

A GUIDE TO THE ENFORCEMENT OF WRITS OF POSSESSION



**HIGH COURT
ENFORCEMENT
GROUP®**

Version 2.3 May 2024

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 enforcement of writs of possession

Contents

Introduction	3
Trespassers in residential property	3
Evicting trespassers from land or commercial property	4
When to start a claim in the High Court	4
Transferring up a possession order	4
Eviction from property and land under a writ of possession	5
Writ of restitution	6
Eviction from land under Common Law	6
Removal of animals	6
Eviction of tenants from commercial property	7
Order for possession	7
Forfeiture	7
Torts on goods left behind during forfeiture	8
Eviction of tenants from residential property	10
Why use an HCEO	10
Application for leave under section 42	10
Notice to occupants	10
Transfer up process	11
Compulsory purchase orders	12
Enforcing a CPO	12
Health & safety in evictions	13
Planning	13
Executing the writ of possession	14
About High Court Enforcement Group Limited	16
Useful links	17

Introduction

This guide covers the recovery of property and land, whether from trespassers or tenants. We will primarily focus on the enforcement of a High Court writ of possession by a High Court Enforcement Officer (HCEO), but will also cover eviction under Common Law and forfeiture of a commercial lease.

This guide covers the following types of possession. We will not be covering the enforcement of a warrant of possession by a County Court bailiff.

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”.

Commercial tenancy

Commercial tenants in rent arrears can be evicted through the forfeiture of the lease. This remedy does not require a court order and is enforced by certificated enforcement agents. All our enforcement agents are certificated.

Residential tenancy

Residential tenants are also 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.

Compulsory purchase orders

Statutory bodies, local authorities and acts of Parliament use CPOs to gain title to land where developments are planned. The person whose land is compulsorily purchased 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.

Trespassers in residential property

This guide does not cover the removal of trespassers from residential property. Trespassers in residential property are removed by the Police since squatting in residential property became a criminal offence in 2012 under the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#).

Evicting trespassers from land or commercial property

To remove trespassers from commercial property, an order for possession must first be obtained. This may then be enforced either by a County Court bailiff under a warrant of possession or by an HCEO under a writ of possession. However, trespassers on land, including travellers and protesters, may be removed either under a County Court warrant, a High Court writ or under Common Law.

The decision is likely to be influenced by the nature of the occupation and the landowner. A local authority with Occupy-style protesters may decide that a High Court writ is more appropriate given the nature of the occupation and the higher likelihood of resistance; the writ will provide greater authority as it has been awarded in the courts.

For a more straightforward removal, most frequently travellers, Common Law is more likely to be used. If Common Law eviction is not successful, then a court order for possession will be required to remove the trespassers.

When to start a claim in the High Court

The vast majority of such possession claims will be started in the county court or via Possession Claim Online (PCOL).

[Practice Direction 55A \(1.3\)](#) states the circumstances which may, in an appropriate case, justify starting a claim in the High Court:

- There are complicated disputes of fact;
- There are points of law of general importance; or
- The claim is against trespassers and there is a substantial risk of public disturbance or of serious harm to persons or property which properly require immediate determination

Transferring up a possession order

The writ to evict trespassers will be made against “persons unknown” and this will instruct the HCEO to remove all the persons from the land or property in question, without the need to know their identity.

The County Court possession order can be transferred up to the High Court for enforcement without any additional permission required from the court.

The transfer up will be made using form N293A and follows the same process as transferring up a money judgment.

We offer to transfer any case to the High Court free of charge, but there is a [court fee](#) to pay for sealing the writ. Once the writ is sealed, enforcement can commence.

Eviction from property and land under a writ of possession

At High Court Enforcement Group, we have a thorough and robust process of risk assessment and planning to ensure that every eviction is carried out correctly and effectively to safeguard all involved – the enforcement agents, the police (if attending), the trespassers and the general public.

Notice of eviction

In most instances in trespass cases, no notice of the eviction is given, as it is not required. Whether one is given will depend on the circumstances of the case. If it is likely to lead the occupiers putting up barricades or draft in reinforcements, then HCEOs do not give notice.

Police support

The eviction team and the police, if their support has been requested, meet prior to the eviction to go through the final details of the operational plan. Depending on the circumstances, especially with squatters, we normally enter the premises before the occupants are awake for the element of surprise.

Method of entry

In the case of protesters and activists, there is a strong likelihood that some will have created barricades or other obstacles to removal. This may include locking themselves onto structures, tunnelling, tree top occupation and booby traps.

These present challenges to the HCEO, not only in terms of gaining access, but also for ensuring the safety of those present – the activists, the enforcement agents and potentially the general public.

Specialist method of entry teams may be required to quickly and safely gain access using specialist equipment to remove the protesters. Part of HCE Group, UK Evict, has extensive expertise in this area.

On site

All the occupants will be given time to pack their belongings and then removed. The eviction team will then thoroughly search the site for anyone hiding away with the aim of letting the occupiers back in after the eviction team has gone.

Post eviction site security

The HCEO secures the site and returns the premises to the owner. As part of the operational planning, considered ongoing security measures should have been presented to the client to prevent re-entry. This is important in the case of a building, but even more so with open land.

Writ of restitution

If the property owner is unfortunate enough to have trespassers enter again, and it is within 12 months of the execution of the writ of possession, they can apply to the court for a writ of restitution. This is a writ in aid of another writ, which means that the client does not need to start a new possession claim.

Eviction from land under Common Law

Common Law may be used to quickly remove trespassers from land. The eviction must be carried out by a certificated enforcement agent. A court order is not required.

The enforcement agent will attend to serve notice, giving 24 hours' notice to leave. They will then return the following day and will remove the trespassers, their vehicles and any animals if they have not already left.

Removal of animals

Unlike Common Law, a writ of possession does not cover the removal of animals. Any horse or livestock left behind become the responsibility of the landowner. However, most HCEOs will be able to assist the landowner with any animals not taken by the occupants.

They will arrange the removal and appropriate accommodation. Under the Control of Horses Act 2015, they must inform the local police within 24 hours of the removal of horses and the owner will have four days within which to reclaim the horses.

After that, they may be either rehomed, sold or humanely disposed of.

Eviction of tenants from commercial property

Commercial tenants are almost always evicted through the forfeiture of the lease, rather than going to court to obtain an order for possession, provided that the breach of the lease is as a result of non-payment of rent.

Order for possession

There are some circumstances where the landlord must go to court to obtain an order for possession. These include: mixed use premises, where there is no forfeiture clause included in the lease and where there is no longer a lease in place.

The order for possession may be enforced by a County Court bailiff under a warrant of possession, or the landlord may apply for leave from the court to transfer the possession order to the High Court for enforcement under a writ of possession.

Leave is applied for under Section 42 of the County Courts Act 1984. This is best done at the time of application for the possession order. This is the same process as for residential property and is covered in more detail in the next section of this guide.

Forfeiture

For the majority of landlords, forfeiture will be the more attractive option, as it does not require going to court and can be undertaken very quickly once the time period specified in the lease has elapsed. This is commonly 21 days.

Peaceable re-entry

Forfeiture entails the peaceful re-entry to the unoccupied property by a certificated enforcement agent, normally assisted by a locksmith. If the certificated enforcement agent believes there may be a possible breach of the peace during the forfeiture, he will arrange for police support.

The peaceable re-entry is peaceable to the persons, not the property. For this reason, most forfeiture is undertaken early in the morning, before the tenant has arrived for work. If necessary, the enforcement agent can force entry to the vacant premises.

Once the enforcement agents have secured access to the premises, they will change the locks and fix a notice to the premises. The tenants', and any sub-tenants', rights to the property will end.

Notice

Notice does not need to be given to the tenants when forfeiting the lease due to non-payment of rent. This will include any items reserved as rent under the terms of the lease such as service charges.

If there are any other breaches to the lease, the landlord must give notice to the tenant to allow them time to remedy the breach. Once remedied, the landlord may not then forfeit the lease.

Waiver

If the landlord demands or accepts rent payments, or exercises his right to recover rent arrears under CRAR (commercial rent arrears recovery), this will waive his right to forfeit the lease.

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

Relief from forfeiture

The tenant and sub-tenant do have the right to apply for relief. This should be done “without delay”, normally within 6 months. If their application is successful, the tenancy will be restored.

Forfeiture during administration

There is a moratorium on legal action, including enforcement, when a business is in administration. The landlord will need permission from the administrator or the court to forfeit the lease during this time.

Torts on goods left behind during forfeiture

Fixtures

When the lease has been forfeited by peaceable re-entry, the tenant’s fixtures revert to the landlord and the tenant has no right to remove them. This was established in the case of *Re Palmiero* (1999).

Goods

However, it is a different matter when it comes to goods left behind in the premises. The tenant remains the legal owner, so the landlord could be sued by the tenant if he sells or disposes of them.

It is unlikely that this would apply to perishable or disposable goods, although the landlord would be wise to ensure that there is a clause in the lease that permits him to do this. The landlord has become an “involuntary bailee”.

He can sell or dispose of them if they have been abandoned, which means not only that they have been physically abandoned, but also that the owner intended to abandon them. Given that the lease was forfeited, this is unlikely.

Torts (Interference with Goods) Act 1977

Under this Act, the landlord must serve notices on the tenant in order to deal with these goods. The first is notice that the goods need to be collected within a reasonable time period, and the second is notice that the landlord intends to sell the goods if they are not collected within that time period.

In the case of commercial property, if the tenant's address is not known, the landlord can place these notices prominently on the premises.

If the tenant sues

To avoid being sued by the tenant for the disposal of the goods, it is advisable to include clauses within the lease of what the landlord may do under these circumstances.

It is also best practice right after forfeiture to capture an inventory and photographic record of all the goods in situ, ideally taken by a third party.

If the tenant does sue, they can only do so for the value of the goods, not for their replacement value (another good reason for a photographic record).

Eviction of tenants from residential property

This section provides an overview of the eviction of tenants from residential property by an HCEO under a writ of possession.

If you would like to read more about this process, please download our [Guide to the eviction of residential tenants](#).

Why use an HCEO

Ministry of Justice data for Q2 2017 shows that it is taking, on average, 43 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 31 weeks.

Many residential 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, provided this is added to the possession order.

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.

Application for leave under section 42

The county court will issue the order for possession and this needs to be transferred up to the High Court for enforcement. Leave is required from the court to do this, which is applied for under section 42 of the County Courts Act 1984.

The best time to apply for leave to transfer up is as the time of making the initial claim. However, it is possible to request leave after the possession order has been awarded. We help clients with the appropriate wording to use on the application.

We will manage the process of transfer up and, once leave has been granted, the writ of possession will be awarded and we will prepare for and execute the eviction.

Notice to occupants

Before leave to transfer up is granted, every person in actual possession of the whole or any part of the land ("the occupant") must have received sufficient notice of the proceedings to enable the occupant to apply to the court for any relief to which the occupant may be entitled. At HCE Group we write to the occupiers at the point of application for transfer up.

Transfer up process

The steps of the transfer up process are:

1. Obtain leave to transfer (under section 42 of the County Courts Act 1984)
2. Permission to issue a writ of possession
3. Request for the issue of a writ of possession
 - Form PF88 for a possession order only
 - Form PF89 for a possession order and recovery of money
4. Obtain an order for permission to issue, form PF92
5. Writ of possession, form No.66

Once the writ is issued, the eviction can take place.

Compulsory purchase orders

Compulsory purchase orders - CPOs - are used by statutory bodies, local authorities and acts of Parliament to compulsorily purchase the land for large-scale developments, transport infrastructure or a new town centre where the landowner has refused to sell their property.

In the case of a local authority, the Planning and Compulsory Purchase Act 2004 states that the local authority must be able to demonstrate that the development, re-development or improvement is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of their area.

The property owner has the right to be awarded compensation, which will cover the value of the property and land, the cost of buying another property and moving, as well as obtaining professional advice, for example from a solicitor and surveyor.

A CPO can be exercised either by serving a notice to treat or executing a general vesting declaration. A notice to treat is a formal request from the entity undertaking the compulsory purchase to agree a price for a property, whereas a general vesting declaration is a formal procedure that gives that entity the right to take over the ownership of property.

Enforcing a CPO

In many cases, the compensation will be agreed between the property owner and the entity making the compulsory purchase. However, there are instances where action will need to be taken to remove the occupants from the property.

There is no requirement for a further court action, as the CPO itself provides the authority for the HCEO to act.

The process to enforce a CPO is very similar to that of a [writ of possession](#), although the CPO does not expire after execution.

If the property is subsequently reoccupied, the CPO provides the authority for further enforcement action.

This differs from a writ of possession which expires after execution, so that a writ of restitution is required if the property is reoccupied.

Health & safety in evictions

Health and safety planning is an essential part of carrying out an eviction. This must be a robust and professional process to ensure that the eviction is carried out safely and legally, compliant with all relevant health and safety legislation.

Planning

Operational plan

When it comes to planning, information is key. Before any eviction, we carry out a three-part risk assessment to prepare the operational plan for the eviction. The risks associated with any eviction should never be underestimated; each case can be as diverse as the people occupying the property.

Protesters can be the most challenging as they will have an agenda and can often summon additional support at short notice.

General risk assessment

This is based on the information given by our client and the results of our fact-finding questionnaire which covers the number of occupiers, the type of property, topography, boundaries, access, any hazards known and, importantly, any threats made.

With protesters, details of any affiliations of the occupants are helpful if known, for example they may be linked to groups such as Occupy.

In the case of tenants, is there a history of violence at the property? Are there any dogs? Does the tenant suffer any form of disability, physically or mentally?

Pre-planned risk assessment

Possibly the most important of all, is the pre-planned risk assessment where we ask the client to provide any additional information relevant to the safe completion of the eviction. This may also include a site visit to establish:

- > The layout of the property
- > Access, number of entrances, windows, and any walled or gated areas
- > The number of people on site, including children, vulnerable adults and animals
- > Visible barricades, any signs of potential lock-ons and rooftop/treetop occupation

Once we have all this information, we will be able to complete our operational plan, having determined our potential methods of entry, evaluated what specialist teams and equipment we will need and the level of police support.

Police support

The Courts Act 2003 Schedule 7(5) covers the right of the HCEO to request police support, and Criminal Law Act 1977 section 10, makes it an offence to obstruct an enforcement agent (EA) executing a High Court writ of possession.

Dynamic risk assessment

Or in other words, “on the go” risk assessment. Our EAs will be looking for any obvious problems upon arrival to the property, and if needs be, vehicles can be positioned for easy access and a quick retreat if it turns volatile. They will also be keeping an eye out for any indicators of aggression and confrontation.

As employers, we have a duty of care towards our EAs carrying out the eviction, which can on occasion be aggressive. All our EAs are equipped with a stab proof vest, a video recording badge, mobile phones for immediate communication and a tracking device on their vehicles.

We also need to ensure that the occupiers are not placed in any danger and that the eviction can be carried out as safely and effectively as possible. For example, evictions of occupied properties can involve young children.

Executing the writ of possession

On the day, we will be undertaking a dynamic risk assessment, covering the potential for additional problems, such as booby traps and barricades.

We will have done all we can to avoid alerting the trespassers to the eviction, to prevent reinforcements being called for via social media. In the case of protesters, where we know who the group is, we will look into its social media profiles.

We have a duty of care to our enforcement agents – we will make sure that we are ready for a quick retreat if needed, and they are equipped with a stab proof vest, video recording equipment, mobile phone and vehicle tracking.

We also have a duty of care for the safety of the trespassers and the general public (for example, where the property is on a busy city street) and we will execute the writ in accordance with the Human Rights Act 1988 (HRA) and the Health and Safety at Work Act 1974 (HASAW).

Vulnerable people

Where we are to conduct the eviction, we need to be aware of any vulnerable people. While it can be said that anyone being evicted is in a vulnerable category, the elderly and disabled occupiers may need additional time or assistance to vacate the premises. Additional resources may therefore be required to enable a safe eviction.

Human rights

The HCEO or their EA must consider, document and manage any human rights issues raised by the execution of the writ of possession in accordance with the Human Rights Act 1988 (HRA). They must ensure that their conduct and integrity during the execution of the writ of possession is maintained throughout.

Resistance

There are also risks associated with resistance on an eviction, including:

- > Barricades
- > Violence, with or without the use of weapons or missiles
- > Physical obstructions and booby traps
- > Verbal abuse and threats
- > Fortified areas, using confined spaces
- > Lock-ons to the infrastructure, which can place both the trespasser and the enforcement agent in some degree of danger, making this an area for our specialists
- > Rooftop and treetop protests, where specialists are needed to get them down safely

An eviction is more emotionally charged and life changing than taking someone's goods under a writ of control. As you may expect, aggressive reactions are not an uncommon occurrence and can be enhanced under the influence of drugs and/or alcohol. Once the agents have gained access to premises, they will quickly look to secure the site to prevent rooftop access and further lock-ons.

Hazards

Some of the hazards to considered during an eviction include:

- > Physical hazards, such as the layout of the site
- > Animals present
- > Biohazards left by persons and animals on the site
- > Chemical hazards
- > Asbestos, especially in empty commercial buildings, which require experts on hand to check the site if any has been exposed
- > Weather conditions
- > Tampering with electricity and gas supplies and working in the dark if there is no power

Training

We hold an obligation to comply with the Health and Safety at Work Act 1974 (HASAW) and parts of this are in the extensive training given to the EA. These skills enable the EA to conduct a safe and effective eviction for all involved. The safety of the public is to be considered a principal objective on any eviction. We also train our EAs to read body language, attitude and behaviour so that they can spot early signs of aggression and conflict to de-escalate any potential situation at the earliest opportunity.

About High Court Enforcement Group Limited

We are the largest High Court enforcement company in the country. We are independent and privately owned, 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, 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.

To instruct us or find out more

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 **01792 450031**

Remember, we are here to help.

Useful links

Instruction forms

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

Tracing services

<http://www.hcegroupp.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.landlordreferencing.co.uk/>

National Landlords Association

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

Residential Landlords' Association

<http://www.rla.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://hcegroupp.co.uk/services/court-fees-enforcement-fees>

Further reading

<http://www.hcegroupp.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
-  [@HCEGroup](https://twitter.com/HCEGroup)
-  [HCEGroup](https://www.facebook.com/HCEGroup)
-  [High-court-enforcement-group](https://www.linkedin.com/company/high-court-enforcement-group)

