

Enforcing a money judgment by taking control of goods with writs and warrants of control

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A guide to taking control of goods and obtaining writs and warrants of control. This note considers the effectiveness of this method of enforcement of a money judgment and gives a summary of the practical and procedural steps involved.

Note: The taking control of goods regime came into force on 6 April 2014. Execution against goods undertaken prior to the commencement of the taking control of goods regime on 6 April 2014 was not affected by the new regime. For information about the old regime, see the old version of this note, *Practice note, Execution against goods and writs of fieri facias*.

Practical Law Dispute Resolution

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Scope of this note

Taking control of goods and selling them to raise funds replaced execution of goods as a method of enforcing a money judgment from 6 April 2016. This note sets out what it can achieve and the procedure involved. It covers the procedure for:

- Obtaining a writ or warrant of control.
- Delivery of the writ or warrant to an enforcement officer who will then deal with taking control.
- How control is taken.
- Subsequent sale of the goods and payment to the judgment creditor.
- Challenges to the taking of control and adverse claims to the goods

The note does not cover execution under the old regime if that is still relevant to be considered. That is covered by a separate practice note, *Practice note, Execution against goods and writs of fieri facias* (www.practicallaw.com/6-558-9888).

Other methods of enforcing a money judgment are also covered in other related notes.

Taking control of goods and writs and warrants of control: key points to note

Taking control of goods and selling them in order to enforce a money judgment is a power granted by *Schedule 12, Tribunals, Courts and Enforcement Act 2007 (TCEA)* and also governed by regulations and by the Civil Procedure Rules (CPR). It replaced execution against goods under the common law from 6 April 2014 when regulations under TCEA and new procedural rules came into force.

Like its predecessor, taking control of goods is a very popular method of enforcing a money judgment. It requires the issue of a court document (in the High Court, a writ of control, in the County Court, a warrant of control) which commands an enforcement officer to seize and sell a judgment debtor's goods and raise funds to satisfy the judgment debt.

Taking control of goods may often be the quickest method of enforcement of a money judgment. The procedure is simple and straightforward. It does not require a judicial decision. A writ or warrant of control can be issued, in most cases, administratively by the court office, following production of documents and payment of a fee. Notice to the debtor is not required at the time of the issue of the writ or warrant; although notice is to be given later, by the enforcement officer. The threat of enforcement may even be enough, in some cases, to secure payment of a judgment debt.

Writs and warrants of control work well whether the debtor is an individual or a corporate debtor. The corporate debtor may have stock, machinery, office equipment or vehicles which can be taken and sold but it is always vital to check for any third party rights.

Taking control of goods can be undertaken alongside other methods of enforcement, although note that a judgment creditor needs the leave of the court to levy **execution** (www.practicallaw.com/0-107-6579) whilst an **attachment of earnings** (www.practicallaw.com/3-382-6153) order is in force (*section 8(2)(b), Attachment of Earnings Act 1971*). Where more than one method of enforcement is used, the judgment creditor should ensure that they notify the court and enforcement agent of any payment received.

Before issuing a writ or warrant of control, it is vital to consider:

- Whether the judgment debt is due and enforceable.

- What assets the debtor has. He must either have goods which can be sold at auction to raise a sum sufficient to meet the judgment debt (or a large part of it) or enough money to meet the judgment debt to stop goods being taken and sold. If the judgment is sizeable, unless the debtor has particularly high value goods, **charging orders** (www.practicallaw.com/7-382-6151) or **third party debt orders** (www.practicallaw.com/6-382-6161) may be a better method of enforcement.

What will it secure/achieve?

A writ or warrant of control commands an enforcement officer (High Court enforcement officer or County Court bailiff) to seize and sell at auction enough of a debtor's goods in order to obtain the funds to satisfy a money judgment.

Note that you can ask a County Court bailiff to try to get back any amount up to £5,000. (Though this limit does not apply if you are enforcing an agreement regulated under the *Consumer Credit Act 1974*. These agreements can **only** be enforced in the County Court.) Unless the judgment debt is a consumer credit agreement, you cannot ask the County Court to issue a warrant for more than £5,000, but you can transfer your judgment to the High Court and then ask the High Court enforcement officer to enforce the judgment.

Writs and warrants of control: points of caution

A writ or warrant of control will only help if the defendant has either:

- Enough goods which could be sold at auction to raise money to meet the sum outstanding under the judgment.
- Enough money to pay the judgment debt (to stop goods being sold).

Before the court will issue a writ or warrant of control, the defendant must have either:

- Failed to pay the amount he or she has been ordered to pay in the time allowed.
- Fallen behind with at least one of his or her payments under an instalment order. (*CPR 83.9(5)(b)*.)

It is important to note that the procedure is strictly regulated and the subject of express procedure. Detail is set out in subsequent paragraphs but it is particularly worth noting that

- Paragraphs 4 to 69 of Schedule 12 TCEA delineate the general powers of the enforcement agent, including, at para 13, the four ways in which he may take control of the goods. (See, *Process of taking control of goods*), whereas *CPR 84* regulates specific matters that may, and often will, arise on applications in the process of taking control.
- For example, *CPR 84.3* provides that, in pre-existing proceedings, any application to the court must be made to the High Court or the County Court in accordance with *CPR 23.2*.
- Further, whilst notice must be given to the judgment debtor not less than 7 days before the enforcement agent takes control, application may be made without notice to shorten that period (*CPR 84.4*). (See *Notice to debtor*)
- An application to extend the period under which control may be taken is the subject of *CPR 84.5*. (See, *Validity of writ or warrant of control and extension*.)
- An application to take control during prohibited hours, again without notice, may be made under *CPR 84.6* (see, *Prohibited hours for taking control*). This will require evidence that unless the order is made it is likely that the judgment debtor will dispose of the goods in order to defeat the process.
- The enforcement agent will usually sell the goods at public auction. If however he seeks an order for sale by private treaty in a particular case he must apply under paragraph 41(2) of Schedule 12 for that purpose. *CPR 84.11* contains special provisions relating to any such application. (See, *Sale of the goods*.)
- Where a co-owner of the goods may be entitled to a share of the proceeds of sale, disputes in that respect are the subject of application under *CPR 84.15*. See *Co-owner's claims*.
- An application by the enforcement agent to recover exceptional disbursements is the subject of *CPR 84.14*.
- Disputes about the amount of fees recoverable are governed by application under *CPR 84.16*.

Procedure for obtaining a writ or warrant of control

The procedure for obtaining a writ or warrant of control is straightforward and quick, as explained below. It is an administrative procedure that does not involve a court hearing.

Enforcement by taking control of goods is governed by *Schedule 12* to TCEA and regulations issued under TCEA, the *Taking Control of Goods Regulations 2013 (SI 2013/1894)* (2013 Regulations). The procedural rules for obtaining a writ or warrant of control are in *CPR 83-85*. (Note that there are writs and warrants conferring a power to use the taking control of goods procedure and writs and warrants which do not do this. CPR 83 covers both types of writs.)

A flowchart providing guidance and setting out the interrelationship between the CPR, TCEA and the 2013 Regulations should also be found on the *Justice website*. Such flow chart will, particularly, provide information as to the occasions on which, and how, an application to the court will need to be made in the process.

Preliminaries

- Check that there is a judgment debt due and enforceable. The debtor must have failed to pay the judgment debt when due, or failed to pay an instalment due under the terms of the judgment (*CPR 83.9(5)(b)*). It is generally the case that before most enforcement methods can be used, the judgment debtor must have been given an opportunity to pay the judgment debt.
- Act quickly to establish the nature and value of the goods of the debtor which can be taken control of and his assets generally. The goods must be capable of being taken control of (see *What goods can be taken control of*). There must also be sufficient value in the goods so that after sale at auction there is sufficient to meet the judgment debt or a large part of it. Alternatively, the debtor must have enough assets to pay the judgment debt so as to prevent execution being levied against his goods.
- Check whether permission to issue a writ or warrant of control is required. (See, *Is permission to issue a writ or warrant of control required?*)
- Issue of a writ of control is governed by CPR 83.9. This provides that issue takes place on the writ being sealed by a court officer of the appropriate office. In all cases save those stipulated in CPR 83.9 (1)(a)(b) and (c) (and from 1 October 2014, Chancery Chambers, see *Legal update, 74th and 75th updates to CPR and practice directions in force on 30 July and 1 October 2014 (www.practicallaw.com/0-577-0188)*) this will be the Central Office of the Senior Courts at the Royal Courts of Justice. A request for the issue of the writ must be filed. Such request must be signed by the judgment creditor, if acting in person, or by their solicitor. CPR 83.9(5) lays down the documents which must be produced by the person presenting the writ in order to enable the writ to be sealed. It also requires the court officer to be satisfied that any period specified in the judgment or order for the payment of any money or the doing of any other act under the judgment or order has expired. Every writ of execution or control will bear the date on which it is issued (*CPR 83.9(6)*). Check that you have complied with this rule carefully. See further, the sections below.

What goods can be taken control of?

Generally, any goods belonging to a debtor can be taken control of for the purpose of this enforcement power unless they are "exempt goods" under Schedule 12 TCEA and the 2013 Regulations. (See further, *What are exempt goods?*)

TCEA defines goods as being "property of any description, other than land" (paragraph 3, Schedule 12, TCEA).

The following **cannot** be seized using a writ or warrant of control:

- Goods not owned by the debtor. For example, goods subject to a hire purchase agreement or conditional sale or finance lease or transferred pursuant to a **bill of sale** (www.practicallaw.com/4-200-0063).
- Trust assets, unless the whole beneficial interest in the goods is vested in the debtor.
- Interests in land and fixtures upon land.
- Exempt goods. (See, *What are exempt goods?*)
- Other specific exemptions. (See, *Other specific exemptions*)
- Goods on premises not subject to the power of enforcement and goods outside England and Wales.
- Crown property. A separate procedure exists to enforce judgments against the Crown. This is set out in *sections 25(1) to (3)* of the *Crown Proceedings Act 1947*. See also *CPR 66*.
- Goods already seized under another writ or warrant of control.

What are exempt goods?

Exempt goods are defined in Regulations 4 and 5 of the 2013 Regulations. The following are exempt goods;

- Items or equipment (for example, tools, books, telephones, computer equipment and vehicles) which are necessary for use personally by the debtor in the debtor's employment, business, trade, profession, study or education, **except that in any case the aggregate value of the items or equipment to which this exemption is applied shall not exceed £1,350**. This is different to the law governing the previous regime, execution against goods using writs of fi fa. Previously, there was no limit for the tools of trade exemption. It is thought that the change may lead to satellite litigation regarding value of goods.
- Such clothing, bedding, furniture, household equipment, items and provisions as are reasonably required to satisfy the basic domestic needs of the debtor and every member of the debtor's household, including (but not restricted to):
 - a cooker or microwave;
 - a refrigerator;
 - a washing machine;
 - a dining table large enough, and sufficient dining chairs, to seat the debtor and every member of the debtor's household;
 - beds and bedding sufficient for the debtor and every member of the debtor's household;
 - one landline telephone, or if there is no landline telephone at the premises, a mobile or internet telephone which may be used by the debtor or a member of the debtor's household;
 - any item or equipment reasonably required for the medical care of the debtor or any member of the debtor's household, or for safety in the dwelling-house, or for the security of the dwelling-house (for example, an alarm system) or in the dwelling-house;
 - sufficient lamps or stoves, or other appliance designed to provide lighting or heating facilities, to satisfy the basic heating and lighting needs of the debtor's household; and
 - any item or equipment reasonably required for the care of a person under the age of 18, a disabled person or an older person.
- Assistance dogs (including guide dogs, hearing dogs and dogs for disabled persons), sheep dogs, guard dogs or domestic pets.
- A vehicle on which a valid disabled person's badge is displayed because it is used for, or in relation to which there are reasonable grounds for believing that it is used for, the carriage of a disabled person.
- A vehicle (whether in public ownership or not) which is being used for, or in relation to which there are reasonable grounds for believing that it is used for, police, fire or ambulance purposes.
- A vehicle displaying a valid British Medical Association badge or other health emergency badge because it is being used for, or in relation to which there are reasonable grounds for believing that it is used for, health emergency purposes.

Further, where any goods of the debtor are also premises, and are occupied by the debtor or another person as the debtor's or that person's only or principal home, those goods are exempt goods.

The burden of demonstrating that goods are exempt falls on the debtor, and depends on the factual circumstances of the particular case.

Other specific exemptions which may apply

- **Chattels of tenant debtor subject to landlords rent recovery.** Unpaid landlords may have rights over tenant debtor's chattels that are held on leasehold property and such rights may take priority over the rights of a creditor. Note that distress for rent was replaced by "Commercial Rent Arrears Recovery" from April 2014. (See *Practice note, Commercial rent arrears recovery for leases* (www.practicallaw.com/2-547-6746) .)
- **Partnership goods.** A writ or warrant of control can only be executed against the assets of partnership where judgment has been entered against the partnership. If the debt is just the debt of an individual partner or partners rather than the whole partnership, partnership property cannot be seized.
- **Assets of transport companies.** Sections 4 to 5 of the *Railway Companies Act 1867* (the 1867 Act) exempted certain railway rolling stock and plant used by a railway company from seizure under a writ of fieri facias after a railway has been open to public traffic. Enforcement of a judgment against such a company should be by seeking the appointment of a receiver or manager under a special mechanism provided for by section 4 of the 1867 Act. Key system assets in the London Underground are also exempted from seizure (*section 216(4), Greater London Authority Act 1999*). This may now also apply to writs of control.

Goods which may be taken control of but with particular issues

Certain goods, although amenable to being taken control of, raise difficult issues on enforcement. For example:

- **Money and financial instruments.** Special rules apply to taking control of the debtor's money, banknotes, bills of exchange, promissory notes, bonds, specialities or securities for money (see *2013 Regulations*).

- **Aircraft.** Note that different parts of an aircraft may have different ownership and there are likely to be some parts subject to finance leases which cannot be seized. A specialist enforcement officer with experience of aircraft should be used. A copy of the writ of control is required to be attached both outside the plane and in the cockpit to alert both passengers and others entering the aircraft and the pilot of the seizure of the plane (or part of it).
- **Ships.** Under certain circumstances, the master and crew of a ship can claim a lien over the ship (usually for unpaid wages). Such a lien will take priority over a creditor's attempts at enforcement against a ship or a share of a ship (*The Ile de Ceylan* [1922] P 256).
- **Goods on farms.** Animals can be taken control of but must be properly looked after. Crops can be seized but only if produced using "human labour" (*Evans v Roberts* (1826) 5 B&C 829). Special rules apply where the debtor is a tenant farmer. (See, *Sale of Farming Stock Act 1816*.)
- **Machinery.** If machinery is heavy or large, a specialist enforcement officer with experience of such assets should be consulted. Arrangements will need to be made for the removal and storage of the assets or sale at the debtor's premises.
- **Company goods.** Note that a company may not have many or any goods at its registered office. You need to find out where the company's goods are located as this information will be vital to successful enforcement.
- **Joint goods.** Goods which are jointly owned can be taken control of and sold but difficulties can arise regarding the sale proceeds. The enforcement officer may need to seek an order from the court as to the division of the proceeds. (See, *Adverse claims to goods*)

Is permission to issue a writ or warrant of control required?

Permission is not required to issue a writ or warrant of control except in the following circumstances listed by *CPR 83.2(3)*:

- Where six years or more has elapsed since the date of the judgment or order.
- Where any change has taken place, whether by death or otherwise, in the parties entitled or liable to the execution under the judgment or order or liable to have it enforced against them.
- Where the judgment or order is against the assets of the deceased person coming into the hands of his executors or administrators after the date of the judgment or order and it is sought to issue execution on such assets.
- Where any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the court or a sequestrator.
- Where under the judgment or order any person is entitled to a remedy subject to the fulfilment of any condition which it is alleged has been fulfilled.
- Where the writ or warrant of control is to be in aid of another writ or warrant of control.

The leave of the County Court is also needed to levy **execution** (www.practicallaw.com/0-107-6579) whilst an **attachment of earnings** (www.practicallaw.com/3-382-6153) order is in force (*section 8(2)(b)* of the *Attachment of Earnings Act 1971*).

An application for permission is made in accordance with *CPR 23*. A fee is payable for the application. The fee varies depending on whether the application is made on notice or without notice to the debtor. For the relevant fee, see *High Court fees: a quick guide* (www.practicallaw.com/3-205-8040). Notice does not have to be given to the debtor. The application should be supported by evidence in a witness statement covering matters such as:

- The details of the judgment or order to which the application relates.
- If the judgment or order is for the payment of money, the amount originally due and that due at the time of the application may be stated.
- The reasons for any delay in enforcement.
- The details of any change in the parties which has taken place since the date of the judgment or order.
- That a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so.
- Other information as is necessary to satisfy the court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it. (*CPR 83.2(4)*.)

The application does not need to be on notice to the other party unless the court directs (*CPR 83.2(5)*).

The court has a discretion regarding the application for permission. It may grant or refuse permission to issue the writ or warrant of control or order the matter to be tried. It can also impose terms and costs as it thinks fit.

A judgment creditor is more likely to obtain permission if they can demonstrate that there has not been delay in enforcing or enforcement has been thwarted by action on the part of the judgment debtor.

A second application for permission can be made if an application for permission is unsuccessful. However, the second application should be made on the basis of material not before the court on the first application (*W T Lamb and Sons v Rider [1948] 2 KB 331*, a case concerning the predecessor to *CPR 83.2* which was *RSC Ord 46 rule 4*).

A fresh order can be made after an order expires.

When to apply: writs and warrants of control

An application for a writ or warrant of control can be made at any time after you have obtained judgment. However, check that the judgment debt is due and enforceable and that the method of enforcement is appropriate (see *Preliminaries*). A writ or warrant of control will not be granted unless the debtor has failed either:

- To pay the debt when due.
- To pay an instalment due under the terms of the judgment. (*CPR 83.9(5)(b)*.)

Note that delay of over six years from the date of the judgment means that an application for permission to issue a writ or warrant of control is required and may result in loss of interest on the judgment debt. (See, *Is permission to issue a writ or warrant of control required?*)

Application documents: writs and warrants of control

To issue a writ of control, the judgment creditor should file the following documents at court:

- A request for issue of the writ signed by or on behalf of the solicitor of the judgment creditor or, if the judgment creditor is acting in person, by him. See *PF 86* (www.practicallaw.com/3-625-9336) for a form of request. *PF 86A* (www.practicallaw.com/2-502-8427) or *Form N293A* (www.practicallaw.com/3-382-1042) is a combined certificate of judgment and request for writ of control. (See *Transfer of County Court judgment to High Court for execution by writ of control*.)
- A draft writ of control. The relevant form is one of the following:
 - *No. 53 - Writ of control*. (www.practicallaw.com/8-503-3435)
 - *No. 54 - Writ of control on order for costs* (www.practicallaw.com/0-565-8945) .
 - *No. 56 - Writ of control after levy of part* (www.practicallaw.com/0-565-9006) .
 - *No. 57 - Writ of control against personal representatives* (www.practicallaw.com/8-565-9045) .
 - *No. 63 - Writ of control to enforce foreign registered judgment* (www.practicallaw.com/6-565-9287)

The writ of control has historically been issued in the name of the monarch and the Lord Chancellor acts as witness. The name of the current Lord Chancellor should be inserted into the draft writ. This can be obtained from the *Ministry of Justice website page: Our ministers*.

The writ should be addressed either to a named individual enforcement officer (for the relevant postcode of the judgment debtor) or to the enforcement officer or officers for the postcode of the judgment debtor's residence or place of business in which case the writ will be allocated to a particular HCEO by rotation. Allocation will be carried by the National Information Centre for Enforcement c/o Registry Trust Limited of 153-157 Cleveland Street, London W1T 6QW (telephone 0207 391 7299) Further information can be found on the High Court Enforcement Officers Association website at <http://www.hceo.org.uk>; or by telephone enquiry to the Association's office at 0844 824 4575. (It may not matter if a named enforcement officer is not assigned to the relevant district in which the writ is executed, provided that he has already agreed to execute the writ. Named enforcement officers are likely to be used when the debtor has goods which are special or of high value and an enforcement officer with specialist expertise is necessary.) The writ commands the enforcement officer to indorse it with a statement of the details of the execution for return to the judgment creditor.

For information about enforcement officers, see the HMCTS (formerly HMCS) booklet *Ex345, About Bailiffs and Enforcement Officers*.

For a list of enforcement officers in England and Wales who have been authorised to execute High Court writs under the provision contained in *Section 99* and *Schedule 7* to the Courts Act 2003, see the *Directory of Enforcement Officers*.

See also *Delivery to an enforcement officer*.

The draft writ sets out the date and amount of the judgment debt together with costs and interest (if applicable) less any amounts received before the date of the issue of the writ. Amounts received after issue should be notified immediately to the enforcement officer in writing (*PD 70.7.2*).

Where the judgment has been transferred from the County Court to the High Court for enforcement by writ of control, interest should be calculated at the County Court rate from the date of the original county court judgment until the date of the certificate of transfer. The *County Courts (Interest on Judgment Debts) Order 1991 (SI 1991/1184)* provides for certain County Court judgment debts to carry interest at the same rate as that payable on High Court judgments under *section 17 of the Judgments Act 1838*. Post-judgment interest is paid at the rate specified by order in the *Judgments Act 1838, 17(1)*. This has been 8% since 1 April 1993 (see the *Judgment Debts (Rate of Interest) Order 1993 (SI 1993/564)*.)

Where the judgment or order is expressed in a foreign currency, the praecipe and draft writ of control will require amendment. Guidance as to what is necessary is set out in section 12.4.16 of the *Queen's Bench Guide (www.practicallaw.com/2-205-4014)* which should also apply to other divisions of the High Court. The praecipe for enforcement of such judgments must contain a certificate of the rate current in London for the purchase of the relevant foreign currency on the date nearest to the date the writ of control is to be issued and a calculation of the amount of the judgment in sterling at that rate as at that date. Practitioners commonly use closing rates from the Financial Times or Reuters for this certificate.

The draft writ also sets out the address of the judgment debtor which the enforcement officer should visit to levy execution.

- The judgment or order on which the writ is to issue or an office copy.
- If appropriate, the order granting permission to issue the writ of control.
- Where judgment on failure to acknowledge service has been entered against a State (as defined in *section 14 of the State Immunity Act 1978*), evidence that the State has been served in accordance with *CPR 40.10* and that the judgment has taken effect.

To issue a warrant of control file at court:

- A request for a warrant (*Form N323 (www.practicallaw.com/1-508-2274)*).

If the appropriate documents are filed, the writ or warrant of control should be sealed by a court officer and thereby issued. The issue of a writ or warrant of control is an administrative exercise and does not involve any court hearing.

Separate enforcement of costs

Where the judgment is for the payment of money plus "costs to be assessed", then separate writs or warrants of control should be issued. One for the principal sum and interest and one for the costs after they have been assessed (*CPR 83.5*).

Description of parties

Where the name or address of the creditor or debtor as given in the request for the issue of a writ or warrant of control differs from that person's name or address in the judgment or order sought to be enforced, if the creditor files a witness statement that satisfies the court officer that the name or address as given in the request is applicable to the person concerned, the creditor or the debtor will be described in the writ as "CD of [name and address as given in the request] suing [or sued] as AD of [name and address in the judgment or order]". (*CPR 83.10*.)

Which court?

A writ of control can only be issued in the High Court.

Warrants of control are issued in the County Court.

Which High Court?

The writ of control should be issued at the "appropriate office" of the High Court. This is defined in *CPR 83.9* as follows:

- Where the proceedings in which execution is to issue are in a District Registry, that Registry.
- Where the proceedings are in the Principal Registry of the Family Division, that Registry.
- Where the proceedings are Admiralty proceedings or commercial proceedings which are not in a District Registry, the Admiralty and Commercial Registry.
- in any other case, the Central Office of the Senior Courts.

Which County Court hearing centre?

The request for warrant of control must be made to either of:

- The County Court hearing centre where the judgment or order which it is sought to enforce was made.

- The County Court hearing centre to which the proceedings have since been transferred. (*CPR 83.15.*)

Transfer of County Court judgment to High Court for execution by writ of control

Proceedings are usually transferred from the County Court to the High Court for enforcement when a judgment creditor wants to enforce his judgment by taking control of goods using a writ of control, which is a High Court procedure. It is sometimes considered that High Court enforcement officers are more effective than County Court bailiffs.

A writ of control can be obtained to enforce a County Court judgment but the judgment must first be transferred to the High Court and it has to be a judgment over £600 and not regulated by the Consumer Credit Act 1974. Debts below £600 and those regulated by the *Consumer Credit Act 1974* must be enforced in the County Court. If a County Court judgment is for over £5,000, the judgment must be transferred to the High Court for execution.

The procedure for transfer is as follows:

- The judgment creditor makes a request in writing to the County Court for a certificate of judgment stating that it is required for the purpose of enforcing the judgment in the High Court and that it is intended to enforce the judgment by taking control of goods. *Form N293A* (www.practicallaw.com/3-382-1042) is a combined certificate of judgment and request for writ of control.
- The transfer to the High Court takes effect, from the grant of the certificate of judgment, as an order to transfer the proceedings to the High Court. The transfer is only for the limited purpose of enforcement by writ of control.
- Once transfer has taken place, the County Court notifies the debtor using Form N328.
- The judgment creditor just needs to issue the draft writ of control in the High Court.

See also *CPR 40.14A* and the *Queen's Bench Guide* (www.practicallaw.com/2-205-4014) section 12 which refers to the Senior Master's Practice Direction published at [1998] 4 All E.R. 63; and [1998] 1 WLR 1557.

In a case where a request for a certificate of judgment is made under *CPR 40.14A(1)* for the purpose of enforcing a judgment or order in the High Court and any of the following proceedings are pending, the request for the certificate will not be dealt with until those proceedings are determined:

- An application for a variation in the date or rate of payment of money due under a judgment or order.
- An application under either *CPR 39.3(3)* or *CPR 13.4*.
- A request for an administration order.
- An application for a stay of execution under section 88 of the County Courts Act 1984.

(See *CPR 83.19.*)

No fee is required for the issue of the certificate of judgment by the County Court or the registration of it in the High Court, although a fee is payable for the issue of a writ of control (see *Fee*).

The Queen's Bench Guide emphasises that it is important to remember in these cases involving transfer that, whilst an application for a stay of execution may be made to a Master in the High Court, any application to set aside or vary the judgment must be made to the County Court. Thus a Master may, and often does, order a stay of execution on terms that the judgment debtor (a) issues and serves within a limited time an application in the County Court to set aside or vary the judgment and (b) proceeds with such application with all due expedition.

Enforcement of High Court judgment by warrant of control

Where it is desired to enforce by warrant of control a judgment or order of the High Court, the request referred to in *CPR 83.15(3)* (request for warrant of control) may be filed in the County Court hearing centre which serves the address where execution is to be levied.

Any restriction imposed by these rules on the issue of execution will apply as if the judgment, order, decree or award were a judgment or order of the County Court.

Permission to issue execution will not be required if permission has already been given by the High Court.

Notice of the issue of the warrant will be sent by the County Court to the High Court. (*CPR 83.17.*)

Fee

There is a fee for the issue of a writ of control or warrant of control. For the latest fee, see *Court fees* (www.practicallaw.com/0-507-2534).

Suspension of warrant of control at creditor's request

The judgment creditor may apply to suspend a warrant of control because he has reached an agreement with the debtor, for example, for the latter to pay the judgment sum by certain instalments (*CPR 83.22(4)*). He can re-issue the suspended warrant or issue a fresh one subsequently in the event of default.

Note the distinction between withdrawal and suspension. A creditor can withdraw under *CPR 83.22(2)* but should do so only where the warrant has been paid, or perhaps where, for example, adequate security has been given. Withdrawal ends the warrant and it cannot be re-issued.

Where a warrant issued for part of a sum of money and costs payable under a judgment or order is suspended on payment of instalments, unless the court otherwise directs, the judgment or order will be treated as suspended on those terms as respects the whole of the sum of money and costs then remaining unpaid (*CPR 83.28*).

Concurrent warrants of control

Two or more warrants of control may be issued concurrently for execution by two or more different enforcement agents, but:

- No more may be levied under all the warrants together than is authorised to be levied under one of them.
- Unless the court orders otherwise, the costs of more than one warrant will not be allowed against the debtor. (*CPR 83.29*.)

Costs

The judgment creditor is entitled to **fixed costs** (www.practicallaw.com/6-205-5139) if a writ or warrant of control is issued. The fixed costs will be the court fee plus a fixed sum in respect of the costs of execution. For the latest figure, see *CPR 45.8*. See further, *Practice note, Fixed costs in litigation* (www.practicallaw.com/1-520-0767).

If an application for permission to issue a writ or warrant of control was required (see *Preliminaries*), the costs of this application can also be claimed. It will be in the court's discretion whether or not they are awarded.

Delivery to an enforcement officer

The sealed writ of control should be delivered to the enforcement officer or officers identified in the writ for him or them to carry out taking control of goods (see *Application documents*).

An individual can act as an enforcement agent if one of the following applies:

- The agent has a certificate from the court in accordance with section 64 of TCEA.
- The agent is exempt, as defined in section 63(3), section 63(4) and section 63(5) of TCEA.
- The agent acts in the presence and under the direction of someone who holds such certificate or is exempt. (section 65, TCEA)

Information about the judgment debtor's goods and their whereabouts (if not at the judgment debtor's main address) is not usually set out in the application documents but is very useful information for the enforcement officer and can be forwarded to him with the sealed writ or conveyed by telephone. It is essential that care is taken regarding the information given. If wrong information is given and leads to the seizure of the wrong goods, the judgment creditor and solicitor could be liable for trespass (*Morris v Salberg [1899] 22 QBD 614* and *Rowles v Senior [1846] 8 QB 677*) or breach of the 2013 Regulations (see further, *Adverse claims to goods* and *Judgment debtor remedies for taking control of goods breaches*).

The enforcement officer will make a charge for his fees and expenses. He will take this out of the goods seized. He should take sufficient to satisfy the judgment debt and its costs and interest and his own charges. If there is no sale of the debtor's goods, because the debtor pays the judgment debt or execution is stopped, the enforcement officer's fee must still be paid by either the judgment creditor or the person at whose insistence the execution was stopped.

Enforcement officer's fees are governed by *Taking Control of Goods (Fees) Regulations 2014 (SI 2014/1)*. These Regulations set out when enforcement agents can recover their fees and disbursements from the debtor in proceedings to take control of goods under Schedule 12 TCEA, and how those fees are to be calculated. Fees are recoverable at a fixed rate, based on the stage of the enforcement procedure (as specified in the Schedule to the Regulations). Additional fees can be recovered as a percentage of the value of the goods over which control is taken

If a specific individual enforcement officer is not required, the judgment creditor has the following options:

- Get the Sheriffs Lodgment Centre or similar to deal with issue of the writ of control and the taking control of goods (see *Application documents* for further information). A fee is necessary for this service.
- Send the sealed writ to the National Information Centre for Enforcement for automatic allocation to a High Court enforcement officer for the relevant postal district, using the "cab rank" principle. The address details are: National Information Centre for Enforcement, c/o Registry Trust Limited, 153-157 Cleveland Street, London, W1T 6QW. There is no fee to be paid. This is a state-run service. For further detail on High Court enforcement see the *Directory of High Court Enforcement Officers for England and Wales* (www.practicallaw.com/1-380-9649).

Warrants of control in the County Court get to the County Court bailiffs through the court.

Process of taking control of goods

Only an enforcement agent may use the power to take control of goods (*section 63 and Schedule 12(2)(2), TCEA*).

Circumstances when process cannot be used

An enforcement agent may take control of goods only if they are:

- On premises that he has power to enter.
- Goods of the debtor.
- Not exempt goods
- In England and Wales.

An enforcement officer may not take control of goods of a debtor where:

- The debtor is a child.
- A child or vulnerable person (whether more than one or a combination of both) is the only person present in the relevant or specified premises in which the goods are located.
- The goods are also premises in which a child or vulnerable person (whether more than one or a combination of both) is the only person present. (*Regulation 10, 2013 Regulations*.)

The enforcement agent may also not take control of an item where it is in use (in hands of or operated by) by any person at the time at which the enforcement agent seeks to take control of it and such action is in all the circumstances likely to result in a breach of the peace. (*Regulation 10, 2013 Regulations*.)

An enforcement officer cannot take control of goods on a highway if it might cause a risk to public health (*Regulation 11, 2013 Regulations*).

Prohibited hours for taking control

Although an enforcement officer may take control of goods on any day of the week, there are prohibited hours for taking control. These are before 6 am and after 9 pm on any day unless:

- The court orders otherwise. (See further, *CPR 84.6*.)
- The debtor's premises are open for the conduct of trade or business during those hours.
- The enforcement agent has begun to take control of goods during non-prohibited hours and needs to complete this and provided that the time spent in taking control is reasonable. (*Regulation 13, 2013 Regulations*.)

NOTE that for elements of a writ or warrant that contains the power to use the taking control of goods procedure, but which is not a writ or warrant of control CPR 83.6 was revised from 1 October 2014 so that for those elements of the writ or warrant, there must not be execution on a Sunday, Good Friday or Christmas Day. (See, *Legal update, 74th and 75th updates to CPR and practice directions in force on 30 July and 1 October 2014* (www.practicallaw.com/0-577-0188).

Stages of process

The process of taking control of goods has these stages:

- Notice to debtor of enforcement.
- Taking control of the goods by entry into premises and securing the goods or entering into a controlled goods agreement.
- Notice after entry and inventory of goods.

These three stages are covered in detail in the sections below. Sale of the controlled goods is then covered in the next section after those.

NOTE Until April 2014 when the TCEA statutory rules came into force, the common law rules as to rights of entry and existing statutory provisions applied to enforcement officers when they were entering premises for execution. For details on those, see the previous version of this note, *Practice note, Execution against goods and writs of fieri facias* (www.practicallaw.com/6-558-9888).

Notice to debtor

The judgment debtor must be given not less than seven clear days notice of enforcement before the enforcement officer takes control of his goods unless the court orders a shorter period (*Regulation 6(1), 2013 Regulations*). The period of days does not include a Sunday, bank holiday, Good Friday or Christmas Day.

The court may only order a shorter period of notice where it is satisfied that, if the order is not made, it is likely that the debtor's goods will be moved or disposed of to prevent enforcement (*Regulation 6(4), 2013 Regulations*). See also *CPR 84.4*.

The notice must be in writing and contain the following information:

- The name and address of the debtor.
- The reference number or numbers.
- The date of notice.
- Details of the court judgment or order or enforcement power by virtue of which the debt is enforceable against the debtor.
- The following information about the debt:
 - sufficient details of the debt to enable the debtor to identify the debt correctly;
 - the amount of the debt including any interest due as at the date of the notice;
 - the amount of any enforcement costs incurred up to the date of notice; and
 - the possible additional costs of enforcement if the sum outstanding should remain unpaid as at the date by which payment should be made.
- How and between which hours and on which days payment of the sum outstanding may be made.
- A contact telephone number and address at which, and the days on which and the hours between which, the enforcement agent or the enforcement agent's office may be contacted.
- The date and time by which the sum outstanding must be paid to prevent goods of the debtor being taken control of and sold and the debtor incurring additional costs. (*Regulation 7, 2013 Regulations*.)

The notice of enforcement must be given **by the enforcement office or his office** by these means:

- Post to the debtor at the place, or one of the places, where he usually lives or carries on a trade or business.
- By fax or other means of electronic communication.
- By delivery by hand through the letter box of the place, or one of the places, where the debtor usually lives or carries on a trade or business.
- Where there is no letterbox, by affixing the notice at or in a place where it is likely to come to the attention of the debtor.
- Where the debtor is an individual, to the debtor personally.
- Where the debtor is not an individual (but is, for example, a company, corporation or partnership), by delivering the notice to the place, or one of the places, where the debtor carries on a trade or business or the registered office of the company or partnership. (*Regulation 8, 2013 Regulations*.)

The enforcement agent must keep a record of the time when the notice is given.

Note that there is no obligation to state the actual date when the enforcement officer will attempt to take control of the debtor's goods.

Time limit for taking control of goods after notice of enforcement

The enforcement agent may not take control of goods of the debtor after 12 months has expired from the notice of enforcement. Control must be taken within 12 months from the notice of enforcement (*Regulation 9, 2013 Regulations*).

However:

- The court can extend this period by 12 months if requested to do so by the enforcement agent or judgment creditor (it can only extend once and only if satisfied that the applicant has reasonable grounds for not taking control of goods of the debtor during the usual 12 month period).
- Where, after giving notice of enforcement the enforcement agent enters into an arrangement with the debtor for the repayment, by the debtor, of the sum outstanding by instalments (a repayment arrangement) and the debtor breaches the terms of the repayment arrangement, the period begins with the date of the debtor's breach of the repayment arrangement. (*Regulation 9, 2013 Regulations*.)

See further CPR 84.5.

Entry into premises and securing goods

To take control of goods, paragraph 13(1) of Schedule 12 TCEA establishes that an enforcement agent must do one of the following:

- Secure the goods on the premises on which he finds them. Ways of securing goods such as guarding, storage, fitting an immobilisation device are detailed in Regulations 16-18 of the 2013 Regulations.
- If he finds them on a highway, secure them on a highway, where he finds them or within a reasonable distance. Any liability of an enforcement agent (including criminal liability) arising out of his securing goods on a highway under this paragraph is excluded to the extent that he acted with reasonable care.
- Remove them and secure them elsewhere. This must be within a reasonable distance from the place taken. (*Regulation 19, 2013 Regulations*.)
- Enter into a controlled goods agreement with the debtor.

Controlled goods agreement

A controlled goods agreement is an agreement under which the debtor:

- Is permitted to retain custody of the goods.
- Acknowledges that the enforcement agent is taking control of them.
- Agrees not to remove or dispose of them, nor to permit anyone else to, before the debt is paid. (*Paragraph 13(4), Schedule 12, TCEA*.)

A controlled goods agreement can only be entered into with:

- A debtor who is not a child.
- A person, aged 18 or over, authorised by the debtor to enter into a 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.

The enforcement agent should not enter into a controlled agreement with a debtor or another person if it appears (or ought to appear) to the enforcement agent that that person does not understand the effect of, and would therefore not be capable of entering into, such an agreement.

(*Regulation 14, 2013 Regulations*.)

The agreement must be in writing and signed by both enforcement officer and debtor or other person and must contain the following information:

- The name and address of the debtor.

- The reference number or numbers and the date of the agreement.
- The names of the persons entering into the agreement.
- A contact telephone number and address at which, and the days on which and the hours between which the enforcement agent or the enforcement agent's office may be contacted.
- A list of the goods of which control has been taken with a description to enable the debtor to identify the goods correctly, including, where applicable— (i) the manufacturer, model and serial number of the goods; (ii) in the case of a vehicle, the manufacturer, model, colour and registration mark of the vehicle; and (iii) the material, colour and usage, and (where appropriate) any other identifying characteristic of the goods; and
- The terms of the arrangement entered into between the enforcement agent and the debtor for the repayment, by the debtor, of the sum outstanding.

The enforcement officer must give the debtor or other person a copy of the signed agreement at the time of entering and if someone other than the debtor enters into the agreement, the debtor must be provided with a copy at his premises.

(*Regulation 15, 2013 Regulations.*)

Entry requirements

The enforcement agent may enter relevant or specified premises and re-enter only by:

- Any door or any usual means by which entry is gained to the premises (for example, a loading bay to premises where a trade or business is carried on).
- Any usual means of entry, where the premises are a vehicle, vessel, aircraft, hovercraft, a tent or other moveable structure. (*Regulation 20, 2013 Regulations.*)

The enforcement agent must observe the rules about when he may not take control and the prohibited hours. (See, *Circumstances when process cannot be used* and *Prohibited hours for taking control.*)

There are specific rules regarding re-entry in the 2013 Regulations (see *Regulations 23-27*).

An enforcement agent may if necessary use reasonable force to enter premises or to do anything for which the entry is authorised. He can also ask the court may issue a warrant allowing the use of reasonable force to enter premises. See further, *paragraph 20(2)* of Schedule 12, TCEA and *regulations 28-31*, 2013 Regulations and CPR 84.9. A power to use force does not include power to use force against persons, except to the extent that other regulations provide that it does.

The enforcement agent must leave the premises as effectively secured as he finds them. (*Paragraph 30, Schedule 12, TCEA.*)

Notice after entry and inventory of goods

After entering the debtor's premises, the enforcement agent must provide a notice for the debtor giving information about what the enforcement agent is doing.

The notice must be in writing, signed by the enforcement officer and contain the following information:

- The name and address of the debtor.
- The enforcement agent's name, the reference number or numbers and the date of the notice.
- That the enforcement agent has done one or more of the following— (i) entered the premises; (ii) taken control of goods on a highway; (iii) entered a vehicle on a highway with the intention of taking control of goods.
- The address of the premises which the enforcement agent has entered or the location on the highway where the enforcement agent has taken control of goods or entered a vehicle.
- Where a vehicle on a highway has been entered with the intention of taking control of goods, the manufacturer, model, colour and registration mark of that vehicle.
- Whether or not the enforcement agent has taken control of goods of the debtor and, if so, the location where and the time when control has been taken of the goods (i) a list of the goods of which control has been taken with a description to enable the debtor to identify the goods correctly, including, where applicable—(aa) the manufacturer, model and serial number of the goods; (bb) in the case of a vehicle, the manufacturer, model, colour and registration mark of the vehicle; and (cc) the material, colour and usage, and (where appropriate) any other identifying characteristic, of the goods; (ii) the amount of the sum outstanding as at the date of the notice;. (iii)

the date and time by which the sum outstanding must be paid to prevent the controlled goods being sold; (iv) how and between which hours and on which days payment of the sum outstanding may be made; and (v) that the controlled goods will be released on payment in full (or may be released on part payment) of the sum outstanding. (*Regulation 30, 2013 Regulations.*)

There are additional notice requirements where goods have been immobilised or are removed for storage or sale. (*Regulations 31-32, 2013 Regulations.*)

Where the enforcement agent is re-entering premises under paragraph 16 of Schedule 12 to inspect goods of which control has previously been taken and not using force to effect the re-entry the requirement to provide notice does not apply (*Regulation 30(3), 2013 Regulations.*)

If the debtor is on the premises when the enforcement agent is there, the enforcement agent must give him the notice after entry then. If the debtor is not there, the enforcement agent must leave the notice in a conspicuous place on the premises. If the enforcement agent knows that there is someone else there or that there are other occupiers, a notice he leaves must be in a sealed envelope addressed to the debtor. If the premises are occupied by any person apart from the debtor, the enforcement agent must leave at the premises a list of any goods he takes away. (*Paragraphs 28-30, Schedule 12, TCEA.*)

In addition to the notice after entry, the enforcement agent must provide the debtor with an inventory of the goods taken control of as soon as reasonably practicable. If there are co-owners of any of the goods, the enforcement agent must instead provide the debtor as soon as reasonably practicable with separate inventories of goods owned by the debtor and each co-owner and an inventory of the goods without a co-owner. The co-owner must also be provided with an inventory and the notice of entry. (*Paragraph 34, Schedule 12, TCEA.*)

The inventory of goods must be signed and contain the following information:

- The name and address of the debtor.
- The enforcement agent's name, the reference number or numbers and the date of the inventory.
- The name and address of the co-owner, if any.
- That the enforcement agent has taken control of the goods of the debtor or of the debtor and the co-owner as specified in the inventory
- A list of the goods of which control has been taken with a description to enable the debtor or the co-owner to identify the goods correctly, including, where applicable— (i) the manufacturer, model and serial number of the goods; (ii) in the case of a vehicle, the manufacturer, model, colour and registration mark of the vehicle; and (iii) the material, colour and usage, and (where appropriate) any other identifying characteristic, of the goods. (*Regulation 33, 2013 Regulations.*)

The inventory may be combined with a controlled goods agreement and the notice after entry.

Abandonment of controlled goods

Controlled goods are abandoned if:

- The enforcement agent does not give the debtor or any co-owner notice of sale within the permitted period.
- They are unsold after a sale of which notice has been given in accordance with that paragraph.

If controlled goods are abandoned, then, in relation to the enforcement power concerned, the following apply:

- The enforcement power ceases to be exercisable.
- As soon as reasonably practicable the enforcement agent must make the goods available for collection by the debtor, if he removed them from where he found them.

The judgment creditor can apply to take control of goods again using another writ or warrant of control.

(*Paragraphs 52-54, Schedule 12, TCEA and Regulation 47 - note that there are separate provisions regarding abandonment of securities.*)

Validity of writ or warrant of control and extension

A relevant writ or warrant will be valid for the period in which an enforcement agent may take control of the goods in question, as specified in regulation 9(1) of the TCG Regulations (*CPR 83.4*).

Regulation 9 states that (subject to *paragraphs (2) and (3)*), the enforcement agent may not take control of goods of the debtor after the expiry of a period of 12 months beginning with the date of notice of enforcement. Paragraph (2) provides that:

"Where— (a) after giving notice of enforcement the enforcement agent enters into an arrangement with the debtor for the repayment, by the debtor, of the sum outstanding by instalments (a repayment arrangement); and (b) the debtor breaches the terms of the repayment arrangement, the period in paragraph (1) begins with the date of the debtor's breach of the repayment arrangement."

Paragraph (3) of the Regulation provides that the court may order that the period in paragraph (1) be extended by 12 months. The procedure for seeking such extension is in *CPR 84.5*. For the form of notice after an application for extension is granted, see *Standard document, no. 71: Notice of extension of writ of control (CPR 83.4)*. (www.practicallaw.com/2-565-9345)

The court may consider the effect on priority (see *Priority of writs*) when deciding whether or not to grant an extension.

Effect of writ or warrant of control

Goods of debtor are bound

The writ or warrant of control binds the property in the goods of the execution debtor from the time when it is received by the person who is under a duty to endorse it until the goods are sold or the money outstanding is paid or the power of enforcement ceases to exist (*paragraphs 4 and 6, Schedule 12, TCEA*). This gives the enforcement officer a legal right to seize sufficient of the judgment debtor's goods to satisfy the amount specified in the writ or warrant following his receipt of the writ or warrant. This gives the judgment creditor a kind of security.

The judgment debtor continues to own the goods until any sale of them by the enforcement officer and can legally deal with the goods. However, if the goods are transferred to a third party by the judgment debtor after receipt of the writ or warrant by the enforcement officer, the goods will be taken subject to his right to take control of the goods.

This does not prejudice the title to any of the debtor's goods that a person acquires in good faith (honestly), for valuable consideration, and without notice. (*Paragraph 5, Schedule 12, TCEA*.)

If goods are seized which did not belong to the judgment debtor, and then sold, the purchaser will acquire good title to the goods if no claims are made to the goods. No claim can be made against the enforcement officer unless it can be shown that he had notice, or might reasonably have ascertained, that the goods did not belong to the judgment debtor. (See also, *Protection for those purchasing from debtor in good faith, Sale of the goods and Adverse claims to goods*.)

A judgment debtor's insolvency can defeat the binding effect of a writ or warrant of control. See *sections 183, 184 and 346 of the Insolvency Act 1986*, which concern the circumstances in which execution is effective against a bankrupt and a company in liquidation. For further information, see *Practice note, Liquidation: Liquidator's powers: Proceedings against the company* (www.practicallaw.com/1-107-3981).

See further, *CPR 83.20*.

Priority of writs or warrants of control

Irrespective of whether it has been extended under regulation 9(3) of the TCG Regulations, the priority of a relevant writ will be determined by these:

- By reference to the time it is originally received by the person who is under a duty to endorse it.
- By reference to the date on which it was originally issued.

However, under the CPR, there are important distinctions in respect of priority of writs and warrants of control see *CPR 83.4(5) and (6)*. The priority of a writ of control is determined by when it is delivered to the relevant enforcement officer, whereas the priority of a warrant of control is determined by reference to the date upon which it was issued under *CPR 83.3(9)*. The same priority provisions apply to writs and warrants that do not confer a power to use the taking of goods procedure.

What can the debtor do in response to the writ or warrant and once goods taken into control?

In summary, the **debtor's** options after a writ or warrant of control has been issued and he has been given notice of enforcement are:

- To make payment of the judgment debt as soon as possible. (See, *Payment by debtor*.)
- To make a claim that goods are exempt identifying all the relevant goods and explaining why it is alleged they are exempt goods, for example, they are tools of the trade or household necessities. (See, *What are exempt goods?*.) If not accepted by the judgment creditor resulting in a withdrawal of the writ or warrant of control, an application should be made to court to determine this claim under *CPR 85*. (See, *Adverse claims: Judgment debtor's claims to exempt goods*.)

- To ask the court that the writ or warrant be set aside or suspended (for payment by instalments) or that execution be stayed (see *CPR* 83.7). The power to grant a stay of any writ of control is vested in a Master or District Judge. The grounds on which application may be made include the debtors inability to pay, in which case the witness statement in support must disclose the debtor's means: *CPR* 83.7(4). It is specifically provided, in line with the position under the former RSC Order 47 rule 1(1), that if the court is satisfied that (a) there are special circumstances which render it inexpedient to enforce the judgment or order, or (b) that the applicant is unable for any reason to pay the money, then, notwithstanding anything in paragraph (5) or (6), the court may by order stay the execution of the judgment or order, either absolutely or for such period and subject to such conditions as the court thinks fit: see rule 83.7(4). Paragraphs (5) and (6) set out what any application under *CPR* 83.7 shall contain. Any application under this rule should always set out the applicant's case as fully as possible so that the Master may consider, if a stay is to be granted, what condition should be imposed. (See also *Suspension of writ or warrant at creditor's request.*)
- To do nothing and let the goods be sold by the enforcement officer to pay the judgment debt. (See *Sale of the goods.*)

After goods have been taken into control, the debtor can also apply to court for a remedy if he considers that:

- There has been breach of a provision of Schedule 12, TCEA; or
- The enforcement action was taken under a defective instrument

He must supply evidence as to how:

- The provisions of Schedule 12 are alleged to have been breached; or
- The instrument is alleged to be defective. (*CPR* 84.13.) (See further, *Judgment debtor remedies for taking control of goods breaches.*)

Payment by debtor

The judgment debtor can make payment of the amount due under the writ or warrant of control at any time.

The enforcement officer may accept payment of the debt by instalments if the judgment creditor consents. It may make sense, in some cases, to accept payment by instalments, particularly if there are insufficient assets to cover the full amount.

If payment of the debt is made in full, the judgment debtor will have satisfied his obligations and no further enforcement action should be taken. (*Paragraph 58, Schedule 12, TCEA.*)

If further action is taken:

- The enforcement agent is not liable unless he had notice, when the step was taken, that the amount outstanding had been paid in full.
- If the step taken is sale of any of the goods, the purchaser acquires good title unless, at the time of sale, he or the enforcement agent had notice that the amount outstanding had been paid in full. (*Paragraph 59, Schedule 12, TCEA*)

A person has notice that the amount outstanding has been paid in full if he would have found it out if he had made reasonable enquiries. This does not affect any right of the debtor or a co-owner to a remedy against any person other than the enforcement agent or a related party. (*Paragraph 59, Schedule 12, TCEA.*)

Sale of the goods

Unless the judgment debtor makes payment, his goods must be sold following their being taken control of by the enforcement officer. Neither the judgment creditor nor the enforcement officer can keep the goods.

Pending sale, an enforcement agent must take reasonable care of controlled goods that he removes from the premises or highway where he finds them (*paragraph 35, Schedule 12, TCEA and Regulation 34, 2013 Regulations*).

An enforcement agent must sell or dispose of controlled goods for the best price that can reasonably be obtained. (*Paragraph 37, Schedule 12, TCEA.*) Before sale, the enforcement agent must make or obtain a valuation of the controlled goods in accordance with regulations or give the debtor, and separately any co-owner, an opportunity to obtain an independent valuation of the goods. (*Paragraph 36, Schedule 12, TCEA.*)

There should be a seven day notice period of the sale from the time of removal of goods unless that would make the goods unsaleable or extinguish or substantially reduce their value (*Regulation 37, 2013 Regulations*). The form of the notice of sale is governed by *Regulation 39, 2013 Regulations*.

Sale is normally by public auction, although goods can be sold by private tender with the agreement of the court. (*Regulation 41, 2013 Regulations and CPR 84.11.*)

The sale may be held on premises where goods were found by the enforcement agent where those premises are occupied solely for the purposes of a trade or business (*Regulation 42, 2013 Regulations*).

There is separate provision for securities (see *Part 4, 2013 Regulations*).

The sums specified in the writ or warrant of control should be paid over to the judgment creditor out of the proceeds of sale, after a holding period of 14 days to comply with the provisions of *section 184* of the Insolvency Act 1986. If the proceeds are more than the amount outstanding, the surplus must be paid to the debtor. If there is a co-owner of any of the goods, the enforcement agent must also pay the co-owner a share of the proceeds of those goods proportionate to his interest. Note that the enforcement officer is also entitled to be paid out of the proceeds of sale (see further *Delivery to an enforcement officer*).

A purchaser of controlled goods acquires good title, with two exceptions which apply only if the goods are not the debtor's at the time of sale. The exceptions are:

- Where the purchaser, the creditor, the enforcement agent or a related party has notice that the goods are not the debtor's.
- Where a lawful claimant has already made an application to the court claiming an interest in the goods. (See also *Third party claims*.)

A lawful claimant in relation to goods is a person who has an interest in them at the time of sale, other than an interest that was assigned or transferred to him while the property in the goods was bound for the purposes of the enforcement power.

A related party is any person who acts in exercise of an enforcement power, other than the creditor or enforcement agent.

(*Paragraph 51, Schedule 12, TCEA.*)

Any liability of an enforcement agent or related party to a lawful claimant for the sale of controlled goods is excluded except in two cases:

- Where at the time of the sale the enforcement agent had notice that the goods were not the debtor's, or not his alone.
- Where before sale the lawful claimant had made an application to the court claiming an interest in the goods. (*Paragraph 63, Schedule 12, TCEA.*)

Suspension of writ or warrant at creditor's request

The **creditor** can ask the court to suspend an issued writ or warrant of control. If suspension is ordered, he will be treated as having abandoned the goods and the enforcement power to take control ceases to be exercisable.

Suspension does not mean that subsequently a fresh writ or warrant cannot be obtained. If the court is requested by the creditor to suspend the warrant because of an arrangement with the debtor, the court will mark the warrant as suspended by request of the creditor and the creditor may subsequently apply to the court for it to be re-issued. (See *CPR 83.22*.)

Where a warrant issued for part of a sum of money and costs payable under a judgment or order is suspended on payment of instalments, unless the court otherwise directs, the judgment or order will be treated as suspended on those terms as respects the whole of the sum of money and costs then remaining unpaid.

Debtor's application to set aside writ or warrant of control

There may be good reason for the court to set aside a writ or warrant of control. For example, in *Sindicato Unico De Pescadores De Municipio Miranda Del Estado Zulia v International Oil Pollution Compensation Fund 1992 [2015] EWHC 2117 (QB)*, a writ of control was set aside because the writ was being used to enforce a Venezuelan judgment which had been registered in the Queen's Bench Division and the registration order expressly provided that there should be no execution until any application to set aside the registration order had been disposed of, and there was such an application still to be determined. The issue of the writ of control was also not permitted under *CPR 74.9(1)* which provides that, where an application has been made to set aside a registration order, "no steps may be taken to enforce the judgment" until that application has been determined. Issuing a writ of control amounted to a step taken to enforce the judgment and so *CPR 74.9(1)* was clearly engaged. See *Legal update, Writ of control to enforce foreign judgment set aside as extant application to set aside registration order (High Court)* (www.practicallaw.com/4-617-5751),

Adverse claims to goods

Judgment debtor's claims to exempt goods

A judgment debtor can make a claim to exempt goods under *CPR 85.8*.

Co-owner's claims

Co-owners claims (to proceeds of sale) are the subject of application under *CPR 84.15*.

Third party claims

If third parties claim that the goods taken control of belong to them rather than to the judgment debtor, there is a procedure to resolve any dispute. This is set out in *CPR 85.4-5* and paragraph 60, Schedule 12, TCEA. (These (together with *CPR 86* which concerns stakeholder claims (see *Practice note, Stakeholder claims and applications: overview* (www.practicallaw.com/4-597-4466)) and *CPR 85.6-7* which concern claims to executed goods (those subject to a writ of execution such as a writ of possession, writ of delivery, writ of sequestration and writ of ecclesiastical property (not writs of control)) replace the old interpleader procedure under *RSC Order 17*.)

The procedure for dealing with a claim against controlled goods involves the third party, enforcement officer and judgment creditor setting out their claims so that the court can decide title to the property. If the claim is disputed, the court receives written evidence and then decides if it will dismiss a claim or order a sale to go ahead and/or order how proceeds and costs should be dealt with. It can order a trial if it considers that this will assist.

After receiving notice of the application, the enforcement agent must not sell the goods, or dispose of them (in the case of securities), unless directed by the court.

On making the application to the court, the third party must make the following payments into court. (The aim of these is presumably to deter time-wasters):

- An amount equal to the value of the goods, or to a proportion of the value as directed by the court.
- An amount, at prescribed times, in respect of the costs of retaining the goods. (*Paragraph 60(4), Schedule 12, TCEA*.)

The court may direct the enforcement agent to sell or dispose of the goods if the applicant fails to make, or to continue to make, the required payments into court.

If the applicant makes a payment of the value but the enforcement agent disputes the value of the goods, any underpayment is to be determined by reference to an independent valuation carried out in accordance with regulations, and paid at the prescribed time.

Even if payment is made, the court may still direct the enforcement agent to sell or dispose of the goods before the court determines the applicant's claim, if it considers it appropriate. The enforcement agent must pay the proceeds of sale or disposal into court.

(Note: this is a summary; the procedure is set out in full in *CPR 85.4-6*.)

The parties are encouraged to agree matters informally. Judgment creditors and enforcement officers should consider third party claims carefully. Otherwise, there may be costly satellite litigation.

Any liability of an enforcement agent or related party to a lawful claimant for the sale of controlled goods is excluded except in two cases:

- Where at the time of the sale the enforcement agent had notice that the goods were not the debtor's, or not his alone.
- Where before sale the lawful claimant had made an application to the court claiming an interest in the goods. (*Paragraph 63, Schedule 12, TCEA*)

Nevertheless, enforcement officers should always make reasonable enquiries to ascertain that goods are the property of the judgment debtor when seizing goods.

CPR 85.3 provides that any claim under Part 85 must be made by an application under Part 23. This is a change from the previous High Court procedure, where a Part 8 claim had to be issued unless there were already existing proceedings.

If goods seized are jointly owned by the judgment debtor and another, the enforcement officer is entitled to take control of the goods and then seek direction from the court as to the division of the proceeds of sale. (See *CPR 84.15*.)

Stakeholder claims

CPR 86 makes provision for when a person is under a liability in relation to a debt or goods and two or more competing claims are made or expected to be made against that person in relation to the debt or goods. See further, *Practice note, Stakeholder claims and applications: overview* (www.practicallaw.com/4-597-4466).

Judgment debtor remedies for taking control of goods breaches

Remedies for the debtor in relation to taking control of goods breaches are set out in Paragraph 66, Schedule 12, TCEA. (See further *CPR 84.13* and *What can the debtor do in response to the writ or warrant and once goods taken into control?*)

Creditor's remedy for wrongful interference by debtor with controlled goods

There is a remedy for the creditor if a debtor wrongfully interferes with controlled goods and the creditor suffers loss as a result, the creditor may bring a claim against the debtor in respect of the loss. (*Paragraph 67, Schedule 12, TCEA.*)

Execution under the old regime

Execution against goods undertaken prior to the commencement of the taking control of goods regime on 6 April 2014 will not be affected by the new regime. Section 66, TCEA provides that if before the commencement of the new regime, goods have been distrained or executed against, or made subject to a walking possession agreement, the new regime does not affect the continuing exercise of the old power.

For full details of the old regime, see the old version of this note, *Practice note, Execution against goods and writs of fieri facias* (www.practicallaw.com/6-558-9888).

For more guidance on transitional provisions and an overview of how the new regime changed things from before, and what might be good and bad about the reform, see *Article, The new law of enforcement: are you ready?* (www.practicallaw.com/6-564-3705) by Stephen Allinson, Consultant Solicitor and Licensed Insolvency Practitioner, Lester Aldridge LLP.

Resource information

Resource ID: 1-380-9649

Products: Family, Local Government, PLC Property Litigation, PLC UK Dispute Resolution, PLC UK Employment, PLC UK Public Sector

This resource is maintained, meaning that we monitor developments on a regular basis and update it as soon as possible.

Resource history

Sindicato Unico De Pescadores De Municipio Miranda Del Estado Zulia v International Oil Pollution Compensation Fund 1992 [2015] EWHC 2117 (QB)

We have added a section to this note, and included this case in which a writ of control was set aside.

Related content

Topics

Civil Litigation: Employment (<http://uk.practicallaw.com/topic1-540-5245>)

Enforcement and Remedies: Land and Buildings (<http://uk.practicallaw.com/topic8-103-1313>)

Enforcement: Litigation (<http://uk.practicallaw.com/topic7-204-0010>)

Enforcement: Local Government (<http://uk.practicallaw.com/topic1-540-5387>)

Financial remedies: divorce and dissolution of civil partnership (<http://uk.practicallaw.com/topic7-522-0814>)

Rent, Non-payment of Rent and Rent Review (<http://uk.practicallaw.com/topic0-607-5046>)

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Practice notes

Attachment of earnings (<http://uk.practicallaw.com/topic6-382-5232>)

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Enforcement of English judgments in other jurisdictions (<http://uk.practicallaw.com/topic0-591-7147>)

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Enforcing a money judgment: frequently asked questions (<http://uk.practicallaw.com/topic2-422-3147>)

Third party debt orders (<http://uk.practicallaw.com/topic8-379-0585>)

Standard documents

Application for permission to amend writ of control: example (with drafting notes) (<http://uk.practicallaw.comtopic7-520-6568>)

Application notice for order for stay of execution by writ of control example (with drafting notes) (<http://uk.practicallaw.comtopic4-520-6560>)

Application notice for permission to issue writ of control: example (with drafting notes) (<http://uk.practicallaw.comtopic6-508-2375>)

Application notice to extend the period for taking control of goods by writ of control: example (with drafting notes) (<http://uk.practicallaw.comtopic9-519-8416>)

Letter to client about enforcement of a money judgment: example (<http://uk.practicallaw.comtopic0-519-4187>)

Order granting permission to issue writ of control: example (<http://uk.practicallaw.comtopic2-511-6363>)

Order staying execution by writ of control: example (<http://uk.practicallaw.comtopic6-520-2721>)

Order/notice of extension of writ of control: example (<http://uk.practicallaw.comtopic3-519-4195>)

Request for issue of a writ of control: example (with drafting notes) (<http://uk.practicallaw.comtopic2-508-2377>)

Request for warrant of control: example (with drafting notes) (<http://uk.practicallaw.comtopic7-509-2779>)

Witness statement in support of application for stay of execution by writ of control example (<http://uk.practicallaw.comtopic6-520-2702>)

Witness statement in support of application to extend period for taking control of goods by writ of control: example (<http://uk.practicallaw.comtopic3-519-4181>)

Witness statement supporting an application for permission to issue a writ of control: example (<http://uk.practicallaw.comtopic3-508-3135>)

Writ of control: example (with drafting notes) (<http://uk.practicallaw.comtopic4-508-2381>)

Checklists

How to use a writ of control: flowchart (<http://uk.practicallaw.comtopic0-385-1926>)

Stakeholder claims and applications: Flowchart (<http://uk.practicallaw.comtopic6-598-0206>)

Glossary

Taking control of goods (<http://uk.practicallaw.comtopic7-382-5769>)

Warrant of control (<http://uk.practicallaw.comtopic1-382-6154>)

Writ of control (<http://uk.practicallaw.comtopic8-382-5764>)

Article

The new law of enforcement: are you ready? (<http://uk.practicallaw.comtopic6-564-3705>)

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