has been awarded and transferred to the High Court for enforcement using an HCEO.

If the judgment or order is issued in the High Court, then it must be enforced by an HCEO and may be against persons known or unknown.

Writ of restitution

The other relevant High Court writ is the writ of restitution. This is used if, after the successful eviction of trespassers from commercial property or land under a writ of possession, the same trespassers re-enter that property or land again. This writ will allow the HCEO to again enforce and remove the trespassers accordingly.

Court fee

The court fee to obtain a writ of possession or a writ of restitution. Please check our website for [current court fees for these and other writs](#).

Eviction from property under a writ of possession

The HCEO will plan the eviction in advance, including a health & safety and risk assessment, meetings with the Police, where appropriate, and putting specialist method of entry teams on standby if the risk assessment indicated they might be needed (this is more common when the trespassers are activists and protesters).

A skilled locksmith will normally be used to gain access quietly to maintain the element of surprise, although forced entry is sometimes the only option.

Once inside, the HCEO eviction team will remove all occupants from the property. At HCE Group we will give them reasonable time to pack all their belongings, but if anything is left behind, we will issue a torts notice concerning the disposal of abandoned goods.

The HCEO will ensure that the eviction team has removed all squatters from the property. If just one person is left hiding inside, they can wait until everyone has left, then simply let the other squatters back in. Specialist HCEO eviction teams know where people can hide and are skilled at finding and removing everyone from the building.

Once the eviction is completed, the writ of possession will need to be signed by the property owner, their agent or their solicitor to confirm that the repossession is complete and the property has been handed back to the owner.

Once the writ is signed off, the eviction team is not permitted to re-enter to remove anyone else from the property without a new writ of possession (or writ of restitution). Another good reason for checking all the squatters have been removed.

The property owner or their agent will probably need to have a clean-up team on hand. There is every chance there will be rubbish and detritus everywhere, graffiti on walls and damage to the building.

Eviction from land under a writ of possession

Although landowners have the right to remove trespassers under Common Law, there are a number of reasons why you might want to consider evicting under a writ of possession:

- The writ provides landowners with greater protection than they would have under Common Law
- Notice of the date and time of eviction do not have to be given
- Whilst the Police have a duty to prevent a breach of the peace, they may be more supportive of your efforts to remove trespassers if you have a writ
- If the same trespassers return, you can remove them under a writ of restitution, without needing to restart the court process
- You can combine the writ of possession with a writ of control

If you had originally given permission for occupation of the land in exchange for payment of rent, should the occupants default on the rent, you may obtain a second judgment for the outstanding rent and then combine the writ of possession with a writ of control, which allows the HCEO to take control of assets to sell to recover the outstanding rent at the same time as the eviction.

In this case, the judgment must identify the individuals by name; it cannot be left as “persons unknown”.

The HCEO may take control of goods and chattels, including cars and caravans, as long as the caravan can be moved. This includes caravans that have been linked up to an electricity supply.

If squatters return

Once squatters have been successfully removed and possession is given back to the rightful owner, we advise our clients to keep a security team in place to guard the property and prevent squatters from re-entering, be they the same people as before or a new group. This is especially important in the 48 hours immediately after eviction as this is the most common time for re-entry to be attempted.

If, for whatever reason, the same squatters do re-enter the premises, the best method of removing them, assuming they were evicted in the first place using a writ of possession, is via a writ of restitution.

If trespassers and squatters return to premises post-eviction, they cannot be removed again under the original writ of possession, as this may only be executed once.

Once the original writ of possession is signed off it cannot be re-executed, but fortunately the process of obtaining a writ of restitution is quite fast and straightforward. In effect, the writ of restitution is a writ in support of another writ that has been previously executed.

Once it has been issued by the Master (the HCEO will normally take care of arranging this), then it is executed in the same way as was the original writ of possession.

If the trespassers are not the same people, then a new writ of possession will be required.

Health and safety when planning evictions

Health and safety planning is important when preparing for an eviction, whether for smaller or large-scale evictions, but particularly so for large evictions and where there are activists and protesters.

There are the key elements that go into planning the health and safety aspect of evictions by a High Court Enforcement Officer (HCEO) under a writ of possession.

Legislation

Three key relevant pieces of legislation relating to the enforcement of a writ of possession are:

- Health and Safety at Work Act 1974 (HASAW)
- Human Rights Act 1988 (HRA)
- Courts Act 2003 – section 99 covers the right of the HCEO to request Police support and section 189 makes it an offence to obstruct an enforcement agent executing a High Court writ

The safety of the public is to be considered a paramount objective. Unlawful, reckless or careless actions may render those responsible individually liable to criminal and/or civil action. Every care must be taken to ensure that members of the public are not placed at risk of injury or damage by any action or circumstance arising from the execution of the writ of possession.

Hazards

The following issues should be considered when looking at potential hazards:

- Hazardous substances and/or processes undertaken on the premises
- Electricity and gas supplies conveyed via pipes or portable cylinders
- Biohazards and physical hazards arising from the presence of persons/ animals on site

- Chemical hazards or water contamination by hazardous substances
- Hazards arising from the physical situation of the site, or from extreme weather conditions

Resistance

There are also risks associated with resistance to the eviction. As you might expect this is a not an uncommon occurrence! These include:

- Violence, whether from physical assault, with or without the use of weapons, or missiles, not to mention verbal abuse and threats
- Physical obstructions and fortified areas – people and devices
- Physical prevention of removal by people locking themselves onto structures or to machinery
- Using structures at height to resist removal
- Using confined and fortified spaces to resist removal

These all pose potential risks to the enforcement agents, Police officers, the squatters themselves, and also to the general public. This risk is likely to be increased if the squatters are under the influence of drugs and/or alcohol at the time of the eviction.

Human rights

The HCEO should consider, document and manage the human rights issues that are affected or are likely to be affected by the execution of the writ of possession, endeavour to negate any potential actionable causes arising from the conduct of the execution and ensure the integrity of their conduct during the execution of the writ of possession.

Key aspects to be taken into consideration include:

- The removal of the squatters' personal effects from the site and arrangements for them to be collected by their owner if necessary
- Protecting the personal property of persons not party to the writ of possession
- Safety of members of the public, the enforcement agents and persons in and around the premises
- Freedom to carry out business and daily life of members of the public

Any action that the HCEO and his/her team undertake must be proportionate, lawful, properly authorised and necessary to the execution of the writ. Where possible, the HCEO should try to reach a negotiated agreement to leave the site first.

Training

Proper training is essential. We train our enforcement agents working on evictions to deal with everything that nature or the occupants might present them with, from asbestos contamination, through livestock to waterborne operations!

Operational plan

All the above points – and many more – will form part of the highly detailed operational plan, which will include some or all of the following:

- Risk assessments and site visits prior to the eviction
- Communications plan
- Operational plan and timetable
- Emergency plan
- Briefing of all persons engaged in the operation

It is a thorough, robust and comprehensive process – if you are speaking to an HCEO about an eviction, make sure they show you their planning processes and that they have fully trained EAs and everything in place to manage the eviction in a professional and appropriate manner.

Police support

Depending on the case, the Police may need to attend with the enforcement team, in which case they will be involved in the pre-eviction briefings. If it is unlikely they will be required, it is good practice to alert them to the eviction and have them on stand-by just in case their support is needed on the day.

The Department for Communities and Local Government (formerly The Office of the Deputy Prime Minister or ODPM) [Guidance on Managing Unauthorised Camping](#) (February 2004) advises that the Police should always be notified of an eviction and called in to stand by to prevent a breach of the peace, and that, if the Police advise that it is inappropriate to carry out an eviction, it should always be delayed until an agreed time.

A landowner who proceeds against Police advice might lay himself or herself open to a damages claim if the eviction then resulted in assault, injury or damage to person or property.

Under S61 of the Criminal Justice and Public Order Act 1994, the Police can, at their discretion, tell trespassers to leave land as long as reasonable steps have been taken by or on behalf of the landowner to ask them to leave and there are two or more people intending to reside on the land. Any one of three further conditions must be met:

- If any of those persons has caused damage to the land or to property on the land; or
- Used threatening, abusive or insulting words or behaviour towards the occupier, a member of their family or an employee or agent of his; or
- Those persons have between them six or more vehicles on the land

Recovery of sundry debt by an HCEO

The transfer up process - County Court judgments

When a CCJ is issued, we would recommend that the creditor transfer it up to the High Court for enforcement by an HCEO.

When the judgment is transferred up to the High Court, a writ is issued. Most judgments are for a monetary sum and if that figure is over £600 (including court costs) a writ of control (previously known as a writ of fieri facias or fi fa for short) can be sought. This writ is comparable to a warrant of execution and commands the HCEO to take control of goods from the debtor for sale to raise sufficient funds to recover the debt. Judgments over £5,000 can only be enforced by an HCEO.

This applies to the vast majority of judgments, with the exception of a judgment arising from a regulated agreement under the Consumer Credit Act. Currently, these may not be transferred to the High Court for enforcement by an HCEO.

The transfer process is started with the completion of Part 1 and Part 3 of [Form N293A](#). During this process, you will need to provide the judgment details and a copy of the sealed judgment or order. The form should be signed by the creditor or their solicitor.

At HCE Group, we have an internal department who manage the transfer up process, ensuring the process is completed correctly and they will sign the form on your behalf where required.

This completed form is then submitted to the court. Providing everything is in order and the judgment still stands, then the court will seal Part 2 of the Form N293A, authorising the transfer to the High Court for the purposes of enforcement. However, it remains a County Court judgment.

Once the Form N293A has been sealed, it is returned and can then be submitted to the High Court or a local District Registry (a High Court section within many County Courts) with a completed form no.53 writ of control.

There is a court fee which must be paid at the same time the forms are submitted. The fee is paid to HMCTS (Her Majesty's Courts and Tribunals Services) and is non-refundable. However, the fee is added to the costs to be recovered from the debtor.

The High Court or District Registry will check the details of the forms and, providing everything is in order, will seal the writ of control accordingly. Once this is received by an HCEO they can immediately start the enforcement process against the debtor.

Please be aware that this entire process can take up to 28 days, depending on the speed of the issuing court. Some creditors often expedite matters by attending the court personally and having the Form N293A sealed while they wait. This could cut the entire process to just a matter of days.

Whilst some HCEOs charge for this service, HCE Group offers this entire process free of charge and aims to have the sealed writ back within just 2 to 3 days.

High Court judgments

These do not need to be transferred up for enforcement; however, you still need to request a writ by completing a PF86A form. Simply complete a PF86A form and send, along with a copy of the judgment and your letter of instruction to an HCEO and they will obtain the writ of control on your behalf and complete execution.

However, there is still a court fee for the issue of the writ of control, which is recoverable from the debtor, should enforcement be successful, and a compliance fee of £75 plus VAT per notice of enforcement served if unsuccessful. Fees quoted are correct at time of publication.

Fees associated with High Court Enforcement

Under the Taking Control of Goods (Fees) Regulations 2014, the enforcement process is set into four stages, with fees assigned to each stage.

HCEO fees are recovered in full from the judgment debtor when enforcement is successful. If enforcement is unsuccessful, as judgment creditor you only have to pay a compliance fee.

You do not pay any other costs associated with the enforcement of your writ. Please see below for further details.

The four enforcement stages

Compliance stage

Once the HCEO receives your instruction they will apply the fee for this stage which is £75 plus VAT. Upon receipt of the sealed writ of control, the HCEO will send a 'Notice of Enforcement' to the judgment debtor.

The notice of enforcement must be sent to the debtor personally, giving them 7 clear days (excluding Sundays and bank holidays) to pay the sums due in full, at the place, or one of the places, where the debtor usually lives or carries on a trade or business.

If the debtor is a company or partnership the notice must be sent to the place, or one of the places, where the debtor carries on a trade or business or the registered office. Delivery can be by post, fax or other electronic means such as email.

If the debtor pays in full – the judgment amount, interest, court fees and the £75 plus VAT enforcement fee for the compliance stage - after receiving the notice, the enforcement process is concluded.

Enforcement stage 1

If the debtor fails to make contact with the HCEO or requests to pay by instalments during the compliance stage, an enforcement agent (EA) will attend their premises to take control of goods (the new term replacing 'seizure').

This stage is known as Enforcement Stage 1 and the fixed charge at this point is £190 plus 7.5% of the sums to be recovered over £1,000, plus VAT. For example, if the outstanding debt was £3,000, the 7.5% would only be charged on £2,000. The sums to be recovered are the judgment debt, court costs and execution costs.

If, when the EA attends, the debtor pays in full immediately or agrees to an acceptable instalment arrangement, then the matter ends there.

Enforcement stage 2

If the debtor refuses either to make any payment or to enter into an acceptable instalment arrangement covered by a controlled goods agreement (the term replacing walking possession agreement), then the matter moves to Enforcement Stage 2.

If a payment arrangement, with a signed controlled goods agreement, is subsequently broken, the EA will re-attend the property either under Enforcement Stage 2 or the Sale or Disposal Stage dependent upon the circumstances so far.

The fee for Enforcement Stage 2 is a flat £495 plus VAT.

Sale or disposal stage

Should enforcement get to the point where goods actually need to be removed, the enforcement progresses to the Sale or Disposal Stage.

The fee for this stage is £525 plus 7.5% of the sums to be recovered over £1,000, plus VAT. The costs of removal are normally included in this sale stage fee.

However, if the HCEO anticipates exceptionally high removal costs far greater than the sale stage fee, for example specialist equipment and personnel, they can apply to the court to have these added to the amount payable by the debtor.

The only other fees chargeable (without application to court) are for disbursements such as locksmiths, storage and auctioneers' fees.

Court fees

There is a court fee for transferring a CCJ to the High Court for enforcement, which results in the award of the writ of control. If successful, this fee is recovered in full from the judgment debtor.

The only other court fee is the renewal fee, should you need to renew your writ of control beyond its initial 12 months' validity. A renewal fee may also be recovered from the debtor if enforcement is successful.

There are two types of renewal:

- Ex parte – at a cost of £100, where the application is dealt with without a hearing and notice of the application does not need to be served on the parties beforehand
- On notice – at a cost of £255, where it is heard at a hearing in a court and notice is served on all parties involved

Should you not wish to renew your writ and alternatively opt to apply for a new writ, there will be a court fee, costing less than renewal but you will lose order of priority.

The compliance fee

The compliance fee replaces the previous abortive execution fee and is an amendment to the current High Court Enforcement Officers Regulations 2004, SI 2004/400, reg 13 (3)(a).

Once the HCEO receives your instruction they will apply the fee for this stage which is currently £75 plus VAT. Upon receipt of the sealed writ of control, the HCEO will send a 'Notice of Enforcement' to the judgment debtor as part of the Compliance Stage.

This compliance fee is added to the sum recoverable from the debtor. In the event that no money is recovered, the compliance fee is then payable by the creditor to the HCEO to go some way to covering the costs the HCEO has incurred. If all or part of the debt is recovered, then the compliance fee is not charged. Enforcement may not be possible for a variety of reasons, including debtors in insolvency or those who have moved address.

If the EA attends to enforce the writ and the debtor has moved and a new address is found, a new notice of enforcement must be sent to that address.

This second notice of enforcement does not incur another £75 compliance stage fee.

The compliance fee is, like the court fees, something to be weighed up by the creditor when determining how likely it is their debtor will be able to pay and so assess what investment they will make in recovering the debt. There are also steps that creditors and their solicitors can take to increase the chances of a successful enforcement.

Other fees

Occasionally there may be the need for HCEOs to charge fees to the creditor. It is therefore the creditor's responsibility to inform the HCEOs of the following:

- Creditors should notify the appointed HCEO's office of all payments received and other contact with the debtor
- Creditors must not request the suspension of a writ or make direct payment arrangements with debtors without appropriate notification and payment of fees due to the HCEO

See *High Court Enforcement Officers Regulations 2004, SI 2004/400, reg 13(3)*

HCEO rights of entry

The powers of an HCEO are wide-ranging and effective for the enforcement of a writ of control.

Dates and times of enforcement

Enforcement agents are permitted to enforce 7 days a week, except for Bank Holidays and Christmas Day. The time of visit will take place between 06:00 and 21:00, unless the debtor is a commercial entity trading outside those hours, for example a night club.

Residential premises

The EA may enter where a door is open, opening further to aid entry if required. They may also use the door handle to gain access when the door is unlocked. Under the new regulations, they may no longer gain access via a window.

Once inside, they may also force entry through the inner doors of the property to seek the goods of the debtor. The EA may not be forcibly ejected; however, if they are, they can now force re-entry back into the property.

Furthermore, they may force entry to a garage, outhouse, stables or barn providing it is not physically attached to, and form any part of, the residence.

Commercial premises

The EA can force entry to commercial premises to levy on a first visit or any subsequent visit to remove goods, providing the property is not physically attached to, and form any part of, a residential dwelling, although an application to the court for permission may be advisable.

Prior to forcing entry, the enforcement agent should have a genuine reason to believe that goods of the debtor are contained within. They should make reasonable enquiries as to whether the property is rented, contacting the landlord if necessary.

Controlled goods agreement

If the debtor has signed a controlled goods agreement (previously known as a 'walking possession agreement'), then entry may be forced by the EA to remove the controlled goods should payment not be made within the timescales specified under Enforcement Stage 2. See below for further details.

Registered offices

Given the requirement to serve a notice of enforcement for each address where enforcement is to take place, we suggest that the creditor either checks this themselves before the notice is served, or that they instruct their HCEO to run a trace on the debtor.

This is because registered offices, particularly for smaller businesses, are often the premises of their accountant and it is unlikely that goods of the debtor will be found here.

If the registered office is the home of a director, then the EA is bound by the rights of entry as per residential premises above.

Director's home addresses

The enforcement agent may visit the home of a director of a limited liability company if it is either the registered address or the business trades from that address. However, they are bound by the rights of entry as per residential premises above.

Third party premises

The writ of control allows the enforcement agent to enforce at an address where if the debtor is an individual, they reside or carry on a trade of business. Where the debtor is a business the EA may attend their registered office or any trading addresses. The EA cannot enter the premises of a third party (where the debtor does not reside or trade) without the permission of the court.

Exempt addresses

The enforcement agent may not levy execution at royal residences and diplomatic premises. However, it is worth checking the property details thoroughly. For example, many palaces are not deemed "royal residences".

Which goods may be taken into control?

The writ of control commands the HCEO to take into control the goods of the debtor in order to sell (normally at auction) and raise the money to clear the debt. This however is a "means to an end" and in reality goods are rarely removed, as this very action prompts the debtor to make the payment that is due: less than 1% of our cases in the last 12 months have resulted in removal of goods.

The enforcement agent can take into control a wide range of goods within the debtor's premises or on the highway, including but not limited to:

- Vehicles, boats and aeroplanes
- Stock and machinery
- Household furniture
- Jewellery and art
- Money, bank notes and promissory notes (cheques)
- Bonds, shares, securities and deeds
- Livestock and animals
- Firearms
- Jointly owned property (e.g. goods owned by a married couple)
- Items held by the police
- Goods on finance (providing that the sale is agreed by the finance company)

Certain items cannot be taken into control, such as:

- Bedding, clothing, furniture and provisions that the debtor and their family need for a basic level of domestic life
- Items reasonably required for the care of a person under 18, a disabled person or an older person (over 65)
- Perishable goods: refrigerated foodstuffs, fresh flowers etc.
- Vehicles with a valid disabled person's badge, vehicles used for police, fire or ambulance purposes or a vehicle with a valid British Medical Association badge or other health emergency badge because it is being used for health emergency purposes
- Assistance dogs, sheep dogs, guard dogs and domestic pets
- Tools of the trade: those needed by the debtor to do their job or run their business, for example tools, books, vehicles etc., but only to a value of £1,350

However, these goods must be used solely by the debtor for the purposes of his or her work to fall under "tools of the trade". For example, a commercial van that is also used by the debtor's work colleague or spouse is available for seizure.

"Tools of the trade" cannot be claimed by partnerships or limited companies.

However, the enforcement agent may take luxury goods or items of value that are needed for basic domestic life and replace them with similar goods of a lower value. This form of enforcement whereby removal *and* replacement takes place is extremely unusual.

Having taken goods into control, the EA will provide the debtor with a written valuation of the goods. The EA may take control of goods to the value of the sum outstanding and an amount in respect of future costs. He or she may take goods of a higher value if there are insufficient goods of a lower value. The EA may then either

- Secure the goods on the premises
- Secure the goods on the highway
- Remove and secure them elsewhere
- Enter into a controlled goods agreement

Goods may be secured on the premises by locking them in a cupboard, room, garage or outbuilding, fitting an immobilisation device or, in the case of commercial premises, either remaining on site or securing the entire premises.

Vehicles must be immobilised to secure them, unless the debtor gives the enforcement agent the keys. At the time of immobilising the vehicle, the EA will give the debtor a Notice of Immobilisation. Unless the debt is paid in full or a part payment is agreed, after two hours the EA can remove the vehicle and put it into storage.

If goods are not removed, the debtor is asked to sign a statement known as a controlled goods agreement, confirming that neither they nor anyone else will remove or damage the goods and that they will let the enforcement agent re-enter the premises at any time to inspect or remove the goods. Again, in reality, it is payment that is sought.

If it is claimed that some of the items belong to a third party, then they must make a written claim to the HCEO. Proceedings may follow to ascertain the ownership of the goods.

If the debt is not paid in an agreed timescale, the enforcement agent will remove and sell the goods, taking their lawful fees, costs and charges from the money raised and the balance is given to the creditor. If there is any money left over from the sale after this, this is returned to the debtor.

If the goods sold do not cover the total sums now due, the enforcement agent may return to the debtor's property (and any others that may contain their assets) to seek further goods to take control of and sell accordingly. Normally two clear days' notice of a return visit is required, although this can be shortened with the court's permission if there is a reasonable concern that the goods may be disposed of or removed.

An example in one case is when the enforcement agent returned 9 months after the sale of a debtor's vehicle to find he had replaced it with another. Again, the debtor refused payment so this vehicle was also taken control of, removed and sold, clearing the debt in full.

There is one other area where goods cannot be taken into control, but we don't come across it too often – works of art on loan from other countries to UK galleries and museums are immune from seizure.

Controlled goods agreement

When executing a writ, the enforcement agent will take into control goods for later sale to recover the debt if the debtor is unwilling or unable to pay. However, the EA does not need to physically remove the goods there and then.

When leaving the goods at the premises, the EA provides a controlled goods agreement. This document states that he/she has taken control of the goods and that the goods will remain in their custody until the debt and all costs have been paid. The debtor may not sell or remove the goods, nor may they let anyone else do so, including other enforcement agents.

The signed controlled goods agreement permits the enforcement agent to re-enter at any time and as often as they need to inspect and/or remove the goods. The agreement allows the EA to re-enter by force if necessary.

Once the controlled goods agreement is signed, the EA will leave a copy with the debtor. The debtor cannot now sell or dispose of the goods, and if they do, the enforcement agent can recover them from the purchaser, even if the purchaser did not know the goods had been taken into control.

It is a criminal offence for the debtor to intentionally interfere with goods taken into control under Paragraph 68(2) of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007. If found guilty, the debtor will be liable for a prison sentence of up to 51 weeks, and/or a Level 4 fine (currently £2,500).

Further, any party guilty of removing, hiding or selling goods taken into control could also have Contempt of Court proceedings brought against them. In an unreported case in 2012, a judgment debtor who sold goods ordered to be returned to a creditor received a sentence of 28 days in prison. This would be a separate civil action (by the HCEO or judgment creditor) and would not involve the police until after conviction.

Who can sign a controlled goods agreement?

In most cases the controlled goods agreement will be signed by the judgment debtor but if the judgment debtor is unavailable, it may be signed by any responsible adult at the premises.

When the debtor refuses to sign

If the debtor refuses to sign the controlled goods agreement, then the enforcement agent will most likely escalate the enforcement stages to remove the goods there and then to safeguard them and ultimately sell them if payment is not made.

Payment by instalments

If the creditor and debtor reach an agreement on an instalment payment plan, then the goods remain under control under the controlled goods agreement until the debt and costs are paid in full. Once paid in full, the ownership of the goods returns to the debtor. If, however, the debtor falls behind in the instalments, the creditor can decide to have the goods covered by the controlled goods agreement removed and sold by moving to Enforcement Stage 2.

Third party ownership

If the enforcement agent takes into control goods that do not belong to the debtor or are under a hire purchase agreement, then the third party needs to provide evidence of this to reclaim them. This should be made in accordance with CPR Part 85 and may result in proceedings at the High Court where a Master will determine the claim to the goods.

Selling goods taken into control

Normally the threat of losing their goods is enough to encourage a debtor to pay and we rarely have to take the next step of removing, then selling the goods to raise enough to clear the debts and fees. But, when we do need to sell goods, HCEOs can arrange for this to be done by public auction, by private treaty, by sealed bids or by advertisement.

The debtor must be given 7 clear days' notice of the intended sale. However, permission can be sought from the court to hold the sale the day after removal if the goods would become unsaleable or lose most/all of their value by waiting for the notice period, but this is rare.

If the goods are sold at public auction, they must be sold by a qualified auctioneer. If they are sold through an online auction, it must be by an independent auction company, for example eBay.co.uk or i-bidder.com.

The auctioneer will always try to get the best price for the goods, selling to the highest bidder on the day. However, as you may have experienced first-hand, the sums realised at auction are often much lower than their purchase price, as few items hold the value they had new.

In the case of vehicles, if the enforcement agent is unable to get the keys and documents (V5 and service history), the sale price really plummets. You can, of course, get new keys cut sometimes, but this adds significantly to the cost charged by the auctioneer, usually around £250, depending on the vehicle.

There has also been a significant decline in the value of household goods, especially electrical items. Televisions and computers bought several years ago fetch very little these days, as brand-new products can be bought at relatively low cost.

The court may also allow for the goods taken into control to be sold privately rather than at public auction if it can be demonstrated that a higher price is likely to be obtained. This is called private contract. This is usually the best option for goods that are quite specialist or where there is already an interested party.

The HCEO fees for the Sale or Disposal stage are £525 plus 7.5% of the sums to be recovered over £1,000, plus VAT. The costs of removal are normally absorbed in this sale stage fee.

However, if the HCEO anticipates exceptionally high removal costs far greater than the sale stage fee, for example specialist equipment and personnel to remove an aircraft, they can apply to the court to have these added to the amount payable by the debtor.

The only other fees chargeable (without application to court) are for disbursements such as locksmiths, storage and auctioneer's fees. Auctioneer's fees are set at 15% for an auction at their premises, 7.5% for an online auction, plus out of pocket expenses such as listing and advertising fees.

Third party claims

The process of validating third party claims, or interpleader, was also changed with the introduction of the Taking Control of Goods Regulations 2013 Part 6, and specifically the Civil Procedure Rules Part 85 (CPR).

These new CPR define a clear and detailed process to be used by all EAs, whether enforcing High Court writs, council tax, business rates, parking fines, HMCTS fines or commercial rent arrears (CRAR).

Written notice

The new rules now require a third party to make their claim to the EA in writing (not verbally) within seven days of the EA attending and taking control of goods. The written notice must provide the name and address of the third party, a detailed list of the goods they specifically claim and the grounds for the claim for each item.

The EA, or their office, must then forward the notice of claim to the creditor within three days. The creditor has seven days to let the EA know whether they agree with the third party's claim, or whether they dispute it. If the creditor agrees that the third party owns the goods, then they are released from control. The creditor is only liable to pay for the fees and expenses incurred by the EA before the notice was received.

If the creditor fails to respond within seven days, then the EA may apply to the court to issue a third-party claim. In these circumstances, all parties will come to court so that rightful ownership can be determined by the Judge or Master.

Where the creditor gives notice to the EA that they dispute the third party claim the EA must, within three days of that notice, inform the claimant to controlled goods that their claim is disputed.

Application to court

The third party/claimant to controlled goods must then make an application to court, which must be supported by a witness statement setting out the basis for their claim, describing the specific goods claimed and exhibiting any evidence to support their claim in respect of each item claimed (purchase receipts, bank statements etc.).

When making the application the third party/claimant to controlled goods must make a payment into court to the value of the goods that are claimed. This has been somewhat controversial, but the third party is permitted to seek further directions at court for leave to pay only a proportion of the value of the goods.

The hearing

Upon receipt of a third party claim a Judge or Master will list the case for a hearing when directions for the progression of the case will be given. At the hearing they will decide, based on the evidence submitted, whether the claim is genuine. Costs may be awarded against the losing party in such a matter.

Further enforcement action

It is important to remember that during this process, the EA can continue action against the debtor and take control of other goods that are not subject to the claim.

Impact of Coronavirus related legislation on CRAR and forfeiture of lease

In March 2020, the Government introduced a moratorium on commercial landlord sanctions, which was initially due to end on 30th June 2020. This was then extended to 30th September and, on 9th December, it was further extended to 31st March 2021.

On 9th December 2020, the Government announcement did state that this will be the final extension of the moratorium. The moratorium covers:

- CRAR (commercial rent arrears recovery)
- Forfeiture of lease
- Winding up petitions
- Statutory demands

Rent is still due to the landlord from the tenant during the moratorium. Once the moratorium is lifted, the landlord will be able to exercise forfeiture or recover rent arrears.

On 19th June, the Government passed the Taking Control of Goods and Certification of Enforcement Agents (Amendment) (No. 2) (Coronavirus) Regulations 2020.

CRAR

Pre-COVID, 7 days' of rental arrears were required before acting under CRAR.

Under these Coronavirus regulations, with effect from 25th December 2020, there must be a minimum of 366 days' unpaid rent in order to serve notice for CRAR.

If you have tenants who do already have this level of rent arrears, you CAN serve notice and enforce under CRAR.

We do not know at this stage when (or if) the arrears requirement will be reduced back to 7 days.

Forfeiture

Under the moratorium, landlords are not currently permitted to forfeit the lease. Once it is lifted, landlords will be able to forfeit if the tenant is in breach of the lease.

The current expectation is that the moratorium will be lifted at the end of March 2021.

Legislation updates

You can check out the most up-to-date legislation updates on our website at:

<https://hcegroup.co.uk/resources/enforcement-legislation-updates>

CRAR

CRAR – Commercial Rent Arrears Recovery – allows landlords of commercial property to instruct a certificated enforcement agent to enter the premises and take control of goods belonging to the tenant to sell at auction to pay rent arrears.

A court order is not required and so it is a very fast and efficient process. The landlord **MUST** use a certificated enforcement agent and is not permitted to enforce CRAR themselves.

When CRAR can be used

Under CRAR:

- There must be a written lease in place with the tenant in occupation, or a written assignment of the lease to the occupier
- It may only be used for commercial premises, and may not be used for mixed use premises unless the lease completely separates the rent payable for the commercial and residential premises
- Only rent, interest and VAT may be recovered, nothing else
- The rent must be at least 7 days overdue
- 7 days' notice of the intention to exercise CRAR must be served, excluding Sundays and bank holidays. The certificated enforcement agent will prepare and serve the notice
- CRAR may only be enforced by a certificated enforcement agent

There must be a written lease in place to use CRAR. Any contract or lease that seeks to amend or avoid the CRAR provisions will be void.

CRAR may only be used for commercial premises. Some premises, for example pubs or shops, also have residential accommodation. Provided that the residential part has a separate entrance and a separate lease, then CRAR may be used to recover the rent arrears on the commercial lease.

If they are not separate, they will be deemed mixed use premises and CRAR may not be used, unless the lease clearly shows and separates the rent payable for the commercial and residential aspects. In this instance, the certificated enforcement agent may only attempt enforcement for the rent owed by the commercial unit.

CRAR only applies to the actual rent (and any interest and VAT) payable under the lease on leased premises. If you wish to recover items such as service or maintenance charges under the banner of rent in the lease, you will need to obtain a county court judgment, and have this enforced if it remains unpaid.

It must be possible to calculate the rent due with certainty and it must be for a minimum amount. This is called the “net unpaid rent” and is what is owed once interest, VAT and any permitted deductions are made. These are deductions, recoupment or set-off that a tenant would be entitled to claim if the landlord takes rent arrears action.

If you want to use CRAR, you will first instruct a certificated enforcement agent, who will then have to give the tenant 7 clear days' notice of enforcement after the rent is due. The rent must still be unpaid at the time the notice is served, as well as immediately before any goods are taken control of. Once notice has been served, the tenant may apply to court for a set aside or delay of execution.

The process

You instruct the certificated enforcement agent (EA) to attend the premises and take control of goods belonging to the tenant.

The EAs must give the tenant at least 7 days' notice (excluding Sundays and bank holidays) that they are exercising their right to use CRAR after the rent becomes overdue. The rent must still be unpaid at the time the notice is served, as well as immediately before taking control of goods.

The notice must be served, either by post, hand, fax or electronic communications such as email. Notice will be valid for 12 months. Once served, the tenant may apply to court for a set aside or delay of execution.

On attending, the EA must show the tenant his/her certificate and leave a memorandum detailing the inventory of what they have taken control of and the associated authorised fees, charges and expenses.

As with the vast majority of enforcement cases, we find at HCE Group that the mere attendance of the certificated enforcement agent is enough to persuade the tenant to pay all arrears.

Taking control of goods under CRAR

The EA can enter the demised premises, through an open or unlocked door or other normal means. The EA will establish the route forward, which may involve a payment arrangement to taking control of goods belonging to the tenant (not to third parties) at the demised premises.

EAs can attend any day of the week between 06:00 and 21:00, or the tenant's normal business hours, if different. They are unable to attend during religious holidays.

If the tenant agrees to a payment by instalments plan, they will be required to sign a controlled goods agreement.

The EA may not take control of goods with a value greater than the rent owing plus the costs and they must give the tenant a valuation of the controlled goods.

Tools of the trade used exclusively by sole traders will be exempt, but only up to a value of £1,350. The EA may take control of tools of the trade that exceed that value, and they may also take control of goods claimed as tools of the trade, but which are used by other persons, or that belong to a partnership or limited company.

If the arrears are not paid and the controlled goods are sold at auction, the tenant must be given seven clear days' notice of the sale (excluding Sundays and bank holidays). Goods may only be sold at auction, unless permission is given by the court to use an alternative method.

Mixed use premises

Mixed use premises are those used for both residential and commercial use, such as pubs and retail premises with a flat above.

Under the former remedy of distress, the landlord was able to enter the commercial part of the premises and take control of assets to recover rent arrears.

In most cases you will not be able to exercise your right for CRAR where part of the property is used as a residence and the lease is deemed as mixed use. There are a small number of exceptions to this: for instance, CRAR may be undertaken where the lease clearly separates the rent payable for the commercial unit and the residential component.

Where the lease separates the rent payable, the EA will only be able to pursue the rent owed by the commercial unit. If the lease does not separate the rents payable, then court proceedings will be needed to obtain a judgment.

This leaves the commercial landlord of mixed use premises with rent arrears in the same position as residential landlords facing arrears. They will have to go to court to obtain a judgment, which will then need enforcing if it isn't paid.

Please see below for more on alternative methods of recovery.

However, there are some advantages to recovering rent arrears via a CCJ (county court judgment), namely:

- Assets belonging to the tenant that have been moved to their new premises may be taken control of (under CRAR the enforcement agent may only take control of the assets on the demised premises)
- You can also include unpaid service charges and other charges within your claim, which cannot be recovered under CRAR.
- If the CCJ is enforced by an HCEO, they can generally only force entry to commercial premises where a controlled goods agreement is in place

Other methods of commercial rent recovery

You may choose to obtain a judgment (CCJ) under the following circumstances:

- The tenant has already left and has no assets on the demised premises
- The goods are in another office or warehouse owned or rented by the tenant
- There is a sizeable debt beyond rent owed, e.g. service charges, insurance
- There is a license in place, instead of a lease
- The premises are mixed use
- The landlord needs to repossess the property via a court order and also wishes to recover rent arrears

Forfeiture

Forfeiture is a Common Law right for landlords of commercial premises. It permits them to terminate the lease before the contract end date because of a breach by the tenant.

The most common reason for forfeiture is non-payment of rent, which includes all items that have been reserved as rent under the terms of the lease, such as service charges. The lease will normally stipulate the number of days the rent must be overdue before the landlord can forfeit the lease. This is often 21 days.

Forfeiture may only be used for commercial premises. If there are residential premises attached and accessible from within the commercial premises, forfeiture may not be used and the landlord will need to obtain a court order for possession.

The process

You can instruct an Enforcement Agent (EA), who will attend to change the locks and take possession of the premises, so they can be re-let to a new tenant. Once the lease has been forfeited, then the tenant's and any subtenants' right to use the property comes to an end.

A court order is not required and notice does not need to be given, although you do have the option of going to court to get a forfeiture order, but this typically takes six weeks.

If the breach is for any other reason, then you must serve notice on the tenant, specifying the breach and giving them a reasonable time to remedy it. If it is remedied, then you may not forfeit the lease.

Subtenants

You may choose to have a lease with just one company that can then sublet the property to one or more subtenants. In this case, you will need a carefully written lease to ensure that your interests are protected in case there are disputes, either with the tenant or subtenant, or the tenant becomes insolvent.

You should also check the terms of any agreement between the tenant and subtenant. You should ensure that the lease gives them the right to forfeit and protect their interests with regards to the tenant and subtenant.

If the tenant has sublet the property without permission, or against the terms of the lease, you can forfeit the lease, although you will need to give notice.

Taking legal advice on the drafting of any commercial lease is always highly advisable.

Waiver

You should be careful to ensure that you do not do anything that could waive your right to forfeit. Acts of waiver include demanding or accepting rent payments. Exercising your right to

recover arrears via CRAR, commercial rent arrears recovery will mean that forfeiture cannot take place during the same rent quarter.

You only regain the right to forfeit if the tenant goes into arrears on a subsequent occasion.

After forfeiture, you can then obtain a court order against the now former tenant to recover the arrears owing. It is always a good idea to check that the tenant would be able to pay before starting proceedings.

Again, taking legal advice on waiver is recommended.

Forfeiture during administration

When a business goes into administration, there is a moratorium on enforcement action, so that the administrator can focus on rescuing what can be saved from the business for the benefit of the creditors.

This moratorium on legal action, including enforcement, also extends to the business as a tenant of the property/properties it leases. This includes CRAR, forfeiture of lease, as well as court action, such as a writ of control or writ of possession.

The only way you are permitted to forfeit a lease after the tenant has entered into administration is with the agreement of either the administrator or the court. The court or administrator will normally give permission if forfeiture will not negatively impact on the mission of the administrator.

Relief from forfeiture

There may be circumstances when the tenant or both tenant and landlord want the lease to continue after the forfeiture. For example, the tenant has paid all the rent arrears and wants to remain in the building.

The process of reinstating the lease is called relief from forfeiture. This can have many disadvantages, especially for the landlord. The new lease would most probably not include any guarantees and may then automatically grant the tenant security of tenure as the new lease will not have been contracted out.

The process

The tenant must apply to the Court “without delay”, normally within six months, for relief under section 146 of the Law of Property Act 1925. If they do not and the landlord and tenant decide to continue their relationship without relief, their arrangement will be deemed to be a new lease.

If the tenant wants to reverse the forfeiture and reinstate the lease, they must apply to court. If the tenant is successful, the lease and any sub leases will be reinstated. A subtenant can also apply for relief; if successful, this is most likely to result in a new lease with the landlord.

New tenants

To avoid problems with a new tenant after forfeiture, you might need to advise them that the previous lease was forfeited and that there could be an application for relief. The former tenant does still have the right to apply for relief, but the court will take into account factors such as the time delay in applying and whether the landlord acted quickly and unreasonably in granting the new lease.

If the court does rule in favour of the former tenant, then the new tenant becomes the former tenant's landlord and the lease between the landlord and new tenant becomes an intermediate lease and the new tenant will have a claim in damages against the landlord.

Payment of costs

It is normal practice for the tenant to pay the court costs of both parties. The court will normally grant relief to the tenant if they act quickly, pays the arrears and landlord's costs and remedies any breaches of covenant.

Time limits

The tenant's right to apply for relief technically exists indefinitely, even after the landlord has changed the locks, although this is more in theory than in practice. However, if you subsequently obtain an order for possession, then the right to apply for relief is lost.

If you acted under a court order, then once you have enforced the order, the tenant loses the right to apply for relief.

Repossession under a court order

There are a few circumstances where a commercial landlord may have to go to court to obtain an order for possession to repossess the property from tenants. These include:

- Mixed use premises
- Licenced premises (where there is a licence in place, rather than a lease)
- Trespassers

Mixed use

Where the attached residential premises can be accessed from within the commercial premises, for example access to a flat upstairs from within the shop/restaurant, the landlord cannot use forfeiture.

Licence

Where there is a licence instead of a lease, i.e. for shared possession of the property, some services will also be included in the fee (e.g. utility bills, rates) and furniture, fixtures and fittings are also provided. The landlord has the right to terminate the licence with little or no notice. This is not a common scenario and is more likely to occur when there are also significant rent arrears.

Trespassers

People on premises, e.g. broken in to occupy premises, possibly barricade themselves in.

In the case of mixed-use premises or licences, the landlord will need to obtain a County Court possession order and request permission, under Section 42 of the County Court Act 1984, for the order to be transferred to the High Court for enforcement by an HCEO under a writ of possession. Please see section 6 below for more detail.

Permission is not required to transfer up the order to remove trespassers.

If there are also rent arrears, the landlord may apply for a combined writ of possession and writ of control to recover both the arrears and property simultaneously.

Eviction of residential tenants by an HCEO

Applying for a possession order

Assuming you have an assured shorthold tenancy (AST), if you wish to evict your tenant you must issue either a section 21 notice to the tenant, or a section 8 notice which is usually due to rent arrears, from date of breach.

If the tenant does not move out by the date specified, then the landlord can start the possession process.

Initial application

There are three methods of applying for a possession order:

- By completing form N5/N5B and sending it to the court
- The Government PCOL online system www.possessionclaim.gov.uk/pcol/.
- The Government's online Accelerated Possession procedure <https://www.gov.uk/accelerated-possession-eviction>.

NOTE: In April 2015 the Section 8 forms were updated as a result of new legislation. You must ensure that you are using the correct forms, as the judge may refuse your application if you use the old forms.

New simplified process

The new procedure under Civil Procedure Rule 83.13 allows an application to the court for the writ of possession.

It provides for a notice period to be given by the enforcement agent to a tenant/occupier before eviction in private and social housing, as well as commercial property or land.

It also removes the requirement for permission from court to issue the writ.

New notice periods

The Coronavirus Act 2020 has changed the notice period that must be given to tenants. For notices served between 29th August 2020 and 31st March 2021, six months' notice must be given.

It is possible that this may be extended further.

However, there are some circumstances where the landlord may be able to give a shorter notice period:

- Where anti-social behaviour is the reason for the eviction, the notice period will revert to what it was before the Coronavirus Act 2020, and the landlord can issue proceedings on the same day that notice is served

- Where the tenant is accused of domestic abuse or has provided false information to obtain the tenancy, the notice period is two to four weeks' notice
- If the tenant has over six months' rent arrears, only four weeks' notice is required
- If the renter is discovered to have rented the property in breach of the Right to Rent rules, they can be evicted on three months' notice
- Where there are substantial rent arrears

“Substantial arrears” has been defined as arrears equating to six months' rent arrears in England only. This exclusion does not apply in Wales.

In all cases the order should state that the court is satisfied that an exemption applies.

Applying for leave to transfer to the High Court

Should you wish to use HCEOs you must seek leave of the court to do so under section 42 County Courts Act 1984, which allows a case to be transferred to the High Court for enforcement purposes.

The best time to do this is at the point of initial application for the order for possession. You will need to make your request for leave to transfer up in the freeform box, as there is no specific box for this purpose.

When leave to transfer is not required

Where the claim is against trespassers, provided the writ is issued within three months of the order, permission to transfer to the High Court for enforcement is not required. This must be issued under trespasser proceedings.

Valid reason for application

When seeking leave, it **MUST** include the reason for the transfer and it is always advisable to include as much information about the reasons why you might want an HCEO to enforce the order.

The most common reason we have seen is the significant delays by the CCB due to the amount of work they have, thereby resulting in a significant loss of income for the landlord.

Other reasons given include, but are not limited to, the potential risk of damage to the property therefore causing extra expense to the landlord or if the landlord also has a money order for the rent arrears and wishes for an HCEO to enforce both the possession and the money order at the same time, thereby removing the need to instruct two enforcement agents.

It is important to note that the decision to permit the transfer of enforcement to the High Court is, ultimately, at the discretion of a judge.

Already have a possession order?

If you already have a possession order in place, it is possible to submit an application and request that under Section 42 you be permitted to have the possession order enforced by an HCEO.

The form required is an N244. Again, you must include the reason for your request, but it is still up to the presiding judge as to whether they grant your application.

There is a court fee of £100 which must be paid at the same time the forms are submitted. The fee is paid to HMCTS (HM Courts and Tribunals Services) and is non-refundable.

Normally a hearing (“on notice”) will not be required, but if it is, the court fee will increase to £255. The main points to remember when requesting the transfer to the High Court are:

- Request the transfer in your initial application for possession
- Give the reason for the transfer – for example CCB delays, risk to the property, loss of income

We find that the following wording used in part 10 of the N244 can help with the application:

“Following the possession order granted to [claimant], the tenant has not left the property by the date stipulated. The order states the right to ask the court, without further hearing, to authorise a High Court Enforcement Officer to evict the tenant. I have been advised by the court that the County Court Bailiffs will be unable to carry out the eviction before [date].

“I therefore request that the Judge permit that the case be transferred without delay to High Court Enforcement Officers for enforcement purposes, as covered by Section 42 of the County Court Act 1984, to prevent further loss of rental income, which is currently over £X.”

If the possession order was awarded by virtue of Section 8 rent arrears, you can also add:

“We also request a money order enforceable by a High Court Enforcement Officer for £Y on a ‘rolling’ basis of £Z per day for use and occupation from the date of judgment to the date of possession.”

Illegal evictions

To use a High Court enforcement officer to conduct an eviction of a residential tenant they **MUST** obtain leave from the County Court under Section 42 of the County Court Act 1984. Without this any writ of possession enforced is invalid and any action taken under it illegal.

If so, the tenant may have a claim for considerable damages from the landlord, the company that evicted them and the authorised HCEO personally.

Further changes to the procedure

Serving notice of eviction

In addition to the removal of the need for court permission to transfer the possession order to the High Court, there are also changes to the notices that must be served on the tenant.

Previously, the landlord was required to serve the tenant/s with notice of the application to issue the writ of possession. This is NO LONGER required.

Prior to the changes introduced in August 2020, we normally advised giving notice of eviction to tenants (unless doing so would increase the risks of undertaking the eviction).

The August 2020 new procedure has made it a compulsory requirement to give the tenant/s not less than 14 days' notice before the writ of possession is enforced by an HCEO. This is exactly the same for the enforcement of a warrant of possession by a CCB.

The notice of eviction must be addressed to all persons against whom the possession order was made and any other occupiers. It must be in the form prescribed by Practice Direction 83, which is Form 66 or 66A (as appropriate) for a writ of possession.

The notice of eviction must be delivered by inserting it through the letter box in a sealed transparent envelope. If that is not practicable, then by attaching a copy to the main door or some other part of the land so that it is clearly visible. If that is also not practicable, by placing stakes in the land in places where they are clearly visible and attaching to each stake a copy of the notice in a sealed transparent envelope.

If you have a compelling reason to not deliver a notice of eviction, you may apply to court to dispense with the notice. The court may also extend or shorten the timeframe for service of the notice of eviction.

We will manage the process of serving notice of eviction on your behalf, as part of our service. The notice of eviction must be served by the HCEO/CCB.

Proceedings brought before 3rd August 2020

Any proceedings brought before 3rd August 2020 need to have a reactivation notice served. The notice will need to include information on how the tenant has been impacted by the coronavirus pandemic. If not provided, the court can adjourn proceedings until it has been provided.

Regulations and guidance

Please visit our website for updated regulation and guidance on any restrictions on evictions at <https://hcegroup.co.uk/resources/enforcement-legislation-updates>

Transfer a possession order to the High Court

Step 1 – application to transfer

The application is made using form N244. There is a court fee of £100. Permission to transfer the order for possession to the High Court for enforcement must be applied for and obtained under Section 42 of the County Courts Act 1984.

The best time to do this is at the point of initial application for the order for possession.

If you did not obtain permission at the time of initial application, then you can do so using form N244, which incurs a court fee of £100.

Step 2 – instruct your HCEO

Most HCEOs permit online instruction. [Our instruction form can be found on our website.](#)

We will ask you whether you wish to obtain a writ of possession or a combined writ of possession and writ of control (for the recovery of rent arrears).

Step 3 – issue of a writ of possession

Once you have instructed us, we will manage the rest of the process on your behalf to obtain the writ. There is a court fee for the writ of possession.

Step 4 – notice to tenants

Once the writ of possession has been awarded, we will serve the tenant with 14 days' notice of eviction before the enforcement process commences.

Regulations and guidance

Please visit our website for updated regulation and guidance on any restrictions on evictions at:

<https://hcegroup.co.uk/resources/enforcement-legislation-updates>

About High Court Enforcement Group Limited

We are the largest independent and privately owned High Court enforcement company in the country, with more authorised and experienced officers than anyone else. This allows us to build and manage our business in a way that puts our clients first.

Clients trust us to deliver and our service level is paramount – we are committed to meeting and exceeding their expectations. Transparency and ethical behaviour are also at the heart of our business, both with our clients and their debtors.

We achieve this by recruiting excellent people and investing in their development. All our Enforcement Agents are employees, allowing us to ensure quality, transparency and ethical behaviour – firm but fair enforcement.

Our highly skilled Enforcement Agents are recognised for their impressive local knowledge and their steadfast commitment to upholding the values of responsibility and accountability. Ensuring exemplary professionalism through time-honoured dedication to firm but fair enforcement.

We are committed to educating as well as enforcing. We believe that an informed decision is a correct decision and that our clients should also understand the processes associated with enforcement. We believe in sharing our knowledge and expertise with our clients, to help them make informed choices.

Should you wish to instruct us on a current case, then simply click through to our [online instruction form](#).

If you would like any further information, please click through to our [website](#).

Should you wish to discuss a case, please do not hesitate in calling our dedicated possession team on **08450 999 666**

Remember, we are here to help.

Useful links

Accelerated Possession Procedure	https://www.gov.uk/accelerated-possession-eviction
BT Directory Enquiries	www.bt.com
Companies House	www.companieshouse.org.uk
HCEOA	www.hceo.org.uk
HCEO Regulations	http://www.legislation.gov.uk/uksi/2004/400/regulation/13/made
Insolvency Service	www.insolvency.gov.uk
Instruction forms	https://hcegroup.co.uk/instruct-us
Land Registry	www.landregistry.gov.uk/
Ministry of Justice	www.justice.gov.uk
Possession Claim Online	https://www.possessionclaim.gov.uk/pcol/
Registry Trust	www.trustonline.org.uk
Tracing services	http://www.hcegroup.co.uk/debtor-tracing/
Further reading	http://www.hcegroup.co.uk/articles/
Evicting Tenants	http://evicting-tenants.net/
GOV.uk	https://www.gov.uk/evicting-tenants/rules-you-must-follow
National Residential Landlords Association	http://www.nrla.org.uk/
Property118	www.property118.com

Legislation and regulations

Part 3 of the Tribunals, Courts & Enforcement Act 2007	http://www.legislation.gov.uk/ukpga/2007/15/part/3
Taking Control of Goods Regulations 2013	http://www.legislation.gov.uk/uksi/2013/1894/contents/made
Taking Control of Goods (Fees) Regulations 2014	http://www.legislation.gov.uk/uksi/2014/1/contents/made
Certification of Enforcement Agents Regulations 2014	http://www.legislation.gov.uk/uksi/2014/421/contents/made
The Civil Procedure (Amendment) Rules 2014 No 407	http://www.legislation.gov.uk/uksi/2014/407/pdfs/uksiem_20140407_en.pdf
Court fees and enforcement fees	https://hcegroup.co.uk/services/court-fees-enforcement-fees

Glossary

Accelerated possession procedure

A service for landlords to make a claim to evict tenants using the accelerated possession procedure if they're on an assured shorthold tenancy.

Assured shorthold tenancy

Most private tenancies started on or after 28th February 1997 are assured shorthold tenancies (AST). Tenancies between 1989 and 1996 are normally assured tenancies. An AST is protected by the Housing Act 1988 and there are specific rules that a landlord must follow if they want to repossess the property.

Evicting or trying to evict tenants without following these rules is a criminal offence which can lead to a fine and/or up to two years in prison. The tenant might also be able to bring a civil claim for damages.

The AST does not automatically end once the fixed term originally agreed has expired. It will continue and become a statutory periodic AST, the period being the interval at which rent is paid. So, if rent is paid monthly, each period will begin on the first of the month.

Certificated enforcement agents

This is an enforcement agent (formerly known as a certificated bailiff) who has been granted a certificate by a judge to levy distraint/distress. They now come under the umbrella term 'Enforcement Agent'. The certificate lasts for two years and cannot be granted to anyone employed in a business that buys debt or any officer of a county court.

Compliance stage

The sending of the notice of enforcement must be sent to the debtor giving them 7 clear days to pay the sums due in full, at the place of enforcement. If the debtor pays in full after receiving the notice, the enforcement process is concluded.

Control - writ of

The writ of control is the High Court version of a warrant of execution in the County Court. It empowers an HCEO to take control of goods belonging to a tenant (judgment debtor) in order that the judgment debt for rent arrears is settled, either by way of payment or sale.

County Court Bailiffs

County Court bailiffs are civil servants employed by the court. They enforce orders for possession to evict tenants and a warrant of execution to enforce CCJs for rent arrears (and other money judgments) valued up to £5,000.

County Court Judgment or CCJ

You may either use a solicitor to obtain your CCJ or you can use the Government's self-service called Money Claim Online. If the debtor still does not pay, you may proceed to enforcement. CCJs can be enforced for six years from the date they are awarded.

CRAR – Commercial Rent Arrears Recovery

CRAR is a remedy available to commercial landlords to recover rent arrears where there is a written lease in place. It only covers the recovery of rent, and not any other charges such as service charges or insurance. The landlord must use a certificated enforcement agent to act under CRAR.

Debtors in liquidation or administration

You can check with Companies House to find out if a company is in Liquidation or Administration with an “L” or and “A” next to the name.

Demised premises

The property that is covered by the lease.

District Registry

A district registry is part of the High Court situated in various districts of England and Wales, dealing with High Court family and civil business. District registries are often co-located at county courts.

Enforcement agent

An enforcement agent (EA) is the person who will attend the debtor’s premises to enforce the writ of control. They must undergo a process of training and certification. In the case of High Court enforcement, the EA will act under the direction and authority of the authorised HCEO.

Enforcement stage 1

If the debtor fails to make contact with the HCEO or requests to pay by instalments during the compliance stage, an EA will attend their premises to take control of goods (the new term replacing ‘seizure’) under Enforcement Stage 1. If, when the EA attends, the debtor pays in full immediately or agrees to an acceptable instalment arrangement, then the matter ends there.

Enforcement stage 2

If the debtor refuses to make any payment, to enter into an acceptable instalment arrangement or breaks a payment arrangement, then the matter moves to Enforcement Stage 2.

Forfeiture of lease

A Common Law remedy whereby a commercial landlord may enter the property once the terms of the lease have been breached (and not remedied) to change the locks and take possession of the property, thereby ending the lease. A landlord will normally use a certificated enforcement agent to forfeit the lease.

Form N215

The declaration of service form which must be completed after notice is served on the tenant/s.

Form N244

The form you use to request permission from the court to transfer your order for possession to the High Court for enforcement under Section 42 of the County Courts Act 1984.

Gaining entry by force

Commercial premises: the HCEO can force entry to commercial premises where there is a signed controlled goods agreement or where there is a court order granting permission to use reasonable force.

Residential premises: the HCEO can enter the premises through an unlocked door or normal means of access (but not a window). Once inside, they may break down inner doors to seek the debtor's goods.

The enforcement agent may not be forcibly ejected, but if they are, they can then force re-entry. They may force entry to a garage, outhouse, stables or barn providing it is not physically attached to, and form any part of, the residence.

High Court Enforcement Officer, HCEO

An enforcement agent authorised by the Lord Chancellor to enforce High Court writs. HCEOs normally operate their own private companies and are not civil servants. The writ will be issued in the HCEO's name and the enforcement of that writ remains his/her responsibility, although he/she is permitted to authorise enforcement agents to act on his/her behalf when enforcing a writ.

Insolvent debtors

The Insolvency Service allows you to check individuals and "trading as" names for bankruptcy and IVA.

Notice of enforcement

Enforcement agents are required to give the judgment debtor seven clear days' notice of enforcement before they visit. This does not include Sundays or bank holidays. This is called the Compliance Stage, the first stage of enforcement. This stage activates a fee of £75 + VAT, which will be recovered from the debtor if enforcement is successful.

Partnerships

Partnerships (apart from limited liability partnerships) are not a legal entity, rather a collection of individuals trading together. As such, the partners are liable for the debt of the business and this liability is not limited.

When enforcing against a partnership, the creditor is best advised to obtain a judgment against the partnership and include the name/s of the individual partner/s within the command portion of the writ of control. This then gives the creditor, via the HCEO, the option of enforcing against the partnership, the partners individually or both.

Payment by instalments

If the creditor and debtor reach an agreement on an instalment payment plan, then the goods remain under the controlled goods agreement until the debt and costs are paid in full. Once that happens, the ownership of the goods returns to the debtor.

If, however, the debtor falls behind in the instalments, the creditor can decide to have the goods covered by the controlled goods agreement removed under Enforcement Stage 2 and potentially sold under the Sale or Disposal Stage.

Persons unknown

In the case of trespassers, the owner is unlikely to know the names of all or any of the occupants, in which case they will apply for an order against “persons unknown”, removing the need to know exactly who is on the premises.

Possession Claim Online (PCOL)

The Government online service to start possession claims where section 8 notice has been issued. Section 8 matters processed by PCOL generally result in a faster hearing date.

Possession – writ of

Commercial landlords may apply for a writ of possession to repossess land and property on that land. The landlord, or their appointed agent, must attend the repossession to identify the correct property or land that is being repossessed.

The Occupant will have been served 7 days’ notice of the proceedings but the HCEO is not obliged to give details of the exact eviction date, unless specified within the original order. The enforcement agent is entitled to use force to enter commercial premises and may also use reasonable force to eject the occupants and other people found on the premises at the time.

N293A

The form used to transfer up the order of possession to the High Court for enforcement by an HCEO. Against “persons unknown”.

Restitution – writ of

A writ of restitution is a writ to support another writ of execution. Once the writ of possession has been executed, it is completed, so a writ of restitution will be requested to enable the eviction of squatters who reoccupy the property, without the requirement to restart court proceedings.

Sale or disposal stage

Should enforcement get to the point where goods actually need to be removed, the enforcement progresses to the Sale or Disposal Stage.

Section 21

A Section 21 Notice does not have a set form, but must contain the information required by the Act. A Section 21 Notice gives at least two months’ notice of when possession is required. If

the AST is for a fixed term, then the date of possession cannot be before the end of the fixed term.

Section 42

Under Section 42 of the County Court Act 1984, a matter can be transferred to the High Court for enforcement. It is best to apply for permission to do so at the time of the initial application for the order for possession.

Section 8

A Section 8 Notice has a set form for giving notice and the landlord must give the grounds for repossession. A Section 8 Notice can be given at any time, and the notice period given is for when possession proceedings will start, not when the tenant must leave.

The period depends on which ground is being used and will be up to two months. Please note – these forms changed as a result of new legislation introduced in April 2015 and you must use the new forms.

Setting aside judgment

When the tenant (debtor) applies to set aside judgment (sometimes used as a delaying tactic), the court will fix a date for the hearing, which both parties will attend. The tenant will have to explain why they want the judgment set aside.

If the court does set aside judgment, then the tenant is allowed to put forward their defence, having provided the landlord (creditor) with the documents they intend to use and witnesses to support their defence. If they are successful, enforcement cannot proceed. If their application is denied, the landlord may proceed with enforcement. Enforcement can continue whilst the application is awaiting a hearing.

Signing off the writ

Once the eviction is completed, the writ of possession will need to be signed by the property owner, their agent or their solicitor to confirm that the repossession is complete and the property has been handed back to the owner.

Taking control of goods and sale of goods

It is the duty of the HCEO or certificated enforcement agent to take control of the goods of the debtor in order to sell (normally at auction) and raise the money to clear the debt. If sold at auction, the auctioneer will always try to get the best price for the goods, selling to the highest bidder on the day.

Although not common, the court may also allow for the controlled goods to be sold privately rather than at public auction if it can be demonstrated that a higher price is likely to be obtained. This is called private treaty.

Third party premises

The HCEO cannot enter the premises of a third party, where the debtor does not reside or carry on a trade or business, without permission from the court.

Transfer of judgment to High Court

When a County Court Judgment (CCJ) is issued for £600 and above (including court costs), the creditor can transfer it up to the High Court for enforcement by an HCEO. The transfer form is the N293A and there is a court fee to obtain the writ, which can be added to the debt. Once completed, a writ of control is issued, which gives the HCEO the authority to enforce.

Validity of the writ

The writ of control will be valid for 12 months from the date of notice of enforcement, or, if the debtor breaches a payment arrangement for 12 months from the date of the breach.

Voluntary arrangements – how they impact on enforcement

A company voluntary agreement is put in place to allow a company to continue trading while making an arrangement with its creditors. The arrangement is proposed by the company to its creditors and, once accepted by the appropriate majority, is binding on all creditors.

Normally, the creditors will agree to accept a delay in payment, a smaller payment, or a combination of the two. Enforcement of writs of execution is normally suspended during a company voluntary arrangement.

Winding up

This is for use against a company for debts over £750. You don't need a judgment first, but can go straight to a statutory demand. If payment isn't received, the next step is a winding up petition, which must be advertised at least seven days before the hearing in the London Gazette.

This usually leads to banks freezing bank accounts. If the petition is granted, a liquidator is appointed to realise and distribute assets amongst creditors.



To find out more or instruct us

If you have any questions or wish to instruct High Court Enforcement Group then please contact us on **08450 999 666** or visit our website at **hcegroup.co.uk**, go to the instruct us page and select the

-  enquiries@hcegroup.co.uk
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