

A GUIDE TO THE EVICTION OF RESIDENTIAL TENANTS



**HIGH COURT
ENFORCEMENT
GROUP®**

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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.

A guide to the eviction of residential tenants

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Introduction

This briefing is designed to give private landlords, lettings agents and property solicitors a comprehensive understanding of the process of applying for and enforcing a High Court writ of possession, for the recovery of residential property and rent arrears by an authorised High Court Enforcement Officer (HCEO).

This guide covers the new simplified procedure which came into effect on 24th August 2020. This new procedure aligns the process for enforcement by an HCEO and a County Court Bailiff (CCB).

Section 42(2) of the County Courts Act 1984 gives the County Court power to transfer a case to the High Court and Section 42(5) states that if proceedings for enforcement are transferred, the order may be enforced as if it were a High Court order by an authorised High Court Enforcement Officer (HCEO).

The new procedure under Civil Procedure Rule 83.13 allows an application to the court for the Writ of Possession. It provides for a notice period to be given by the enforcement officer/bailiff to a tenant/occupier before eviction in private and social housing, as well as commercial property/land. It also provides for the removal of the issue of a writ requiring judicial permission.

If you require further information or would like to instruct us to recover your property, please call us on 08450 999 666 and we will be happy to answer your queries.

Why use an HCEO

A report in Landlord Today advised that landlords in the UK are owed over £5 billion every year because of damage to property and unpaid rent.

Government statistics show that 110,907 landlord possession claims were made in 2019, an average of 9,242 per month. Of these claims, 15,193 have led to repossession by County Court Bailiffs.

Ministry of Justice data for March 2020 shows that it is taking, on average, 45.3 weeks from the time of claim to the time of eviction, and the number of weeks from obtaining the possession order to the actual eviction date is 33.6 weeks.

Many landlords cannot afford to wait that long to recover their property, get new tenants in and start earning rent to pay the mortgage. The other potential hazard of waiting that long is the likelihood of disgruntled tenants severely damaging the property.

As a result, landlords with tenants refusing to leave, or refusing to engage in any discussions, decide to instruct an HCEO to recover their property, and potentially rent arrears.

There are also instances where County Court Bailiffs have tried, and failed, to evict tenants, so the landlord has turned to HCEOs to carry out the eviction. At High Court Enforcement Group Limited we have successfully enforced every eviction we have undertaken.

This briefing guides you through the process of obtaining permission from the court, then transferring up your County Court possession order to the High Court for enforcement by an HCEO.

Types of possession

Trespass

This may be trespassers on either property or land, for example squatters, protesters or travellers. They can be evicted either under common law or under a High Court writ of possession by an HCEO, or under a warrant of possession by a County Court Bailiff. The writ or warrant of possession will be made against “persons unknown”. No permission is required to transfer the possession order against persons unknown to the High Court for enforcement.

Tenancy

Tenants are most commonly evicted as a result of rent arrears. A County Court possession order is required and an eviction can be carried out by a County Court Bailiff under a warrant of possession, or by an HCEO under a writ of possession. Permission is required from the County Court to transfer the possession order to the High Court for enforcement.

Order for sale

One method of enforcement for money judgments is a charging order. This means that when the property is sold, the creditor will be paid what they are owed out of the proceeds of the sale. The creditor can apply for an order for sale, i.e. requesting that the property is sold now, rather than waiting for the debtor to decide when to sell.

Mortgage

If the occupant falls behind with mortgage payments, the mortgage lender may take action to recover the property and will evict the occupants, either under a warrant or writ of possession, if they refuse to leave.

Compulsory purchase orders

Local authorities use CPOs to gain title to land where developments are planned. The person whose land is bought is awarded compensation to cover the value of the property and land, the cost of buying another property and moving, as well as obtaining professional advice. Most will leave when required, but on occasion, particularly where residents are protesting, an eviction will be required under a warrant of possession. HCEOs can enforce a CPO warrant and there is no need to transfer it to the High Court to do so.

Improving your chances of a successful eviction

There are many things you can do to avoid the obstacles that slow the eviction process. One of the main points is to work as a team, liaising with your solicitor, if you are using one, the enforcement team and the different parts of the court system for the eviction. Through this teamwork, you can achieve a faster and more effective eviction.

Information is key: it will help the eviction and increase any chance of recovering any money.

- Make sure that you gather all the information you might need at the time of entering into the tenancy, before you hand over the keys
- It is good practice to create a spreadsheet of information at the very beginning, adding all details and keeping them safe with the rest of your documents
- Contact points – ensure that you have all the contact details for every person coming into the property, as well as mobile numbers, work numbers and email addresses. If the tenant does move and you need to contact them, you are likely to be able to do so either through their mobile number or their work number.
- If they are self-employed, get their trading name and any trading address
- If you ask for a guarantor, make sure that you have all their details, so that if you do need to go to court at any point, you will be able to include the guarantor in the action
- Establish their financials - ask for their bank details and get them to show you several statements so that you know how much they are being paid and the date on which they are being paid. This will help you if you do need to apply for an attachment of earnings order to recover rent arrears
- Have a photograph of the debtor, particularly a copy of their driving licence and/or passport (which you will need to check under the right to rent rules). A photo helps the Enforcement Agent to visually identify the debtor at another location
- Date of birth is essential - this is held in most of the databases that we would use to search when undertaking a trace
- Social media details – often tenants will post their recent location, or post about their most prized assets such as a new car. There have also been cases where notice has been served by social media

Going to court to obtain an order for possession

At this point, you have several different routes that you might go down, so you need to decide whether are you going to use the High Court or the County Court for enforcement, and if your primary intention is to get the property back, to recover the rent arrears, or to achieve both.

It is possible to add a money order to the writ of possession to recover rent arrears.

Is it worth trying to recover rent arrears?

Consider their circumstances - the way they live and the assets that they have - before deciding whether it is worth your while to try and recover the rent arrears.

The most important thing is how they have engaged with you. If they have ignored you throughout, you are unlikely to get paid.

There are indicators which can affect the success of the recovery of any monies:

- The tenant has been made unemployed or redundant
- The couple have split up and the fee earner has left the property
- They are suffering from mental health problems
- They suffer from drink or drugs misuse

We often see a lot of time and effort going into chasing the money element where there is very little hope of any recovery, but the landlord has decided to proceed on the principle that the tenant should be made to pay.

It is important to be realistic. Before you decide how to continue, you should consider the following points:

- What is your objective?
- Are you likely to get your money and your court fee back if successful?
- Does the debtor owe other people money?
- Does the debtor own any goods or assets?
- Is the debtor working?
- Does the debtor have other earnings?
- Does the debtor have a bank account?
- Does anyone else owe the debtor money?

While the application for the possession order will be started in the County Court, it is entirely your choice as to whether to use a County Court Bailiff or an HCEO for enforcement.

Cost and time factors

The normal trend for the repossession of residential properties is through the County Court Bailiffs. However, as mentioned previously, Ministry of Justice data from March 2020 shows that it is taking on average 45.3 weeks from the time of claim to the time of eviction, and 33.6 weeks from the date of the possession order to the actual eviction date.

This is average – in some areas of the country it will be even longer. The delay for the County Court Bailiffs is largely due to them being under-resourced and over-stretched.

Using the option of transferring up the possession order to the High Court for enforcement by an HCEO means that you can reduce this time quite dramatically.

Time is of the essence and it is important that the landlord is able to recover their property quickly, particularly in areas of the country where rents are significantly higher. We also find on many occasions that, when the tenant knows that they are going to be evicted, they can cause considerable damage to the property as they no longer care.

There are also situations where the landlord has decided to sell the property but the tenant will not move out, blocking the chances of a sale.

[Court fees](#) are the fee for the N244 application fee to ask court permission to transfer the possession order to the High Court and the court fee for the sealing of the High Court writ.

There are also the High Court Enforcement Officer costs for carrying out the eviction.

This makes the High Court option more expensive than the County Court up front, but there are substantial savings to be made when you take loss of rent versus time saved into account.

The HCEO will carry out the eviction within 28 days of receiving the sealed writ, including the service of the 14 days' notice of eviction.

With the County Court Bailiff, you will be waiting an average of 33.6 weeks.

So, your decision is likely to be based on how much rent you are losing with every week of waiting and how much risk there is to your property.

New simplified procedure

The new procedure under Civil Procedure Rule 83.13 allows an application to the court for the writ of possession.

It provides for a notice period to be given by the enforcement agent to a tenant/occupier before eviction in private and social housing, as well as commercial property or land.

It also removes the requirement for permission from court to issue the writ.

Serving notice of eviction

In addition to the removal of the need for court permission to transfer the possession order to the High Court, there are also changes to the notices that must be served on the tenant.

Previously, the landlord was required to serve the tenant/s with notice of the application to issue the writ of possession. This is NO LONGER required.

Prior to the changes introduced in August 2020, we normally advised giving notice of eviction to tenants (unless doing so would increase the risks of undertaking the eviction).

The August 2020 new procedure has made it a compulsory requirement to give the tenant/s not less than 14 days' notice before the writ of possession is enforced by an HCEO. This is exactly the same for the enforcement of a warrant of possession by a CCB.

The notice of eviction must be addressed to all persons against whom the possession order was made and any other occupiers. It must be in the form prescribed by Practice Direction 83, which is Form 66 or 66A (as appropriate) for a writ of possession.

The notice of eviction must be delivered by inserting it through the letter box in a sealed transparent envelope. If that is not practicable, then by attaching a copy to the main door or some other part of the land so that it is clearly visible. If that is also not practicable, by placing stakes in the land in places where they are clearly visible and attaching to each stake a copy of the notice in a sealed transparent envelope.

If you have a compelling reason to not deliver a notice of eviction, you may apply to court to dispense with the notice. The court may also extend or shorten the timeframe for service of the notice of eviction.

We will manage the process of serving notice of eviction on your behalf, as part of our service. The notice of eviction must be served by the HCEO/CCB.

Proceedings brought before 3rd August 2020

Any proceedings brought before 3rd August 2020 need to have a reactivation notice served. The notice will need to include information on how the tenant has been impacted by the coronavirus pandemic. If not provided, the court can adjourn proceedings until it has been provided.

Regulations and Guidance

Visit our website for updated regulation and guidance on any restrictions on evictions at <https://hcegroup.co.uk/resources/enforcement-legislation-updates>

Transfer up process

Section 42 of the County Courts Act 1984 must be used to apply for permission to transfer the possession order up to the High Court for enforcement.

Applications under section 42 are to be made using form N244 at the original County Court, there will be a hearing so that the Judge can satisfy themselves that notice has been given, and that the application is compliant with this practice direction and CPR rules.

The new four-step process

This process may sound complicated, but it is actually straightforward and is working smoothly. The steps are:

1. Obtain leave to transfer (under section 42 of the County Courts Act 1984)
2. Instruct your HCEO – [you can instruct us online](#)
3. Issue of a writ of possession
4. Notice to tenants

Step one – obtain leave to transfer

The possession order can be transferred up to the High Court for enforcement under [Section 42\(2\) of the County Courts Act 1984](#).

The best time to make this application is at the same time you are applying for the possession order to be issued. It is important to remember that the decision to grant leave is at the discretion of the Judge.

Plead your case and put the circumstance in as to why you wish to transfer up, indicating any hardship being experienced in the delay.

We would recommend using the following wording, as from experience, it is more likely the court will grant leave:

The Claimant requests the court's permission pursuant to Section 42 of the County Courts Act 1984 without a further hearing that the possession order be transferred to the High Court for Enforcement and the Claimant requests the following order; that the proceedings for the enforcement of the said Judgment or order of the County Court be transferred to the High Court under Section 42(2) of the County Courts Act 1984.

If you do not obtain permission at the time of the initial application, you will need to make a secondary application under an N244. As it will be an application on notice (i.e. a hearing is required) there is a [higher court fee](#). A section 42 is essential to be able to transfer the case.

Step two – instruct your HCEO

Choose with HCEO you want to work with and [instruct them online](#). We will then ask you wish to obtain a writ of possession or a combined writ of possession and writ of control (for the recovery of rent arrears).

Step three – issue of the writ of possession

Once you have instructed us, we will manage the rest of the process on your behalf to obtain the writ. There is a court fee for the writ of possession.

Step four – notice to tenants

Once the writ of possession has been awarded, we will serve the tenant with 14 days' notice of eviction before the enforcement process commences.

A quick checklist

For the eviction of residential tenants by an HCEO under a writ of possession, you will need:

- A copy of the possession order
- A copy of the permission granted under Section 42 separate from the original order or included in the possession order

Payment of the court fee for the writ of possession to seal the writ

Enforcement

We require additional information to make the eviction go smoothly; this is relayed to the Enforcement Agents on the ground who carry out the eviction.

The eviction

The instructing party (i.e. the landlord and their solicitor if they are using one) has a duty to us, as High Court Enforcement Officers, to ensure that we are given all the information that we need, as this also affects our health and safety planning and execution of the case.

- What type of property is occupied? This will help us determine the most effective course of action
- How many doors are there? Do you have the current keys or do we need to arrange for a locksmith to be in attendance? If using your own locksmith, please ensure that they are experienced and fully trained in eviction entry methods
- If there is a communal access door, who can provide us with access (sometimes we can arrive at the property and wait some time for someone to come down and let us in)
- Are you aware of any previous eviction attempts at the property? This can help us understand how best to approach the case
- How many occupants are likely to be present and are there any animals at the property?
- Have there been any threats of violence made to any party or are there any firearms known to be there? We have been advised by the police to wear bullet proof vests where they expect trouble
- How will you secure the premises after the eviction to prevent re-entry? Do you need us to arrange this?
- Do you wish the property to be shuttered? This is most commonly used where there has been a reoccupation

Once complete

The property will be secured by the Enforcement Agents and then released to the landlord or their representative.

About High Court Enforcement Group Limited

We are the largest independent and privately owned High Court enforcement company in the country, with more authorised and experienced officers than anyone else. This allows us to build and manage our business in a way that puts our clients first.

Clients trust us to deliver and our service level is paramount – we are committed to meeting and exceeding their expectations. Transparency and ethical behaviour are also at the heart of our business, both with our clients and their debtors.

We achieve this by recruiting excellent people and investing in their development. All our Enforcement Agents are employees, allowing us to ensure quality, transparency and ethical behaviour – firm but fair enforcement.

Our highly skilled Enforcement Agents are recognised for their impressive local knowledge and their steadfast commitment to upholding the values of responsibility and accountability. Ensuring exemplary professionalism through time-honoured dedication to firm but fair enforcement.

We are committed to educating as well as enforcing. We believe that an informed decision is a correct decision and that our clients should also understand the processes associated with enforcement. We believe in sharing our knowledge and expertise with our clients, to help them make informed choices.

Should you wish to instruct us on a current case, then simply click through to our [online instruction form](#).

If you would like any further information, please click through to our [website](#).

Should you wish to discuss a case, please do not hesitate in calling our dedicated possession team on **08450 999 666**

Remember, we are here to help.

Useful links

Instruction forms

<http://www.hcegroup.co.uk/repossession-and-eviction-instruction-form/>

Tracing services

<http://www.hcegroup.co.uk/debtor-tracing/>

Government web site on eviction

<https://www.gov.uk/evicting-tenants/rules-you-must-follow>

Accelerated possession procedure

<https://www.gov.uk/accelerated-possession-eviction>

Possession Claim Online

<https://www.possessionclaim.gov.uk/pcol/>

Tenant Referencing

<http://www.landlord-referencing.co.uk/>

National Residential Landlords Association

<https://www.nrla.org.uk/>

Ministry of Justice Civil Procedure Rules

<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part-83-writs-and-warrants-general-provisions>

Insolvency Service

<https://www.insolvencydirect.bis.gov.uk>

Property 118

<https://www.property118.com/>

Companies House

<https://www.gov.uk/government/organisations/companies-house>

Registry Trust

<http://www.trustonline.org.uk/>

Court fees and enforcement fees

<https://hcegroup.co.uk/services/court-fees-enforcement-fees>

Further reading

<http://www.hcegroup.co.uk/articles/>

To find out more or instruct us

If you have any questions or wish to instruct High Court Enforcement Group then please contact us on **08450 999 666** or visit our website at **[hcegroup.co.uk](https://www.hcegroup.co.uk)**, go to the instruct us page and select the service you require from the menu.

-  property@hcegroup.co.uk
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