

TITLE: ENFORCEMENT OF POSSESSION ORDERS AND ALIGNMENT OF PROCEDURES IN THE COUNTY COURT AND HIGH COURT

This is a consultation exercise by the Civil Procedure Rule Committee

This consultation begins on 14 February 2019

This consultation ends on 2 May 2019

Introduction

The Civil Procedure Rule Committee (CPRC) is considering whether amendments should be made to Civil Procedure Rules Part 83 and in particular rules 83.13 and 83.26

The consultation is aimed at all users and potential users of the civil justice system in England and Wales, and those affected by or engaged in the process of possession enforcement, and in particular at landlords and tenants, mortgagees and mortgagor borrowers, the legal profession, enforcement agents, advice and representative organisations and the judiciary in England and Wales.

A list of the main professional bodies and representative groups that are being consulted is set out at the end of the document. This list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

Contact details/How to respond

The CPRC invites written responses from users and potential users of the civil justice system in England and Wales. In particular responses from legal professionals, enforcement agents, businesses, individuals, representative organisations, and advice agencies in England and Wales are welcome.

Responses to be received no later than 5pm on 2 May 2019 . Responses to the consultation can be made by email or by post, the details are as follows:

Email to: CPRCconsultation@justice.gov.uk. Please note “Enforcement of Possession Orders and alignment of procedures in the County Court and High Court” in the subject line of your email.

Post to: Carl Poole, Secretary to the Civil Procedure Rule Committee
Post Point 9.23, Ministry of Justice, 102 Petty France, London SW1H 9AJ

Please Note:

Submission format: If you intend sending a PDF document it would be helpful if you could send a word document as well to assist in analysing the responses. Only the PDF document will be retained as the response document.

Complaints or comments: If you have any complaints or comments about the consultation process you should contact the secretary to the CPRC at the address given above.

Circulation and additional copies: Copies of the consultation document are being sent to various stakeholders, a list is included at the end of this document. The list is not exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject. Further copies can be obtained from the secretary as above.

Representative groups: Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality: Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the CPRC. The CPRC will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

The principles that public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf

Welsh Language: A Welsh language consultation paper is available at
<https://consult.justice.gov.uk/digital-communications/enforcement-of-possession-orders>

For more information on the Welsh Language Scheme:

Am fyw o wybodaeth am y cynllun iaith Gymraeg yn gweld:

<https://www.gov.uk/government/publications/moj-welsh-language-scheme-2018>

Who are we consulting

A non-exhaustive list of consultees is included in an **Annex A** at the end of the consultation paper. However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

Foreword

The Civil Procedure Rule Committee (“CPRC”) is responsible, under the provisions of the Civil Procedure Act 1997 (“the 1997 Act”), for making rules of court governing the practice and procedure to be followed in the High Court and the County Court, and to do so with a view to securing that the system of justice is accessible, fair, and efficient, and that the rules are both simple and simply expressed. In consequence the CPRC seeks to keep the Civil Procedure Rules and their operation under review and considers whether they are meeting and are continuing to meet those objectives. Under section 3 of the 1997 Act, the CPRC is, before making Rules, to consult with such persons as they consider appropriate.

One area in which Civil Procedure Rules appear to be unsatisfactory is that of the enforcement of possession orders. There are two differing, and anomalous, systems in the High Court and in the County Court. In the County Court, there is a system of administrative action and court-appointed bailiffs, involving substantial delays (to the detriment of property owners) albeit with limited costs, and a non-statutory informal procedure for occupiers to be given advance notice of evictions. In the High Court, there is a system of judicial involvement and external High Court Enforcement Officers, with less delay, but more cost, and a more limited provision for occupiers to be given advance notice of proceedings. The differences between the two systems and the weaknesses of each, particularly in terms of delay, cost and limited notice to those being evicted (and who may have rights to apply to the court), have been noted in a number of both historic and more recent judicial decisions and in recent reports, including The Final Report of The (Briggs) Civil Courts Structure Review which recommended that there should be at least harmonisation of the operation processes of the enforcing agents.

The CPRC recognises that there is a balance to be struck; for example, on the one hand there may be a landlord who is owed several month’s unpaid rent and who may also be in debt as a result of the rent arrears, and on the other hand tenants or other occupiers who ought to know if and when they are to be evicted to enable them to make other provision or make their own representations to the court. All parties should be treated fairly and with respect. Although this issue arises mainly in the residential context, it extends also to commercial premises but where different considerations may be thought to arise.

I therefore look forward to receiving and considering the views expressed as to the various proposals and questions set out and posed in this Consultation.



Lord Justice Coulson

Deputy Head of Civil Justice

Executive Summary

The Civil Procedure Rules (CPR), made by the Civil Procedure Rule Committee (CPRC), govern civil court processes including enforcement of court orders, and thus of orders for possession. This consultation is being carried out under section 3 of the Civil Procedure Act 1997, as the CPRC is concerned that the Rules regarding enforcement of possession orders ought to be reformed but wishes to obtain views from actual and potential court users, and those potentially affected, before determining what (if any) changes to make in the existing rules and system.

The proposals in this consultation are intended to improve the process of enforcement of orders for possession in order to bring it up to date with a modern justice system that is open and transparent and in tune with the needs of both the claimant and defendant and others affected.

This paper sets out for consultation:

Proposals as to:

1. the current procedure in the County Court regarding enforcement, that a 'notice to occupiers' (Form N54), regarding the date and time of eviction be delivered to the premises prior to the repossession being put on a statutory and general basis;
2. the procedure for enforcement of possession orders in the High Court and County Court being aligned; by a similar requirement of a notice to occupiers of the date and time of eviction having to be delivered to the premises prior to the eviction, being introduced in relation to High Court enforcements;

And further the following questions:

3. in particular (but not only) if the proposal 2 above is not adopted; whether there should be any (CPR) Rule or Practice Direction regarding the (and indeed whether there should be) need to justify transfer between the County Court and the High Court for the purposes of enforcement
4. if the proposal 2 above is adopted; whether the need to obtain judicial permission to enforce most possession orders in the High Court should be removed;
5. whether or not proposal 2 above is adopted, whether there should be any specific provisions that:
 - (i) applications for transfer should be made on notice to the defendant and/or
 - (ii) subsequent applications for stays or suspensions of the possession order be made to the County Court rather than the High Court and/or
 - (iii) costs recoveries should be limited to the level of the County Court fees;
6. in relation to the request for a Warrant or Writ of possession; whether the applicant should certify that all occupants have had sufficient notice of the proceedings (and/or of

some aspect of that such as the intention to enforce the possession order) in order for such occupants to be able to apply for relief.

Under the proposed changes, a possession order executed by a bailiff or a HCEO will have the same notification process and the occupants will be provided with information as to the eviction in advance in order to be able to assert their rights and apply to the court for any available relief and/or to make other appropriate arrangements.

The proposals envisage that the procedure should remain under the control of the court and so that judges will, on application, be able to modify (and even dispense with) the requirement for and length of notice in appropriate cases.

The proposals would not affect enforcement in pure trespass cases unless, perhaps, the trespassers fell into a special category (such as, possibly, occupying relatives of a deceased tenant).

The proposals would also affect commercial premises and the question is raised as to whether there is any good reason to exclude them.

If the proposals as to notice of the eviction having to be given in advance in both the County Court and the High Court are adopted, then there is a further question as to whether the present need in the High Court to obtain judicial permission to enforce should cease.

The questions also engage the issue, whether or not the proposals are adopted, of whether there should be any particular need to justify transfer from the County Court to High Court for enforcement purposes, and, if so, then whether particular factors should be identified as being relevant to such a question.

The questions also deal with certain specific aspects of the process including the form and meaning of certification of occupiers having had notice of the proceedings, the appropriate court for an occupant to make application for relief, and costs recovery, and whether or not the main proposals are to be implemented.

Introduction

A claimant landlord, mortgagee or other person with an interest in property can apply to a Court (usually the County Court but in some circumstances the High Court) for a possession order on a very wide variety of grounds but in particular where the tenant or mortgagor borrower is in breach of their contractual agreement, for example non-payment of rent or mortgage instalments, or has not left following the ending of their tenancy or has not paid back the mortgage following the expiry of its term. The court may make an order for possession of the premises which is in principle effective against all occupants (whether or not they are parties to the proceedings); although in many cases, both residential and commercial, the tenant or borrower may have a common-law or statutory right to seek relief from the court, and there may also be other occupants, not yet parties to the proceedings, who may have their own rights. If the tenant, borrower or any other occupiers do not then leave as directed, the claimant can apply in the County Court for a Warrant of Possession directed to the County Court bailiffs or in the High Court for a Writ of Possession directed to an High Court Enforcement Officer (“HCEO”), for them to enforce the possession order by way of an eviction. The present Rules for enforcement of possession orders do not distinguish between residential and commercial premises.

This Consultation Document identifies various differences between, and sets out consultation proposals to align, the processes for enforcement of possession orders of premises between the County Court and the High Court. Those differences were considered to a degree by Lord Justice Briggs (as he then was) in his Final Report regarding his Civil Courts Structure Review and where, while he favoured unification of enforcement processes, he recommended that, at least on an interim basis, harmonisation should be pursued (paragraph 10.25) although on basis that both County Court bailiffs and privately instructed HCEOs should be able to enforce (paragraph 10.32). There are also set out other possible reforms.

In the County Court, the process is governed by CPR83.26 which provides for the application for the issue of the Warrant to be purely administrative, but where the Form N54 procedure has been introduced as a means of the Court giving notice to the occupiers of the date and time when the eviction would take place. However, this introduction was only effected on a rather informal basis following judicial criticism of the previous absence of such a requirement. Responses received to the 2018 “Cardiff v Lee” consultation relating to suspended possession orders had a majority stating that they thought that this procedure afforded sufficient protection to occupiers.

In the High Court, except in mortgage (and trespasser) cases, the process is governed by CPR83.13, and provides for the Court, as a judicial act, to have decided that the occupiers have had “sufficient notice of “the proceedings” to be able to apply for relief” before the Writ is issued; but the majority of High Court decisions have interpreted this provision to have a distinctly limited effect and to require only some informal notice of an intention to implement an eviction process. In practice it creates a considerable burden upon High Court Masters to deal with applications on paper without notice with little practical benefit for occupiers. There is no equivalent to the Form N54 procedure of any notice having to be given of the eviction itself; and which is liable to take place without any advance warning to the occupiers.

However, whilst possession proceedings are usually brought in the County Court, there has been over the last decade, an increasing desire by those obtaining orders for possession to transfer the proceedings to the High Court for the purpose of enforcement.

There are various possible motivations for this, and which are mentioned in both the Briggs Report and in a recent External Consultants Report for the Ministry of Housing, Communities and Local

Government (“MCHLG”), published as part of their recent Call for Evidence regarding a possible Housing Court. The one most mentioned by claimants is a desire for expedition (as a Writ can result in almost immediate enforcement) especially in circumstances where the previous litigation has been drawn out but also where there are substantial arrears with a long history of non-payment and the owner is suffering substantial prejudice (e.g. their own mortgage payments, inability to re-let or sell etc.) with the occupant (who may well have no resources to enforce against) being said to be playing the system and enjoying, in effect, free occupation. However, other possible motivations have been mentioned including such matters as (i) a reputation of much greater forcefulness on the part of HCEOs than of bailiffs (resulting in execution on first attendance being more likely to be effective), and (ii) a lower chance of an application being made to challenge or suspend the possession order or its enforcement (as a result of e.g. (a) the absence of a full Form N54 warning (b) the relative speed of the process). This is notwithstanding the higher expense of the process (and the costs of which may be sought against the occupant, at least if they make a successful suspension or even set aside application of their own). Briggs (paragraphs 10.29-10.32) when considering various of these points was particularly concerned that the state-employed County Court bailiffs model was under-funded and ill-resourced causing it to be “gravely afflicted in its quality by delays and under-performance” (10.32) and where the “often repeated assertion that the County Court bailiff service suffers from unacceptable delays... went entirely unchallenged” (10.29). The MCHLG documentation refers to an internal HMCTS project designed to free up time for Bailiffs and thus to reduce delays, but it is unclear as to what might be achieved in practice and within what time frame. Notwithstanding the existence of the MHCLG and HMCTS initiatives, the CPRC has decided to proceed with this Consultation because it relates to anomalies within the CPR themselves.

Transfer applications are sometimes made formally but are often made informally at a possession hearing (and at which the defendant may not be present) following the judge’s determining to make a possession order. Views differ on whether notice of the application to transfer is required to have been given to the defendant, although it can be argued that this is the general rule under CPR23.4 (and with a freestanding right to apply to set aside any transfer order made without notice under CPR23.8-11 albeit that the exercise of such a right would be unusual). CPR30.4 requires notice of a transfer order to be given to all of the parties.

Views also differ in the District Bench as to whether some good reason (out of the norm) is required for a transfer order to be made. The jurisdiction under section 42(2) of the County Court Act 1984 is a general one; although CPR30.3(2) sets out a non-inclusive list of matters to which the court should have regard but which have limited application to a transfer for purpose of enforcement. However, in *Partridge v Gupta* 2017 EWHC 2110 (@ para 69, albeit where the application for transfer had been hotly contested, Mr Justice Foskett affirmed a statement from Master Yoxall that both the application to transfer and the consequent order were “completely routine”. A sizeable proportion of District Judges are reluctant to transfer to the High Court notwithstanding the decision in *Gupta*, and (where the prejudicial consequences to the occupiers were further noted) that in *Ali v Channel 5 : 2018 EWHC 298* The lack of notice and the additional cost of HCEO enforcement are often cited as important factors, and some District Judges include protective provisions in their orders (such as restricting any future application for costs by the claimant to what would have been incurred under the Bailiff process and/or requiring an undertaking to give equivalent advance notice of the eviction as under the County Court N54 process).. It might be considered that variation of practice is undesirable and that clearer guidance in the rules will achieve greater consistency. However, there may be less reason to require a justification if the High Court practice was harmonised with that in the County Court and others of the proposals were to be adopted so as to protect the occupiers.

It is perhaps worth noting that due to concerns as to over-use of the transfer procedure, the Senior (Queens Bench) Master issued a Practice Note of 21 March 2016 providing guidance to the effect

that transfer applications had to be made to the County Court rather than (as is theoretically possible under the CPR) to the High Court.

It is a very important general principle that court orders are to be complied with, and the defendants to the litigation should be aware of the fact and terms of the possession order. However, both the common-law and statute do confer upon tenants and other occupants' rights to seek relief in various situations even once an order for possession has been made, and including where an occupant has not been made a party to the litigation. The courts are mindful when considering a claim for possession that, ultimately, someone may be made homeless (or lose their other premises) and so want to ensure that the parties concerned are given opportunity to respond and defend the claim if possible, and, where there is no defence, are allowed proper time to make alternative arrangements. The purpose of County Court bailiffs or High Court Enforcement Officers attending an eviction is, of course, not catch the occupant 'off guard', but to ensure that the process is completed effectively.

It is also to be noted that possession in an ordinary residential mortgage or social housing context is often to be regarded as remedy of last resort.

Further, while in the High Court there is no actual specific requirement to give advance notice of the eviction, the High Court Enforcement Officers' Association (the only authorised body and where belonging to it is an effective condition of becoming an authorised HCEO) states on its website FAQs that seven days' notice should be given (absent good reason), albeit that that provision does not appear in its Code of Practice. Words to the same effect also appear on the websites of some HCEO entities. However, it is not clear as to the extent that HCEOs follow this practice or as to in what circumstances they would regard it as being inappropriate.

In the commercial context, it is again important that possession orders should be complied with but, again, tenants and others may have continuing rights (such as to seek relief from forfeiture), there may be non-party occupants, and an orderly vacation of the premises may well be desirable.

Consultation

General

The judiciary (and also Briggs in the Civil Structure Review) has noted that the system for enforcement of possession orders as between the County Court and the High Court has evolved in a haphazard and historic manner so as to give rise to major inconsistencies and an increasing tendency for landlords and mortgagees to seek transfer from the County Court to the High Court for enforcement. The resultant system is both incoherent and potentially confusing for and detrimental to tenants and mortgage borrowers as well as for occupants who are not parties to the possession litigation.

As a result, the CPRC, in its role of making and amending the CPR, has proposed that consideration be given to a number of changes that will provide clear guidance to parties and the judiciary as to operation of the procedures, that will not only update the procedure for possession enforcement but also ensure parity amongst the parties concerned so that those affected by a proposed eviction have the time they need to take advice and/or make applications and/or alternative arrangements as necessary.

It is important to note that, where an order for possession of any land has been made, section 89 of the Housing Act 1980 provides that the giving up of possession should not be postponed beyond a maximum of 14 days from the date of the order, unless the occupant can demonstrate 'exceptional hardship' in which case the maximum is six weeks. However, this statutory limitation does not apply in forfeiture, mortgage or 'discretionary ground' residential leasehold (where a residential landlord has to show it is reasonable to make an order and a tenant can apply for relief up to eviction) cases.

In order to enforce an order for possession an application must be made to the County Court for a Warrant of Possession which results in the date and time being fixed for execution by a County Court bailiff. The court fee is £121. The time from application to an appointment can vary between courts but is often quoted to be between six and ten weeks. The CPR do not require expressly that advance notice of the date and time of eviction be given to the occupiers; however, the Ministry of Justice developed the Form N54, and which has become a CPR Form, which the County Court bailiffs deliver to the premises in order to inform residential tenants and their families and other occupiers of the precise date and time of the proposed eviction.

It has been noted that some local authorities with a duty to provide for the homeless have insisted that residential tenants, and their families, and others continue to occupy premises until they receive such notification at risk of their being treated as intentionally homeless; this practice was queried in *Ali v Channel 5* and is inconsistent with the recently enacted Homelessness Reduction Act 2017, but occupiers may still fear that they will lose the ability to be re-housed unless they stay to the last moment.

In the High Court, the present position is different. Once an order for possession has been granted, the person seeking to enforce it must obtain a Writ of Possession which is then executed by a HCEO. HCEOs are appointed by the Lord Chancellor and have to be members of the High Court Enforcement Officers Association and adhere to its Code of Practice and the Ministry of Justice's National Standards for Enforcement Agents.

An order to obtain a Writ involves a formal, without notice, application where the judge has to be satisfied that all occupants have sufficient notice of the intention to evict under a court order. The court fee is £66, but the HCEO will also charge significant fees to execute the Writ. The Writ does not give a date for execution and the HCEO may enforce it at any time, but only during reasonable hours, and no notice has to be given to the occupants of the date and time of the intended execution.

The differences between the County Court Warrant and the High Court Writ procedures, in particular expediency, have led many claimants, in particular landlords, once they have obtained an order for possession in the County Court, to seek to transfer the proceedings under section 42 of the County Courts Act 1984 and CPR30 to the High Court for enforcement.

Trespassers

Claims against trespassers may be brought in the High Court or in the County Court against persons who entered or have remained on the land without consent. Enforcement against Trespassers within three months of the date of the order for possession does not require the court's permission and after three months such permission can be applied for without notice (unless the court orders otherwise). While the rules in the County Court and the High Court use different wordings, their effect appears to be identical. No changes are proposed regarding ordinary Trespassers (although there may be special cases such as occupying members of deceased tenants' families, a common situation in the County Court, to be considered).

Differing Possession Claims

Commercial and residential leases and mortgages have different common-law and statutory consequences and procedures. It is important to note that in relation to most residential leases and mortgages where possession is sought on "discretionary grounds" of failure to pay money (there is an exception where more than two months' (or similar) rent is outstanding and a specific statutory ground is relied upon) or breach of covenant, there are statutory discretions enabling the tenant/mortgagor to apply for relief even after the making of a possession order but only if the application is made and determined before eviction takes place (the only exception being where there has been fraud, abuse or oppression, usually involving the occupier being misled). Also in lease forfeiture cases, both commercial and residential, there are specific common-law and statutory rights for relief to be sought with differing time-limits (some e.g. under section 138(4) of the County Court Act 1984 being by the time that a landlord actually obtains possession). However, other possession orders are made on "mandatory" grounds where no subsequent right to relief, at least for the then parties to the litigation, exists. However, even then a party (or other occupant) may be able to apply for relief, for example because they had not been notified of the possession hearing.

Enforcement in the County Court (other than against trespassers)

The process for enforcement in the County Court as set out in the CPR Rules themselves (in particular in CPR83.26) does not require any notification of the defendant or any occupier either prior to obtaining the Warrant or of its execution. Therefore, the defendant used not to know any more than that the deadline in the order for possession has passed, leaving them with having their home (or other premises) entered and secured against them by the bailiffs and, perhaps, as a result of having missed the deadline for making an application for suspension in relation to an order made on discretionary grounds. Some occupiers may have had no knowledge of the proceedings prior to eviction at all.

There are now some differences in the case of residential mortgages where both CPR55.10 will have required a notice of the original proceedings and their hearing date to have been delivered to the premises and, usually, the Mortgage Repossessions (Protection of Tenants etc.) Act 2010 and the Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010 will have required a notice to have been delivered to the premises of the fact that an application is being made for a Warrant; but still no provision for advance notification of the date and time of the eviction.

The absence of a need to notify the defendant (and other occupiers) of the date and time of execution concerned the Court of Appeal in 1991 (*Leicester CC v Aldwinkle*) so they invited the then Supreme Court Rules Committee to consider whether the rules should be aligned, and whether notice should be given to the tenant before enforcement (and which invitation was repeated in subsequent cases). The Court of Appeal did make clear the right for the tenant to apply on grounds of fraud, abuse and oppression, and a series of cases then followed developing the law on these aspects. All this led to the development of the Form N54 which, by its own wording, requires bailiffs to deliver it to the tenant personally or to leave it at the property in an envelope addressed to the named defendant and 'all other occupiers' in advance of the eviction. Form N54 confirms that the Warrant has been issued, sets out the date and time for execution and includes a note of the need and how to make applications to suspend prior to eviction and advises that advice be taken.

Form N54 does not have an express statutory basis although it is considered to be approved by the CPR in that it does appear in the list of CPR Forms and can thus be said to be required by CPR4(1) and Practice Direction 4 (see *Ali v Channel 5*). The Form N54 procedure was viewed by the Court of Appeal in *LB of Southwark v Brice* as having an important role in rendering the enforcement procedure such as to be human rights compliant. Its practical usefulness is confirmed by the many applications received by District Judges to suspend execution following the service of Form N54. These applications are then listed for urgent hearing prior to the execution date and time. However, unless it is delivered to the premises, occupiers may still be unaware of what is to happen (or even, if not parties, of the proceedings) depending upon their relationship and communication (if any) with the claimant and the defendant.

The fact that the Form N54 procedure is not set out in CPR83 (which deals with enforcement), and so lacks an express statutory basis, seems unsatisfactory. The absence of any CPR Rule also has the consequence that there is no provision as to how far in advance of the proposed eviction the Form N54 should be served at the premises. There can be seen to be a tension between it and section 89 of the Housing Act 1980 but that is subject to the Human Rights Act and the Court of Appeal in *LB of Southwark v Brice* appeared to regard the imposition of the Form N54 procedure as being proper. This would seem to be all the more the case where there are non-party occupiers.

The informal and administrative nature of the Form N54 procedure does mean that there is an absence of practical judicial control over the need for and the timing of the giving of the Form N54 notice prior to the eviction date. In principle the need for legal certainty would suggest that if advance notification of the date and time of eviction is required, then there should be a default timetable capable of being varied by a judge (either by altering the period which should elapse between the giving of the notice and the eviction or even by dispensing with the giving of the notice altogether) in appropriate cases.

It is therefore proposed that the Form N54 procedure should be put on a statutory basis and responses are sought to this proposal as follows.

Question 1: (a) Should there be a process in the County Court of providing a notice of the time and date of eviction prior to the retaking of possession? And if so then (b) should it be put on a statutory basis?

1a

Yes

No

1b

Yes

No

Please explain your response

Question 2: Should the notice be based on the current Form N54?

Yes

No

Other

Please explain your response

Question 3: What information should be included in the notice?

a) The same as the N54?

b) Or a new form? If so, please provide details and explain your answer

Question 4: a)To whom should the notice be addressed and b)where should it be delivered? In particular should it always be addressed “to the occupiers” and delivered to the premises?

4a

Tenant

To the occupiers

Other

Please explain your response

4b

The premises

Other

Please explain your response

Question 5: What should the standard length of notice be?

- a) seven days
- b) 14 days
- c) other (and what length)

Please provide your justification for a) or b) or c)

Question 6: Should the court have the power (i) to dispense with or (ii) to reduce or (iii) extend, the notice period?

Yes

No

Please explain your response and:

- **If yes:**
- **a) at the time of the original judgment?**
- **b) or later?**
- **Please provide your justification for a) or b)**

The present position is that orders for possession against trespassers are seen by the CPR as something of a special case, at least where the Warrant is sought within three months of the order for possession. However, trespassers may be of various different types and categories, such as a recently arrived squatter or a child of a deceased tenant who may have been occupying for years.

Question 7: Should there be an exception to the requirement for advance notice of the eviction to be given in the case of trespassers?

- **Yes**
- **If not, why?**
- **Should there be any limits on such an exception; if so then what and why?**

The present CPR83.26 applies to all premises (commercial and residential) and, subject to the 2010 Act and Regulations, to mortgage as well as to other possession claims. The 1980 Act has a policy of giving a strictly limited time to unlawful defendant occupiers in many situations. However, all cases involve an eviction from premises of persons who may have at least arguable claims for relief, and may involve occupants who are not yet parties and have no knowledge of the underlying litigation.

Question 8 - Should there be any other exceptions to the requirement for advance notice of the eviction to be given (e.g. commercial premises or mortgages)?

- **Yes**
- **No**
- **If so, then what exceptions and why?**

Enforcement in the High Court (other than against trespassers)

The High Court procedure is set out in CPR83.13. In general, the High Court has to give permission for the issue of a Writ of Possession. There are exceptions for applications within three months to enforce orders against trespassers and in most mortgage cases.

The application for permission is made 'without notice' unless the court directs otherwise and the Writ itself is directed to an HCEO and does not specify any date or time for eviction. There is no case that considers that in the High Court there is any requirement for notice to be given to the occupants of the eventual date and time for eviction as chosen by the HCEO, and this seems to have been the view of the High Court in both *Partridge v Gupta* and in *Ali v Channel 5*.

The application will usually be dealt with by a High Court Master on paper. The Master needs to be satisfied that all occupants have "received such notice of the proceedings as appears to be sufficient to the court for such occupant to apply for relief" (CPR8.13(8)). Judicial views have differed as to what this means but recent case-law suggests that some informal notice that an eviction procedure is to take place (without any details) is sufficient. The result is that as long as the applicant certifies that the requirement has been satisfied the Master will generally have no reason not to grant the application.

There is then no equivalent to the County Court Form N54 procedure. Rather, following the issue of the Writ, the HCEO will then be able to attend without any notice of the date and time of the eviction having been given to the occupants, and who will have had no further opportunity to react (and then, for example, applying to the court or making other arrangements). The occupants may return to the premises to find themselves locked-out; and, in any event, will tend to lose any rights they may have to apply for relief where such rights are time-limited to the period before the eviction takes place. For example, in *Ali v Channel 5* the occupying tenant knew of the possession order but all that he knew of the application for transfer, the transfer order and the eviction date, was from a telephone call with the claimant landlord to the effect that the claimant would be applying to the court for an order for bailiffs to evict. The HCEOs attended at about 8.23am without further notice to evict the occupant and his family (including his children).

Thus, there is a major difference between the County Court procedure where the Form N54 procedure means that occupiers will have learnt of the impending date and time of the eviction and the High Court procedure (as in *Partridge v Gupta* and *Ali v Channel 5*) where they will not; and which has important practical consequences.

It should be noted that there are various advantages, and in particular that of speed, to claimants in using the High Court procedure, and that the giving of notice to occupiers will result in a slowing down of that process, and which may be seen to be inconsistent with the policy of the 1980 Act in some situations. On the other hand, the Court of Appeal in *LB of Southwark v Brice* regarded advance notice of eviction as important in the human rights context.

It is therefore proposed that the County Court and High Court notification procedures should be aligned and responses are sought to this proposal as follows.

Question 9: Should procedures, (in terms of enforcement of possession orders in the High Court and in the County Court) be aligned by a similar requirement for HCEOs to provide a Notice to occupiers of the date and time of eviction delivered to the premises prior to the retaking of possession?

- a) Yes
- b) No

Please provide your justification for a) or b)

At present, the High Court procedure also differs from County Court procedure in that the issue of the Writ requires a judicial act in terms of a judge being satisfied that all occupiers have sufficient notice of the proceedings. As stated above, this requirement involves a considerable case-load for Masters but where the burden on the claimant is very low and it is difficult to see how the court could reject the claimant's certificate that the occupiers have such notice. If the occupiers are to have advance notice of the date and time of eviction by way of a Form N54 type procedure, then that would give them notice and an opportunity to seek any relief or make arrangements.

Question 10: If it is accepted that provisions for enforcement of possession orders in the County Court and High Court be aligned, should there still be the need for judicial permission to enforce possession orders in the High Court?

Yes

No

please explain your answer

If there is to remain a need for such judicial permission in the High Court, then the present CPR83.13 excludes orders against trespassers and also most mortgage cases. As set out above, there may be different types of trespassers. As regards mortgage cases, the rationale for the exception for mortgage cases may not be entirely clear as, while occupants are likely to have received notice of the proceedings themselves under the procedure set out in CPR55.10 for a notice of the possession claim hearing date to have been delivered to the premises, the 2010 Act and 2010 Regulations regarding notification being given on the initiation of the enforcement process only apply in the County Court and not in the High Court.

Question 11: Should the current exception regarding the absence of need for judicial permission for a Writ to issue against trespassers continue?

- **Yes**
- **No**
- **Please explain your answer**

Question 12: Should there be any limits on the trespassers exception?;

- **Yes**
- **No**
- **Please explain your answer**

Question 13: Should the current exception regarding the absence of need for judicial permission for a Writ to issue in mortgage cases continue?

- **Yes**
- **No**
- **Please explain your answer**

The courts have expressed different views as to what is meant by “sufficient notice of the proceedings” although the more recent authorities have limited to this to merely some notice of an intention to implement an enforcement eviction procedure rather than a formal letter accompanied by a copy of the order for possession setting out that an application for a Writ is now being made. From a Claimant’s perspective, it is for the defendant to initiate an application for relief. However, a, possibly vulnerable, defendant may require a notification of substance to push them into seeking advice and defending their rights.

Question 14: Should the requirement of occupiers having “sufficient notice of proceedings” be defined; and if so then how and in particular as to notice of:

(i) the proceedings seeking possession?

(ii) the original order for possession?

(iii) any order transferring enforcement to the High Court?

(iv) the last order or writ or warrant for possession or order staying or suspending such?

(v) an intent to enforce or

(vi) something else?

Any of the above – please specify which

All of the above

Other

Transfer from the County Court to the High Court

As we have already mentioned there has been an increasing trend by those obtaining orders for possession to apply to transfer the proceedings to the High Court for the purposes of enforcement. This requires the permission of the Court under section 42 of the County Courts Act 1984 and CPR30, and which has been described as “routine” in recent High Court decisions although many County Court judges see them differently and require some specific reason for them to be granted. Applications can be made by a formal Form N244 process but are more usually made informally at the possession hearing (which defendants often do not attend). Views differ on whether notice of the application to transfer is required to have been given to the defendant, although this is considered the general rule under the CPR. Transfer orders are supposed to be notified to the defendant by the Court (CPR30.4).

The main reason stated for claimants to seek such transfers are a need for expediency as the Writ can be enforced almost immediately (thus often saving between six and twelve weeks of waiting for a bailiff appointment). This is particularly important in cases where there are substantial arrears. Claimants may also feel that HCEOs are likely to be more forceful than bailiffs thus increasing the likelihood of a successful eviction upon first attendance.

However, the Writ and HCEO procedure also has the advantage to Claimants that as a result of the absence of advance notice under the present High Court procedure, there is a lower chance of either an application being made to suspend in time or of any resistance from the occupier(s). If the possession procedures are aligned in the County Court and the High Court so as to introduce an advance notification requirement then this advantage, and the concomitant disadvantages to occupiers, should disappear.

Claimants seek transfers notwithstanding that the Writ and HCEO processes are more expensive, although where if an occupier does seek relief then they may only obtain it on condition that they pay the claimant's abortive costs of the enforcement process and which have been increased as a result of both the transfer and employing an HCEO. Thus, a question arises whether a defendant (who is, of course, in breach of the possession order) should become liable for the high costs of the claimant having chosen to transfer to the High Court, and some District Judges only grant transfers on condition that the claimant should be confined to the lower County Court costs.

One side-effect of a transfer having taken place is that if an application to suspend is made then it, presently, has to be made to the High Court which may face two problems in dealing with it. First, the High Court is unlikely to have been sent the County Court file, and which may also give rise to issues between electronic and physical working. Second, it is the County Court which is most likely to have the relevant specialist property expertise. Accordingly, it has been suggested by the Senior Master of the Queen's Bench Division that it may be more sensible for such applications to be heard by the relevant County Court.

Question 15: Should there be a need to justify transfer of enforcement of possession orders between the County Court and the High Court (i) if the procedures for possession are aligned and (ii) if they are not?

Yes

No

Please explain your answer; and give any particular considerations that should be taken into account as to whether or not transfer should take place

Question 16: What (if any) information should the court be provided with on application to transfer?

Question 17: Where a landlord wishes to transfer a case for the purposes of enforcement, should there be a specific provision that these applications are made on notice to the defendant using Form N244 or some other means?

Yes

No

If Yes:

- Form N244
- Other – please specify

Question 18: Should such an application be capable of being determined on paper without a hearing?

Yes

No

Please explain your answer

Question 19: Should there be any provision made regarding the higher costs of the HCEO over the County Court bailiff procedure?

Yes

No

If so, what provision should be made?

Question 20: Should there be any provision made regarding notice having to be given to occupiers in advance of eviction if a transfer order is made and a Writ obtained?

Yes

No

Please explain your answer

Question 21: Should any applications for stays or suspensions of the possession order (made by the tenant) be made to the (home) County Court rather than the High Court?

Yes

No

Please explain your answer

The Application for a Warrant or for a Writ

If the procedures in the County Court and the High Court are to be aligned then the application for a Warrant or a Writ is likely to involve an administrative act rather than judicial consideration. Nevertheless, this is an enforcement procedure which may well extend to enforcement against non-parties, and general principle and natural justice may suggest that they should have had at least some notice of what is happening before the court institutes a process of this nature against them. If these procedures are to be without notice and administrative, then the question arises as to whether the Claimant should have to certify that such notice has been given, and so that the request may be referred to a judge if such a certificate is not provided. If so, then the question arises (and see above) as to whether what is adequate notice should be defined.

Question 22: In cases where there is a request for a warrant or writ of possession, should the applicant have to certify that all occupants have had sufficient notice of proceedings to able to apply for relief (i) if advance notice does have to be given of the date and time of eviction and (ii) if such advance notice does not have to be given?

Yes

No

Should there be exceptions (e.g. trespassers)?

Yes

No

Please explain your answer

Should the Court be able to waive such a requirement?

Yes

No

Question 23: If there is to be a need for such certification; then should it be defined?

Yes

No

If yes, then should be defined as all or any (and if so which) of notice of:

(i) the proceedings seeking possession?

(ii) the original order for possession?

(iii) any order transferring enforcement to the High Court?

(iv) the last order or writ or warrant for possession or order staying or suspending such?

(v) an intent to enforce or

(vi) something else?

Question 24: What form should such certification take so as to give confidence that all occupiers who may be affected by a possession order are informed;

a) a statement of truth/declaration or

b) some other means?

A full impact assessment has not been produced as these proposals do not fall under the definition of a regulatory provision and because we estimate the costs to be minimal. Our assessment is that there may be some administrative costs associated with these proposals but we expect them to be minimal and if that is the case, that they should be absorbed within MoJ's existing budget.

We would welcome your views to help us assess and quantify any impacts, preferably with supportive evidence.

Question 25: How will the proposed changes affect work in the enforcement sector?

Thank you for responding.

Response document

CIVIL PROCEDURE RULE COMMITTEE CONSULTATION

Title: Enforcement of Possession Orders And Alignment of Procedures in the County Court and High Court

[dates from 14 February 2019 – 2 May 2019]

The Civil Procedure Rule Committee would welcome responses to the questions set out in this consultation paper. Please email your completed form to <mailto:CPRCConsultation@justice.gov.uk> or send it to Carl Poole, Post Point 9.23, Ministry of Justice, 102 Petty France, London SW1H 9AJ

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Questionnaire

[Instructions: for the web version, include an on-line questionnaire, which can be completed and returned on-line]

We would welcome responses to the following questions set out in this consultation paper.

Question 1: (a) Should there be a process in the County Court of providing a notice of the time and date of eviction prior to the retaking of possession? And if so then (b) should it be put on a statutory basis?

1a

Yes

No

1b

Yes

No

Please explain your response

Question 2: Should the notice be based on the current Form N54?

Yes

No

Other

Please explain your response

Question 3: What information should be included in the notice?

c) The same as the N54?

d) Or a new form? If so, please provide details and explain your answer

Question 4: a)To whom should the notice be addressed and b)where should it be delivered? In particular should it always be addressed “to the occupiers” and delivered to the premises?

4a

Tenant

To the occupiers

Other

Please explain your response

4b

The premises

Other

Please explain your response

Question 5: What should the standard length of notice be?

- d) seven days**
- e) 14 days**
- f) other (and what length)**

Please provide your justification for a) or b) or c)

Question 6: Should the court have the power (i) to dispense with or (ii) to reduce or (iii) extend, the notice period?

Yes

No

Please explain your response and:

- If yes:**
- a) at the time of the original judgment?**
- b) or later?**
- Please provide your justification for a) or b)**

Question 7: Should there be an exception to the requirement for advance notice of the eviction to be given in the case of trespassers?

- Yes**
- If not, why?**
- Should there be any limits on such an exception; if so then what and why?**

Question 8 - Should there be any other exceptions to the requirement for advance notice of the eviction to be given (e.g. commercial premises or mortgages)?

- Yes**
- No**

If so, then what exceptions and why

Question 9: Should procedures, (in terms of enforcement of possession orders in the High Court and in the County Court) be aligned by a similar requirement for HCEOs to provide a Notice to occupiers of the date and time of eviction delivered to the premises prior to the retaking of possession?

- g) Yes**
- h) No**

Please provide your justification for a) or b)

Question 10: If it is accepted that provisions for enforcement of possession orders in the County Court and High Court be aligned, should there still be the need for judicial permission to enforce possession orders in the High Court?

Yes

No

please explain your answer

Question 11: Should the current exception regarding the absence of need for judicial permission for a Writ to issue against trespassers continue?

- Yes**
- No**
- Please explain your answer**

Question 12: Should there be any limits on the trespassers exception?;

- Yes**
- No**
- Please explain your answer**

Question 13: Should the current exception regarding the absence of need for judicial permission for a Writ to issue in mortgage cases continue?

- Yes**
- No**
- Please explain your answer**

Question 14: Should the requirement of occupiers having “sufficient notice of proceedings” be defined; and if so then how and in particular as to notice of:

(i) the proceedings seeking possession?

(ii) the original order for possession?

(iii) any order transferring enforcement to the High Court?

(iv) the last order or writ or warrant for possession or order staying or suspending such?

(v) an intent to enforce or

(vi) something else?

Any of the above – please specify which

All of the above

Other

Question 15: Should there be a need to justify transfer of enforcement of possession orders between the County Court and the High Court (i) if the procedures for possession are aligned and (ii) if they are not?

Yes

No

Please explain your answer; and give any particular considerations that should be taken into account as to whether or not transfer should take place

Question 16: What (if any) information should the court be provided with on application to transfer?

Question 17: Where a landlord wishes to transfer a case for the purposes of enforcement, should there be a specific provision that these applications are made on notice to the defendant using Form N244 or some other means?

Yes

No

If Yes:

- **Form N244**
- **Other – please specify**

Question 18: Should such an application be capable of being determined on paper without a hearing?

Yes

No

Please explain your answer

Question 19: Should there be any provision made regarding the higher costs of the HCEO over the County Court bailiff procedure?

Yes

No

If so, what provision should be made?

Question 20: Should there be any provision made regarding notice having to be given to occupiers in advance of eviction if a transfer order is made and a Writ obtained?

Yes

No

Please explain your answer

Question 21: Should any applications for stays or suspensions of the possession order (made by the tenant) be made to the (home) County Court rather than the High Court?

Yes

No

Please explain your answer

Question 22: In cases where there is a request for a warrant or writ of possession, should the applicant have to certify that all occupants have had sufficient notice of proceedings to able to apply for relief (i) if advance notice does have to be given of the date and time of eviction and (ii) if such advance notice does not have to be given?

Yes

No

Should there be exceptions (e.g. trespassers)?

Yes

No

Please explain your answer

Should the Court be able to waive such a requirement?

Yes

No

Question 23: If there is to be a need for such certification; then should it be defined?

Yes

No

If yes, then should be be defined as all or any (and if so which) of notice of:

(i) the proceedings seeking possession?

(ii) the original order for possession?

(iii) any order transferring enforcement to the High Court?

(iv) the last order or writ or warrant for possession or order staying or suspending such?

(v) an intent to enforce or

(vi) something else?

Question 24: What form should such certification take so as to give confidence that all occupiers who may be affected by a possession order are informed;

a) a statement of truth/declaration or

b) some other means?

Question 25: How will the proposed changes affect work in the enforcement sector?

Thank you for responding

Copies of the consultation paper are being sent to:

Copies of the consultation have been sent to the following individual stakeholders. However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in, or views on the subject covered by this paper.

Judicial and Legal bodies including:

- Association of District Judges
- Bar Council
- Chancery Bar Association
- High Court Masters Group
- HM Council of Circuit Judges
- Housing Law Committee
- Housing Law Practitioners Association
- Landlord Law
- Law Centres Network
- Law Commission
- Law Society
- Property Bar Association
- The Civil Justice Council
- The Designated Civil judges for Cardiff, Manchester, Birmingham, Sheffield, Newcastle, Leeds, and Central London
- Master Fontaine
- HHJ Jan Luba QC
- DJ Langley CLCJC
- Judge McGrath – President of the First-tier Tribunal
- Residential Property Tribunal (Wales)

Consumer Bodies and Stakeholder groups including:

- Advice Services Alliance
- Advice for Renters
- Advice UK
- Age UK
- Association of Residential Letting Agents (ARLA)
- Association of Residential Managing Agents
- Association of Retirement Housing Managers
- Association of Tenancy Relations Officers
- British Holiday and Home Parks Association
- British Property Federation
- BPP Law School
- Chartered Institute of Credit Management
- Chartered Institute of Housing (England)
- Chartered Institute of Housing (Wales)

- Chartered Institute of Public Finance and Accounting
- Children's Society
- Christians Against Poverty
- Church Action on Poverty
- Civil Court Users Association
- Citizens Advice
- Community Money Advice
- Credit Services Association
- Crisis
- Council for Mortgage lenders
- Equality & Human Rights Commission
- Federation of Private Residents Associations
- Housing Justice
- Generation Rent
- Greater London Authority
- Guild of Residential Landlords
- Housing Ombudsman
- Housing Justice
- Independent Park Homes Advisory Service
- Institute of Money Advisers
- HM Land Registry
- Leasehold Advisory Service
- Leasehold Knowledge Partnership
- LSLA
- Local Government Association
- MIND
- Money Advice Liaison Group
- Money Advice Service
- Money Advice Trust
- Money and Mental Health Policy Institute
- PayPlan
- National Association of Student Money Advisers
- National Consumer Council
- National Housing Federation
- National Landlords Association
- National Union of Students
- Personal Support Unit
- Property Ombudsman
- Property Litigation Association
- Property Redress Scheme
- Residential Landlords' Association
- Royal Institute of Chartered Surveyors
- Shelter
- Southern Landlords' Association
- Stepchange
- The Debt Advice Foundation

- This is Money
- Which?
- Z2K

Other Government departments and bodies: including the:

- Ministry for Housing, Communities and Local Government
- National Assembly for Wales

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.