



England and Wales

Narrative National Report

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PART I: LEGAL FRAMEWORK

I.1 Legislation affecting civil enforcement

The High Court Enforcement Officers Association (HCEOA) was formed in April 2004 and was formally known as *The Sheriffs' Officers Association of England and Wales*. It represents the High Court Enforcement Officers (HCEO) who are charged with the enforcement of court decisions.

In 2007 the UK government introduced the Tribunals Courts and Enforcement Act of 2007. This covered many areas. However, it was parts 3 and 4 that covered enforcement.

The Taking Control of Goods Regulations (2013) regulated almost 50 different forms of legislation into one easy to understand area of law.

These regulations cover a number of areas such as - the procedure for taking control of goods, the sale of controlled goods, exemptions of goods, valuation of goods, securities of the debtor, abandonment of goods, third party claims, and the collection of commercial rent arrears (CRAR).

The Insolvency Act 1986 also has an impact upon HCEOs when enforcing a Writ of Control against a debtor who has become bankrupt or a company that has become insolvent. As a general rule, the Act prohibits the enforcement to continue.

I.2 Enforceable titles

Within the European Union there is no uniformity from one country to another on the procedures and charging structures other than the European Enforcement Order¹ (EEO) or the European Order for Payment², (EOP) which for some countries is merely an Order that has to be converted into an enforceable title. As a general rule, certain conditions in law must be met when an HCEO enforces an EEO/EOP.

As a judgment creditor based in France with an EEO/EOP as an example, and the debtor has moved to England, what would the procedure be to have the Order enforced by an HCEO?

Firstly, England and Wales under the Civil Procedure Rules (Amendment No3) Rules 2005 (SI 2005/2292) makes provision for the recognition and enforcement of EEO/EOP.

As an example, if the Order was obtained in France then the title will probably be in French. So, the first action after receiving the EEO/EOP is to have the Order translated into English.

The judgment creditor will need to provide:

- A sealed copy of the judgment.

¹ Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

² Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.



- A sealed EEO certificate.

A translation of the EEO certificate into English must be certified by a Notary Public or other qualified person or by written evidence that the translation is accurate. Once the judgment creditor has fulfilled the above criteria an application can be made in the English courts to take control of the judgment debtor's assets; apply for a charging order; apply for a third-party debt order; apply for an attachment of earnings order or apply for a receivership to be imposed.

The requirements are mentioned in Article 30 of EEO Regulation³.

Whichever route of enforcement chosen, an application to the High Court or County Court must be made by a qualified lawyer. A list of enforceable titles in England and Wales is provided below.

The enforceable titles are obtained in the High Court, County Court and Magistrates Court. As a general rule, most titles will have a life cycle of 12 months and can be renewed or extended by application to the issuing court. Once the enforcement is completed the HCEO or Civilian Enforcement Agent (CEA) will issue a certificate or return to the court as to the manner and outcome of the enforceable procedure.

Table 1

Enforceable Title	High Court	Enforceable Title	County Court	Magistrates Court
Writ of Control	✓	Warrant of Control	✓	
Writ of Possession	✓	Warrant of Possession	✓	
Writ of Delivery	✓	Attachment of Earnings Order	✓	
Writ of Restitution	✓	Charging Order	✓	
Writ of Assistance	✓	Third Party debt Order	✓	
Compulsory Purchase Order	✓	Magistrates Liability Order		✓

³ (a) A copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity; and

(c) where necessary, a transcription of the European Enforcement Order certificate or a translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Community other than its own which it can accept for the completion of the certificate. The translation shall be certified by a person qualified to do so in one of the Member States.



Anton Pillar Order	✓	Magistrates Arrest Warrant		✓
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I.3 Service of documents to parties and third parties

Whilst there is no authoritative title of an officer serving official documents or, examinations and qualifications to pass, those involved in the service of court documents in England and Wales are known as Process Servers. A Process Server can be an individual working in a self-employed capacity, or a judicial officer simply wearing a different hat, or a County Court bailiff.

A Process Server as a general rule will accept instructions to serve documents from solicitors, lawyers, local authorities, government agencies, private and public companies, and private individuals. They will also accept instructions from overseas clients.

In the UK there is a professional body known as the Process Servers Association.

Typical documents that the private sector process server would serve are:

- Statutory demands.
- Bankruptcy petitions.
- Winding-up petitions and claim forms.
- Matrimonial documents.
- Eviction notices.
- Non molestation orders.
- Injunction orders.
- Confiscation orders.
- Divorce petitions.
- Official documents from EU and non-EU members.

The County Bailiff (public sector) also has a role to play in the service of official documents, whereby the courts have been requested to serve such documents. It must also be noted that certain rules are governing the proper service of all official documents that the courts will recognise as “proper service”; these are governed by the *Civil Procedure Rules part 6*.

There are several factors to keep in mind that the Process Server must comply with. They must at all times:

- Comply with the Civil Procedure Rules on service part 6.
- Comply with special instructions within the framework of the law.

- Ensure that they comply with General Data Protection Regulation (GDPR⁴).
- Ensure that all statements or affidavits are completed accurately and correctly and promptly.

A Statement of Fact, a Certificate of Service, or an Affidavit is the document that is presented to the court together with a copy of the papers served.

The Statement of Fact⁵, Certificate of Service, or an Affidavit should all include the following:

- Full name of the person serving the documents.
- Full business address of the person serving the documents.
- The official title of the person serving the documents.
- Day and time of service.
- Address of service.
- Name of the person accepting service.
- The official title of the person accepting service.
- Any comments from the person accepting service.
- Declaration of the person serving.

As a general rule, the service of official court documents and papers in England and Wales are a precursor to an enforceable title or enforceable proceedings. There are many exceptions to this rule, whereby, documents are served giving due notice to the commencement of enforcement. The notified party will have a period after service from between 14 – 28 days (generally) to either appeal, contest, or make a counterclaim.

1.4 Legal remedies, appeal and objection

To obtain an enforceable title, the creditor has to follow many steps, and comply with current legislation. For example, a debtor owes a creditor £5,000.00 and is not responding after many letters, phone calls, emails, and text messages.

Step 1.

Letter of Claim.

The next stage is to instigate the Pre Action Protocol (PAP) in line with the Civil Procedure Rules. The Protocol is all about giving the debtor as much information regarding their debt, such as:

⁴ Regulation (EU) No 2016/679 of the European Parliament and of the council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

⁵ This document should not be confused with the Statement of Fact as it is used in other jurisdictions, i.e., the written statement of an enforcement agent regarding substantive facts observed by the enforcement agent personally.



- Amount of the claim, including interest and charges.
- Who made the agreement, when and where it was agreed.
- A copy of the written agreement.
- Whether the debt has been sold, details of the original debt and creditor.
- Details of how the debt can be paid, instalment options.
- Address to which a completed reply form should be sent.

There are other requirements in the PAP mentioned in the link at the end of this Atlas. The PAP can be sent by first class post or email. If the debtor does not reply within 30 days, then the creditor may start court proceedings.

Step 2.

Letter before Action – Generally 7 days to reply.

Step 3.

Issuing court proceedings by way of a County Court Claim. The debtor has a further 14 days to respond, to either admit the claim, pay in full, make a part payment, dispute the claim, or make a counterclaim.

Step 4.

Judgment obtained. Judgment sent to the HCEO and transferred to the High Court if the parameters are met a further 3-4 days. HCEO sends a Compliance Letter giving a further 7 days to pay.

Step 5.

The enforcement begins with a physical visit from the HCEO/County Court Bailiff.

At any-time, during the above process, the debtor can dispute the claim, even after the enforcement officer has attended the premises. They would need to make an application to the court for a stay of execution to halt the enforcement process. Once the Judge has ordered the stay, the HCEO/County Court Bailiff must cease all enforcement action.

1.5 Postponement, suspension and termination of enforcement

The court has a general power to stay the whole enforcement process either in whole or in part. The “stay” can be until a specified date or an event. The Civil Rules Procedure states that a “stay” imposes a halt on proceedings. Either the creditor or the debtor may make the application for the stay at any-time during the enforcement process. The benefits for the debtor making the application and being granted a “stay” is that it provides a temporary lifeline to preventing either the removal of their goods or possession of their home or buildings.

There are certain circumstances where a stay of execution is automatic such as:

- A third-party claim to the goods under control, allowing the claim to be heard before the court.

- An order for payment by instalments of a judgment debt.

Other aspects for an application include but are not limited to:

- The debtor in their application failed to acknowledge service of a claim or serve a defence.
- Significant change in circumstances that affect the enforcement such as death, critical illness, insolvency, etc.

In all circumstances, the debtor must set out within their application supported evidence in the form of a witness statement or affidavit. The evidence must substantiate grounds for making the application. If there is an inability to pay, the applicant must provide evidence of the income and expenditure, the value of any properties held, along with details of any liabilities. These details will enable the judge to make an informed decision.

The creditor must be served not less than four clear days before the hearing. There should be a very good reason to deny the judgment creditor the immediate fruits of their judgment. Merely making an application does not halt the enforcement process, although it is good practice where the HCEO has been informed that an application has been made, to halt enforcement pending the outcome of the hearing.

The consequences for continuing enforcement and removing goods before the hearing is that the judge may well order the return of the goods at the expense of the HCEO.

1.6 Counter enforcement

When a judgment or official title is obtained through the courts, and keeping in mind that the majority of judgments are uncontested, if the debtor believes that the creditor has obtained a title that should not have been granted, the debtor can make an application for the title to be varied, or set aside.

The debtor upon receiving the initial court documents can file with the court a defence or a counterclaim. A counterclaim is where the debtor believes and has evidence that the creditor has a financial obligation.

The courts upon hearing the arguments have been known to issue the judgment with special provisions that the debtor now becomes the creditor and the creditor now becomes the debtor (reverse writ of control). Although these writs are very rare, judicial officers have received them. They are normally accompanied with an instructing letter explaining that there was a counterclaim.

Certain rules are applicable in making the application under the *Civil Procedure Rules part 13*⁶.

⁶ In the first instance, the rules are very clear for the judgment to be set aside.

13.2 The court in the first instance can set aside a judgment entered if the judgment was incorrect because certain conditions were not satisfied in other words:

The time limits can take place at any-time during the enforcement procedure, however, normally a counterclaim is expected to be made whilst serving the defence of the initial procedure, and before the judgment has been granted.

1.7 Objects and exemptions on enforcement

This is an area where the enforcement officer needs to pay particular due diligence. An HCEO simply cannot take control of goods at their leisure. There are certain rules on exempted goods that must at all times be adhered too. These exemptions are put in place to protect the rights of debtors and to ensure that they continue to enjoy the necessary items for continued day to day living.

Exempt goods are listed under the *Taking of Goods Regulations 2013*. However, there is a financial limit on certain items of £1,350.00⁷.

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- the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
 - the relevant time for doing so has expired
 - in a counterclaim made under (CPR **20.0**),
 - the whole of the claim was satisfied before judgment was entered.

⁷ In practical terms, the officer can remove a £20,000.00 vehicle to pay the judgment and replace it with a less expensive vehicle. The rule is as follows:

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 d £1,350;

Other exempt items are: 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)—

(i) 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; safety in the dwelling-house; or the security of the dwelling-house (for example, an alarm system) or security 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), sheepdogs, 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;



I.8 (Court) penalties and fines

There are several aspects to this. As regards the role of the High Court Enforcement Officer, non-compliance from a debtor during the enforcement procedure (debts only) will result in the escalation of additional fees⁸.

When there is issued to the HCEO a Writ of Possession, which is the recovery of land and/or buildings, the HCEO will exercise slightly different powers, as they are not in attendance to collect a debt, they are there to regain possession of occupied land and buildings⁹.

Civilian Enforcement Agent (CEA) principally enforces liability orders and criminal fines issued in the lower Magistrates Court. The liability orders and fines are substantial around 3.2 million issued each year, but of low value.

Local and Central Government are the main creditors who issue these types of debts. Debtors who wilfully refuse to pay their property tax can be sent to prison for up to 3 months¹⁰.

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- 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; and
 - 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.

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.

Diplomats of foreign countries and their premises enjoy the privilege and protection from seizure of their goods. Currently over 15,000 persons in the UK enjoy this protection. This is governed by the Diplomatic Privileges Acts 1964 1971.

Under Crown Privilege of the Civil Procedure Rules part 66, enforcement against the Crown is exempt.

⁸ See *Part IV: Enforcement Costs* of the Atlas.

⁹ In the UK for over 30 years there have been different movements involving high-level protests. These protests are generally an attempt to prevent the landowners from developing the land. Such projects that have attracted environmental protests have included Airport Runways, Motorways, Fossil fuel extraction (black coal) HS2 and numerous others.

For non-compliance in these situations, the HCEO can use reasonable force to remove a person or persons from occupied land. For persistent offenders, the HCEO has the power to arrest and detain the individuals and either hand them over to the Police or bring them to court for sentencing. They can face up to a £5,000.00 fine or six months in prison or both.

Criminal Law Act Section 10 1977.

¹⁰ *An extract from the legislation. "if (and only if) the court is of opinion that his failure is due to his wilful refusal or culpable neglect it may if it thinks fit to issue a warrant of commitment against the debtor, or fix a term of imprisonment".*

Even though it is very rare in England and Wales that debtors are sent to prison for non-payment of their property taxes the threat is always there for the debtor. It focuses on their minds. As a last resort, the enforcement agent will arrest the debtor with bail conditions. If the debtor does not turn



I.9 Access to information on the domicile and assets of the debtor

There are several databases and registries available to the High Court Enforcement Officer and the creditor.

I.9.1 Order to obtain information

This order demands that the debtor be questioned under oath in court about their financial circumstances. The creditor can ask for this if they have already got a judgment or judicial title (CCJ). This is a useful tool in determining which enforcement route to take.

The court can ask:

- Income and outgoings.
- Job situation.
- Properties owned and any other assets of value.

The creditor will need to apply to the court to make this order. Debtors will have at least 14 days' notice to attend court. The order to obtain information will contain a penal notice. This is a warning that if the debtor does not attend the hearing, they can be sent to prison for disobeying the court order (contempt of court).

I.9.2 Driving Vehicle and Licensing Agency (DVLA)

This is one of the largest databases available to the HCEO holding over 48 million driver records and over 40 million vehicle records. For a small fee, the HCEO can check the registered keeper of a vehicle under their control. However, the DVLA will not have the ownership details of the vehicle, only the keepers' details¹¹.

Access to this database is highly regulated and subject to strict GDPR. HCEOs can only have access with a valid writ or warrant. Information will only be given on vehicle registrations that are linked to an enforcement procedure.

I.9.3 HM Land Registry

Unfortunately, HCEOs can only search the ownership of a property when in possession of the correct address. This search engine is available to the general public. However, name searches are not allowed. The person searching can only search if they have the property address. There are exceptions to this rule:

up in court, the next time they are arrested they are taken into custody to appear before the magistrate.

The same procedure is followed for the wilful non-payment of criminal fines. However, this is covered by different legislation.

¹¹ The vehicle may be on hire purchase/leased/bank-loan/private finance/owned by a third party. Although there are around 60 specific questions in the forms that a new owner completes, "are you the owner of the vehicle"? is not one of them.

- Criminal activity.
- Insolvency.

I.9.4 County Court Register

This beneficial search provides valuable information on whether or not the debtor has other judgments against them. It should inform the enquirer if the judgment has been satisfied and when that was, or that the debtor has a multitude of judgments against them. That being the case, the HCEO would proceed with caution, as the goods of the debtor may be in the possession of another HCEO, and therefore the goods would not be available. Access to this database is available to the general public. It is accessed through the website of Registry Trust Limited who is the custodian of this information.

I.9.5 The HCEO's own database

If the debtor is already known to the office of the HCEO, the database will provide valuable information on how any previous writs were paid or not as the case may be. Access to this database is available only to employees of the HCEO.

I.9.6 Insolvency Register

This is one of the first searches that an HCEO would undertake. There are four areas of insolvency that they would look for, through a search engine, available to the general public, and providing a clear view over the debtor:

- Bankruptcies, for example, the date of discharge (when someone is freed) from debts.
- Current bankruptcies.
- Debt Relief orders.
- Individual voluntary arrangements.

I.9.7 Companies House

This relates to enforcing writs against a Limited or Public Company. It will provide information on:

- Directors/shareholders.
- Trading address and registered office.
- Company accounts profit and loss.
- Company structure such as holding companies or subsidiary companies.
- Number of and value of judgments against the company.
- Any bank charges or debentures against the company.
- Company accountants.
- Cash in the bank.
- Current balance sheet value.

Access to this database is available to the general public.

The HCEO or judicial officer does not have access to the following databases:

- Banking information.
- Revenue and customs information.
- A name search on property information.
- Tax return information on individuals.
- Credit card information such as balances and payments.
- Unsecured loan information.
- Pension arrangements such as insurance companies.

I.9.8 Confidentiality

Any information collected or collated by the HCEO is shared with the creditor and their legal representative regarding the debtor. Staff members of the HCEO can also access this information. There are certain exceptions to this rule such as insolvency and criminal proceedings.

PART II: ORGANIZATION OF ENFORCEMENT

II.1 The status of the judicial officer

The Authorised High Court Enforcement Officer (HCEO) is a person authorised to enforce writs or judicial titles in their personal name in England and Wales. The HCEO has personal liability and responsibility in law for the conduct of the writ. A person making an application must be an associate member of the professional body (High Court Enforcement Officers Association of England and Wales) that oversees HCEOs. The educational pathway in becoming a member has to be achieved before the application is made.

A person starts as a student member with a qualification in law or credit management or an equivalent Level 3. The student during their training will need to sit the Level 2 examination in Taking Control of Goods Regulations with a pass, as part of that training. The Chartered Institute of Credit Management (CICM) provides further academic training for the student, to include a Level 4 Diploma and a final exam.

There are two aspects on their road to qualification – academic and practical. CICM providing the academic and an Authorised Officer providing the practical training. This generally takes 2 years or more depending on the student. Should the student not achieve either before 5 years has expired, they will forfeit their student status.

The student will need a two-year training contract with an Authorised Officer who will provide the practical logs for their training. Once the student reaches all these requirements they will then qualify as an Associate Member of the professional body.

An application is made to the Senior Master of the Queen's Bench Division who is designated by the Lord Chancellor to authorise HCEOs. Once authorised the HCEO must apply for full membership, which is a requirement under the regulations. This



enables the HCEO to participate fully in the work of the professional body as well as the ability to receive writs of control and execution in the HCEO's name.

There are disciplinary sanctions for HCEOs who operate outside their scope. They are subject to the complaints procedure of the professional body. Breaches can incur up to a £15,000.00 fine, with the ultimate sanction of recommending their removal from office.

The removal will be made by the Senior Master of the Queen's Bench Division of the High Court of Justice. The Ministry of Justice will also be included and notified of such a removal.

The officer when appointed is providing a public function.

II.2 Supervision over enforcement

The Ministry of Justice provides the ultimate control over enforcement. They have introduced laws and regulations governing the day-to-day activities of HCEOs, they set the parameters for conduct, code of practice, and will agree on any amendments that are necessary from time to time. They are responsible for collecting judicial statistics from each officer and collating these to give an overview of the effectiveness of enforcement.

Within the regulations, the powers are clearly defined on what to do and what not to do. Each HCEO understands their role and responsibilities, to achieve such status and during their training, they would have covered all the aspects concerning their powers. The professional body will have control over the following areas:

- Dealing with all complaints made from either a debtor, creditor or instructing lawyer.
- Ensuring that HCEOs are continuing their professional development training.
- Ensuring that HCEOs are complying with the regulations.
- Ensuring that HCEOs are complying with "best practice" and codes of conduct.

Generally, the only time that the professional body will become involved in the day-to-day conduct of an HCEO is where they have received a complaint that includes a breach of conduct, best practice, non-compliance with the regulations, or a lack of continued training. The professional body can send reminders, practice directions, but will not officially become involved with the HCEO unless there has been a complaint. A complaint can also be made by any member against another member.

II.3 Access to the premises

The regulations require an HCEO to send an Enforcement Notice (EN) addressed to the debtor at the address stated on the writ of control. There must be 7 clear days before an attendance is made. If there is no response to the EN, the HCEO or their assistant will attend the premises directed on the Writ of Control, that:

- Either collect payment in full.
- Take control of goods and enter a stage payment agreement, allowing the



debtor to continue and enjoy the peaceful use of their possessions.

- Or if the circumstances demand they will remove goods to a public auction.

Private premises

Writs of Control

To access a private dwelling house, entry is made through any door or any usual means. The HCEO has to be invited in to assess and discuss the payment of the writ. Once inside the home, the goods of the debtor can formally be taken into control in the absence of full payment. They will sign an agreement known as a “Taken Control Goods Agreement” allowing the goods to remain on the premises while the debt is being paid through an instalment arrangement. The agreement will also allow the HCEO to re-enter the premises in the event of a default of the arrangement, hopefully, peaceable re-entry, or with a Locksmith if re-entry is refused.

During the initial visit and attendance, the HCEO can enter the premises without an invitation if they discover that the front or back door is open and ajar.

Commercial premises

Access to commercial premises may be obtained on the first visit by either:

- Peaceable entry.
- Forced entry.

Writs of Possession

A specific writ commanding the HCEO to put the claimant in possession of land or commercial buildings. There is no obligation to inform the occupants of an impending eviction, the HCEO can use reasonable force to break into premises and remove the occupants. This is always risk assessed depending on the nature of the occupiers and their intent.

Writs of Possession on private homes

The HCEO must give notice of their visit. This will enable the debtor to make alternative arrangements for re-housing. So, the skills of the HCEO are critical not to add any unnecessary stress during the eviction, but to give sufficient time for them to gather the belongings and personal effects.

II.4 Obstructing the judicial officer from carrying out enforcement

When enforcing a judicial title such as a possession order for the recovery of land and buildings, Section 10 of the Criminal Law Act of 1977¹² provides for the right to arrest.

¹² *“A person is found guilty of an offence if he resists or intentionally obstructs any person who is in fact an officer of the court engaged in executing any process issued by the High Court or any County Court for the purposes of enforcing any judgment or order for the recovery or delivery of possession of any premises.*



In practical terms, the HCEO even though having powers of arrest, will require the assistance of the police. Arresting a person who is obstructing an officer of the court in the execution of their duty, is the last resort. The HCEO and their assistants can use reasonable force to remove the person from the area covered by a Writ of Possession.

There have over the years been hundreds of arrests using Section 10 of the Criminal Law Act of 1977, with numerous successful convictions, resulting in a maximum prison sentence of six months or a £1,000.00 fine or both.

When enforcing a money judgment or title, a refusal to provide information on the debtor's assets does not constitute an offence under the current legislation. However, the HCEO can require police assistance where necessary, to which they are duty bound to attend the premises where there is a breach of the peace.

II.5 Time of enforcement

The Taking Control of Goods Regulations 2013 clearly defines the days and time that an enforcement officer can enter or re-enter premises to enforce a title.

II.5.1 Hours of entry

The enforcement agent may only enter, re-enter or remain on the premises after 6 a.m. and before 9 p.m. on any day. Where the premises are used (whether whole or part) for a trade or business, the enforcement agent may enter, re-enter or remain on the premises (or part of the premises so used) during any hours when the premises (or part of the premises) are open for the conduct of that trade or business.

If the premises are only open from 11pm – 2am, then the enforcement agent is allowed to enforce during this time.

Where the enforcement agent has, during hours permitted under paragraph (2), (3) or (5), already entered or re-entered premises, the enforcement agent may, outside such permitted hours, remain on the premises, if it is reasonably necessary for them to continue to search for and take control of goods, inspect controlled goods or remove controlled goods for storage or sale, provided the duration of time spent is reasonable.

The court may also authorize the enforcement agent to enter, re-enter or remain on premises during times other than those permitted only if an application for authorization is made to the court by the enforcement agent.

The HCEO is able to enforce their title on any day of the year. The one exception to this is the enforcement and possession of land or buildings. Writs of Possession still come under the Sheriffs Act of 1887, and therefore to enforce on a Sunday requires a special order from the court.

II.6 Mediation

There is no provision for the judicial officer to use a soft approach such as mediation

A constable in uniform or any officer of the court may arrest without warrant anyone who is, or whom he with reasonable cause, suspects to be, guilty of any offence under Section 10."



between the creditor and debtor. In practice the judicial officer attends to obtain a number of outcomes from the debtor:

1. Payment in full.
2. Taking control of the debtor's goods.
3. Entering into a stage payment agreement.
4. Removing the debtor's goods to a public auction.
5. Returning the writ, no goods no offer of payment.

However, many offices – but not all – of the HCEO offer a service such as amicable debt collection.

PART III: ENFORCEMENT PROCEDURES

III.1 Initiation and end of the enforcement procedure

The 5 steps described in I.4 mark the initiation and development of the enforcement procedure.

III.2 Enforcement against movable assets to settle pecuniary claims

During the initial attendance by the HCEO and determining that the debtor is not in a position to make a full payment, the HCEO now has an obligation under the writ to secure the debt by accessing the goods of the debtor.

There are many variables that the HCEO has to consider when undertaking their evaluation. Firstly, and depending on the honesty of the debtor goods belonging to the debtor must be identified. These are the only goods that can be evaluated. However, there are always exceptions to this rule, such as other goods that are on the premises where it is claimed that they are third-party goods.

The HCEO will ask for evidence regarding this claim, such as:

- Lease agreement.
- Rental agreement.
- Hire purchase agreement.
- Loan agreement.
- Sale of return agreement.
- Loan debenture agreement.
- Private loan or rental agreement.

The above is not an exhaustive list but gives a flavour of the type of evidence a debtor could provide to satisfy the HCEO. Goods that may appear on the inventory that the debtor has identified as belonging to them and goods where the debtor has been unable to provide concrete evidence of third-party ownership may also be taken into control. However, the HCEO must realise that the latter may be subject to a third-party claim when eventual evidence is produced.

III.2.1 Valuation

The HCEO will need to consider:

- The amount outstanding together with costs and interest.
- The cost of removal and transportation.
- The locksmith costs if required.
- The storage costs at the auctioneers' premises (these can be substantial in the event of a third-party claim that is disputed).
- The eventual auctioneers' costs.
- The HCEO costs.
- Distribution of proceeds.

III.2.2 Controlled goods agreement

For this agreement to be legally binding on the debtor it must contain the following information:

- (a) the name and address of the debtor.
- (b) the reference number or numbers and the date of the agreement.
- (c) the names of the persons entering into the agreement.
- (d) 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.
- (e) 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
- (f) the terms of the arrangement entered into between the enforcement agent and the debtor for the repayment, by the debtor, of the sum outstanding.

III.2.3 Different options for sale or methods of sale

The sale of the debtors' goods may:

- Take place by public auction and may only be held in a public auction house.
- Be held on an online or internet auction site.
- Or be held on premises where goods were found by the enforcement agent where those premises are occupied solely for the purpose of a trade or business.

When the HCEO has removed specialist items such as works of art, artefacts, airplanes, ships, livestock, specialist cars, he/she is under a duty to obtain the best possible price. Therefore, the HCEO or his/her office will have a list of specialist auctioneers to hand.

There are occasions when the HCEO needs to make an application to the court for sale other than by auction such as:

- (a) Private contract.
- (b) Sealed bids.
- (c) Advertisement; and
- (d) Such other method as the court considers appropriate.

The conduct of the sale is highly important and must demonstrate that the HCEO is an impartial officer of the court. This is achieved by the independence of a qualified auctioneer, and where the sale takes place online or through an auction website the auction provider must be independent of the HCEO.

Before the sale takes place the HCEO must give the debtor a 7 clear day notice period (*if this period includes a Sunday, bank holiday, Good Friday or Christmas Day that day does not count in calculating the period*) that such an event is going to take place. This gives the debtor a final opportunity to pay all outstanding amounts and have their goods released.

There are exceptions to this rule, where goods removed are classified as perishable goods such as foods and liquids, that to store these goods would negate the value over time. A common-sense approach would be required.

III.2.4 Distribution of funds or proceeds amongst the creditors

After the sale of the debtors' goods at public auction, and as soon as possible thereafter, the HCEO must provide the debtor in an open and transparent manner the following information:

- The application of the proceeds.
- An itemised list of the goods sold or otherwise disposed of.
- A statement of the sum received concerning each item.
- The itemised amounts deducted to include advertising and disbursements.
- Cost of removing the goods to auction.
- Auctioneer's fees for sale (capped to 15%).
- HCEO fees deducted.
- Balance of proceeds.

The enforcement agent must provide the debtor and any co-owner with a copy of all receipts for the disbursements to which the regulations apply.

III.3 Attachment on the bank account of the debtor

The powers conferred on the HCEO prohibit the attachment of a court order to the debtors' bank account. This procedure is carried out by a qualified Lawyer. HCEOs who hold a dual appointment, that of an Authorised High Court Enforcement Officer and a Lawyer, can undertake this procedure.

The judgment creditor before making an application to the court will need an unpaid County Court Judgment. In the first instance, the creditor will need to apply to the court for a Third-Party Debt Order (TPDO), which is one of the legal methods in the enforcement of a county court judgment. In essence, this Order compels a third party to pay the judgment debt.

A third party in this section of the Atlas is the debtors' bank. However, the TPDO is used not just for banks and building societies; it can be used against other persons who carry on the business of lawfully accepting monetary deposits.

On a practical note, when making the application it will be critical to know the debtors' bank account details such as:

- The name of the bank or building society.
- The name of the account.
- The account and sort code number.

Interestingly this form does not ask for the IBAN as bank accounts are generally identified through their sort code and account number.

The judge before making their final Order will in the first instance make an Interim Third-Party Debt Order, as this part of the process is dealt with, without a hearing. The Interim Order will ensure that the bank retains the amount or freezes the amount on the Order until a final hearing takes place.

The Interim Order protects the interests of the Creditor until all parties are represented before the court. Once the Interim Order is served on the bank it becomes binding. In other words, the debtor or the bank cannot withdraw the monies from the account of the debtor.

Once the Interim Order is served the full hearing cannot take place unless 28 days have expired following service.

The obligations of third parties served with Interim Order are mentioned hereafter:

- A bank or building society served with an Interim Third-Party Debt Order must search to identify all accounts held with it by the judgment debtor.
- The bank or building society must disclose to the court and the creditor within 7 days of being served with the order, in respect of each account held by the judgment debtor.
- The number of the account.
- Whether the account is in credit.
- Whether the balance of the account is sufficient to cover the amount specified

in the Order.

- The amount of the balance at the date it was served with the Order if it is less than the amount specified in the Order.
- Whether the bank or building society asserts any right to the money in the account.
- Whether pursuant to a right of set-off or otherwise, and if so, giving details of the grounds for that assertion.

However, as stated above, the bank has a right to-set off within the account. It could be that the deposited monies may be used as collateral for other borrowed monies with the bank, an example would be an overdraft facility or a loan. Should this be the case, the bank will need to provide the court with evidence of such an arrangement. This must be dealt with by the bank within 7 days of being served the Interim Order.

If by freezing the debtor's account, the debtor suffers hardship, and unable to cover their living standards, the debtor can make an application to the court known as A Hardship Payment Order. On a successful application the court could make a further Order for a part payment out of the account, leaving a balance for the debtor to use, that covers their living expenses.

There is a further application that could be made such as a defence by the debtor, and a counter dispute.

The final effect of the Order is that monies are paid to the court, who will in turn upon a further application pay the money to the judgment creditor, less any court costs accrued.

III.4 Enforcement against savings deposits and current accounts

See III.3.

III.5 Enforcement on immovable property

The powers conferred on the HCEO prohibit the attachment of a court order to the debtors' immovable property. This procedure is carried out by a qualified Lawyer. HCEOs who hold a dual appointment, that of an Authorised High Court Enforcement Officer and a Lawyer, can undertake this procedure.

Money judgments will entitle the judgment creditor to the sum of money stated. This money is to be paid by the debtor within a time-period set by the court, this is usually 14 days. However, it is not always the case that judgments will lead to prompt payment. Oftentimes creditors can find themselves holding a perfectly valid money judgment but dealing with a debtor who will not or cannot pay. Creditors therefore need to think about how to enforce that judgment and get their money back.

This complex section deals with a County Court judgment that remains unpaid when the only asset is immovable property. Enforcement against immovable property can concern several creditors such as:

- Banks.

- Building societies.
- Loan companies.
- The official receiver (insolvency rules).
- Liquidator.
- A trustee in bankruptcy.

As an example, when a County Court judgment remains unpaid there are remedies for the creditor and the debtor. This course of action is generally lengthy and costly with no guarantees on the final Order of the court. To obtain a charging order (*the second part of the process*) will generally take between 6-8 weeks for uncontested applications, and much longer should the application be contested or challenged. A charging order may be placed on:

- Land.
- Buildings (including the home of the debtor or other property owned by the debtor).
- Apartments.
- Maisonettes.
- Commercial properties.
- Mixed use properties.

In simple terms, once a judgment creditor obtains a charging order on a debtor's home, they may then apply to the court for another order to force the debtor to sell their home.

However, the 12-year Rule comes into consideration. Section 20 of the Limitation Act 1980 prevents the commencement of any action to recover money secured by a mortgage or other charge on a property after 12 years have elapsed following the date on which the right to receive the money accrued.

A number of factors need to be considered, including:

- The "form of the order made".
- Whether or not the property is held in trust for persons other than for the registered owners.
- Whether the beneficial interests of joint owners are impeded.
- The value of the property.
- The amount outstanding on any mortgages or loans.
- And any other legal charges against the property.

Once satisfied, and before the expiration of the 12-year period, and armed with an order for sale, the creditor's lawyer will have already established all the circumstances

surrounding the property, such as:

- Ownership.
- Valuation.
- Amount outstanding.
- Equity.

The sale of immovable property by the creditor can be carried out in one of two ways. Firstly, they can instruct a local real estate agent to value the property. There is a requirement under the CPR rules to obtain the best possible price, which does not necessarily mean that the property will be sold for market value. It could be between 10 – 30% under value as the creditor will want to recover their outstanding debt as soon as possible.

Should the real estate agent fail in their quest to sell the property, the creditor can choose the second option which is registering the property with an online auction house. The advantage of this second option is that as an online facility will reach a larger audience than with a local agent. The fees charged should not be more than 2.5% of the purchase price.

There is usually an advertising campaign with open house inspections for several weeks leading up to the auction date. Potential buyers are encouraged to attend for an open inspection and leave their contact details with the agent who will contact them in the lead-up to the auction to measure the level of interest.

On the day of the auction, the property may be open for inspection for one last time, or at least half an hour before the bidding starts. This gives the buyer one last chance to have a final look at the property, the relevant paperwork, and the auction rules.

By bidding, the buyer accepts the terms of the contract on display before the auction, and will not be able to negotiate terms, such as - a longer settlement period.

The table below will look at an example of deductions:

Table 2

Creditor instructs an Auction House	Sale Price	Auctioneer Fees. 2.5% plus VAT @ 21%	Mortgage Company	Equity after paying the first charge – Mortgage Company and Sale Fees	Creditor with Judgement Debt – Charging Order inc legal costs and interest	Amount of final proceeds available to debtors
	£345,000	£10,436.25	£136,000	£198,436.75	£47,657.98	£150,778.77
TOTAL			£146,436,25			



There are certain rules that are applicable for the buyer. The buyer will pay 10% of the purchase price when their bid has been successful and is legally obligated to complete the purchase within 28 days.

III.6 Enforcement against wages and other permanent pecuniary income

The powers conferred on the HCEO prohibits the attachment of a court order to the debtors' employers. This procedure is carried out by a qualified Lawyer. HCEOs who hold a dual appointment, that of an Authorised High Court Enforcement Officer and a Lawyer, can undertake this procedure.

The procedure is confined to the jurisdiction of the County Court, and the debtor is employed on a Pay As You Earn (PAYE) employment. The Order is commonly known as an Attachment of Earnings Order (AEO) and is one of the more popular methods of court-based enforcement.

An application to the County Court for an attachment of earnings order must be made to the County Court Money Claims Centre.

It is good practice for the judgment creditor before making an application for an AEO to check if the debtor already has other creditors who have made a subsequent AEO with their employer.

There is a register known as the Attachment of Order Index. The creditor or their lawyers can complete the court form FE16 Family Court and request if any other AEOs are in priority. Court rules dictate that each court must keep a register of judgment debtors.

The popularity of the AEO is a relatively straightforward remedy. However, before any application is made, the creditor must have an unpaid County Court judgment. The procedure is to complete the court form N337 which contains the following information:

Table 3

Claimant's Details	Name	Address	Contact number	Name and address for service and payment	
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Table 4

Debtor's details: Name: Address: Contact number: Judgment details	The court where the Order was made	Amount outstanding and balance due plus the issue fee and final amount due
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Table 5

Employer's details	Employer's name and address	Phone number	Debtor's place of work Debtor's job description
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			Works no. /pay ref
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The applicant must provide a certified copy of the Order; and a witness statement verifying the amount due under the order¹³.

Once the court has received the application for the AEO, it will then serve the debtor notice that an application has been made for an AEO. The papers served by the court will include Form N56 which is a Reply Form, giving the debtor 8 days in which to respond.

III.7 Attachment under the debtor's debtor

This procedure is not carried out by the Judicial Officer, but by a qualified Solicitor/Lawyer. The procedure is known as a "Third Party Debt Order" formerly known as a "Garnishee Order". This is covered under the *Civil Procedure Rules Part 72 – Third Party Debt Orders*.

This situation often arises where the debtor is being pursued by the Judicial Officer for a money judgment, and the debtor maintains that they can discharge their financial obligations if only their debtors paid them their outstanding invoices.

Normally, this happens with large institutions which do not comply with the stated terms of the invoice, referred to as "hanging onto money for as long as possible". In extreme cases, some large institutions will take up to 120 days to pay a 30-day invoice.

The effect of this, is that a company or individual who is not a serial or professional debtor ends up with an enforceable title against them. They are forced into a situation where they become the debtor through no fault of their own.

This approach is often used by creditors who know the debtor's bank account details, or they are aware of a large contract the debtor may have.

The major benefit of using a Third-Party Debt Order to enforce a debtor's debt is that a debtor who is now the creditor retains an element of surprise.

An application is made to Court without notice. In other words, the debtor will not know when the application is made and will not be notified until after they have been served the Court Order.

By the time the debtor is made aware of the application and Court Order, their bank account or funds have already been frozen.

The problem with a Third-Party Debt Order is that it can be a gamble. If the debtor's bank account is held jointly with another person that does not owe the money, the application will be rejected.

¹³ The claimant's legal representative will then sign the declaration at the bottom of the form stating the following: "I certify that the whole or part of any instalments due under the judgment or order have not been paid and the balance now due is as shown".



Even if the bank account is in the debtor's sole name, the order will be ineffective if the account is not in credit on the date the order is served. Likewise, if the sums held by the third party, not a bank or building society, on the date the order is served, the order will also be ineffective. So, the effect of considering this procedure is to ensure that the debtor's bank accounts are known and are likely to be in credit on the day the Order is served, which will be crucial to increasing the chances of success.

III.7.1 Third-Party Debt Order procedure

1. Obtain a County Court Judgment (CCJ).
2. Complete Court form N349 and send the application to Court with a Court fee of £110.00. Note: It may be essential to serve the Order on a particular date when funds will be available. If that is the case, a creditor can notify the Court that service will be carried out by a Judicial Officer on the financial institution.
3. The Court will then issue an Interim Order with a hearing date.
4. That Order is then served on the Third Party. Once the order is served, the Judicial Officer has to file a certificate of service with the Court.
5. The Third Party/Bank or Building Society will have to disclose the amount available/frozen. Generally, if it is a bank, they will also disclose any other bank accounts the debtor may have. This correspondence is then sent to the Court.
6. Prepare for and attend the hearing listed at Court.
7. A Final Order is then made at the hearing and served on the Third Party/Bank or Building Society (if not done so by the Court) and the funds are expected to be sent.

III.8 Enforcement against shares

Judicial Officers can seize or take control of Share Certificates, and subsequently make an application to court to sell those certificates to discharge the debtor's judgment.

Although this is a very rare procedure, the debtor's full cooperation is desirable.

III.9 Other attachment procedures

There are some very rare Writs available that are issued to the HCEO. They are:

- Writ of Restitution.
- Writ of Assistance.
- Writ of ne exeat regno.

III.10 Handing over movable assets

A Writ of Control empowers the HCEO to take control of the debtor's assets, with a view to either:

- Have the judgment paid in full.
- Enter into a payment arrangement.
- Take the debtor's goods to public auction.

There is however a further writ available to the judgment creditor known as a Writ of Delivery. This writ generally directs the HCEO to put the creditor in possession of specified goods. It can be supported with a combined Writ of Control if invoices remain unpaid.

The Writ of Delivery will have specific wording such as either to obtain payment of the assessed value of the goods or to obtain possession of the goods to the benefit of the owner.

The specified goods removed will not be taken to public auction but will be delivered up to the creditor. Examples of this procedure include cases where goods removed to public auction will bring a lower value than goods delivered. There are five main areas where a Writ of Delivery is used¹⁴.

The practicalities of executing a Writ of Delivery and normal practice, is for the creditor or his representative to be in attendance to identify the specified goods. The creditor is responsible for the costs of removal and storage¹⁵.

III.11 Enforcement in reinstatement of employee to work

Firstly, this falls outside the powers of an Authorised High Court Enforcement officer, and research shows that in practice, re-employment is rare. In fact, less than one per cent of claimants get their job back, with most successful claimants only receiving monetary compensation.

Reinstatement is one of the orders that may be made by a tribunal under section 112 of the Employment Rights Act 1996 (ERA 1996) following a finding of unfair dismissal.

The tribunal can order reinstatement or re-engagement if the applicant wins a dismissal case, as long as they have indicated on an ET1 Form (Employment Tribunal claim form for single claimants) that they want to be reinstated or re-engaged, rather than just compensated.

Even when Tribunals make such an order, employers commonly refuse to implement it. If there is a refusal to comply, they have to apply again to the Tribunal. The Tribunal

¹⁴ • Such as highly developed specific software that has been provided by the developer and unpaid for, the computer in itself has little value, however the software has high value.

- When an item has been sold on finance and the finance company retains ownership (title) until the goods are paid for in full. If their client stops making payments, then the finance company may decide to repossess the item – for example, vehicles or machinery.
- Where someone has provided items, such as jewellery, paintings or a car, to a dealer or auctioneer to sell on their behalf, and the item is not sold but is not returned to the owner, or where they have been loaned to a gallery or exhibition, but not returned.
- Documents, including share certificates.
- When goods are counterfeited, the counterfeits are deemed to belong to the brand owner. A writ of delivery may, therefore, also be used to remove counterfeit goods from warehouses, retailers, wholesalers etc.

¹⁵ The Sheriff's Fees Amendment Order, 1971 specifies the allowable fees:

- 5% up to the first £100.00.
- 2.5 % on the remaining assessed value.



will probably award additional compensation in such a situation.

HCEOs receive many Tribunal Awards to enforce against former employers for unfair dismissal. It is of noteworthy interest that 39% of awards remain unpaid with 53% paid in full.

The UK government introduced a fast – track procedure in 2010 for the transfer of awards to the High Court for enforcement, by using just one form N471. This form covers employment Tribunal Awards and Advisory, Conciliation and Arbitration Service (ACAS) settlements.

The HCEO will enforce that Award in the same manner as a Writ of Control.

III.12 Eviction

Evictions in England and Wales are executed with the HCEO receiving from the High Court a Writ of Possession. Even though the Writ’s command is one of immediate effect or at once, it has long been held that these expressions mean “as soon as is practicably possible”.

Writs of Possession fall into four categories and are executed and managed quite differently:

- Residential and tenant eviction.
- Common law and Unlawful occupation.
- Traveller eviction.
- Protestor/Demonstrator eviction.

The Writ of Possession is issued in the personal name of the authorised officer who has a duty and responsibility to put the owner back into peaceful possession of their land and buildings.

The owner has a duty to identify the extent of land and building to the HCEO. In practical terms the owner’s legal team will attach an ordinance survey map obtained from the Land Registry clearly out-lining which is normally colour coded, the map and the extent of the boundary.

This is very useful when removing environmental protestors from land only, as the HCEO’s powers only extend to the area covered by the Writ of Possession.

In summary the HCEO and their assistants can force entry and use reasonable force to remove named and un-named persons. They have powers of arrest, under section 10

Criminal law Act 1977¹⁶ and are protected under the Sheriffs Act of 1887 s.8 (2)¹⁷.

The Writ commands to give ‘immediate possession’. This term therefore does not extend powers on the HCEO to remove goods and chattels, which will be the responsibility of the owner.

Neither can the HCEO be liable for an action for damages, especially if they have to use reasonable force to break into premises or tear down fortifications.

III.12.1 Planning and preparation

Leading up to the day of execution the HCEO will have pre-planning meetings with all parties concerned.

The paperwork provided by the HCEO will include the following:

Table 6

Operational plan	Health and safety policy	Risk assessment	Methodology statement	Policy on equality and diversity
Timeframe	Public and media policy	Children and vulnerable adults	Traffic management	Proportionality

Once the HCEO concludes the eviction process he/she then needs to hand over either the Land or Buildings to the judgment creditor. This is called a “return”, which is a statement to manner in which the writ has been executed, and that the landowner or his representative/agent now accepts full responsibility for delivery.

A note on the fees chargeable for the execution is that each eviction is different, some with complexity and others fairly straightforward. The HCEO will negotiate either fixed rates, hourly rates, or day rates. Number of personnel required, and whether or not specialist teams may need to be called upon.

III.13 Enforcement of obligations to act, refrain from acting or suffer action

When an HCEO receives a bona-fide judgment from the High Court, they are under an obligation to obey the command irrespective of the content of the judgment. An HCEO

¹⁶ “A constable in uniform or any officer of a court may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be guilty of any offence under this section”.

An offence under this section is committed by a person who intentionally obstructs or resists an officer who is engaged in executing any process issued in the High Court. This carries up to 6 months in prison and a fine.

¹⁷ *If a sheriff (HCEO) finds any resistance in the execution of a writ they shall take with them the power of the county. The modern-day posse comitatus or “power of the county” is Her Majesty’s Police force. They are compelled to assist as no Writ of Possession is incapable of enforcement. It is no excuse to delay or refuse the execution no matter what the circumstances. The only reason, and there is one, is if the landowner is unable to pay the fees of the HCEO for the execution.*

is unable to use discretion or interpret the command on the writ.

One area of enforcement where an HCEO may wrestle with their conscience, is concerning Compulsory Purchase Orders (CPOs). A CPO is not a writ but an administrative process, and therefore the Police are not under a power to assist in the execution of the CPO. A request can be made for support if the officer fears a breach of the peace.

Generally, CPOs are issued when local or central government has decided to build a road, a railway, or develop land for the benefit of society in general. Oftentimes the development would have gone through a planning phase, with town-hall meetings listening to the concerns of homeowners, especially when it affects the owners land or home. Offers to purchase would have been made at market value. However, in many instances financial reward is insufficient when there is a sentimental value attached.

A Writ of Control empowers the HCEO to remove the debtor's goods. By signing the controlled goods agreement - where the debtor signs and agrees to look after the goods while payment is made through instalments - the debtor has a duty to perform the action of not removing the goods from his/her premises.

The debtor who fails in this agreement - hides the goods elsewhere - faces sanctions. It is a criminal offence for the debtor to interfere with controlled goods¹⁸.

If an HCEO is unable to use discretion or disobeys the command on the judgment title, persons or debtors who do not comply with the judicial officer can be subject to further sanctions such as imprisonment or a fine or both. Likewise, if an HCEO refuses to enforce a proper title, they would be putting their authorisation at risk and also the risk of being sued.

III.14 Sequestration of goods

This is not a function that is carried out by an HCEO but by a Trustee.

A court makes a bankruptcy order after a bankruptcy petition has been presented. It

¹⁸ 68(1) A person is guilty of an offence if he intentionally obstructs a person lawfully acting as an enforcement agent.

(2) A person is guilty of an offence if he intentionally interferes with controlled goods without lawful excuse.

(3) A person guilty of an offence under this paragraph is liable on summary conviction to—

(a) imprisonment for a term not exceeding 51 weeks, or

(b) a fine not exceeding level 4 on the standard scale, or

(c) both.

In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), the reference in sub-paragraph (3)(a) to 51 weeks is to be read as a reference to 6 months. In other words, up to six months would be normal.

is usually the debtor or one or more of the creditors who are owed at least £750.00 by the debtor. The bankruptcy process can either be voluntary or involuntary and the order can still be made if the debtor does not agree to it. The debtor must owe at least £750.00.

Following bankruptcy, the Official Receiver or a Trustee (*an insolvency practitioner*) is appointed and has control over the bankrupt's affairs. The Bankrupt is obligated to surrender their assets to the Trustee and to declare all their assets and liabilities.

A **sequestration order** has the same effect as a bankruptcy order. It is an order handed down by the court which makes a person bankrupt. Once a sequestration order has been served, the court will appoint a Trustee in bankruptcy that will manage the bankrupt's assets.

The Trustee who is appointed by the court will take control of the insolvent's assets. Their role is to establish the value of assets versus the liabilities. They will consider secured creditors more favourably than unsecured creditors.

Once the evaluation has been assessed the Trustee will make a percentage distribution of liquidated assets to the creditors.

This distribution in many instances is zero.

III.15 Enforcement of foreign enforceable documents from non-EU States

The recognition and enforcement of foreign judgments in England and Wales which fall outside the scope of the special EU and statutory regimes are dealt with under English common law.

There is no agreement, allowing the mutual recognition and easy enforcement of judgments in non-EU states. However, there are exceptions to this that cover former British dominions and commonwealth countries. These are covered under the following:

- Lugano Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
- Hague Convention of 30 June 2005 on Choice of Court Agreements (Hague Convention).
- Administration of Justice Act 1920 ("AJA") Foreign Judgments (Reciprocal Enforcement) Act 1933 ("FJA").

Foreign judgments falling outside of these reciprocal agreements, will be enforced under common law. This is achieved by bringing a new action in the English and Welsh courts, with the non-EU judgment becoming the foundation of the action. At that point, the judgment is treated as a contractual debt and new proceedings are therefore issued in the court system for payment of that 'debt'.

So, essentially, in England and Wales, it is not possible to directly enforce a non-EU judgment that falls outside the scope of these agreements; a creditor must first obtain a fresh judgment order using the original order as the foundation for the claim.

Non-EU judgments are only enforceable at common law if certain conditions have been met. These conditions are as follows:

- The non-EU judgment is final and conclusive.
- It concerns a definitive sum of money.
- Jurisdiction.
- Fraud.
- Natural justice.

Once the courts recognise the foreign judgment, the enforcement is carried out in the same manner as described throughout this Atlas.

PART IV: ENFORCEMENT COSTS

IV.1 The costs of enforcement

Taking Control of Goods (fees) Regulations 2014 has simplified what HCEOs or an enforcement agent may charge the debtor or their client. There are no incentive fees for enforcement other than those laid out throughout the regulations.

The tables below list the stages of the enforcement process and how the fees are applied.

Table 7

Enforcement of a High Court Writ of Control or Judgment		Fixed Fee	Percentage Fee (Regulation 7) percentage of sum recovered exceeding £1,000.00
Fee Stage	Action		
Compliance stage	letter	£75.00	
First enforcement stage	visit	£190.00	7.5%
Second enforcement stage	visit	£495.00	
Sale of disposal stage	visit	£525.00	7.5%

The above table applies to HCEO Writs of Control. There are four stages to the enforcement charges that can be applied. Each stage has to be exhausted before the HCEO can trigger an enforceable charge laid out within the regulations.

Where a Writ of Control is unenforceable the HCEO is entitled to charge the issuing creditor an administration or abortive fee equal to the compliance stage.

In addition to the above fees, the only other charges are where goods are removed to public auction. Locksmith, removal, storage, and auctioneers' fees will be an additional charge cocooned under disbursements, as mentioned in the table below.

Table 8



Compliance Stage	The compliance stage, which comprises all activities relating to enforcement from the receipt by the enforcement agent of instructions to use that procedure in relation to a sum to be recovered up to but not including the commencement of the enforcement stage; letter charge.
First Enforcement Stage	Where the enforcement agent and the debtor enter into a controlled goods agreement, the first enforcement stage, which comprises all activities relating to enforcement from the first attendance at the premises in relation to the instructions until the agreement is completed or breached.
Second Enforcement Stage	The second enforcement stage, which comprises: (i) where the enforcement agent and the debtor do not enter into a controlled goods agreement, all activities relating to enforcement from the first attendance at the premises in relation to the instructions up to but not including the commencement of the sale or disposal stage; (ii) where the enforcement agent and the debtor enter into a controlled goods agreement but the debtor breaches that agreement, all activities relating to enforcement from the time at which the debtor breaches the agreement up to but not including the commencement of the sale or disposal stage.
Sale or disposal Stage	The sale or disposal stage, which 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 and provision of the information required by regulation 14).

Where there is non-compliance from the debtor during the enforcement procedure, the HCEO may accelerate stage 1 to a removal of the goods of the debtor to public auction. It is always advisable for the debtor to do the following:

- Pay the debt at compliance stage.
- Or enter into a controlled goods agreement and pay by instalments at Stage 1.
- Avoid defaults of the arrangement that will trigger stage 2.
- Avoid removal of goods.

Table 9

<i>Enforcement other than a High Court Writ</i>		<i>Fixed Fee</i>	<i>Percentage Fee (Regulation 7) percentage of sum recovered</i>
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			<i>exceeding £1,500.00</i>
Fee Stage	Action		
Compliance stage	letter	£75.00	
First enforcement stage	visit	£235.00	7.5%
Sale or removal stage	visit	£110.00	7.5%

For enforcement of all warrants outside the High Court and obtained in the lower courts the fees chargeable are laid down in the above table. The fees are in three stages with a percentage fee over the £1,500.00 limit, and a further percentage fee for sale and removal of goods¹⁹.

IV.1.1 Writs of Possession

The 2013 Taking Control of Goods Regulations do not cover Writs of Possession or fees in relation to eviction of domestic or commercial premises. Fees charged are negotiated with the Landowner, depending on the complexity of the eviction and manpower requirements. Other factors considered for pricing the eviction include the duration of the eviction, specialist equipment and specialist teams.

Due to an arrangement made with the landowner, HCEOs have different pricing structures as there is no uniformed approach or statutory fees in place under the 2014 (fees) regulations.

Landowners should consider several factors when appointing an HCEO, such as experience, charge rates, and safety.

PART V: LINKS, LITERATURE AND SOURCES

The Execution of Sheriffs' Warrants 2nd Edition – J.A. Keith, FCA W.B. Podevin, Claire Sandbrook, LL.B.

<https://www.legislation.gov.uk/uksi/1999/1008/contents/made>

Taking Control of Goods (fees) Regulations 2014

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

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

Courts Act 2003 Schedule 7 Section

99 <http://www.legislation.gov.uk/ukpga/2003/39/schedule/7>

High Court Enforcement Officers Regulations

2004 <https://www.legislation.gov.uk/uksi/2004/400/contents/made>

Taking Control of Goods Regulations

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

¹⁹ It would be very rare for an enforcement agent to charge any additional fees to the client other than what is described within the scope of the statutory fees. There would not be any advanced payments required from the creditor under any circumstances that springs to mind. Creditors issuing warrants would typically be Local Government, and Central.



The Crime and Courts Act

(2013) <http://www.legislation.gov.uk/ukpga/2013/22/section/25/enacted>

<http://www.legislation.gov.uk/ukpga/1986/45/contents>

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06>

<https://www.hcea.org.uk/images/content/documents/the-high-court-enforcement-officers-regulations-2004/The-High-Court-Enforcement-Officers-Regulations-2004.pdf>

<https://www.justice.gov.uk/courts/procedure-rules/civil/protocol>

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part13>

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part20>

<http://www.legislation.gov.uk/uksi/2013/1894/part/1/crossheading/exempt-goods/made>

<http://www.legislation.gov.uk/ukpga/1964/81/schedule/1/part/9/paragraph/3>

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part66>

<http://www.legislation.gov.uk/ukpga/1992/14/schedule/4>

<https://www.gov.uk/search-bankruptcy-insolvency-register>

<https://www.gov.uk/get-information-about-a-company>

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part72>

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part74#l>

Taking Control of Goods (fees) Regulations 2014

<http://www.legislation.gov.uk/uksi/2014/1/regulation/5/made>

