

**BRIEFING ON WRITS OF CONTROL
HIGH COURT ENFORCEMENT GROUP**



**HIGH COURT
ENFORCEMENT
GROUP®**

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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.

Briefing on writs of control

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Introduction

This briefing is designed to give solicitors and credit managers a thorough understanding of the process of applying for and enforcing a High Court writ of control for the recovery of money judgments by an authorised High Court Enforcement Officer (HCEO).

If you require further information, please call us on 08450 999 666 and we will be happy to answer your queries. We can also arrange to visit your offices to run a training session for your team.

Background to HCEOs

Prior to 2004, HCEOs were known as Under Sheriffs and Sheriffs Officers. This all changed when the Courts Act of November 2003 brought in significant changes, including the new term authorised High Court Enforcement Officer and the removal of bailiwicks, which meant that HCEOs could now enforce anywhere within England and Wales.

HCEOs are private sector but are appointed and authorised by the Lord Chancellor. There are 51 authorised HCEOs in England and Wales.

The authorised officer is responsible for all actions that are taken under any writ that is issued in his or her name through the High Court, and we operate under the Courts Act 2003 and the High Court Enforcement Officers Regulations 2004.

Enforcement by an HCEO

HCEOs can enforce:

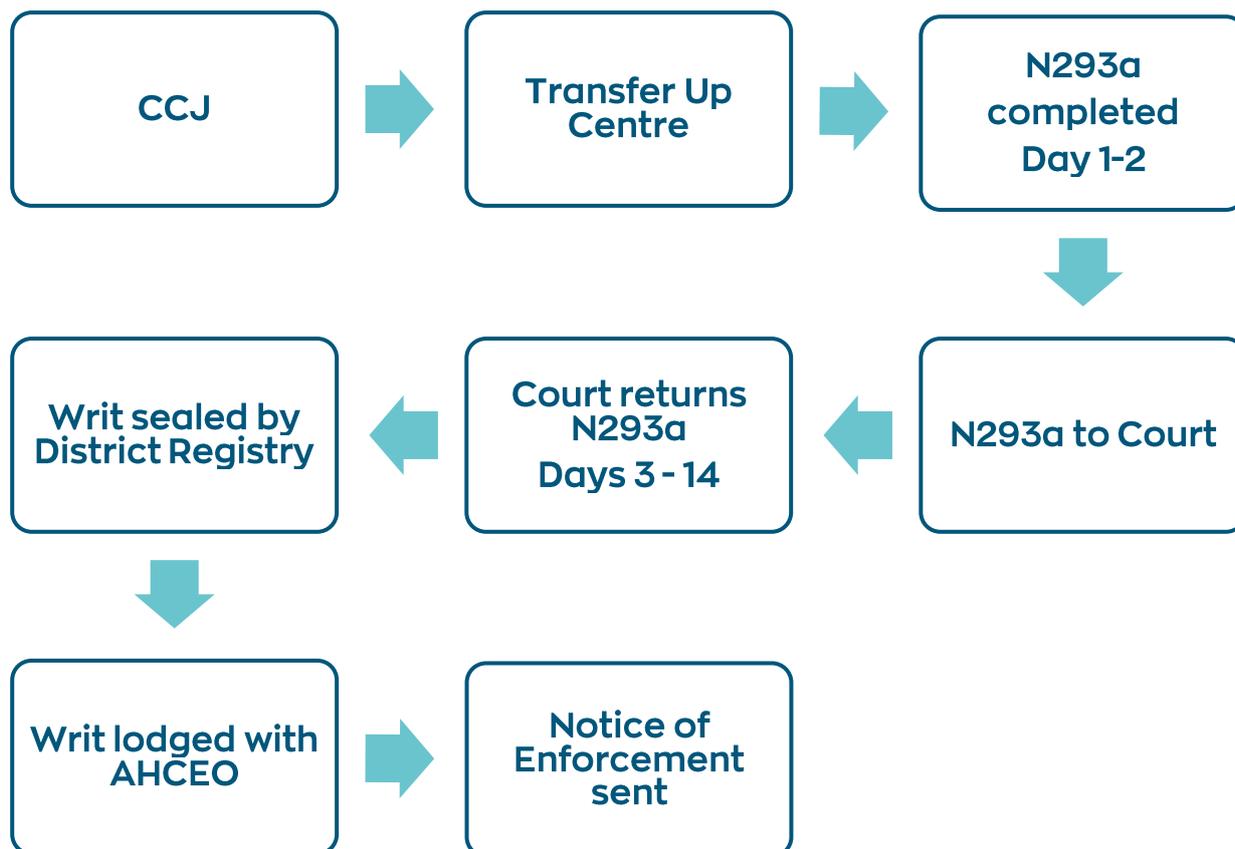
- Non-regulated County Court and High Court judgments over £600
- Employment tribunal awards and ACAS settlements of any value, including those below £600
- Possession against trespassers – other possessions require the Court's permission

If a County Court judgment (CCJ) is for £5,000 or more, it may only be enforced by an HCEO, unless it is a Consumer Credit Act regulated judgment. CCJs below that value may be enforced by either an HCEO or a County Court bailiff.

To instruct an HCEO, you can make your own choice as to which to appoint, and then name the authorised High Court Enforcement Officer on the writ, or to issue it through the Registry Trust's NICE Sheriffs system, which will allocate the next HCEO on the list in a "cab rank" system.

Transferring up a County Court judgment for enforcement

Where the original judgment is awarded in the County Court, it must go through the formal procedure of being transferred up to the High Court for enforcement by an HCEO. The judgment still remains a County Court judgment.



Firstly, a copy of the CCJ is sent to the Transfer Up Centre, where the HCEO then completes the Court form N293A and sends this off to the Court together with the writ of control.

The Court completes the N293A and then passes the writ over to the District Registry. The writ is then sealed by the District Registry and sent back to the High Court Enforcement Officer. Once it is lodged with the High Court Enforcement Officer, the enforcement process starts with a notice of enforcement.

Most High Court Enforcement Officers, including High Court Enforcement Group, offer a free transfer up process, all that is payable is the court fee.

Taking control of goods

High Court enforcement was again changed in 2014 with a number of regulations that were brought in:

- Tribunals Courts and Enforcement Act 2007 (**TCE Act**)
 - Part 3 – Enforcement by Taking Control of Goods
 - Schedule 12 – Taking Control of Goods
 - Schedule 13 – Amendments
- Crime and Courts Act 2013
- The Taking Control of Goods Regulations 2013 (**TCGR 2013**)
- The Taking Control of Goods (Fees) Regulations 2014 (**TCGFR 2014**)
- The Certification of Enforcement Agents Regulations 2014
- The Tribunals, Courts and Enforcement Act (Consequential, Transitional and Saving Provision) Order 2014
- Updated and new Civil Procedure Rules –
 - The Civil Procedure (Amendment) Rules 2014, 2014 No. 407 (L.1)
 - The Civil Procedure (Amendment No.2) Rules 2014

There was also an updated amendment to national standards, so we now have a Taking Control of Goods National Standards, which are worth reviewing as there are standards in there for the creditor as well as enforcement agents (the link is in the “useful links” section of this document).

Terminology

The new regulations have changed the terminology surrounding enforcement. The writ of fieri facias, also known as a writ of FiFa, became a writ of control.

No longer do we have enforcement officers or certificated bailiffs, we now have certificated enforcement agents and one of the key elements to the change is that for a person to obtain a certificate from the County Court to become a certificate enforcement agent, they must pass a level 2 qualification that is registered on the Ofqual register.

We also saw a change to some of the old words that we used to use, such as distress, distraint, levy, seizure, and similar terms with a new phrase ‘taking control of goods’.

The Walking Possession Agreement and has now been changed to a Controlled Goods Agreement.

Benefit of the new regulations

The new Taking Control of Goods Regulations 2013 and Schedule 12 of TCE (Tribunals, Courts and Enforcement Act 2007) give us a procedure from the beginning to the end of the enforcement process. They cover:

- Goods which can be subject to legal control, exempt goods
- The serving of a notice of enforcement to take legal control of goods
- Time limit for taking control of goods
- Days and times when an action can take place
- Controlled Goods Agreements
- Securing goods of the debtor
- Powers of entry
- Storing and selling goods subject to legal control

Exempt goods

The first part of the regulations deals with exempt goods and these exempt goods are very similar to those exemptions that we had prior to the new regulations, however there are some changes, the most significant of which is to do with 'tools of trade in A', which are now subject to a value of £1,350.

What that means is that a sole trader cannot claim tools of trade over and above the value of £1,350. So if we attend a sole trader judgment debtor's premises with a writ of control and take control of a motor vehicle that is valued at £3,000, that judgment debtor cannot claim exemption under the Taking Control of Goods regulations.

The sole trader – and this exemption only applies to the goods of sole traders for their exclusive use - can claim the value of £1,350 but the enforcement agent will take control of any goods above that.

The other areas of exempt goods are those required by the debtor and their household to meet their basic domestic needs, such as: cookers, microwaves, refrigerators, washing machines, dining tables, beds and bedding, landlines.

Other items are:

- Any item or equipment necessary for the medical care of the debtor or any member of the household
- Any item or equipment necessary for safety in and the security of the dwelling house
- Sufficient lighting or heating to satisfy the basic needs of the debtor and the household

- Any item or equipment required for the care of a person under 18, a disabled person, or an older person
- Any assistance dogs, including guide dogs, hearing dogs and dogs of disabled people, sheep dogs, guard dogs and domestic pets

There are also exemptions surrounding vehicles:

- Vehicles that **display** a disabled badge or a vehicle where there are reasonable grounds to believe that it to use to transport a disabled person. If the blue badge is not on display, the HCEO might take control of it
- A vehicle, whether in public ownership or not is being used or where there are reasonable grounds it is used for the fire, police or ambulance service
- A vehicle displaying a valid British Medical Association (BMA) badge, because this is used or in relation to those that are for health and emergency purposes. For example, a doctor on call will display a BMA badge, but once off call it may not be shown, so that vehicle could be taken control of

Time limits and extensions

Under the old regulations, a writ of fieri facias lasted for 12 months from the test date. If you needed to extend the writ, you had to apply to Court and pay a court fee to extend for a further 12 months.

Under the new regulations, a writ of control lasts for 12 months from the date that the Notice of Enforcement is issued, i.e. no longer the test date or the sealed date on the writ.

The writ may be extended for a further 12 months, but only on one occasion, and it will be necessary to show to the Court good grounds as to why the writ should be extended for that additional year.

However, if the HCEO and the debtor enter into a payment arrangement under the writ, then the writ will last for 12 months following a breach of that arrangement. If that arrangement extends beyond the 12 months since the notice of enforcement, as long as the debtor keeps paying, the writ will not expire.

This will save the creditor time and money.

Times and days of enforcement

Under the new regulations HCEOs can enforce a writ of control seven days a week. That includes Christmas Day, Good Friday and bank holidays.

We can enforce at residential premises between six o'clock in the morning and nine p.m. in the evening and on commercial premises within normal trading hours.

If an enforcement agent attends a residential property at 20:30, and they are still there at 21:00, they do not have to stop enforcement because they commenced taking control of goods within the proscribed time.

Means of entry

HCEOs are not allowed to force entry to domestic addresses; they are only allowed to enter the premises if we are permitted to do so by the debtor. We can enter domestic premises if the door is left open, and we cannot use any force to stop the defendant shutting the door.

Our normal means of entry are the front door, the side doors or the patio doors.

However, with 100% commercial premises we do have a right of entry. It is no longer possible for us to enter through open windows or skylights, and even if we want to re-enter the premises we must enter the premises through the normal means of entry.

Taking control of goods – enforcement stages

When the Government was looking at the new structure for taking control of goods, they decided on a four stage enforcement procedure for the High Court.

- Compliance stage
- Enforcement stage 1
- Enforcement stage 2
- Sale stage

The intention was to encourage early payment by the debtor, as the fees payable by the debtor increase with each stage, as they are cumulative.

These stages can be found in the Taking Control of Goods Fees Regulations 2014.

Compliance stage

The Compliance Stage is where we send a notice of enforcement to the judgment debtor upon receipt of the writ from the Court. The notice requests payment in full of the sums owed to prevent any further enforcement. The only option is payment in full – if a payment arrangement is required, this will be agreed under enforcement stage 1.

The fee payable by the debtor on top of the judgment debt, costs and interest, is on our [court fees page on our website](#).

The minimum notice period required is seven clear days, but we must exclude the day we issue the notice of enforcement, Sundays, bank holidays, Good Friday and Christmas Day in the seven-day calculation. Normally, this means that we would attend the debtor's premises for the first time on or around day 12.

However, in exceptional circumstances, an application to Court can be made to reduce this seven-day notice requirement if there is the belief that the goods that may be taken control of would be in jeopardy.

A good example of this would be a case where we needed to take control of an aeroplane that we knew flew in and out of the UK. Serving the Notice of Enforcement may well have meant that plane avoiding the UK, a request was made and permission was obtained from the Court to serve 15 minutes' notice, which allowed us to take control of the aeroplane.

Enforcement stage 1

If the debtor does not pay at the compliance stage, we move to enforcement stage one, where we visit the debtor's premises with the purpose of either obtaining payment in full or, if that is not possible, entering into a Controlled Goods Agreement and discussing payment of the writ with the debtor.

The visit also enables the enforcement agent to assess the value of the goods, which might have a bearing on the amount to be paid each month under a payment arrangement.

The charges payable here are £190 plus VAT, as well as 7.5% plus VAT on any judgment debt, costs and interest over £1,000. This is in addition to the compliance fee from the compliance stage.

Controlled Goods Agreement

If we do enter into a Controlled Goods Agreement because the debtor cannot or does not want to pay, the regulations stipulate who can enter into such an agreement and they are:

- A debtor who is not a child
- A person who is 18 or over, authorised by the debtor to enter into the Controlled Goods Agreement on the debtor's behalf
- A person in apparent authority who is on the premises, where those premises are used (whether wholly or partly) to carry on a trade or business

An inventory of the goods will be made and included as part of the Controlled Goods Agreement. Once the Controlled Goods Agreement is signed, we leave a copy both for the signatory and the judgment debtor (if different) in a prominent position with all the details of what the debt was about and the details of Controlled Goods Agreement.

If the enforcement agent believes that the goods are of sufficient value to satisfy the judgment debt, costs, interest and HCEO fees, he can proceed to removal.

If the debtor, or a responsible person, refuses to sign a Controlled Goods Agreement, the enforcement agent is required to remove the goods that are at the premises.

Enforcement stage 2

Enforcement stage 2 is triggered under two circumstances. The first is where we haven't been able to enter into a Controlled Goods Agreement and we continue with our activities to try and take control of goods, or get the debtor to enter into arrangements.

The second is where the debtor has defaulted on a Controlled Goods Agreement and we are now looking to the next stage which would be the removal of goods. This is the debtor's last opportunity to either bring the Controlled Goods Agreement up to date, or pay in full to prevent the removal of goods.

The fee for enforcement stage 2 is £495 plus VAT.

Where we have now visited at stage 2 and again the debtor has not complied, paid, or entered into an arrangement and we have taken control of goods, we would then look to move to the sale or disposal stage, where the enforcement agent will arrange for the removal of the goods.

Sale or disposal stage

This stage comprises all activities relating to enforcement from the first attendance at the property for the purpose of transporting goods to the place of sale, or from commencing preparation for sale if the sale is to be held on the premises, until the completion of the sale or disposal (including application of the proceeds).

This stage carries an all-encompassing fee of £525 plus VAT and 7.5% plus VAT on any judgment debt, costs and interest over £1,000.

Within this fee we have to arrange all the removal of goods.

If the debtor wants to pay at this stage, they can do so, before the goods are removed to the auction.

Where we do need to remove goods, we can sell them in a number of methods

- At the premises of an auctioneer - the auctioneer can charge 15% of the sum raised by the sale of the goods, the auctioneer's out of pocket expenses and reasonable disbursements of advertising the sale
- On site, for example in the case of large machinery – the auctioneer's fee is 7.5% of the sum realised together with his out of pocket expenses and disbursements
- Internet auction – the HCEO may recover an amount not exceeding 7.5% of the sum of the goods realised.

The HCEO is permitted to recover certain disbursements and exceptional fees from the debtor for:

- The cost of storage
- The cost of hiring a locksmith
- Any court fees incurred during the course of the writ, for example reducing the notice period or making other applications under the regulations

There are also exceptional fees that can be charged where they are required for effective enforcement of the writ. So if we took control of an aeroplane, we may elect to pass on the costs of insuring that aeroplane to the judgment debtor under an exceptional fee.

New creditor guaranteed fee

The creditor guaranteed fee was introduced under the new regulations and is payable by the creditor where the HCEO was unable to collect in respect of the value of the High Court writ of control. It is similar to the previous abortive fee.

Where the HCEO has not recovered the compliance fee or any part of it from the judgment debtor, then the person who instructed the High Court Enforcement Officer, i.e. the claimant, is liable for the whole or part of that fee that remains unpaid.

Third party claims

Whilst enforcing a writ of control, we do come across a number of third parties who will make claims that the goods belong to them. Under the old regulations this was called the interpleader procedure, and is now known as a Third Party Claim.

The claim can come from a number of sources: trade suppliers, finance companies, family members. The claim may be for specific goods or all the goods at an address that we have visited.

When we receive a claim, the HCEO will follow the procedures within the regulations and the Civil Procedure Rules to deal with that third party claimant.

The procedure is that we:

- Send a copy of the claim to the client, or the claimant
- The claimant has seven days to admit or dispute the claim
- If the claimant admits the claim to the goods, then the HCEO will withdraw from control of the controlled goods
- If the claimant disputes the claim, we will advise the third party that the claimant has actually disputed the claim
- The third party must then make an application to the Court to deal with the claim and also may well be asked to pay the value of the goods into Court

This is where the rules are slightly different to those of the old interpleader in that it is the responsibility of the third party to commence the Court proceedings, not the High Court Enforcement Officer. When it comes to the proceedings, the HCEO steps back and the case is dealt with in Court between the third party and the claimant's representative.

Vulnerable debtors

One of the areas of the National Standards is dealing with vulnerable judgment debtors and it is very important that the enforcement agent who is enforcing the writ takes into account the vulnerability of judgment debtors and it is a necessity that we use discretion and it's essential in every case.

The debtor may be considered vulnerable for reasons of age, health or disability and they are unable to safeguard their personal welfare, or the personal welfare of other members of the household.

At High Court Enforcement Group, we've trained our High Court Enforcement agents in how to deal with vulnerable debtors and mental health. And therefore we do have a duty to contact the judgment creditors or their representatives and report circumstances where we do find vulnerability.

We will advise whether or not enforcement action is appropriate and how we should go about that.

Regulations review – areas to be addressed

Organisations within the enforcement industry were asked to submit their thoughts on the implementation of the new regulations, and a number of areas were identified that were sent into the Ministry of Justice.

These areas to be addressed were:

- **Prescribed forms**
Some of the new forms seem to be duplicated
- **Notice of re-entry**
All other notices may be served by post or by hand, but notice to re-enter the debtor's premises may only be by hand. We think this may be a drafting error and have submitted this as an amendment to the Ministry of Justice
- **Compliance stage**
There is often confusion regarding debtors not able to enter into arrangements at this stage (we address this by referring the debtor to the explanatory notes on the back of the Notice of Enforcement)
- **Attending third party addresses**
Under the old regulations, the HCEO was permitted to attend third party premises where the debtor's goods were believed to be, such as third party storage or a boat moored elsewhere. Under the new regulations we can only attend those premises with a further court order
- **Third Party Claims**
Although the Civil Procedure rules are sound in respect of what point the third party has to make their claim to the Court where a claimant has disputed the claim, yet there is no time limit for a third party to submit a claim to be submitted, yet the judgment debtor has a 7-day timeframe within which to make a claim to exempt goods
- **Review of fees**
We have asked the Ministry of Justice to review the fees to see whether or not they are working as intended

About High Court Enforcement Group

Clients trust us to deliver and service 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.

We also believe in sharing our knowledge and expertise with our clients to help them make informed choices.

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.

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

At High Court Enforcement Group, we are committed to educating as well as enforcing. We believe that an informed decision is a correct decision and that our clients should understand the processes associated with enforcement.

If you would like any further information, or would like us to come and run a seminar for your team, please call us on **08450 999 666**.

Useful links

Taking control of goods national standards:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/353396/taking-control-of-goods-national-standards.pdf

Tribunals Courts and Enforcement Act 2007, Part 3

<http://www.legislation.gov.uk/ukpga/2007/15/part/3>

The Taking Control of Goods Regulations 2013

<http://www.legislation.gov.uk/uksi/2013/1894/contents/made>

The Taking Control of Goods (Fees) Regulations 2014

<http://www.legislation.gov.uk/uksi/2014/1/contents/made>

The Certification of Enforcement Agents Regulations 2014

<http://www.legislation.gov.uk/uksi/2014/421/contents/made>

The Tribunals, Courts and Enforcement Act 2007 (Consequential, Transitional and Saving Provision) Order 2014

<http://www.legislation.gov.uk/uksi/2014/600/contents/made>

The Civil Procedure (Amendment) Rules 2014 No 407

http://www.legislation.gov.uk/uksi/2014/407/pdfs/uksi_20140407_en.pdf

Registry Trust

<http://www.trustonline.org.uk/>

Companies House

<https://www.gov.uk/government/organisations/companies-house>

Insolvency Service

<https://www.gov.uk/government/organisations/insolvency-service>

Court and enforcement fees

<https://hcegroup.co.uk/services/court-fees-enforcement-fees>

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](https://www.hcegroup.co.uk)**, go to the instruct us page and select the service you require from the menu.

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