



MOJ guidance for evicting tenants using HCEOs

Landlords, especially private landlords with buy-to-let mortgages cannot afford to have tenants who do not pay the rent.

Unlike mortgage lenders in the owner-occupied sector, mortgage lenders in the buy-to-let sector are less tolerant to arrears, which means that landlords need to take possession of their property quickly and transferring it to the High Court to use High Court Enforcement Officers (HCEOs) is the quickest method.

How does it work?

Once the section 8 or section 21 has been served, if your tenant doesn't move out by the given date you will need to apply for a possession order.

In order for HCEOs to enforce the eviction, they must be given permission by the court to do so under Section 42(3) of the County Courts Act 1984. It is therefore recommended that you apply for Section 42 to be granted in the initial application to the courts ~ this does not mean that you have to use HCEOs but it does give you the option.

New guidance from the Ministry of Justice

Over the past year we have become increasingly aware that some franchised HCEOs have been conducting evictions without the necessary permission from the courts ~ technically making them illegal and leaving the landlord open to claims for damages from the ex-tenants. It has also come to the MoJ's attention that warrants of possession have also been issued to the court bailiffs at the same time as writs being issued to HCEOs, thus causing conflict and confusion.

In light of this, in February 2015 the MoJ issued formal guidance on when and how retrospective permission may be given ~ Remember the decision to permit the transfer of enforcement to the High Court is, ultimately, at the discretion of the judge.

Summary of guidance

- Application to transfer the possession order is to be made on form N244
- A supporting fee needs to be paid, whether the application is without notice or on notice
- The application to transfer needs to be made regardless of whether there is an existing warrant of possession
- The current occupant must have received sufficient notice of proceedings to allow them to apply to the court for relief (apart from in the case of trespassers)
- Applications will be considered by a District Judge, who will decide whether a hearing is required
- When the transfer order is granted it means that the County Court bailiffs loses enforcement jurisdiction

When permission to transfer is not required

There are some circumstances where permission to transfer is not required:

- Where the claim is against trespasser, provided the writ is issued within three months of the order
- Where there is a claim for payment of moneys secured by mortgage, sale of the mortgaged property, foreclosure, delivery of possession to the mortgagee by the mortgagor, redemption, reconveyance of the land or its release from the security, or delivery of possession by the mortgagee

**Contact the Eviction team on property@thesheriffsoffice.com
or call us on 0845 688 9757
for further information**