



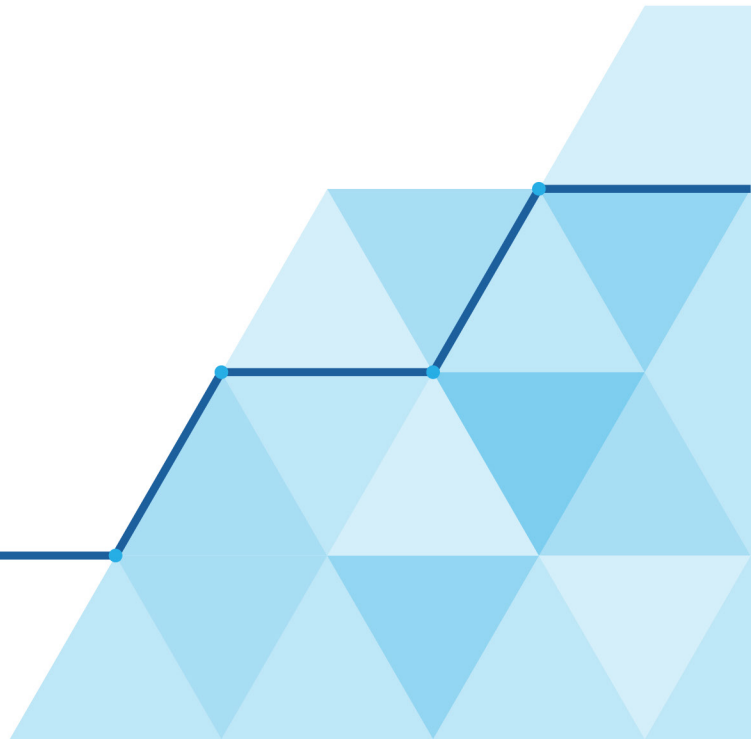
Ministry
of Justice

Taking Control of Goods Regulations

Consultation 2023

This consultation begins on 10 October 2023

This consultation ends on 4 December 2023





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of Justice

Taking Control of Goods Regulations

Consultation 2023

A consultation produced by the Ministry of Justice. It is also available at <https://consult.justice.gov.uk/>

About this consultation

- To:** This consultation is aimed at the enforcement industry, individual enforcement agents, creditors, users of the civil courts, debt advice providers and any other interested parties
- Duration:** From 10/10/23 to 04/12/23
- Enquiries (including requests for the paper in an alternative format) to:** Bailiff Review
Ministry of Justice
Civil Justice and Law Division
102 Petty France
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Email: bailiffreview@justice.gov.uk
- How to respond:** Please send your response by midnight on 04/12/23 to:
Civil Justice and Law Division
Ministry of Justice
102 Petty France
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Email: bailiffreview@justice.gov.uk
- Response paper:** A response to this consultation exercise will be published at: <https://consult.justice.gov.uk/>

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Executive summary

The Taking Control of Goods Regulations 2013 (the TCG Regulations) and the Taking Control of Goods (Fees) Regulations 2014 (the Fees Regulations) came into force on 6 April 2014. They regulate how enforcement agents (EAs) and High Court Enforcement Officers (HCEOs) in England and Wales take control of goods to enforce judgment debts and set out the fees they can recover from judgment debtors for that work. The regulations seek to strike a balance between providing enough revenue for EAs and HCEOs to run a profitable business, whilst seeking to protect debtors from disproportionate costs.

The Government published a review of the fees that can be recovered from debtors by EAs and HCEOs when using the procedures under the TCG Regulations and the Fees Regulations on 17 July 2023.¹

In the review the Ministry of Justice committed to consult on several amendments to the regulations. This consultation paper seeks views on proposals to encourage people in debt to settle a judgment debt at the earliest stage so keeping the fees that they pay to a minimum, and to prescribe when EAs and HCEOs can progress through the stages of enforcement.

The measures that we seek views on are:

- extending the minimum period of notice that must be given before EAs and HCEOs can visit a residential property;
- clarifying that EAs enforcing High Court writs can agree to repayment plans at the compliance stage;
- prescribing the tasks that should be carried out as part of the compliance stage;
- mandating that a new “Information Sheet” should be enclosed with a Notice of Enforcement (a statutory form giving debtors notice that an EA or HCEO will visit to take control of goods unless they pay);
- clarifying the High Court Enforcement fee scale to set out the requirements of Enforcement Stage 1 and when the fee for Enforcement Stage 2 can be recovered;
- using the non-High Court fee scale for low value High Court debts;
- amending the Taking Control of Goods: National Standards to prohibit creditors from receiving extra payment or profit-sharing from the use of EAs and the charging of fees; and
- future reviews of the impact of the reforms proposed in this paper and the level that the fees are set at.

¹ <https://www.gov.uk/government/publications/enforcement-agent-fee-review-2023>

Background

Following the implementation of the TCG Regulations and the Fees Regulations – which fundamentally changed the enforcement landscape – a one-year review was held in 2015. The original scope of the one-year review was to focus on urgent unintended consequences, and to identify any obvious flaws in the fee structure that appeared to be driving negative impacts.

A light-touch check of average fees was carried out to assess any dramatic differences from predictions made during the formulation of the fee structure. Data provided for the first review showed that the effectiveness of enforcement had improved, with a greater proportion of debts being successfully enforced than predicted. The review obtained data about the percentage of enforcement cases that were settled at the compliance stage one year after the regulations came into force in 2015.²

At the time, EAs enforcing High Court writs settled more debts at the compliance stage than predicted; 10% of total writs issued compared to a predicted 1%. However, for EAs enforcing non-High Court debts, compliance stage enforcement rates were lower than expected. It was expected that compliance stage enforcement would improve for both High Court and non-High Court debts as the reforms bedded in.

A second review, held in 2018/19,³ found that the proportion of settled cases that were resolved at the compliance stage remained very similar to the levels found at the one-year review and, therefore, remained below the predicted rate for non-High Court debts. Data provided by some individual firms indicated that some firms were considerably better than others at settling debts at the compliance stage and that the rates varied by debt type.

In 2019, the Justice Select Committee (JSC)⁴ conducted an inquiry on the impact of the regulations. They recommended, amongst other things, that the fees should be set as low as possible while ensuring the sustainability of the enforcement industry and recommended that the fees should be reviewed by an independent regulator.

The Government's response to the report⁵ contained a commitment to review whether the level the fees were set at remained appropriate given the technological, economic and

² <https://www.gov.uk/government/publications/one-year-review-of-enforcement-agent-reforms>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1123366/government-response-call-evidence-enforcement-agents.pdf

⁴ <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/1836/full-report.html#:~:text=We%20recommend%20that%20the%20Government,as%20fines%20for%20poor%20behaviour.>

⁵ <https://publications.parliament.uk/pa/cm5803/cmselect/cmjust/979/report.html#heading-2>

regulatory changes that have taken place in the decade since they were set and to see if more could be done to encourage earlier and cheaper settlement of debt.

A further review was held in January 2023. A questionnaire was sent to key stakeholders seeking evidence and views on the following themes:

- whether more could be done to encourage early payment to reduce the number of cases where an enforcement agent needs to attend the debtor's property;
- whether the fees remained set at an appropriate level;
- the fee charged for Enforcement Stage 2 of the High Court Enforcement fee scale; and
- the impact of the Fees Regulations on creditors.

Each theme explored whether the fee structure and level of fees continue to strike an effective balance between providing EAs with adequate remuneration to run profitable businesses without debtors paying unnecessary and disproportionate fees. In addition, it sought to explore whether the fees continue to incentivise payment at the earliest and cheapest stage: the compliance stage.

Following the review, we announced our intention to uplift the fixed fees that EAs and HCEOs can recover from judgment debtors by 5%. This will be the first uplift to the fees in 10 years. It is necessary to do so to ensure that enforcement firms are appropriately remunerated for the work they do in order to ensure the sustainability of the sector. Please see **Annex A** which sets out the fees for non-High Court and High Court fees as they are now and will be following the 5% uplift.

We also announced that we intend to uplift by 24% the thresholds above which an additional percentage fee can be recovered, meaning that the threshold for non-High Court cases will be £1,900 and the threshold for High Court cases will be £1,200. This will have the effect of reducing the proportion of debtors that will have to pay percentage fees and bring it back to the target levels when the thresholds were set.

This consultation is aimed at EAs, HCEOs, creditors and users of the civil courts, debt advice providers and other interested parties in England and Wales.

The Department is also seeking evidence from stakeholders to understand the regulatory impact of these proposals on them.

Copies of the consultation paper are being sent to:

- The Civil Enforcement Association (CIVEA)
- The High Court Enforcement Officers' Association (HCEOA)
- The Taking Control Coalition Group, (Citizens Advice, The Money Advice Trust, StepChange Debt Charity, Advice UK, Christians Against Poverty, Community Money Advice, Institute of Money Advisers)
- The Enforcement Conduct Board (ECB)
- The Civil Court Users Association (CCUA)

- The Local Authority Civil Enforcement Forum (LACEF)

We have also sent this consultation to individuals, organisations and firms who responded to the review. This list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

Proposal A

To amend the TCG Regulations to extend the minimum period of notice that must be given before EAs and HCEOs move from the compliance stage to the enforcement stage from a minimum period of 7 days to 28 days for individual debtors, but not for debts owed by businesses.

Background

Paragraph 7 of Schedule 12 to the Tribunals Courts and Enforcement Act 2007⁶ states that an EA may not take control of goods unless the debtor has been given notice. Regulation 6 of the TCG Regulations⁷ states that notice of enforcement must be given to the debtor not less than 7 clear days before the enforcement agent takes control of the debtor's goods. This time gives the individual the opportunity to either pay the debt or agree to a repayment plan, or to seek debt advice before enforcement agents visit the premises to take control of the goods.

This period before a visit takes place is known as the compliance stage. Settlement of the debt at the compliance stage is cheaper for all parties and avoids the need for an EA or HCEO to make a visit. The EA or HCEO may also decide not to visit the premises to take control of the goods if they assess that the person is vulnerable or may not owe the debt.

The compliance stage includes all activities from the receipt by the EA of instructions up to but not including the commencement of the enforcement stage. This may include activities such as background checks on the debtor or sending a letter to the debtor.

The intention behind the fee structure was to incentivise settlement at the compliance stage before a visit and taking control of goods became necessary. Agreeing to a sustainable repayment plan or by settling the debt at the compliance stage keeps the fees, which are recovered from the debtor to a minimum.

The TCG Regulations allow the court to order that a shorter period of notice may be given to the debtor if the court is satisfied that it is likely that goods will be moved, or otherwise disposed of to prevent the EA or HCEO from taking control of them.

⁶ <https://www.legislation.gov.uk/ukpga/2007/15/schedule/12>

⁷ <https://www.legislation.gov.uk/uksi/2013/1894/contents/made>

The TCG Regulations require that a longer notice period of 14 days' notice be given in cases where EAs or HCEOs are enforcing Commercial Rent Arrears Recovery (CRAR) against sub-tenants.

Proposed change

As part of our reforms to reduce the number of cases that result in an enforcement visit, we are consulting on extending the minimum notice period from seven clear days⁸ to 28 calendar days in all cases apart from cases where the debtor is a business.

Our review found that some enforcement firms already give people in debt a longer period to engage with them at the compliance stage, which gives more time for an affordable repayment plan to be agreed. Some firms reported that creditors required them to operate a longer compliance period. The debt advice sector said that a longer compliance period should be required in the TCG Regulations to give people time to seek debt advice if needed.

We have proposed 28 calendar days as it should give people in debt sufficient time to seek and receive debt advice, to assess their ability to pay and to agree a repayment plan with the EA or HCEO.

We do not propose extending the time limit for debtors that are not individuals, because elements of the enforcement sector told our review that businesses are more likely to vacate premises or remove assets when they receive a Notice of Enforcement. A longer period between receipt of the Notice of Enforcement and a visit by an EA or HCEO would increase that risk.

We understand that in some cases it will not be clear from the information provided to EAs or HCEOs whether the debtor is an individual or a business. In cases where it is not clear that the debtor is not an individual, we propose that the longer notice period of 28 calendar days should be given. We propose that sole traders be considered as individuals and not as a business.

We do not intend to amend the power of the courts to allow for a shorter period of notice if they are satisfied that the goods might be moved or disposed of. Nor do we intend to amend the period of notice that must be given when enforcing CRAR.

⁸ Regulation 2 TCG Regulation defines "clear days" means that in computing the number of days—
(a) the day on which the period begins; and
(b) if the end of the period is defined by reference to an event, the day on which that event occurs, are not included.

Questions

- Q1. Do you agree that the minimum period of notice that must be given to a debtor before the EA or HCEO is able to take control of goods should be increased from 7 clear days to 28 calendar days?
- Q1a. If not, please explain why.
- Q2. Do you agree that the minimum period of notice that must be given to a debtor that is not an individual, but is for example, a company, a corporation or a partnership, should remain at 7 clear days?
- Q2a. If not, please explain why.
- Q3. Do you agree that the reference to an individual should include a sole trader?
- Q3a. If not, please explain why.
- Q4. Do you agree that where it is not clear whether the debt is owed by an individual that the longer period of 28 calendar days should apply?
- Q4a. If not, please explain why.

Proposal B

To amend the Fees Regulations to clarify that EAs and HCEOs enforcing High Court writs can agree to payment by instalments at the compliance stage.

Background

When the Fees Regulations were introduced, it was estimated that only 1% of settled High Court cases would be paid at the compliance stage. HCEOs, however, have been achieving progressively higher rates of settlement at the compliance stage. 23.9% of cases settled in 2022 were resolved at the compliance stage, compared to 20% of settled cases in 2018. However, the proportion of High Court cases that settle at the compliance stage is still significantly lower than the proportion of non-High Court cases that settle at the compliance stage, which is almost 40%.

The High Court enforcement sector report that one of the main reasons for this disparity is because they are obliged by the command on a writ of control to undertake a visit to take control of goods if payment is not made in full at the compliance stage and that prevents accepting payment in instalments.

However, the High Court enforcement sector also reported to our review that some creditors specify in the contract with the HCEO that repayment arrangements can be

accepted at the compliance stage and provide an undertaking that they will not hold the HCEO liable for not moving to Enforcement Stage One (ES1) because payment in full was not made.

In light of the uncertainty in the industry, it has been suggested that the Fees Regulations should be amended to specify that arrangements to pay in instalments can be accepted in respect of writs of control at the compliance stage, with the consent of the creditor.

The Explanatory Memorandum to the Fees Regulations 2014, says at paragraph 7.3:

“Unless a debtor pays in full at the compliance stage, the enforcement agent is obliged to visit the debtor in every High Court case in order to take control of goods, thereby triggering the first enforcement stage.”

Whilst that does not expressly require payment in single lump sum, or preclude instalments, it is sometimes interpreted in that way.

Proposed change

We propose that the Fees Regulations should be amended to clarify that HCEOs can accept a payment plan in instalments at the compliance stage, and do not, therefore, need to visit the debtor in order to take control of goods if payment is not paid in one payment at the compliance stage. Debtors should also be allowed the time to do so.

We are, therefore, consulting on adding the following text to the Fees Regulations:

“Activities to be completed before moving to the enforcement stage:

EAs and HCEOs must consider whether the debt could be paid in instalments, over a longer time period than the minimum period of notice stipulated at Regulation 6(1) of the Taking Control of Goods Regulations 2013, without the need to move to the enforcement stage.”

Questions

- Q5. Do you agree that the proposed amendment to the Fees Regulations makes it clear that HCEOs will be able to agree at the compliance stage to payment in instalments over a longer time-frame than the minimum notice period (currently 7 days), meaning that they do not have to visit the property if payment is not made in a single payment at the compliance stage?
- Q5a. If not, please explain why and how the requirement could be made clearer?
- Q6. Do you have any concerns about the proposal to require HCEOs to consider whether debts could be repaid in instalments before moving to the enforcement stage?
- Q6a. If so, please explain why.

Proposal C

To amend the TCG Regulations to set out the tasks that should be carried out as part of the compliance stage.

Background

Our review found that a variety of approaches are taken at the compliance stage by EAs, HCEOS and firms, and that differing approaches were taken when deciding when to move from the compliance stage to the enforcement stage. We also found that creditors had differing expectations about how cases should be handled at the compliance stage. It was suggested that the Ministry of Justice should prescribe in greater detail in the TCG Regulations the minimum actions that EAs should undertake at the compliance stage before moving to the enforcement stage.

There are some requirements set out in the regulations. Regulations 5 and 6 of the Fees Regulations define the compliance stage as comprising of all activities relating to enforcement up to but not including the commencement of enforcement stages. Regulations 6, 7 and 8 of the TCG Regulations set out rules about how the Notice of Enforcement should be given. Regulation 12 of the Fees Regulations sets out that where the debtor is a vulnerable person the enforcement stage fees are not recoverable unless the debtor has been given an opportunity to get advice. There is no further detail in legislation about what must be done at the compliance stage.

In addition, the landscape has changed since the Fees Regulations were drafted and different tasks are now undertaken at the compliance stage. Many of the differences relate to an increased use of technology. For example, firms reported being better able to confirm debtor details through increased data collection and the ability to access information about debtors from different organisations. Similarly, search engines allow firms to better link cases and so obtain a fuller picture of the debtor's financial circumstances. This in turn enables them to be better able to identify financially vulnerable debtors.

Debt advice organisations suggested that an enforcement pre-action checklist, similar to that used in the Mortgage Pre-Action Protocol or the Debt Pre-Action Protocol, should be developed to prescribe the minimum actions that must be taken by the EA before they can move to the enforcement stage.

Proposed changes

We propose specifying, in regulations and in guidance, the steps that EAs must take at the compliance stage before they can recover the enforcement stage fee. For the regulations, we are consulting on making some new requirements and putting some steps that are

currently in guidance into regulations. We also propose to issue guidance on some steps that are already set out in the Fees Regulations.

The Ministry of Justice's guidance will refer to the following steps that are already set out in legislation.

- a. To act on any notification that the debt is exempt from enforcement action, for example because the debt is in a Breathing Space or has been consolidated into a Debt Resolution Order. This reflects legislation elsewhere, such as the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020.
- b. Where the debtor is vulnerable, that the debtor has been given an opportunity to seek advice. This is required by Regulation 12 of the TCG Regulations.
- c. A dated Notice of Enforcement must be sent to the debtor. The requirement to send a Notice of Enforcement is set out in the TCG Regulations. We propose amending those regulations to make it also a requirement to send an Information Sheet (see Proposal D for further details).

We welcome views on putting the following requirements into the TCG or Fees Regulations, with some supplemented by guidance:

- d. That an Information Sheet, containing specific information for debtors about their rights and responsibilities and signposting them to advice, must be enclosed with the Notice of Enforcement. A more detailed discussion on the Information Sheet and what it should contain is set out in Section D below.
- e. That if the debtor is an individual and no response or contact has been received to the Notice of Enforcement after 14 days, the Notice of Enforcement and Information Sheet must be resent.
- f. Following the issue of a Notice of Enforcement, if it becomes apparent that the debtor has moved to a different address, that a new Notice of Enforcement must be sent to that address and the notice period must start again.
- g. Where vulnerability has been reported that the EA or HCEO must consider whether it is appropriate to proceed with enforcement action and must contact the creditor for any relevant information they have and to canvass their view. This reflects guidance in the Taking Control of Goods: National Standards.
- h. That EAs and HCEOs must consider whether the debt could be paid in instalments, over a longer time period than the minimum period of notice stipulated in the TCG Regulations, without the need to move to the enforcement stage.⁹
- i. That in cases where an agreement to pay by instalments is broken, a warning must be sent that payment is due before moving to the enforcement stage.

⁹ The proposal to set out this in Regulations is also considered at Section B of this paper.

Questions

Q7. Do you think that it would be beneficial to set out in guidance that the steps set out in the section about proposal C, at points a to i, should be undertaken at the compliance stage before moving to the enforcement stage?

Q7a. If not, please give reasons.

Q8. Do you agree that the steps set out in the section about proposal C at, points d to i, should be prescribed in the TCG or Fees Regulations?

Q8a. If you disagree, please set out why.

Q9. Are there other steps you think should be prescribed in the TCG or Fees Regulations and/ or in guidance?

Proposal D

To amend the statutory requirements for information that must be sent to debtors to signpost advice and encourage engagement with EAs and HCEOs.

Background

EAs and HCEOs are required to provide those facing enforcement action with a Notice of Enforcement before they can visit the property to take control of goods. The Tribunals, Courts and Enforcement Act 2007 (TCEA 2007) states that the form and content of that notice must be set out in regulations. Regulation 7 of the TCG Regulations sets out that the notice must be provided in writing and the information that must be provided within it. The prescribed Notice of Enforcement that EAs and HCEOs must use is contained in the Schedule to the Certification of Enforcement Agent Regs 2014.¹⁰

Some respondents to the review suggested that changes should be made to the statutory Notice of Enforcement to explain the enforcement process more clearly to those facing enforcement action and to include information about how to access support from debt advice organisations, including the 'Breathing Space' scheme.

It was also suggested that the Notice of Enforcement could be improved by using plain English and that it should be re-focused to direct people to debt advice and encourage engagement with EAs and HCEOs. It has been suggested that people were more likely to engage with their creditors and seek help where communications offered reassurance that help was available and gave people options to deal with their situation.

¹⁰ <https://www.legislation.gov.uk/uksi/2014/421/schedule>

Proposals

We have reviewed further whether the notice could be amended to make it easier to understand and less overwhelming to people who are in financial difficulty. We have also considered how to amend it to encourage more people to engage with EAs or HCEOs or to seek debt advice. We have concluded that it would be better to produce a new, separate information sheet that EAs and HCEOs will be required to send with the Notice of Enforcement. We think that it will be easier for debtors to refer to two separate documents: one setting out specific information about their case and the other providing general information about how to respond to the notice and where to go for further information.

We seek views on amending the TCG Regulations to require EAs and HCEOs to send this Information Sheet when sending a written Notice of Enforcement.

We also seek views on the content of the Information Sheet, which is attached at Annex B. It aims to set out in clear and easily understandable language, how the person or business should respond to the Notice of Enforcement. It emphasises the free debt advice services that are available; encourages engagement with EAs and HCEOs; informs that they should in most cases consider a repayment plan; and sets out the potential financial implications of not taking any action.

Questions

Q10. Do you agree that the TCG Regulations should be amended to require EAs and HCEOs to send a statutory information sheet with a Notice of Enforcement?

Q10a. If not, please explain why.

Q11. Do you agree with the information provided on the draft Information Sheet (Annex B)?

Q11a. If not, please explain why.

Q12. Is there any other information that you would want to be included in the Information Sheet?

Q12a. If so, can you explain what it is and why it should be included?

Q13. Given the proposal to require EAs and HCEOs to send debtors the Information Sheet with a Notice of Enforcement, do you think that it is additionally necessary to amend the notice?

Q13a. If so, please set out why and how.

Proposal E

Amending the Fees Regulations to make it clearer when the fee for enforcement stage two (ES2) can be recovered under the High Court enforcement fee scale.

Background

The Dehayen Report¹¹ highlighted several key differences between the nature of non-High Court enforcement and High Court enforcement. It concluded that High Court enforcement had a higher cost base, due to the personal responsibility of an HCEO (who has writs addressed directly to them) and the obligations that imposes on them, and the fact that they enforce higher value debts.

It was therefore decided that where the person in debt did not pay in full at the compliance stage, two stages of enforcement, with associated fees, were needed before the sale of the goods to recover the debt. These stages are set out in the Fees Regulations.

Regulations 6(1)(b) and (c) of the Fees Regulations are as follows:

- (b) 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;
- (c) 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.

The first enforcement stage (ES1) commences at the first visit to the property, and, where a Controlled Goods Agreement (CGA) is agreed, encompasses all the work creating it and until compliance with it or its breach.

The second stage (ES2) has two possible formulations. The first is where no CGA is agreed at the first visit. In those circumstances ES2 runs from that first visit and continues up to but not including the start of the sale stage. The second formulation is where a CGA

¹¹ [Enforcement Agent Fee structure review \(justice.gov.uk\)](https://www.justice.gov.uk/enforcement-agent-fee-structure-review)

is agreed in ES1, but that agreement is breached and, in those circumstances, ES2 runs from the breach up to but not including the start of the sale stage.

The fee structure was designed to incentivise debtors to pay the debt in full or by entering into a CGA and adhere to it, thereby avoiding the need for the goods to be physically secured on or removed from the premises and the additional costs of that. It also did so partly by setting the fixed fees for ES1 at a lower level than those incurred for ES2.

Data provided to our review showed that High Court enforcement firms still incur greater costs than non-High Court firms, but that those costs are falling. We consider, therefore, that there is still justification for there to be a different fee scale to compensate firms enforcing High Court writs for these costs.

However, our post-implementation reviews found a number of problems with the interpretation of the current regulations about when the ES2 fee should be recovered. For example, we received evidence that HCEOs sometimes move immediately to charge the ES2 fee in addition to the ES1 fee where payment is made in full at a first visit to the property.

A further example was where the ES2 fee is recovered in cases where a second visit is required to the property, irrespective of the reason for the need for that second visit. Concern was also raised about a lack of regulation about when HCEOs can move to ES2 following a breach of the CGA. We have also considered whether the ability to recover the ES2 fee if a CGA is breached might be an incentive for HCEOs to press for unaffordable CGAs.

The HCEOA's Best Practice Guidance attempts to deal with some of these issues and goes into more detail than the Fees Regulations. It states:

“If the case is escalated during a first visit because of the debtor’s repeated failure to comply with the enforcement of the writ (it is expected that evidence of this failure is recorded).

If no CGA has been entered into during the initial visit, or there has been a breach of the CGA, and there is clear repeated refusal by the debtor to either pay in full or by an acceptable instalment agreement.

Where no response is gained at the premises on a first visit, a reasonable opportunity is given to the debtor to make contact and negotiate an arrangement to pay before escalation to ES2.”

In light of the evidence we have found of what we consider to be inappropriate interpretation of the regulations, and recognising the fact that the HCEOA felt the need to issue guidance to deal with some of the issues, we consider that the Fees Regulations

should be clearer about what must take place in ES1 to avoid unnecessary or inappropriate escalation to ES2.

Proposals

(a) To set out in the Fees Regulations more clearly what must take place in ES1.

We propose making it clear in the Fees Regulations that the aim of ES1 is to encourage payment in full or to reach a manageable agreement for payment under a CGA and to act reasonably with respect to that agreement.

ES1 will therefore begin with the first visit and contain all steps up to but not including physically securing the goods prior to the sale stage, whether at the property or by removing them.

Apart from defining the start and end point of ES1 as above, in order to ensure the aim is achieved, we also propose requiring the HCEO to take all reasonable steps to secure payment or a CGA, or a combination of both, in ES1 and to act reasonably with respect to any CGA that is entered into. Where they do not, they will not be entitled to the ES1 or ES2 fee, as they will not have properly executed ES1 or appropriately moved to ES2. For example, a single attendance at the property where no one is in will not be enough to claim the ES1 fee or move to ES2.

To that end, we also intend to provide guidance in the National Standards as to what reasonable steps the HCEO must take before moving to ES2. For example, we propose that the guidance will specify that a first visit to a property without meeting the debtor will not of itself satisfy that requirement. The HCEO will need to follow that visit up, including by further visits where appropriate, to be sure that the payment or a CGA is unlikely to be forthcoming. Therefore, where, for example, a debtor makes contact after that first visit and offers to pay, receiving that payment or securing a CGA will be a part of ES1 and not ES2.

In addition, in order to avoid the scenario where even a small departure from the CGA, for example a late payment, could be considered a breach of the CGA, we propose that guidance will set out what is expected of an HCEO where a debtor does not meet the terms of the CGA before the HCEO is entitled to secure the goods (ES2) and recover the ES2 fee. For example, in the case of a late payment, unless the debtor has confirmed that they will be unable to meet the debt under the CGA, irrespective of minor changes to it, or failed to make 2 scheduled payments in a row, the HCEO will be required to offer a further reasonable opportunity to pay.

(b) To set out in the Fees Regulations a clearer point at which ES2 begins

We propose to amend the Fees Regulations to make clear that ES2 only commences when goods are physically secured. That may be at the property or by removal for storage elsewhere. Demarcating clearly where ES2 commences in this way, and therefore that all action before it but after the compliance stage lies in ES1, will help

to remove the uncertainty and confusion which has led to a variety of inappropriate practices.

For example, as mentioned above, that definition of ES2 will mean that where payment is made at any time before securing the goods, ES2 will not have begun and the fee for it won't be payable.

We consider it to be a reasonable point at which ES2 can be said to have started as it also reflects the next practical stage in the work to enforce the debt where a settlement cannot be achieved.

Questions

Q14. Do you agree with the proposals listed in the section about proposal E setting out the circumstances when the ES2 fee can be recovered?

Q14a. If you do not agree, please explain why.

Q15. Do you think the proposals could go further?

Proposal F

To seek views on amending the Fees Regulations that apply to High Court enforcement to prevent a higher fee being applied to low value debts.

Background

As set out at Section E, a separate fee scale was established for High Court debts which allows for the recovery of higher fees than for Non-High Court debts. The current and future fee scales are set out at Annex A. Concerns were raised to our review that the fees recovered under the High Court fee scale are disproportionate to low value debts. For example, following the planned 5% uplift to the fees, in cases that reach the ES2 stage, debtors who owe less than £800 will pay more in fees than the value of the original debt. They will have to pay the compliance stage fee as well as the ES1 and ES2 stage fees. In non-High Court debt enforcement, there is only one enforcement stage fee, and it is considerably lower than the combined ES1 and ES2 fees.

Proposal

We are consulting, therefore, on whether the non-High Court fee scale should be applied to lower value debts enforced in the High Court and if so, what the threshold should be below which the non-High Court fee scale should be used.

We are consulting on two potential thresholds:

- £800, which would mean that the fee, in cases which are paid at the enforcement stage, would not exceed the value of the original debt; or

- £1,200 which would align with the new threshold above which a percentage fee can be recovered, which is the value above which it was decided, when the fees were designed, it was decided that debts were more expensive to enforce.

Questions

Q16. Do you think that the Regulations should be amended to require the non-High Court fee scale to be used for low value High Court cases?

Q16a. If not, please explain why.

Q17. Do you think that the threshold below which the non-High Court fee scale should be used should be set at: £800 or £1,200: or do you think the threshold should be set at a different amount?

Q17a. If you think the threshold should be set at a different amount, please set out why.

Proposal G

Amend the National Standards to prohibit creditors from receiving extra payment or profit-sharing from the use of EAs and the charging of fees.

Background

The enforcement sector expressed concern to our review that some creditors have been requesting that firms remit to them a percentage of their fee income. They explained that these requests are different to and sometimes in addition to social value requests made under the terms of the Public Services (Social Value) Act 2012.¹²

Guidance issued by the Department for Levelling Up, Housing and Communities¹³ sets out that Local Authority creditors cannot receive extra payment or profit-sharing from the use of EAs:

“Local Authorities must ensure that bailiffs provide clear and accurate information about costs to the bill payer, including a breakdown of costs, outlining how much has been charged for the bailiff action. It is inappropriate for authorities to receive extra payment or profit-sharing from the use of bailiffs and the charging of fees. Contracts should not involve rewards or penalties which incentivise the use of bailiffs where it would not otherwise be justified.”

¹² <https://www.legislation.gov.uk/ukpga/2012/3/contents>

¹³ [Guidance on enforcement of CT arrears - amended version.doc \(publishing.service.gov.uk\)](#)

Proposal

To ensure that the fees that have been set remain appropriate and provide adequate remuneration for the enforcement sector while not unduly burdening debtors, we propose to amend the Taking Control of Goods: National Standards¹⁴ to make clear that creditors should not be requesting that firms remit to them a percentage of their fee income.

We propose that the following paragraph be inserted into the Taking Control of Goods: National Standards:

Creditors' Responsibilities

In order for the enforcement process to work effectively, creditors must be fully aware of their own responsibilities. The primary purpose of this guidance for creditors is to draw their attention to their responsibilities when instructing and dealing with enforcement agents/agencies to recover debts on their behalf.

It is inappropriate for creditors to receive extra payment or profit-sharing from the use of Enforcement Agents and the charging of fees. Contracts should not involve rewards or penalties which incentivise the use of Enforcement Agents where it would not otherwise be justified.

Questions

Q18. Do you agree with the proposed amendment to the Taking Control of Goods: National Standards?

Q18a. If not, please explain why.

Proposal H

Review mechanism

We intend to review the impact of any of the reforms implemented as a result of this consultation three years after they come into force. We also intend to review whether the levels the fees are set at, and the thresholds above which a percentage fee can be recovered, are achieving the intended effect three years after the planned uplift is implemented, and every three years thereafter.

This timetable will replace the commitment in the Explanatory Memorandum to the Fees Regulations to review the fees annually with reference to the latest Consumer Price Index. This proposal reflects the findings of the 2023 review about the range of factors that must be considered in order to ensure that the levels the fees are set at are fair to all parties. We consider that it would be inappropriate to conduct such a review annually as we are

¹⁴ [Bailiffs and enforcement agents: national standards - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/bailiffs-and-enforcement-agents-national-standards)

unlikely to have sufficient time to implement changes and gather sufficient data on that range of factors to satisfactorily assess their impact on a yearly cycle.

Questions

Q19. Do you agree with the proposal to review these reforms and the fee levels after three years, and to review the fee levels every three years thereafter?

Impacts

Regulatory Impact

To help us understand the regulatory and equalities impact of these proposals, it would be helpful if you could answer the following questions.

Questions For EAs, HCEOs and enforcement firms

Q20. Will any of the proposals create a new business requirement either for you or your firm?

Q20a. If yes, could you explain which proposal and what the business requirement will be?

Q20b. Do you have any data that you can share with us to allow us to understand the regulatory burden these proposals may have on businesses?

Q21. Will any of the proposals require a need to amend IT systems?

Q21a. If yes, could you explain which proposal and whether the cost will be ongoing or an implementation cost?

Q22. Will the proposals require any staff training?

Q22a. If yes, what training and at what cost?

Questions for creditors and other court users

Q23. Do any of the proposals create a new business requirement?

Q23a. If yes, could you explain which proposal and what the business requirement will be?

Q23b. Do you have any data that you can share with us to enable us to understand the regulatory burden these proposals may have on businesses?

Q24. Will any of the proposals require a need to amend IT systems?

Q24a. If yes, could you explain which proposal and whether the cost will be ongoing or an implementation cost?

Q25. Will the proposals require any staff training?

Q25a. If yes, what training and at what cost?

Questions for Debt Advice Providers

Q26. To understand better whether the proposals will create a greater take-up of advice for the debt advice sector, do you have any data that can help us understand the regulatory burden these proposals may have on civil societies and charities.

Equalities Impact

Q27. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please give reasons.

Q28. Do you agree that we have correctly identified the range and extent of the equalities impacts under each of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts as appropriate.

Q29. Are there forms of mitigation in relation to equality impacts that we have not considered?

Any other observations

Q30. Do you have any general comments to make on the proposals mentioned in this paper?

Annex A

The fees for non-High Court and High Court are set out in the tables below. They show their current level and that of the uplift to both the fees and the thresholds.

Non-High Court fee scale		Non-High Court threshold		
Stage	Current fee	5% uplift	Current £1,500	Uplift £1,900
Compliance stage	£75	£79	0	0
Enforcement stage	£235	£247	7.5%	7.5%
Sale or disposal stage	£110	£116	7.5%	7.5%

High Court fee scale		High Court threshold		
Stage	Current fee	5% uplift	Current £1,000	Uplift £1,200
Compliance stage	£75	£79	0	0
First enforcement stage (ES1)	£190	£200	7.5%	7.5%
Second enforcement stage (ES2)	£495	£520	0	0
Sale or disposal stage	£525	£550	7.5%	7.5%

Annex B

INFORMATION SHEET TO BE SENT WITH A NOTICE OF ENFORCEMENT

You have received this Information Sheet because an enforcement agent has been instructed to recover a debt from you. It tells you what to do next, including what to do if you need advice.

This information has been prepared by the Ministry of Justice, which is the government department with responsibility for the rules that enforcement agents must follow.

Please read this information carefully.

What should I do now?

Read the enclosed Notice of Enforcement very carefully. It should provide you with the following information:

- how much money you owe, and any interest and fees added to the debt,
- who you owe the money to, and
- details of the court judgment or order that has led to the debt being passed to an enforcement agent.

If it doesn't contain all this information, contact the enforcement agent and ask them for it.

Once you have read the Notice of Enforcement, consider the following options.

Seeking debt advice.

If you are in financial difficulty or need advice to help you work out whether you owe the debt, or how you might pay the debt, contact a debt advisor.

The following organisations offer free, impartial and non-judgmental advice:

Organisation	Telephone Number
Advice UK www.adviceuk.org.uk	0300 777 0107
Christians Against Poverty www.capuk.org	0800 328 0006 (Freephone)
Civil Legal Advice www.gov.uk/civil-legal-advice	0345 345 4345
Money Advice Trust www.nationaldebtline.org	0808 808 4000
StepChange www.stepchange.org	0800 138 1111 (Freephone)

It is recommended that you get debt advice if you have any doubt about whether you owe the debt or whether you can pay it now.

If you are in financial difficulties, you may be eligible for a 'Breathing Space'. The Debt Respite Scheme (Breathing Space) gives eligible people in problem debt the right to legal protections from their creditors. Please speak to one of the organisations listed above to discuss if you are eligible.

Speaking to the enforcement agent or enforcement company.

It is recommended that either you or your debt advisor contact the enforcement agent. Their contact details should be in the Notice of Enforcement.

If you are struggling to pay, you should contact the enforcement company to discuss your case. You can also obtain further advice from a local or national advice agency who may be able to contact the company on your behalf.

If you can afford to pay the debt now, they can take the payment over the telephone. If you cannot afford to pay it all in one go you can ask them to consider a repayment plan to pay the debt by instalments.

Asking to pay the debt by instalments.

If you need more time to pay the debt, you can ask the enforcement agent to consider a payment arrangement. The enforcement agent should consider how much you should pay in instalments based on your income and expenditure and how long you will have to pay them.

How long do I have to reply to the notice?

If you are an individual, you will usually have at least 28 days to contact the enforcement agent. If you do not contact them within the time period set out in the Notice of Enforcement, an enforcement agent will visit your home. This will increase the fees that you will be asked to pay.

An enforcement agent may request that you enter a controlled goods agreement to pay the money in instalments. A controlled goods agreement means a list is drawn up of goods that could be removed at a later date if you do not keep up with the agreed payments. If you are unable or unwilling to pay the debt or enter into a controlled goods agreement, the enforcement agent may seek to secure or take goods that belong to you.

An enforcement agent must give you a proper opportunity to pay or enter into a controlled goods agreement before securing or removing your property.

What goods can an enforcement agent take control of?

Enforcement agents cannot take control of all types of goods. The main types which they **cannot** restrict your access to or use of are as follows:

- items or equipment which are necessary for use personally by the debtor for employment, work or education, up to the value of £1,350,
- items that are needed to satisfy basic domestic needs of every member of the household, such as clothing, bedding, furniture and household equipment, items and provisions, and
- a vehicle displaying a valid disabled badge.

What should I do if I don't owe the money?

The appropriate way to dispute that you owe the money will depend on the type of debt. It is recommended that you seek independent debt advice or legal advice to identify your best course of action.

Where can I find out more information?

You can find more information about the procedure here, including what to do if an enforcement agent visits your home:

[What you can do when a bailiff visits - GOV.UK](#)

[Taking Control of Goods: National Standards GOV.UK](#)

Setting aside a judgment: <https://www.gov.uk/county-court-judgments-ccj-for-debt/cancel-the-judgment>

Appeal against a Parking Charge Notice (PCN) <https://www.gov.uk/appeal-against-a-penalty-charge-notice/court-order>

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

- Q1. Do you agree that the minimum period of notice that must be given to a debtor before the enforcement agent is able to take control of goods should be increased from 7 clear days to 28 calendar days?
- Q1a. If not, please explain why.
- Q2. Do you agree that the minimum period of notice that must be given to a debtor that is not an individual, but is for example, company, corporation or partnership, should remain at 7 clear days?
- Q2a. If not, please explain why.
- Q3. Do you agree that the reference to an individual should include a sole trader?
- Q3a. If not, please explain why.
- Q4. Do you agree that where it is not clear whether the debt is owed by an individual that the longer period of 28 calendar days should apply?
- Q4a. If not, please explain why.
- Q5. Do you agree that the proposed amendment to the Fees Regulations makes it clear that HCEOs will be able to agree at the compliance stage to payment in instalments over a longer time-frame than the minimum notice period (currently 7 days), meaning that they do not have to visit the property if payment is not made in a single payment at the compliance stage?
- Q5a. If not, please explain why and how the requirement could be made clearer?
- Q6. Do you have any concerns about the proposal to require HCEOs to consider whether debts could be repaid in instalments before moving to the enforcement stage?
- Q6a. If so, please explain why.

- Q7. Do you think that it would be beneficial to set out in guidance that the steps set out in the section about proposal C, at points a to i, should be undertaken at the compliance stage before moving to the enforcement stage?
- Q7a. If not, please give reasons.
- Q8. Do you agree that the steps set out in the section about proposal C at, points d to i, should be prescribed in the TCG or Fees Regulations?
- Q8a. If you disagree, please set out why.
- Q9. Are there other steps you think should be prescribed in the TCG or Fees Regulations and/ or in guidance?
- Q10. Do you agree that the TCG Regulations should be amended to require EAs to send a statutory information sheet with a Notice of Enforcement?
- Q10a. If not, please explain why.
- Q11. Do you agree with the information provided on the draft Information Sheet (Annex B)?
- Q11a. If not, please explain why.
- Q12. Is there any other information that you would want to be included in the Information Sheet?
- Q12a. If so, can you explain what it is and why it should be included?
- Q13. Given the proposal to require EAs to send debtors the Information Sheet with a Notice of Enforcement, do you think that it is additionally necessary to amend the notice?
- Q13a. If so, please set out why and how.
- Q14. Do you agree with the proposals listed in the section about proposal E setting out the circumstances when the ES2 fee can be recovered?
- Q14a. If you do not agree, please explain why.
- Q15. Do you think the proposals could go further.
- Q16. Do you think that the Regulations should be amended to require the non-High Court fee scale to be used for low value High Court cases?
- Q16a. If not, please explain why.

Q17. Do you think that the threshold below which the non-High Court fee scale should be used should be set at: £800 or £1,200, or do you think the threshold should be set at a different amount?

Q17a. If you think the threshold should be set at a different amount, please set out why.

Q18. Do you agree with the proposed amendment to the Taking Control of Goods: National Standards?

Q18a. If not, please explain why.

Q19. Do you agree with the proposal to review these reforms and the fee levels after three years, and to review the fee levels every three years thereafter?

Q20. Will any of the proposals create a new business requirement either for you or your firm?

Q20a. If yes, could you explain which proposal and what the business requirement will be?

Q20b. Do you have any data that you can share with us to allow us to understand the regulatory burden these proposals may have on businesses?

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- Q26. To understand better whether the proposals will create a greater take-up of advice for the debt advice sector, do you have any data that can help us understand the regulatory burden these proposals may have on civil societies and charities.
- Q27. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please give reasons.
- Q28. Do you agree that we have correctly identified the range and extent of the equalities impacts under each of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts as appropriate.
- Q29. Are there forms of mitigation in relation to equality impacts that we have not considered?
- Q30. Do you have any general comments to make on the proposals mentioned in this paper?

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by midnight on 4 December 2023 to:

Civil Justice and Law Division

Ministry of Justice

Civil Justice and Law Division

Area 5.25

102 Petty France

London SW1H 9AJ

Email bailiffreview@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from bailiffreview@justice.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published within three months of the closing date of the consultation. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf



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