

The commercial landlord's guide to CRAR and forfeiture



The Sheriffs Office[®]
We recover more for you

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

The Sheriffs Office

Guide to CRAR and forfeiture

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1. Introduction

CRAR – Commercial Rent Arrears Recovery - and forfeiture are remedies available to landlords of commercial properties leased to tenants to recover rent arrears (CRAR) and to repossess the property (forfeiture).

Neither CRAR nor forfeiture requires a court order, making them quick and easy remedies. They may only be used in the case of commercial premises where there is a lease in place.

Enforcement

CRAR came into effect on 6th April 2014 when part 3 of the Tribunals, Courts and Enforcement Act (TCA) 2007 came into force, replacing Distress for Rent. Section 72 of TCA 2007 allows a commercial landlord to use Schedule 12 of the Act (taking control of goods) to recover rent payable under the lease from the tenant, without needing to go to court.

Unlike distress for rent, CRAR may only be enforced by a Certificated Enforcement Agent, formerly known as a Certificated Bailiff. The landlord must NOT enforce CRAR himself.

Forfeiture may be effected by the landlord, but it is more common, and good practice, to appoint a Certificated Enforcement Agent to forfeit the lease.



2. CRAR

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

A court order is not required and it is a very fast and efficient process – the landlord can instruct in the morning and the enforcement agent can attend the same day. The landlord **MUST** use a certificated enforcement agent and is not permitted to enforce CRAR himself.

When CRAR can be used

Under CRAR:

- There must be a written lease in place
- It may only be used for commercial premises, and may not be used for mixed use premises
- Only rent, interest and VAT may be recovered, nothing else
- The rent must be at least 7 days overdue
- 7 days' notice of the landlord's intention to exercise CRAR must be served
- CRAR may only be enforced by a Certificated Enforcement Agent

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

CRAR may only be used for commercial premises. Some premises, for example pubs or shops, also have residential accommodation. Provided that the residential part has a separate entrance and a separate lease, then CRAR may be used to recover the rent arrears on the commercial lease. If they are not separate, they will be deemed mixed use premises and CRAR may not be used.

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

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

If the landlord wants to use CRAR, he will have to give the tenant 7 days' notice of enforcement after the rent is due. The rent must still be unpaid at the time the notice is served, as well as immediately before any goods are seized. Once notice has been served, the tenant may apply to court for a set aside or delay of execution.



The process

The landlord instructs the certificated enforcement agent (EA) to attend the premises and take control of goods belonging to the tenant.

The EA must give the tenant at least 7 days' notice (excluding Sundays and bank holidays) that he is exercising his right to use CRAR after the rent becomes overdue. The rent must still be unpaid at the time the notice is served, as well as immediately before any goods are seized.

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

On attending, the EA must show the tenant his/her certificate and leave a memorandum detailing the inventory of what has been seized and the associated authorised fees, charges and expenses.

As with the vast majority of enforcement cases, we find at The Sheriffs Office that the mere attendance of the certificated enforcement agent is enough to persuade the tenant to pay all arrears. It is only on rare occasions that goods are seized.

The landlord may instruct sub tenants to pay him their rent directly, but must give them at least 14 days' notice.

Taking control of goods under CRAR

The EA can enter the demised premises, through an open or unlocked door or other normal means, to take control of goods belonging to the tenant (not to third parties) at the demised premises on any day of the week between 06:00 and 21:00, or the tenant's normal business hours, if different.

If the tenant agrees to a payment by instalments plan, he will be required to sign a controlled goods agreement, which replaces the previous walking possession agreement.

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

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

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



Mixed use premises

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

Under distress, the landlord was able to enter the commercial part of the premises and seize assets to recover rent arrears.

However, it is no longer possible to do this under CRAR, where part of the property is used as a residence, unless it has a separate lease and a separate entrance. It is irrelevant whether the commercial tenant is also the residential tenant or if the two are completely separate.

This leaves the commercial landlord of mixed use premises with rent arrears in the same position as residential landlords facing arrears. They will have to go to court to obtain a judgment, which will then need enforcing if it isn't paid. That could be a High Court Enforcement Officer (HCEO), a county court bailiff or a third party debt order. Please see below for more on alternative methods of recovery.

However, there are some advantages to recovering rent arrears via a CCJ, namely:

- Assets belonging to the tenant that have been moved to their new premises may be seized (under CRAR only the assets on the demised premises may be seized)
- The landlord can also include unpaid service charges and other charges within his claim, which cannot be recovered under CRAR.
- If the CCJ is enforced by an HCEO, they can force entry to commercial premises without the prior permission of the court



Third party claims

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

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

Written notice

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

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

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

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

Application to court

The third party/claimant to controlled goods must then make an application to court (the court fee for this rose from £80 to £155 on 22nd April 2014) which must be supported by a witness statement setting out the basis for their claim, describing the specific goods claimed and exhibiting any evidence to support their claim in respect of each item claimed (purchase receipts, bank statements etc.).

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

The hearing

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

Further enforcement action

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



How CRAR differs from distress

	OLD – distress for rent	NEW - CRAR
Type of premises	Commercial and the commercial part of mixed-use premises	Commercial only – if the lease covers mixed-use, CRAR may not be used
Lease	There must be a current tenancy	There must be a written and current lease in place
What	Any sum treated as rent in the lease, for example service charges, rates, insurance etc.	Only the actual rent, nothing else
How soon	The first day the tenant is in arrears	At least 7 days of arrears and the rent owed must be for the value of at least 7 days' rent
Court order	Not required	Not required
When	Monday to Saturday from sunrise to sunset	Any day of the week from 06:00 to 21:00, or the tenant's normal business hours if different
Who	A certificated bailiff, the landlord or their agent	Only a certificated bailiff
Where	The demised premises	The demised premises
Notice period	No notice period required	A minimum of 7 days (excluding Sundays and bank holidays) notice given to the tenant that the landlord is exercising his right to use CRAR.
Can it be shorter?	N/A	If he can demonstrate a risk the tenant will remove the goods, the landlord can ask the court to reduce the notice period.
How long is notice valid?	N/A	Once served, the notice is valid for 12 months from the date of delivery.
How is notice served?	N/A	Notice may be served by post, hand, fax and electronic communications such as email.
Right to appeal?	No provision	Tenant may apply to have the notice set aside or apply for an order to stay enforcement
Entry	Via an open or unlocked door, a usual means of entry or an open window	Via an open or unlocked door or a usual means of entry (not via an open window)



	OLD – distress for rent	NEW - CRAR
Seizure	Goods belonging to the tenant and sometimes to a 3 rd party	Only goods belonging to the tenant
Tools of the trade	Tools belonging to and for exclusive use of a sole trader are exempt from seizure	Tools of the trade exempt up to a value of £1,350
Value of goods	The goods seized should be approximately the value of the arrears and costs	The EA may not take control of goods with a value greater than the rent owing plus the costs and he must give the tenant a valuation of the items seized
Sale	5 days' notice of a sale must be given to the tenant	A clear 7 days' notice must be given
Sale	Normally by auction	Only by auction unless a court order is obtained to permit an alternative method of sale
Sub-tenants	Landlord can instruct sub-tenants to pay him directly	The landlord has to give the sub-tenant 14 days' notice that they are to pay him directly
Administration	The landlord would normally act before a business went into administration	The landlord will need permission either from the administrator or the court to exercise CRAR



Other methods of commercial rent recovery

A landlord may choose to go to court to obtain a judgment (CCJ) under the following circumstances:

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

Once the judgment is obtained but remains unpaid, it can be enforced in the same way as any other money judgment, by transferring it to the High Court for enforcement by an HCEO (High Court Enforcement Officer), provided the judgment is for £600 or more, under a writ of control.

This transfer up is done using form N293A and there is an HMRC court fee of £60, which is recoverable from the debtor, along with the debt, judgment interest and enforcement costs if enforcement is successful. If it is not possible to enforce, there is only a Compliance Fee of £75 plus VAT.

Once the transfer is complete, the writ of control will be issued and enforcement action will commence. You can read more about the enforcement of money judgments in our Guide to High Court Enforcement (www.thesheriffsoffice.com/ebook).

If the landlord wishes to also repossess the property via a court order (instead of forfeiture), he can apply for a combined writ to cover both the possession order and the money judgment. This will save time and money as the writ will allow the HCEO to enforce both simultaneously, leading to a successful repossession and, subject to sufficient assets being seized, recovery of their rent arrears.

The landlord could also instruct a debt collection agency to recover the rent arrears. They will write and call the debtor to request payment; they may even visit the debtor to discuss the matter (but they have no enforcement powers).



Lease or licence

The fundamental difference between the two is that a lease (covered by the Landlord Tenant Act) gives the tenant exclusive use of the property, to the exclusion of the landlord as well, for a set time period for a rent. One of the provisions of the Landlord Tenant Act is that the leaseholder has the right to renew the lease when the existing one expires.

On the other hand, a licence is for shared possession of the property, some services will also be included in the fee (e.g. utility bills, rates) and furniture, fixtures and fittings are also provided. The landlord has the right to terminate the licence with little or notice.

If an agreement is disputed and goes before a judge, he will decide whether it is a lease or licence based on the substance of the arrangement, rather than the wording used in the contract. A licence that is really a lease agreement disguised to avoid the Landlord Tenant Act will be deemed by a judge to be a lease with the protection the act provides the tenant.

Needless to say, there is far more detail and complexity to this matter, so we would strongly recommend that any landlord obtains professional advice from a lawyer on leases and licences.

Enforcement

Leases allow the landlord to use either CRAR to recover rent arrears by using a certificated enforcement agent or go to court to obtain a judgment, which may then be enforced by an HCEO or a County Court bailiff.

With a licence, the landlord cannot use CRAR, but must make a court claim to obtain a judgment, which can then be enforced by an HCEO or County Court bailiff.



Steps to prevent rent arrears

1. Vet the tenant before they sign any agreement

It is always good practice to undertake reference checks on prospective tenants, as you would any commercial business you are entering into an agreement with.

Always take photocopies of the tenant's passport photo page and driving licence, and recent bank accounts. Take down their car details (make, model and registration) and where they park. This is all information that can help an HCEO know that they are speaking to the right person and not be misled by the debtor claiming to be someone else.

2. Take out guarantees

If you think there is a risk of the tenant not paying the rent, consider asking for guarantees. The guarantor – who also needs to be checked out beforehand – is agreeing to pay any sums owed by the tenant if they default.

In terms of enforcement, the enforcement agent will always first try to enforce against the tenant/defendant, but if this proves unsuccessful, they can then enforce against the goods of the guarantor.

3. If enforcement is necessary tell the HCEO

- Whether the company has recently changed its status, for example become incorporated or a limited liability partnership
- Opening/operating hours
- Contact and online details, such as a company website or social media profile
- Vehicle details and registration numbers for any company vehicles the tenant owns
- Copies of all paperwork of any previous orders relating to the case, for example a set aside or delay of execution
- Details of any contact from the tenant regarding any insolvency proceedings



3. Forfeiture

Forfeiture is a Common Law right for landlords of commercial premises. It permits them to terminate the lease before the contract end date because of a breach by the tenant. Forfeiture was not affected by the introduction of The Taking Control of Goods Regulations 2014.

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

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

The process

The landlord can instruct an Enforcement Agent (EA), who will attend to change the locks and take possession of the premises, so they can be re-let to a new tenant.

Once the lease has been forfeited, then the tenant's and any subtenants' right to use the property comes to an end.

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

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

Subtenants

The landlord may choose to have a lease with just one company that can then sublet the property to one or more subtenants. In this case, the landlord will need a carefully written lease to ensure that his interests are protected in case there are disputes, either with the tenant or subtenant, or the tenant becomes insolvent. The landlord should also check the terms of any agreement between the tenant and subtenant.

Landlords should ensure that the lease gives them the right to forfeit and protect their interests with regards to the tenant and subtenant.

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

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



Waiver

The landlord should be careful to ensure that he does not do anything that could waive his right to forfeit. Acts of waiver include demanding or accepting rent payments and exercising their right to recover arrears via CRAR, commercial rent arrears recovery.

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

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

Again, taking legal advice on waiver is recommended.

Forfeiture during administration

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

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

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



Relief from forfeiture

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

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

The process

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

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

New tenants

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

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

Payment of costs

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

Time limits

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

If the landlord acted under a court order, then once he has enforced the order, the tenant loses the right to apply for relief.



Repossession under a court order

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

- Mixed use premises
- Licenced premises

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

Where there is a licence instead of a lease, i.e. for shared possession of the property, some services will also be included in the fee (e.g. utility bills, rates) and furniture, fixtures and fittings are also provided. The landlord has the right to terminate the licence with little or notice. This is not a common scenario, and is more likely to occur when there are also significant rent arrears.

In either case, the landlord will need to obtain a County Court possession order and request permission, under Section 42 of the County Court Act 1984, for the order to be transferred to the High Court for enforcement by an HCEO under a writ of possession.

You can read more about this process in our “Guide to Tenant Eviction & Rent Arrears” (www.thesheriffsoffice.com/eviction-ebook).

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



4. Rent arrears recovery & repossession

A commercial landlord may use both CRAR and forfeiture to recover rent arrears and the property.

Whilst forfeiture does not require notice to be given, under CRAR there is a requirement to give 7 days' notice (which excludes Sundays and bank holidays). Notice can be given once the rent is 7 days' in arrears.

However, having served notice, once the Certificated Enforcement Agent attends to take control of goods under CRAR, the landlord can also instruct him to forfeit the lease either the following day or at a later date (provided the rent is overdue by the time period specified in the lease, normally 21 days).

CRAR cannot be used if the lease has already been terminated.

Via a court order

Alternatively, the landlord can choose to forfeit the lease straight away, if his main concern is to recover possession of the property, then he can pursue the now former tenant for the rent arrears, as well as any other outstanding payments such as service charges and insurance, through the courts by obtaining a County Court judgment and transferring it to the High Court for enforcement by a High Court Enforcement Officer (HCEO).



5. About The Sheriffs Office

We are a leading firm of authorised High Court Enforcement Officers (HCEO) and Certificated Enforcement Agents covering all of England and Wales.

It all started in the late 1970s as The Sheriffs Office in Northampton, dealing only with High Court writs within the county of Northamptonshire. With the Courts Act in 2004, Sheriff Officers were renamed High Court Enforcement Officers and the restrictive geographical boundaries were dropped.

Since then The Sheriffs Office has gone from strength to strength, growing year on year to become one of the top four HCEO firms with significant market share. Underpinning our success is our focus on client service and a comprehensive “end to end” range of specialist services for the recovery of debt, property and land.

A range of services for everyone

The Sheriffs Office provides the full range of High Court Enforcement and related services for solicitors acting on behalf of clients, as well as business of all sizes, landlords, commercial agents, local authorities, individuals and sole traders.

Money judgments

- High Court enforcement
- CRAR
- Asset recovery
- Employment tribunal award
- Debtor tracing
- European judgment
- Debt collection

Property and land

- Eviction
- Forfeiture of lease
- Repossession
- Security
- Rent collection
- Tenant tracing
- Equine impoundment

Awards for The Sheriffs Office

We have won and been shortlisted for numerous industry awards, including:

- Winner 2015 - Chartered Institute of Credit Management “Enforcement Team of the Year”
- Winner 2014 - CCR Credit Excellence Awards “Legal and Enforcement Profession”
- Winner 2013 – Credit Today “Enforcement Team of the Year”

We are also the HCEO firm featured in the hit BBC programme “The Sheriffs Are Coming”, which has been watched by over 30 million people and won the Broadcast Awards 2014 Best Daytime Programme.

Supporting the environment

We participate in a Carbon Offsetting project run by Carbon Footprint Ltd which is planting trees in Kenya to support local communities in the Great Rift Valley, so as to reduce poverty and provide habitats for wildlife, including lions!



6. Useful links

Accelerated Possession Procedure	https://www.gov.uk/accelerated-possession-eviction
BT Directory Enquiries	www.bt.com
Companies House	www.companieshouse.org.uk
HCEOA	www.hceoa.org.uk
HCEO Regulations	http://www.legislation.gov.uk/uksi/2004/400/regulation/13/made
Insolvency Service	www.insolvency.gov.uk
Instruction forms	http://thesheriffsoffice.com/instruct-us
Land Registry	www.landregistry.gov.uk/
Ministry of Justice	www.justice.gov.uk
Possession Claim Online	https://www.possessionclaim.gov.uk/pcol/
Registry Trust	www.trustonline.org.uk
Tracing services	http://thesheriffsoffice.com/services/debtor-tracing
Further reading	www.thesheriffsoffice.com/articles/

Legislation and regulations

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



7. Glossary of Terms

Certificated enforcement agents

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

Compliance stage (rent arrears recovered by writ)

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

Control – writ of (rent arrears)

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

County Court Bailiffs

County Court bailiffs are civil servants employed by the court.

County Court Judgment or CCJ (rent arrears by writ)

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

CRAR – Commercial Rent Arrears Recovery

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

Debtors in liquidation or administration

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

Demised premises

The property that is covered by the lease.

Enforcement agent

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



Enforcement stage 1 (rent arrears)

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

Enforcement stage 2 (rent arrears)

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

Forfeiture of lease

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

Gaining entry by force

Commercial premises: the HCEO can force entry to commercial premises to levy on a first visit or any subsequent visit to remove goods providing the property is not physically attached to, and form any part of, a residential dwelling.

Residential premises: the HCEO may climb a perimeter wall or fence. They can enter the premises through an unlocked door or normal means of access (but not a window). Once inside, they may break down inner doors to seek the debtor's goods. The enforcement agent may not be forcibly ejected, but if they are, they can then force re-entry. They may force entry to a garage, out house, stables or barn providing it is not physically attached to, and form any part of, the residence.

Insolvent debtors

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

Interpleader – claims by third parties

This can occur if, after the creditor obtained a judgment and the appropriate writ, a third party then claims ownership of the money or goods that have been or will be seized. If the creditor disputes the third party's claim, an interpleader summons will be issued for all the parties to attend the High Court so that rightful ownership can be determined by a Master.

Notice of enforcement (rent arrears)

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



Partnerships

Partnerships (apart from limited liability partnerships) are not a legal entity, rather a collection of individuals trading together. As such, the partners are liable for the debt of the business and this liability is not limited. When enforcing against a partnership, the creditor is best advised to obtain a judgment against the partnership and include the name/s of the individual partner/s within the command portion of the writ of control. This then gives the creditor, via the HCEO, the option of enforcing against the partnership, the partners individually or both.

Payment by instalments

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

Possession Claim Online (PCOL)

The Government online service to start possession claims where section 8 notice has been issued. There is an online Accelerated Possession Procedure for section 21.

Possession – writ of

Commercial landlords may apply for a writ of possession to repossess land and property on that land. The landlord, or their solicitor, must attend the repossession to show the actual property or land that is being repossessed. The HCEO enforcing the writ is not obliged to warn the building's occupants that they are about to be evicted, but it is good practice to do so to avoid problems and prepare any special measures or support that they might need in order to execute the writ. The enforcement agent is entitled to use force to enter commercial premises and may also use reasonable force to eject the occupants and other people found on the premises at the time.

Priority of writs

It is very possible that more than one creditor may be suing a debtor at the same time. When writs of control are issued, the HCEO will time them in, i.e. mark each writ with the date and time of receipt. If two separate HCEOs have writs with the same date, the priority will then be decided by the time it is signed by the HCEO.

Sale or disposal stage (rent arrears)

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

Setting aside judgment (for rent arrears)

When the tenant (debtor) applies to set aside judgment (sometimes used as a delaying tactic), the court will fix a date for the hearing, which both parties will attend. The tenant will have to explain why they want the judgment set aside. If the court does set aside judgment, then the tenant is allowed to put forward their defence, having provided the landlord (creditor) with the documents they intend to use and witnesses to support their defence. If they are successful, enforcement cannot proceed. If their application is denied, the landlord may proceed with enforcement. Enforcement can continue whilst the application is awaiting a hearing.



Taking control of goods and sale of goods (rent arrears)

It is the duty of the HCEO or certificated enforcement agent to take control of (seize) the goods of the debtor in order to sell (normally at auction) and raise the money to clear the debt. If sold at auction, the auctioneer will always try to get the best price for the goods, selling to the highest bidder on the day. Although not common, the court may also allow for the goods seized to be sold privately rather than at public auction if it can be demonstrated that a higher price is likely to be obtained. This is called private treaty.

Third party premises

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

Transfer of judgment to High Court

When a County Court Judgment (CCJ) is issued for £600 and above (including court costs), the creditor can transfer it up to the High Court for enforcement by an HCEO. The transfer form is the N293A and there is a court fee of £60, which can be added to the debt. Once completed, a writ of control (formerly called a writ of fieri facias, or fi fa for short) is issued, which give the HCEO the authority to enforce.

Validity of the writ

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

Voluntary arrangements – how they impact on enforcement

A company voluntary agreement is put in place to allow a company to continue trading while making an arrangement with its creditors. The arrangement is proposed by the company to its creditors and, once accepted by the appropriate majority, is binding on all creditors. Normally, the creditors will agree to accept a delay in payment, a smaller payment, or a combination of the two. Enforcement of writs of execution is normally suspended during a company voluntary arrangement.

Winding up

This is for use against a company for debts over £750 – this threshold is due to rise to £5,000 in October 2015. You don't need a judgment first, but can go straight to a statutory demand. If payment isn't received, the next step is a winding up petition, which must be advertised at least seven days before the hearing in the London Gazette. This usually leads to banks freezing bank accounts. If the petition is granted, a liquidator is appointed to realise and distribute assets amongst creditors.



About The Sheriffs Office

We are a leading firm of authorised High Court Enforcement Officers (HCEO) and Certificated Enforcement Agents covering all of England and Wales.

It all started in the late 1970s as The Sheriffs Office in Northampton, dealing only with High Court writs within the county of Northamptonshire. With the Courts Act in 2004, Sheriffs Officers were renamed High Court Enforcement Officers and the restrictive geographical boundaries were dropped.

Since then The Sheriffs Office has gone from strength to strength, growing year on year to become one of the top four HCEO firms with significant market share.

Underpinning our success is our focus on client service and a comprehensive "end to end" range of specialist services for the recovery of debt, property and land.

A range of services for everyone

The Sheriffs Office provides the full range of High Court Enforcement and related services for individuals, sole traders, business of all sizes, landlords, commercial agents, local authorities and solicitors acting on behalf of clients.

Money judgments

- High Court enforcement
- Employment tribunal award
- Debtor tracing
- European judgment
- Debt collection

Property and land

- Eviction
- Security
- Repossession
- Rent collection
- Equine impoundment

The Sheriffs Are Coming

The Sheriffs Office is the HCEO firm featured in this hit BBC programme, winner of the Broadcast Awards 2014 Best Daytime Programme.

Supporting the environment

We participate in a Carbon Offsetting project run by Carbon Footprint Ltd which is planting trees in Kenya to support local communities in the Great Rift Valley, so as to reduce poverty and provide habitats for wildlife, including lions!

If you would like to find out more about our services,
please call us today on

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