



# Possession proceedings in the County Court

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## What's in this guide?

It is important that possession is avoided whenever possible, but for many the fear of losing a home and the uncertainties surrounding the legal process mean that they do not participate in it. For some tenants, however, acknowledging the problems they are experiencing can prove difficult, resulting in a failure to respond to their landlord attempts at communication.

In this guide, we explain the way in which a claim for possession is made and how they are enforced.

The civil courts resolve disputes between individuals (which include a company or public body, such as a local authority).

- Housing cases forms a substantial part of the county court.
- Possession claims must usually be made in the county court. High value claims or claims that are complex may be brought in the High Court.
- There are three types of possession claims: discretionary grounds, claims made on mandatory grounds, and claims for which no ground is needed.
- Unless a court says otherwise, landlords must permit the tenant rights of quiet enjoyment.
- Landlords cannot access the property whenever they like, unless it is an emergency, and must give at least 24 hours' written notice of visit for things like repairs.
- The most common reason for claiming possession is rent arrears.
- Even where no ground for possession is needed, in exceptional cases a possession order can be postponed for up to six weeks.

## Notice requiring possession

This guide is for self-contained, private rented accommodation, such as houses and flats. Most of it also applies to individual rooms, shared houses, and social tenancies; but your rights and responsibilities are a little different.

Private sector tenancies created before 28 February 1997 have additional requirements not covered by this guide.

The material in this guide has been prepared for general information purposes only and; is not a substitute for getting advice from us or a suitably qualified person. This means you should not rely or act upon this information without seeking advice about your own individual circumstances.

This guide contains links. you can click on the links to visit other websites. They are underlined like this. External links were selected and reviewed when this guide was published. However, we are not responsible for the content of external websites. This is because we do not produce them or maintain/update them and cannot change the content.

Section 21 of the Housing Act 1988 enables a landlord to recover possession of an assured shorthold tenancy on the basis only of two months' notice requiring possession. It must be stressed that neither service of a section 21 notice, nor its expiry, brings the tenancy to an end. It is a statement of intent, not a notice to leave. However, if the tenant does not leave by the date specified in the notice, a landlord can apply for an order of possession.

To obtain an order of possession the landlord must be able to show that any fixed-term had come to an end and no further fixed term has been agreed; and the tenant was served with a notice requiring possession.

The essence of section 21 is that it gives the landlord an automatic right to possession on giving two months' notice, where the tenancy is a periodic tenancy (whether statutory or contractual). Section 21 cannot be used during the fixed term, unless there is a break clause in the tenancy agreement, and never within the first 4 months of a tenancy.

A contractual periodic tenancy is when the tenancy agreement expressly states that the tenancy will continue on a periodic basis after the fixed-term ends. A statutory periodic tenancy is one which says nothing about what happens when the fixed term ends. The Housing Act 1988 says the tenancy continues indefinitely until ended.

Usually there is a fixed term (typically 6 or 12 months) followed by a periodic tenancy, but the landlord and tenant can agree any variant.

## Steps before serving notice

A notice requiring possession cannot be given within the first four months of the tenancy. If the landlord wants to claim possession during this time he or she will need to use the procedure for assured tenants. They cannot use the section 21 procedure.

Additionally, a notice requiring possession cannot be given at a time when the landlord is in breach of a 'prescribed requirement'.

Those requirements relate to:

- **The condition of the property (disrepair);**
- **The health and safety the tenant; and**
- **The energy performance of the property.**

Specifically, this includes retaliatory eviction, gas safety, and an energy performance certificate.

Before serving a section 21 notice, a landlord must also make sure that any tenancy deposit has been properly protected and the prescribed information has been given to the tenant, together with a copy of the Government's How to Rent guide (if one wasn't given at the start of, or during, the tenancy). If those requirements are met, four months' have elapsed since the tenancy began, and there is no current fixed-term, a landlord is entitled to serve a section 21 notice.

The section 21 notice must be in the prescribed form, which at the time of writing is Form 6a.

## Starting the claim

In the county court, the claim will be issued by the hearing centre where the claim is made but will then be sent to the local county court hearing centre which serves the tenancy address. If a landlord starts a claim in the High Court and the court decides that it should have been started in the county court, the court will normally either dismiss the claim or transfer it to the county court. This is likely to result in delay and the court will normally disallow the costs of starting the claim in the High Court and of any transfer.

The landlord will either complete Form N5 and pay a fee or use Possession Claim Online. Around 80% of possession claims based on

rent and mortgage arrears are now dealt with online by using what is known as PCOL.

This can only be used where possession is sought, including a claim for rent arrears, but not for more complex cases.

The process begins with the landlord completing an online claim form. Upon receipt, the court issues the claim form by sending the tenant a printed copy of the form and a defence form. This will include a unique customer identification number and password which allows the tenant to access the claim via the PCOL website. The tenant can then submit online a completed defence form.

PCOL will automatically allocate a hearing date and allows users to view the court diary and correspondence.

PCOL only allows for initial claims to be made online. It is not possible to send court forms or other attachments using PCOL, and only a limited messaging service is available. If the case is adjourned the landlord can only apply for the case to be relisted via hard copy forms.

It is not compulsory to issue claims in possession cases by using PCOL but the cost of issuing a claim is currently £325 using PCOL and £355 using written forms.

PCOL cannot be used for possession claims starting in the High Court.

## Particulars of claim

The particulars of claim (Form N119) requires the claimant to give the reasons for seeking possession, details of persons in possession, the rent payment history (if the claim includes rent arrears) and amounts due, and details of

previous steps taken to recover arrears. There is also an open box to provide information known about the tenant's circumstances.

The guidance notes that accompany this form state that this should give details of financial and other circumstances, especially if housing benefit is being paid.

If PCOL has been used to issue the claim, the particulars of claim will rarely have made it to the judge before the hearing. The court office will usually print everything off for the judge, but not always. On the judge's computer there is only an electronic folder with the claim form in it; there's no hard copy. It is therefore helpful to take an extra copy of everything you want to rely on in court, just in case.

The particulars of claim will usually be issued with the claim form, but not always.

The landlord has 14 days after the claim form has been issued to serve the particulars of claim on the tenant and file a copy with the court.

## Tenants' response

The court sets a date for the hearing, which will be not less than 28 days from the date of issue of the claim form. In PCOL cases the date is allocated automatically.

The claim form and the particulars of claim are sent to the tenant not less than 21 days before the hearing date. Included with this information will be a defence form, which constitutes the tenant's opportunity to submit details to the court relating to their case.

The hearing date will usually be between 28 days and 8 weeks from the claim being issued.

The tenant has two main ways of supplying information about his or her circumstances to the court: the filing of a defence form and attending the hearing.

The tenant's ability to tell his or her story can have a significant beneficial influence on the outcome of the case.

Tenants have 14 days to complete a defence form. If the tenant does not submit the defence form within this time, they may take part in any hearing, but the court may take the failure to do so into account when deciding what order to make about costs.

Accompanying the forms is a set of explanatory notes. The notes advise the tenant to seek advice, complete the defence form and return it within 14 days of receipt, and attend the hearing.

They explain that the judge will take account of any information provided, such as details of their personal and financial circumstances, any defence they have and any dispute about any rent owed.

The note also explains the type of orders the judge can make and reiterates the importance of obtaining legal advice and completing the defence form.

There is a question asking whether the tenant would have somewhere else to live if a possession order were made, and when they would be able to move in. This section is important because, if possession is ordered it will normally be no later than fourteen days after the making of the order, unless it appears to the court that exceptional hardship would be caused by requiring possession to be given up by that date.

If there would be exceptional hardship possession can be deferred to a date no later than six weeks after the making of the order.

## The hearing

Courts usually hear cases together in a possession list, once or twice a week, and the cases will be heard by a district judge or deputy district judge. Cases tend to be 'block listed'. This means that if, for example, there are to be 20 cases heard in a morning session running from 10.30-12.30 the 'case list' will simply list the names of the parties in each of the 20 cases.

The list may be broken down into hourly, or half hourly chunks, but any individual party will not know the precise time that their case will be heard. It may be, therefore, that tenants who turn up for a 10.30am hearing will find themselves still waiting for their case to be heard some time later.

Most possession hearings are not heard in formal court surroundings such as a court room but rather in a 'hearing room' or what used to be known as the judge's chambers. These are small private meeting rooms with the judge sat behind a desk. In front of the judge's desk there will usually be two additional desks, one for the landlord to sit at and the other for the tenant: the landlord on the judge's left, and the tenant on the judge's right.

Above all else, attend court. If you don't turn up the chances are that an immediate order for possession will be made. Even if there is no defence to the claim for possession, the judge will want to hear about any exceptional circumstances. You might be very surprised at the sympathetic way in which you're dealt with.

## Accelerated possession procedure

The accelerated possession procedure enables a landlord to obtain an order for possession by paper without the parties having to attend court and have a hearing.

It can only be used to recover possession and not, for example, also to recover rent arrears.

The claim form used for the accelerated procedure is Form N5B, which requires a copy of the notice stating that possession is required to be attached, together with proof of service. If a tenant wishes to defend the claim they must file a defence form N11B within 14 days after service of the claim form. Much of Form N11B is concerned with whether the tenant agrees with the information provided by the claimant on the particulars of claim form.

Towards the end of the defence form, however, the tenant is asked whether there is some reason why the landlord is not entitled to possession and, if a possession order were to be made, whether the tenant would suffer exceptional hardship if made to leave the premises within 14 days. The tenant is then invited to indicate how long they wish to remain in the premises (with a limit of 42 days after the order is made).

If the tenant does not reply within the 14-day deadline then the landlord can send the tear off slip at the bottom of Form N206A which requests that an order for possession and costs be made by the court.

Provided that the judge is satisfied that the claim form was served, and that the landlord has established that an entitlement to recover possession, the judge will make an order for possession without requiring the attendance of

the parties. If possession is ordered, the tenant is sent Form N26A which informs them of the order for possession and the date by which they must leave the premises.

If there is something wrong with the claim for possession or the tenant files a defence, the case will be heard by a judge, as with the standard possession procedure (above).

## Postponement of possession

Normally, if the court makes a possession order, it will tell you to leave the premises within 14 days. The judge can allow up to 42 days but only if satisfied that leaving within 14 days would cause you hardship which is exceptional (that is, worse than would usually be suffered by someone having to leave within 14 days).

There is no guidance on what establishes exceptional hardship. Tenants will need to be able to demonstrate that making a possession order within 14 days would cause exceptional difficulty. That might be due, for example, to the tenant's physical or mental health.

"Homelessness; no money to find somewhere else to live or needing more time to move to a new home, is not exceptional".

If medical grounds are to be considered, a judge will want to see evidence, such as a medical report or letter from a doctor. Once the date for possession has passed, a landlord can apply for a Warrant of Possession.

## Warrant for possession

Once a request for a warrant has been filed at court together with the appropriate court fee, the court will issue a warrant number. The warrant number then goes into a queue for the court to make a bailiff appointment. Once a warrant has been issued the court bailiffs will usually visit the property a few weeks prior to eviction, to hand-deliver the notice of eviction. However, there is currently no set notice period. It can take some time to be told the appointment date, and the date itself can be quite some time further in the future – usually 4-6 weeks.

This notice will give the address of the property to be repossessed as well as the date and time when the repossession process is scheduled to start. A County Court Bailiff will then attend the property and carry out the eviction.

## High Court enforcement

Instead of waiting for a county court bailiff, a landlord can apply for permission to transfer the order for possession to the High Court for enforcement. A Writ of Possession is then issued and sealed at the High Court or District Registry.

Once the Writ of Possession has been sealed a High Court enforcement officer will attend the property to carry out the eviction. Unlike a county court bailiff, prior notice is not usually given. If the tenant is aware of the claim for possession, there is no requirement that they also be told about the transfer up to the High Court for enforcement. Enforcement can be within a couple of days.

## Useful contacts

**Citizens Advice** – free, independent, confidential and impartial advice.

**Shelter** – housing and homelessness charity who offer advice and support.

**Crisis** – advice and support for people who are homeless or facing homelessness.

**National Homelessness Advice Service** – free expert advice.

**Money Advice Service** – free and impartial money advice.

If you need to contact Housing Options you can fill in this form or visit your local One Stop Shop.

Email us:

**[housing.options@wolverhampton.gov.uk](mailto:housing.options@wolverhampton.gov.uk)**

Phone us:

**01902 556789 (choose option 6).**

Drop in to see us:

### **Bilston**

Bilston Town Hall, Church Street,  
Wolverhampton, WV14 0AP

### **Wednesfield**

Alfred Squire Road, Wolverhampton, WV11 1XU

### **City Centre**

29 Market Street, Wolverhampton, WV1 3AG

# Notes

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If you require this information in another language or format, contact us on 01902 556789

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अन्य भाषा अथवा स्वरूपमां तमने आ माहितीनी आवश्यकता होय, तो 01902 556789 पर अमारो संपर्क करो.

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Jeżeli chcą Państwo otrzymać niniejsze informacje w innej wersji językowej lub format, prosimy skontaktować się z nami pod numerem 01902 556789.

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ئەگەر ئەم زانیاریانەتان بە زمان یان فورمەتیکی تر پێویستە، بە ژمارەی 01902 556789 پەیوەندیمان پێوە بکەن.

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