



Residential Possession Proceedings are governed by Part 55 of the Civil Procedure Rules and the associated Practice Direction (currently PD 55C, due to the Coronavirus pandemic).

The proceedings are split into two types: **Traditional and Accelerated proceedings.**

This factsheet will explain the process involved for both types of proceedings.

*(Please note that the timescales provided are only estimates and cannot be in any way guaranteed; these are dependent on the courts.)*

### **Traditional Proceedings**

Traditional Proceedings can be issued based on a valid section 8 notice, section 21 notice or both a section 8 and section 21 notice together.

The process can be done online by way of the "Possession claims Online" where there is reliance upon a section 8 notice on the grounds of rent arrears (8, 10,11).

If the section 8 notice is for grounds other than 8, 10 11, or if the notice being relied upon is a section 21 notice, then the traditional proceedings will be paper based.

Once proceedings have been issued, the matter will be listed for a hearing. A hearing is usually listed to take place within 8 weeks of proceedings being issued and will normally take place in the County Court local to the property to be repossessed. You should, however, be mindful that the courts may be suffering delays considering the Coronavirus pandemic which could affect these estimated timescales.

The case will be heard in front of a District (or sometimes a Circuit) Judge where you or an agent gives oral evidence on oath.

Initially it is assumed that it is an undefended possession action and hence is listed for a 5-minute hearing.

Our overriding concern is to avoid a second hearing. We therefore recommend that any outstanding repairs, of which you have knowledge, are dealt with prior to the court hearing as soon as possible in order to reduce the chances of the tenant submitting a defence and/or counterclaim due to these issues.

When a landlord lets a property to a tenant, he agrees that the tenant will have quiet enjoyment of that property. Outstanding issues of repair could amount to a breach of this covenant and could entitle the tenant to claim a monetary sum, in compensation. This sum could be used to offset against any arrears of rent.

If there are any issues affecting the tenancy, it is important that you inform the fee earner handling the matter at the earliest opportunity.

Provided that the court agrees that the landlord has grounds for possession, the landlord will be entitled to a 14-day possession order unless the judge takes the view that the tenant's circumstances are such that possession should be delayed. Possession cannot be delayed for more than 42 days unless the grounds for possession are discretionary.

In some cases, the court has discretion as to whether it should make an order for possession. It will be for you to put forwards evidence in relation to the grounds you wish to rely on.

In these types of cases, the court can make a postponed or a suspended order for possession, which will only be enforceable if the tenant fails to comply with the terms of the suspension or postponement in some material way. These types of orders usually provide for the payment of current rent on the agreed payment dates and clearance of any arrears by a specified date.



Within the claim, we will request that the court awards costs. You should be able to obtain at least an order for a fixed contribution towards your legal costs (currently £79.50 plus the cost of the court fee). If a defence is issued by the tenant, an assessed contribution towards your costs may be recoverable. Any total is, unfortunately, unlikely to match the total you have expended.

If the tenant raises a credible defence which we are not able to immediately counter the court will likely issue directions (which will include a timetable) for the resolution of the dispute and set the matter down for a further hearing at some later date when there will be more time available.

Further preparation will then be necessary, the extent of which will depend upon the tenant's defence and/or counterclaim. This preparation will be charged by us based on time spent. An estimate will be provided by the allocated fee earner should this occur.

### **Accelerated Proceedings**

Accelerated proceedings can only be used where the tenant has a written assured shorthold tenancy and has been served with a valid section 21 notice which has expired. This route tends to be a little quicker than traditional proceedings, usually taking around 6 weeks from the issue of proceedings for a possession order to be granted.

The procedure is paper based and will not involve a court hearing (unless a defence is filed and/or the court deem it necessary).

Accelerated proceedings are limited to the recovery of property and will not allow you to include a claim for rent arrears or other monies from the tenant.

Once the papers are deemed served upon the tenant, they will have 14 days in which to file a defence. After this time, the judge will take all the papers and consider them. If he is satisfied that all the papers are in order and the tenant has raised no credible defence, he will make a possession order giving the tenant 14 days to vacate the property.

If the judge is not satisfied with the papers, is uncertain of some aspect of the case or the tenant has raised a potential defence then the judge may direct that a hearing be listed. Should such a hearing be required, there will be additional costs and charges to prepare for the same. If this situation arises, we will give you an estimate of our fees and other costs in advance of the hearing.

### **Bailiff**

If the occupier of the property refuses to leave upon the expiry of a possession order, it will be necessary to instruct the county court bailiff to evict him. Only a county court bailiff or a high court enforcement officer can enforce a possession order and remove the tenant from the property.

Once the bailiff is instructed, he will provide a time and date for the eviction. A bailiff appointment is usually listed to take place within 8 weeks of instruction. The bailiff cannot be instructed until such time as the date for possession has passed.

The bailiff will inform the occupier that they are to be evicted at least 14 days in advance of the eviction date.

On the day of eviction, it is the responsibility of the landlord to ensure that an appropriate representative is available to meet the bailiff at the property at the designated time. It is also vital that a locksmith is instructed to attend to ensure access to the property to carry out the eviction and to secure the property after the eviction has taken place.



Should you believe there to be any risk of violence at the eviction, it is vital that you inform the fee earner handling the matter of this at the earliest opportunity, ideally before the bailiff is instructed. Failure to do so could result in the bailiff appointment being postponed and/or cancelled. It will be your responsibility to ensure that the police attend the eviction should there be any risk of violence or disorder.

Similarly, if you are aware that there are animals at the property, you may want to consider instructing dog handlers/ informing the RSPCA to prevent a situation where the bailiff refuses to carry out the eviction.

### **Exceptional Hardship**

In the defence form, the tenant has the option to seek more time between the making of a possession order and the date before which he must leave the property. In most cases the court can extend this period up to a maximum of 42 days and only where the tenant will suffer exceptional hardship because of the eviction, should it occur earlier.

If the tenant does seek more time, then the court will usually list this request for a hearing, and it will be possible to make representations on this. Generally, the court will only extend the time period in the most serious of cases as they are aware that the if the occupier does not leave in accordance with the possession order there will likely be a further delay anyway before the bailiff attends the property to finally remove them.

Should such a hearing prove necessary, there will be further charges in preparing for the same. An estimate will be provided by the allocated fee earner should this occur.