

Note to Landlords: Securing Recovery of a Dwelling House

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All Landlords will be aware that it is an offence to evict an occupier of residential premises without a Court Order or to harass an occupier of residential premises (Section 1 Protection from Eviction Act 1977 - the [PFE](#)). A residential occupier is defined as “a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises”. Section 1 of the PFE only applies to those who have occupied the premises under a tenancy or a licence and not to trespassers.

There are various types of residential tenancies regulated by statute which can only be brought to an end in a particular way. The more common examples are:

- **an assured tenancy**
- **an assured shorthold tenancy (an AST)**
- **a Rent Act tenancy**

Assuming the appropriate notices have been given consequent upon which proceedings are issued leading to orders granting possession, if the occupier does not give up possession in accordance with the terms of the Court Order the Landlord will need to consider its next step.

To enforce an Order for possession the Landlord must apply for a warrant or writ of possession. For speed, Landlords often apply to transfer Possession Orders made in the County Court to the High Court because an eviction can usually be carried out more quickly by a High Court Enforcement Officer. It is prudent to ask for a transfer upon the grant of a Possession Order rather than wasting time by making an additional application and waiting for an Order consequent upon that.

Once transferred the Landlord applies to the High Court for permission to issue a Writ of Possession under the [Civil Procedure Rules](#). This task is usually delegated to the High Court Enforcement Officers. It is however important to ensure that the procedural steps to obtain a Writ of Possession are properly followed. This entails:

- Giving every person in actual possession of the property notice of the intention to apply for a Writ of Possession. The notice does not confer any new rights on a tenant or other occupier. The effect is to give those who may apply for relief a sufficient opportunity to do so. No time period is specified. However, a seven-day notice is prudent in the circumstances.
- At the expiration of seven days a request for issue of a Writ of Possession is lodged with the [Queen's Bench Division of the High Court](#) supported by:
 - a draft Order for permission to issue a Writ of Possession;
 - an Application Notice; and
 - a witness statement in support of the application setting out the grounds of the application and confirming compliance with the requirement to give a notice to all occupants prior to the issue of the application.

The application is considered on paper by a High Court Master. A Writ of Possession can be ordered on the day of the application. Once armed with a Writ of Possession, the High Court Enforcement Officers are able to effect the eviction of the occupants of the dwelling house and secure the premises in favour of the Landlord.

There is one final matter, however, which needs to be addressed. The Enforcement Officers will serve a notice under the [Torts \(Interference with Goods\) Act 1977](#) giving the occupants a notice of intention to sell or dispose of goods left in the property. This is to cover the situation where the occupants do not remove their belongings. Prudently, at least seven days should be allowed to enable the occupants to remove their effects under supervision of the Enforcement Officers. The Landlord should not interfere with this process. Once the process is complete, the Landlord can take charge of the keys and the property and deal with it as it thinks fit.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

