

## News Sheet No: 01/2019 Applications in Relation to Warrants of Control, particularly Forced Entry

14<sup>th</sup> January 2019

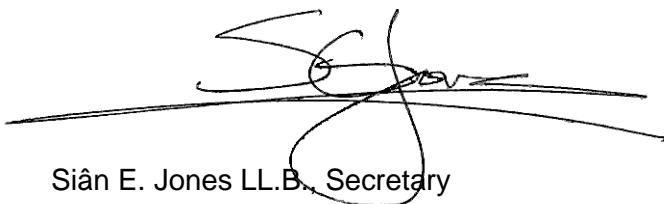
### CIRCULATED DIRECTLY TO ALL MEMBERS OF JCS

Dear Colleague,

JCS has issued this guidance to explain the applications that can be made following the issue of a Warrant of Control (WOC)<sup>1</sup>. The aim of this guidance is to ensure that these applications are dealt with by a process that is both consistent and swift, which in turn should diminish any delay in executing a WOC. This guidance primarily focuses on applications to authorise forced entry, but it also covers other applications such as disputes over fees, ownership or disbursements.

Note that this guidance is **only** for forced entry applications on WOCs. It does not refer to forced entry applications in relation to any other warrants. The law applies to Approved Enforcement Agents (AEAs) as they execute WOCs on behalf of HMCTS.

Yours sincerely,



Siân E. Jones LL.B., Secretary

Copy to SPJ, CMO, MA, MLE, CTDD

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<sup>1</sup> Since 6 April 2014 Distress Warrants have been known as Warrants of Control (Section 62 of the Tribunals Courts and Enforcement Act 2007)

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# Forced Entry Applications For Warrants Of Control

## Warrants of control

A WOC allows enforcement agents (which means Approved Enforcement Agents (AEAs<sup>2</sup>)) to take control of goods and sell them to recover the outstanding debt owed.

The law relating to the execution of a WOC is contained includes:

- Part 3 and Schedule 12 of the Tribunals Courts and Enforcement Act 2007 (TCEA 2007),
- Sections 76, 125A and 125B of the Magistrates Courts Act 1980 (MCA 1980)
- Schedule 5 to the Courts Act 2003
- The Taking Control of Goods Regulations 2013;
- The Taking Control of Goods (Fees) Regulations 2014.
- The Magistrates' Courts Warrants (Specification of Provisions) Order 2000 as amended and
- The Criminal Procedure Rules (CrimPR)

## Forced Entry

There is a general power for the AEAs to use reasonable force<sup>3</sup>, if necessary, to enter premises (but does not include power to use force against persons<sup>4</sup> ). There is no need for a further application to the court for warrants of control issued by the court under section 76 MCA 1980. However there is in relation to WOCs issued under schedule 5 to the Courts Act 2003<sup>5</sup>:

### Applications for a WOC and forced entry: the legal provisions

#### ***Accounts with a collection order:***

The fines officer powers are governed by schedule 5 to the Courts Act 2003. When a person defaults on a collection order made by the Court, the fines officer must either:

- (i) issue an FSN<sup>6</sup> or

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<sup>2</sup> Section 125B Magistrates' Courts Act 1980 states: "approved enforcement agency", in relation to a warrant, means a person or body approved by the Lord Chancellor".

<sup>3</sup> Paragraph 17 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007

<sup>4</sup> Paragraph 24 (2) of Schedule 12 to the Tribunals Courts and Enforcement Act 2007

<sup>5</sup> The conditions needed are contained under paragraphs 14 - 18 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007. The enforcement agent has the power to enter (or re-enter) the premises to take control of goods and the enforcement agent is entitled to execute that warrant either under section 76, 125A or 125B Magistrates' Courts Act 1980

<sup>6</sup> There is also a power to issue a replacement FSN in paragraph 37 of Schedule 5, Courts Act 2003.

- (ii) refer the matter to the justices .<sup>7</sup>

One of the steps that the fines officer can take after the FSN has been served is to issue a WOC.

If the fines officer refers the matter to Court either instead of issuing the FSN or at any stage after issuing one<sup>8</sup> then the Court has the power (among other things) to issue a WOC using the fines officer's powers under paragraph 38<sup>9</sup> or using their standard enforcement powers under section 76(1)<sup>10</sup>.

The legislative power to issue the WOC is central to this guidance because a WOC issued under paragraph 38<sup>11</sup> (whether by the court or the fines officer) needs a further application for forced entry.

A warrant issued by the court under Section 76(1) does not need a further application for forced entry<sup>12</sup>.

***Accounts without a collection order:***

Impositions on companies are not eligible for a collection order but the power to issue a WOC is still available using s 76 MCA 1980<sup>13</sup>. The case must be referred to court by the fines officer in these instances because there is no collection order and only the court can issue the WOC under section 76(1).<sup>14</sup>

**JCS's view :**

Because of the limitations on Libra GoB there is no way of identifying whether a WoC has been issued using paragraph 38<sup>15</sup> or section 76<sup>16</sup>. As a result, it is our view that **all applications for forced entry, regardless of who issued the WOC, will be referred to court.**

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<sup>7</sup> Paragraph 37(6) or 37 of Schedule 5 to the Courts Act 2003

<sup>8</sup> Referral to court can be done either by paragraph 37 (6) (a) or 42 (1) of Schedule 5 Courts Act 2003

<sup>9</sup> To Schedule 5 to the Courts Act 2003

<sup>10</sup> Of the Magistrates Courts Act 1980

<sup>11</sup> To Schedule 5 to the Courts Act 2003

<sup>12</sup> Paragraph 18 (b) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007

<sup>13</sup> The court has the power to issue a WoC in relation to a youth however, it is JCS's view that the use of a WoC for a youth is unlikely to be appropriate.

<sup>14</sup> Of the Magistrates Courts Act 1980

<sup>15</sup> To Schedule 5 of the Courts Act 2003

<sup>16</sup> Of the Magistrates Courts Act 1980

## **The process**

### ***The Application***

The AEA executing the WOC must apply to the Magistrates' Court, via NCES, for permission to force entry in to a property to execute that WOC.

The agent will complete an application form as shown in [Annex A](#).

This application will outline the circumstances and reasons for requesting approval to use forced entry and the method which is to be used. These applications may be urgent and may need to be placed before the appropriate Magistrates' Court (which could be the same date the application has been received).

There is **no fee** payable for this application.

### ***The conditions to apply to use reasonable force: -***

- the AEA has power to enter the premises to execute a WOC<sup>17</sup>;
- the AEA reasonably believes that the debtor carries on a trade or business on the premises (if applicable)<sup>18</sup>;
- the AEA has taken control of the goods by entering into a controlled goods agreement with the debtor and the debtor has failed to comply with any provision of that agreement and has been served notice of the intention to enter the premises to inspect the goods or to remove them for storage or sale<sup>19</sup>

### ***Mandatory information required on the application:***

- the grounds to confirm that there are or that there are likely to be goods on the premises of which control can be taken<sup>20</sup>;
- the nature and value of the goods (if known);
- how the premises will be entered;
- the type and amount of force that will be used;
- how the property will be secured after entry.

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<sup>17</sup> When executing a warrant either under Paragraph, 14, 15 or 16 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, Section 76 (1), Section 125A or Section 125B of the Magistrates Courts Act 1980 and the Magistrates' Courts warrants (Specification of Provisions) Order 2000 as amended by the Magistrates' Courts warrants (Specification of Provisions) 2018 SI

<sup>18</sup> Paragraph 18A of Schedule 12 to the Tribunals Courts and Enforcement Act 2007

<sup>19</sup> Paragraph 19A of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 states what must be contained in the notice

<sup>20</sup> Paragraph 10 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 states that 'An enforcement agent may take control of goods only if they are goods of the debtor'.

### ***Service of application to other parties***

It may be the case that the AEA notifies other parties of their intended application to use forced entry. Service must be in accordance with the Criminal Procedure Rules, rule 4.<sup>21</sup>.

### ***Listing the application before the Court***

These applications may be of an urgent or non-urgent nature and it should be flagged up on the application form so NCES can inform the listing department. It may be that the AEA is there on the doorstep wanting to execute the WOC and therefore the application for forced entry will be of an urgent nature.

It is JCS's view that the application will be listed on the Applications Register in the appropriate court. NCES must conduct a Local Justice Area (LJA) check to ensure the application for forced entry is heard in the LJA that has responsibility for the account. This will ensure applications and listings connected to that WOC are all dealt with in the same LJA.

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<sup>21</sup> <https://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015>

# All other AEA applications in relation to warrants of control

## Introduction

The AEAs can make other applications in relation to a WOC. These applications are summarised below.

The AEAs executing the WOC will again apply to the Magistrates' Court, via NCES, for permission to force entry in to a property to execute that WOC.

The agent will complete an application form as shown in [Annex A](#).

This application will outline the circumstances and reasons for requesting approval to use forced entry and the method which is to be used. These applications may be urgent and may need to be placed before the appropriate Magistrates' Court (which could be the same date the application has been received).

There is **no fee** payable for this application.

[Annex B](#) provides what mandatory information the court will require with these applications.

### **An application to use reasonable force to take goods on a highway**<sup>22</sup>

The AEAs can apply to the court to use reasonable force to take goods that are on a highway. Again, the AEA must adhere to the prescribed times of the day this power may be exercise, unless an application is made to the court.

When considering this application, the court must be satisfied that:

- the WOC was issued under section 76 of the Magistrates' Courts Act 1980;
- the AEA has explained to the court the type and amount of force that will be required to take control of the goods; and
- The court must have regard to (among other matters) –
  - the sum outstanding;
  - the nature of the debt.

### **Application to shorten or extend the time limit for taking controlled goods**<sup>23</sup>

The time limit for taking control of goods is twelve months beginning with the date of the notice (or the debtors breach of a repayment arrangement). An application can be made to the court to shorten or extend this time limit. This application can only be made once.

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<sup>22</sup> Paragraphs 31 to 33 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007

<sup>23</sup> Regulations 6, 8, 9 & 25 of the Taking Control of Goods Regulations 2013

The court may extend the period by twelve months. The court must be satisfied that the AEA has reasonable grounds for not taking control of the goods during the initial twelve-month period.

Before the AEA can take control of the debtor's goods they must give the debtor 7 clear days' notice or 2 days' notice if there is re-entry.

If the AEA can satisfy the court that it is likely that the goods will be removed then the court can order a shorter period of notice to be given to the debtor.

### **Application to change the hours of entry<sup>24</sup>**

The AEA may not take control of goods before 6am or after 9pm on any day, unless the court orders otherwise. Under the regulations the court must consider the restrictions when dealing with applications to enter business premises.

An application for a change of hours may be made if the AEA needs to continue or complete taking control of goods after the prohibited hours.

The court must be satisfied that it is reasonably necessary to change the hours of entry. To be satisfied of this the court will look at whether the duration already spent in taking control of goods is reasonable.

### **An application to enter a specified premise<sup>25</sup>**

The AEA can apply to enter a specified address to take control of goods. This would be premises that the AEA would not have had authority to enter.

The Court must ensure that:

- an enforcement power has become exercisable;
- there is reasonable belief that there are goods on the specified premises and
- it is reasonable in all the circumstances.

### **An application to apply for a method of sale<sup>26</sup>**

The method of sale must be by public auction unless the Court orders otherwise. Public auction may only be held in a public auction house or on an online or internet auction site<sup>27</sup>

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<sup>24</sup> Paragraph 25 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007; Regulations 13 & 22 of The Taking Control of Goods Regulations 2013

<sup>25</sup> Paragraph 15 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007

<sup>26</sup> Paragraphs 41 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007; Regulations 41 of The Taking Control of Goods Regulations 2013

<sup>27</sup> Regulation 42 and 43 of The Taking Control of Goods Regulations 2013



Only the AEA can apply to the court for the court to decide on a different method of sale other than by public auction.

This may be by: -

- Private contract
- Sealed bids
- Advertisement; and
- Such other methods as the court considers appropriate.

### **An application to decide on the disposal of abandoned goods<sup>28</sup>**

When the AEA has goods, which have not been sold or have been abandoned <sup>29</sup> by the debtor then they can apply to court for the court to decide how to dispose of them. The debtor must first have been given an opportunity to collect the goods.

The court may make one of the following orders: -

- Extend the period for collection by the debtor (to be determined by the court);
- That the goods are to be given to a charitable organisation nominated by the court;
- The goods are to be destroyed (as the court determines) or
- Extend the period for collection by the debtor (to be determined by the court) **and**,
- if not collected during that period, then the goods would be given to a charitable organisation nominated by the court; or destroyed.

### **An application to decide on a dispute on the co-owners' share of the proceeds<sup>30</sup>**

These applications to resolve a dispute over the co-owners' share of proceeds can only be determined by the court in an *inter partes* hearing. These cases should be entered and resulted in Libra, not the Applications Register

### **An application to recover disbursements (which agent would not otherwise have)<sup>31</sup>**

Fees that can be recovered in relation to the execution of a WOC are governed by the Regulations. An AEA can make an application to the court to recover exceptional disbursements which are not otherwise recoverable under the regulations.

The court must be satisfied that the disbursements to which it relates are necessary for effective enforcement of the sum to be recovered, having regard to all the circumstances including –

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<sup>28</sup> Paragraphs 52 – 54 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 and Regulation 47 of the Taking Control of Goods Regulations 2013

<sup>29</sup> I.e. the debtor has failed to collect the goods within 28 days

<sup>30</sup> Paragraph 50 of Schedule 12 to the Tribunal, Courts and Enforcement Act 2007; Regulation 15 & 16 of the Taking Control of Goods (Fees) Regulations 2014

<sup>31</sup> Regulations 7 to 12 & Schedule 1 of the Taking Control of Goods (Fees) Regulations 2014

- The amount of that sum
- The nature and value of the goods which have been taken into control, or which it is sought to take control.

**An application to recover fees or disbursements from the debtor<sup>32</sup>**

If proceeds of the sale are less than the amount outstanding they must be applied in the following way:

- Firstly, the auctioneer's fees;
- Secondly, the AEA may recover the compliance fee;
- Thirdly, the proceeds must be applied pro rata in payment of the sum to be recovered, and any remaining fees and disbursement payable to the AEA will be paid before the sum to be recovered.

Any dispute regarding the amount of fees and disbursements that are recoverable will be determined by the Court in an *inter partes* hearing. These cases should be entered and resulted in Libra, not the Applications Register

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<sup>32</sup> Regulation 9-11 & 16 of the Taking Control of Goods (Fees) Regulations 2014

## ANNEX A: AEA Application Template



Gwasanaeth Llysoedd  
a Thribiwnlysoedd EM  
HM Courts &  
Tribunals Service

(English-only logo in England)

### AEA APPLICATIONS

(Tribunals Courts and Enforcement Act 2007 and Courts Act 2003)

Urgent? ☐

#### Section 1: Account details

Debtors name:

Warrant URN:

Debtors DOB:

Address on warrant:

Account Number:

Amount imposed:

Amount outstanding:

Warrant issued on:

Tick here if it is a company account

☐

Officer applying: .....

#### Section 2: Type of Application (please tick 1 or more of the following):

- ☐ Application for forced entry on a warrant of control
- ☐ Application to shorten or extend the time limit for taking controlled goods
- ☐ Application to change the hours of entry
- ☐ Application to recover disbursements (where agent would not have authority to recover)
- ☐ Application to use reasonable force to take goods on a highway
- ☐ Application to enter a specified premise not contained on the warrant
- ☐ Application to decide on the disbursement of abandoned goods
- ☐ Application to apply for a method of sale
- ☐ Application to decide on a dispute on the co-owners share of the proceeds
- ☐ Application for fees or disbursements sought/recovered by the AEA out of the proceeds

#### Section 3: Outline the Application being made:

**Section 4:** What grounds are there to confirm that there are or that there are likely to be goods on the premises of which control can be taken? If known please outline the nature and value of the goods:

**Section 5:** *Only fill this section in if your application is for forced entry*

Outline how you will enter the premises, the type and amount of force that will be used and how after entry, the property will be secured:

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**Section 6:** *Only fill this section in if your application is for forced entry*

Propose the terms of the order you want the court to make:

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**Section 7:** *Only fill in this section if your application is for Method of sale*

Do you have reasons to believe that an enforcement power has become exercisable by another creditor against the debtor or a co-owner? If so said why:

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**Section 8:**

Specify, if any, any persons that have been given notice of this application including dates & times

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**\*For completion by NCES staff\***

**Section 1**

This application has been checked to verify that there is an existing warrant of control- Yes ☐

Name..... (NCES staff)

Date.....

**Section 2:**

Date of Court Hearing	Court Code

**Section 3: inter partes hearings**

*Complete where a hearing is required*

Name(s) of parties

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State time estimate and court venue

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## ANNEX B: Mandatory information to be provided from the AEA for specific types of application

Type of Applications	Mandatory information <i>*all must contain applying officer's name/signature *</i>
Application to force entry into a debtor's property	<ul style="list-style-type: none"> <li>The grounds for the application, that he has reason to believe that there are goods on the premises of which control can be taken.</li> <li>How the AEA will enter the premises.</li> <li>The type and amount of force that will be used.</li> <li>How after entry, the AEA will secure the property.</li> <li>Whether notice has been given to any parties concerned.</li> <li>Propose the terms of the order that they request the court to make.</li> </ul>
Application to shorten or extend a time limit	<ul style="list-style-type: none"> <li>The AEA must outline why it is likely that the goods of the debtor will be moved or disposed of to avoid the goods being inspected or removed for storage or sale and why it is reasonably necessary to change the time limit.</li> </ul>
Application to change the hours of entry	<ul style="list-style-type: none"> <li>The AEA must outline why it is likely that the goods of the debtor will be moved or disposed of to avoid the goods being inspected or removed for storage or sale and why it is reasonably necessary to change the time limit.</li> </ul>
Application to enter a specified premise	No mandatory info other than what is in our template application form
Application for reasonable force to take control of goods on a highway	<ul style="list-style-type: none"> <li>AEA must outline the type of force to be used and</li> <li>The amount of force that will be required to take control of the goods</li> </ul>
Application to sell goods by a method which the agent would not otherwise have authority to use	<p>The AEA</p> <ul style="list-style-type: none"> <li>must state which method of sale is requested</li> <li>must also state if he has reason to believe that an enforcement power has become exercisable by another creditor against the debtor or a co-owner. If so the application must set out – <ul style="list-style-type: none"> <li>the name and address of the debtor; and</li> <li>the AEA's name, the reference number or numbers and the date of the notice; (Attach a copy of the AEAs application to the court)</li> <li>Be given to that other creditor – <ul style="list-style-type: none"> <li>By the AEA</li> <li>by a method required under regulation 8 (1) (methods of giving notice)</li> </ul> </li> </ul> </li> </ul> <p><b>Notice <u>must</u> be given to all parties concerned</b></p>

<p>Application for method of sale on abandoned goods</p>	<p>The AEA</p> <ul style="list-style-type: none"> <li>• must state which method of sale is requested</li> <li>• must also state if he has reason to believe that an enforcement power has become exercisable by another creditor against the debtor or a co-owner. If so the application must set out – <ul style="list-style-type: none"> <li>– the name and address of the debtor; and</li> <li>– the AEA’s name, the reference number or numbers and the date of the notice; (Attach a copy of the AEA’s application to the court)</li> </ul> </li> <li>– Be given to that other creditor – <ul style="list-style-type: none"> <li>○ By the AEA</li> <li>○ by a method required under regulation 8 (1) (methods of giving notice)</li> </ul> </li> </ul> <p><b>Notice <u>must</u> be given to all parties concerned</b></p>
<p>Application to resolve disputes following the sale of goods</p>	<ul style="list-style-type: none"> <li>• The AEA <u>must</u> serve this application on each party to the dispute and any other co-owner</li> </ul> <p><b>This <u>must</u> be dealt with inter partes</b></p>
<p>Application to recover exceptional disbursement</p>	<ul style="list-style-type: none"> <li>• The AEA must outline why the disbursements to which it relates to were necessary for effective enforcement of the sum to be recovered.</li> <li>• Why they were exceptional</li> <li>• The consent of the creditor</li> </ul> <p><b>This <u>must</u> be dealt with inter partes</b></p>