



Guidance to the Mortgage Repossessions (Protection of Tenants etc) Act 2010



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Disclaimer

This guidance does not give an authoritative interpretation of the law; only the courts can do that. Nor does it cover all circumstances that tenants may be experiencing. Tenants who are in doubt about their legal rights or obligations should seek information from a reputable advice agency, such as Shelter, or the Citizens Advice Bureau, or seek advice from a solicitor or housing law centre. Help with all or part of the cost of legal advice may be available under the Legal Aid scheme, depending on individual personal circumstances.

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1. What is this guidance about?

1.1 Information on rights/responsibilities under the Act

This guidance document aims to inform lenders, landlords and tenants of their rights and responsibilities under the Mortgage Repossessions (Protection of Tenants etc) Act 2010 (Annex A), as well as providing an explanation of how it is envisaged that the legislation will operate. The Act and its supporting regulations come into effect on 1 October 2010 within England and Wales.

1.2 The Mortgage Possessions (Protection of Tenants etc) Act 2010

The Act provides unauthorised tenants with the right to request a delay to eviction of up to two months if their landlord (the mortgage-holder) falls into arrears with their mortgage payments and the lender (the mortgagee) commences possession proceedings. This puts an unauthorised tenant on a level playing field with 'authorised' tenants holding an assured shorthold tenancy. It is not intended to grant 'unauthorised' tenants any greater rights than they would have if they were 'authorised' tenants.

1.3 Meaning of 'unauthorised tenants'/'unauthorised tenancy'

The term 'unauthorised tenants' refers to those tenants who are renting a mortgaged residential property from a landlord who has let the property without the knowledge or consent of the lender, and in contravention of the mortgage agreement. Such a tenancy is known as an 'unauthorised tenancy' because the tenancy agreement is unenforceable against the lender.

When letting a mortgaged property on which there is a residential mortgage, the borrower should obtain consent from their lender. Tenants whose landlord has such consent are 'authorised' tenants and this legislation does not apply to them as they have comparable existing rights.

2. Who should read this guidance?

2.1 Who should read this guidance?

This guidance document should be read by:

- unauthorised tenants, who find that the property they are renting is subject to possession proceedings brought by their landlord's lender
- lenders
- landlords and landlord bodies
- housing departments of local authorities
- legal professionals and solicitors acting for lenders or tenants
- solicitors specialising in housing law for tenants and landlords and
- advice bodies

Given the audience, the guidance is necessarily broad in scope and not all parts of it will be relevant to all parties.

2.2 Extent of legislation and guidance

This guidance and the legislation do not apply to:

- tenants in any form of social housing
- authorised tenants of landlords who hold buy-to-let mortgages with consent to let as part of their mortgage terms and conditions
- authorised tenants whose landlord's lender has given consent to let by another means
- owner-occupiers
- lodgers or other occupiers under licence

3. Policy background

3.1 Rationale for legislative intervention

Prior to the Mortgage Repossessions (Protection of Tenants etc) Act 2010, unauthorised tenants could be evicted from their homes at very short notice because their landlord had fallen into arrears with their mortgage payments and the lender had started proceedings for possession of the property. The tenant had no legal rights to be heard in the proceedings as the tenant was 'unauthorised' and had no rights against the lender as the tenancy was unauthorised.

The issue was brought to the Government's attention by the housing charity sector. The sector provided many examples of eviction at short notice and the heightened distress and disruption it caused to a variety of households. Due to the hidden nature of the problem, it is not possible to give an accurate picture of how many tenants are affected. However the impact assessment supporting the legislation estimates the numbers to be 5,000 – 20,000 in a ten-year time scale between 2010

and 2020. Alternatives to legislation, such as a voluntary code of conduct were considered with partners from both the advice sector and lenders, however the shared conclusion was that legislation was the only way to address the gap in legal protection for tenants.

The purpose of the Act is to ensure that tenants of landlords whose properties are repossessed by their lenders do not suffer eviction at short notice. This has been achieved by giving tenants a statutory right to request that the date that the lender may take possession is delayed by up to two months to give the tenant time to find an alternative place to live once they are aware that a possession is likely. It does not prevent the possession but delays it. The legislation has been introduced to provide protection and give unauthorised tenants the same rights of notice as authorised tenants on an assured shorthold tenancy while causing minimum delay to lenders and borrowers.¹

In order to make these new rights effective, the tenant must have notice that a lender has, or intends to, obtain a warrant for possession. The Act requires the lender to now issue a notice (Notice of Execution of Possession Order) to all properties where it plans to enforce a possession order via a warrant.

4. The legislation explained

4.1 What does the Act achieve?

The Act tackles the problem of tenants being evicted at short notice when their home is repossessed by their landlord's lender. The Act protects those tenants whose tenancies are not binding on their landlord's lender, (defined by the Act as 'unauthorised tenants') by giving them the opportunity to request a delay of the date of possession of up to two months. The unauthorised tenant may make a request to the lender and if the lender refuses or does not respond to the request, the tenant can make an application to the court. Applications can be made at the initial possession hearing, or, if that opportunity is missed, when the lender seeks to enforce a possession order. Occupiers are already notified of possession proceedings and the new legislation requires the lender to notify the occupier if, and when, they intend to enforce the possession by seeking a warrant of possession.

The Act:

- gives unauthorised tenants the right to be heard at a possession hearing
- gives the court the power to delay the date for delivery of possession for up to two months, on application by the tenant
- requires the lender to give notice, at the property, of the proposed enforcement of the possession order. (This requirement will apply to all residential properties subject to possessions proceedings, it is not restricted to 'unauthorised' tenancies)
- gives lenders the right to dispute tenancy claims

¹ *Lender Repossession of residential property: protection of tenants* consultation: Department for Communities and Local Government, August 2009

- gives lenders the right to receive income from the tenant during the intervening period before possession
- gives tenants the right to request that the lender delay the possession for up to two months, with a right to apply to the court upon refusal
- gives courts the power to delay an order for enforcement of possession (i.e. to stay or suspend the execution of a possession order) for up to two months, on application by the tenant (provided that the tenant has asked the lender to undertake not to enforce the order for two months and such undertaking has not been given)

5. Commencing possession proceedings

5.1 When a lender commences possession proceedings

Under the terms of the mortgage agreement, lenders have the right to start possession proceedings if the landlord/mortgage-holder does not make the required mortgage payments. Although two months of arrears is legally sufficient for a lender to take action, most lenders will usually try to come to an arrangement to clear the arrears over a period of time and thus avoid taking possession proceedings. Lenders have to operate under rules set down by the Financial Services Authority contained within Mortgage Conduct of Business Rules, which state how forbearance should be managed.

However, if the lender continues to have concerns about the level of arrears the landlord/mortgage-holder is accruing, or is not satisfied with the landlord/mortgage-holder's proposals to repay them, they may take possession proceedings in the local county court.

To initiate possession proceedings, the lender will make a claim for possession of property to the county court. This involves the completion of a claim form. (N5: *Claim for Possession of Property*.) The landlord/mortgage-holder will get a copy of this, along with a date for the hearing. The claim form will include a description of the property and a description of the state of the landlord/mortgage-holder's mortgage account. It will also state the details of the lender's attempts to recover the arrears and what the lender currently requires from the proceedings – which might be possession of the property and repayment of all mortgage arrears.

The landlord/mortgage-holder will also receive a defence form N11M. (*Defence form mortgaged residential premises*), which should be completed and returned to the court within 14 days. This form gives the landlord/mortgage-holder the opportunity to explain the circumstances of why they are in arrears, and how they plan to repay the arrears.

5.2 Upon obtaining a hearing date

(a) *Tenant/Occupier Notification ('intention to repossess property')*

Within five days of receiving notification from the court of the date of the hearing, the Civil Procedure Rules² require the lender to send a notice to the property, addressed to 'the tenant or the occupier'. This notice must:

- state that a possession claim for the property has started
- show the name and address of the claimant, the defendant and the court which issued the claim form and
- give details of the hearing

(b) *Local Authority Notification*

The Civil Procedure Rules also state that the lender must also send a notice to the housing department of the local authority within which the property is located explaining that a possession claim has started relating to a mortgaged residential property. The notice should be addressed to the Head of Housing (Homelessness) Service. This notice must contain the information as above, and must state the full address of the property.

The provision covers all possession claims relating to mortgaged residential property, including buy-to-let.

6. The possession hearing

6.1 What happens at a possession hearing?

Possession hearings are usually heard by a district judge and are in private. Until commencement of the Act, the only people with a right to be heard were the lender (usually represented by their solicitor) and the landlord/mortgage-holder (and/or their legal representative). The possession hearing gives the landlord/mortgage-holder another opportunity to explain why there was a failure to pay the mortgage and to state how they plan to repay the mortgage, including any arrears, and the terms under which these payments will be made. If the lender agrees to these terms, the court will make an order accordingly. This is a suspended possession order. An alternative to repayment is to give the mortgage-holder time to sell the property – in order to pay off the mortgage debt and arrears – and avoid the process of possession. If no agreement can be reached, the court may decide that there is no alternative but to make an outright order for possession.

If the landlord/mortgage-holder fails to turn up at the hearing the judge will make a decision based on the information available. If a party does not attend the hearing, the court may make an order in their absence.

The tenant may have received and opened the notification of commencement of possession proceedings and the date of the hearing. The 2010 Act ensures that any unauthorised tenants now have a right to attend and be heard at the hearing.

² Ministry of Justice Civil Procedure Rule 55.10 on possession claims relating to mortgaged residential property.

A tenant may simply attend the hearing and ask the court to delay the date of the possession in order to enable them to arrange alternative accommodation. The Act gives the court power to delay the date for a period of up to two months. A tenant should bring with them to court any evidence of their tenancy.

6.2 Possible outcomes

There is a range of possible outcomes of a possession hearing, depending on the situation of the landlord mortgage-holder and any unauthorised tenants and the circumstances of the case:

- *Case dismissed*

This means the court has refused to make a possession order. If the claim is dismissed it no longer exists.

- *Adjournment*

This means that the hearing does not proceed at the time (for example, due to absence of the parties or the need for further information or clarification). The court may adjourn the hearing to another date. The parties may bring the case back to court unless the adjournment is conditional (e.g. if not restored in six months it is dismissed)

- *Suspended order for possession*

A suspended order is a relatively common outcome. It gives mortgage-holders a further chance to pay – and retain their property – and also gives the lender security.

The possession order is granted – the lender has a right to possession and the order fixes a date for possession – but the court has suspended possession upon compliance with particular conditions. In the case of the landlord/mortgage-holder, such conditions may be the payment of the current monthly instalment and an agreed amount towards the arrears.

However, upon a breach of those conditions, the lender is entitled to enforce the possession order immediately by applying for a warrant of possession. This is an administrative process with no hearing.

- *Outright order for possession*

This means that the lender has a right to possession after a fixed period – typically 14 or 28 days – without conditions or further process. The lender can apply for a warrant of possession to enforce the order for possession.

6.3 When the court orders the tenant to make payments

The 2010 Act enables the court to order the tenant to make payments to the lender for their occupation of the property during the period of postponement.

6.4 Income from tenant not implying or creating a tenancy agreement

The making of payments for occupation of the property to the lender for the period before possession takes effect does not imply that a tenancy agreement exists or

has existed, and any payments made are not to be regarded as evidence of any tenancy agreement and do not give rise to landlord obligations on the part of the lender.

Any property repair and maintenance obligations and liabilities remain those of the landlord as the tenancy is between the landlord and tenant. If any major repairs are required within the two month period when possession is delayed (e.g. a faulty boiler) the lender may wish to consider stepping in, when to do so would be in order to protect the value of their asset.

6.5 Agreement to remain not implying or creating a tenancy agreement

Any agreement by the lender for the tenant to remain in the property without any payment is not to be regarded as evidence of a right to occupy the property and does not give rise to landlord obligations on the part of the lender.

6.6 What constitutes a genuine tenancy?

The court will decide whether the tenant has a genuine tenancy on the basis of the evidence presented. A tenancy does not need to have a written agreement to be legally binding. Usually once a person is given exclusive possession and the owner accepts rental payments, a tenancy exists.

The following documents could be used to provide evidence of the existence of a tenancy agreement between the borrower and the tenant:

- tenancy agreement
- rent book or equivalent, with proof of payments
- bank statements (or passbook; showing regular payments in line with the terms of the agreement)
- housing benefit documentation (or LHA documents held by the local authority)
- receipts (including the name of the payer and payee, amount paid, and purpose of payment, i.e. rent)
- correspondence between the borrower and tenant indicating that a tenancy exists, or existed
- where a deposit is paid, notification of the deposit by the landlord or evidence it has been lodged with one of three Government-endorsed deposit schemes:
 - Tenancy Deposit Solutions Limited (TDSL) (www.mydeposits.co.uk)
 - The Dispute Service (TDS) (www.tds.gb.com)
 - The Deposit Protection Service (www.depositprotection.com)

6.7 What the court will and can take into account

In accordance with the Act, the court will take into account whether the tenant has complied with the terms of the tenancy or, if the tenant has committed a breach of the tenancy, what was the nature of the breach and to what extent the tenant was responsible. It is expected that anti-social behavior would be considered a breach of the tenancy agreement. The court has discretion to take into account the wider circumstances of the tenant, the landlord/mortgage-holder and the lender.

Joint tenants have equal rights and are both responsible, individually and together, for keeping to all the conditions of their tenancy agreement. Each tenant is responsible for making sure that rent and other charges are paid in full. If there is a breach of the Tenancy Agreement, either tenant can be held fully responsible.

The tenant's right to request a delay to the possession order can only be exercised in respect of the tenancy in court once. The tenant has two opportunities to make the request: at the possession hearing or by application to the court following issue of a notice of execution of possession and if the lender has refused to give an undertaking to delay the possession.

6.8 Landlords who let out a property after a possession order has been granted by the court

Sometimes a landlord will knowingly let a property that is already the subject of a possession order. Landlords may deliberately install new tenants to delay possession by colluding with the tenant to request the two month delay to possession. Courts have discretion to refuse the two month delay period if, based on evidence, they are of the view that the tenancy is not valid or has been falsely devised.

Where the court is of the view that the tenancy was taken out in good faith by the tenant, then the tenant would be entitled to a delay to possession upon receipt of the Notice of execution of possession order.

6.9 Lender appointment of Law of Property Act Receivers

A lender has the ability to appoint a Law of Property Act receiver (under the Law of Property Act 1925). A Law of Property Act receiver is someone appointed to take charge of a mortgaged property by a lender to act on behalf of the borrower whose loan is in default, either with a view to sale or to collect rental income for the lender and/or manage the property. In some instances a lender may chose to exercise this right and use a Law of Property Act receiver to collect payment from the tenants rather than receive income directly. This is acceptable although clear communication to any tenants of this course of action is recommended in order that they are clear on whom they should pay. Tenants who are unsure as to who to pay rent to (whether landlord, lender or receiver should take legal advice).

7. After the possession hearing

7.1 Enforcing the possession order (obtaining a warrant of possession)

To enforce a possession order, the lender must request that the court issues a warrant of possession using form N325: *Request for Warrant of Possession of land*.

7.2 Tenant/occupier notification

Before a lender can take possession of a property, the 2010 Act requires the lender to send to the property a *Notice of Execution of Possession Order* (see the Schedule within the regulations contained at Annex B.)

(a) *Methods of delivery of notice*

The notice can be sent to tenants or occupants by the following methods:

- first class post
- registered post
- leaving the notice at the property
- personal service by an agent of the lender

(b) *Information required on the notice*

The regulation requires the lender (or their agent) to state the following information/detail on the notice:

- the date on which they have applied, or intend to apply, to the court for a warrant of possession against the property. The possession order will only be executed after the end of 14 days beginning with the day on which the notice is given. This means that although a lender is able to apply for the warrant of possession at the same time as sending the notice, the warrant will not be able to take effect until the prescribed period of 14 days has expired. The lender does not have to wait for the prescribed period to end before applying for the warrant.
- the name, address, and telephone number of the court at which they have applied, or intend to apply, for a warrant of possession against the property
- the name of the tenant (if known) on whom the notice is served (or “tenant/occupier” if the tenant’s name is not known) and the address of the property
- the name, telephone number and full address of the lender (or their agent) where enquires about the notice can be made. (The agent should always indicate the name of the lender (and provide their details), on whose behalf the agent is acting.)
- the signature of the lender or lender’s agent and the date of the signing

(c) *Failure to supply the information required on the notice*

Section 2 of the Act states that the “mortgagee’s notice of execution of the possession order must be in the form set out in the Schedule to the Regulations.”

At the time of application for the warrant of possession, the lender will need to have evidence of the tenant having been informed of the application via the use of the appropriate form. If a lender fails to use the appropriate form, as prescribed, or fails to include the information required on the form, the court will not grant the warrant for possession.

Where the lender makes a request for the issue of a warrant of possession using the Pcol system (electronic issue of proceedings) the lender must file a certificate of service indicating that the notice has been served. Where the lender uses N325 to request the warrant, the box on the form certifying that the regulations have been complied with must be completed.

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<http://www.opsi.gov.uk/advice/crown-copyright/copyright-guidance/reproduction-of-legislation>

(d) *Timescale*

Lenders should be aware that the possession order will only be executed by warrant after the end of the 14 days beginning with the day on which the notice is given. The application for the warrant can run concurrently with the *Notice of Execution of Possession Order* and a lender does not have to wait for the prescribed period to expire before applying for the warrant. However any warrant will not come into effect until after the 14 day period of notice.

Where lenders have applied to the court for a warrant when the notice is sent, tenants will have minimal time in which to act and request the two month delay. This is the second opportunity that the legislation provides for and is intended to be a second chance for tenants who may have missed the opportunity to attend the initial possession hearing.

The tenant can request a delay of the lender. There is no obligation on behalf of lenders to grant this request. However if the tenancy was taken out in good faith the lender would need to be very cautious about not agreeing to delay the possession, given that the tenant has the right to apply to the court should the lender refuse the request or not respond.

If the lender agrees to delay possession, the tenant should request that the lender send written confirmation of this to the tenant. It is important that written confirmation is obtained since this is the only evidence the tenant will have to show that they have a (temporary) right to occupy the property.

If a tenant has already received a postponement of possession they cannot request another delay.

If tenants do not ask for a postponement, the lender may go ahead and obtain possession of the property on the date fixed.

7.3 Applicability to all possession cases

The requirement for lenders to send the *Notice of Execution of Possession Order* is applicable to all mortgaged dwelling houses where a possession order is to be enforced, not just tenanted properties. In the majority of cases this will be owner-occupier properties.

7.4 Tenant right to appeal the decision of the lender to court

If the lender does not give an undertaking to postpone seeking the warrant, and the tenant has not previously requested the delay at the original possession hearing, the tenant may apply to the court for a postponement of the enforcement of the order.

Tenants in these circumstances would not apply to appeal the order for possession but would be applying to the court so that the warrant for possession, which executes the possession order, is postponed for up to two months. Tenants cannot apply to the court for a reconsideration of the validity of the original possession order.

The tenants application should be made on an *Application Notice* form N244 and should be submitted as soon as possible in order to tenants the maximum amount of time should the application be refused.

The name and address of the court to which the tenant should apply is stated on the notice. Information on fees for all court applications is available at:

<http://www.hmcourts-service.gov.uk/infoabout/fees/index.htm>.

8. The application hearing

8.1 What happens at an application hearing?

In cases where the lender has refused permission to postpone the possession of the property (or has failed to acknowledge or reply to the tenant's request for postponement) and the tenant has applied to the court for a postponement of the execution of the warrant of possession, the court will fix a hearing so that it can consider the application. The claimant and the landlord/mortgage-holder will be notified of the date of the hearing.

8.2 Possible outcomes

- *Application is adjourned*

This means that the hearing does not proceed (for example, due to non attendance of parties or the need for further information or clarification). The court will adjourn the hearing and may give a new date. Note: the court may make an order in the absence of the parties.

- *Application dismissed*

If the tenant's application to have the date of execution of the warrant for possession postponed has been dismissed, for example because the tenant's application has been deemed invalid, the date fixed for possession of the property

stands. Accordingly the date by which any tenants should have vacated the property remains valid.

- *Execution of the warrant for possession is postponed*

This means that, following an application by the tenant, the date for execution of the warrant for possession of the property is postponed for a specified period of time set by the court and a further date for execution will be fixed. Upon the date specified in the warrant, the lender will take possession of the property. Any tenants or residents should have vacated the property by that date and found alternative accommodation.

9. Related and relevant legislation

9.1 Other legislation

- Law of Property Act 1925
- Administration of Justice Act 1970
- Administration of Justice Act 1973
- Rent Act 1977
- Housing Act 1988
- Housing Act 1996
- Data Protection Act 1998

9.2 Data protection issues

Under the Data Protection Act 1998 the lender is constrained from discussing the individual details of a landlord's mortgage with tenants. However, if a tenant makes contact with the lender or the agent, as a result of receiving the notice of the possession hearing or the notice of execution of possession order, the lender can confirm the details of the possession hearing, and the tenant can make himself known to the lender (or agent). The lender can then consider the tenant's status and a course of action and consider any request for postponement. Data protection rules do not prevent this level of communication between lender and tenant.

The Information Commissioner's Office has confirmed that lenders are able to disclose some information to tenants (such as whether they have appointed a receiver and when a repossession order may be enforced). Lenders should not disclose more details than are necessary to enable tenants to obtain advice and to understand their rights and obligations.

10. Questions and answers

(Some of these points are covered in the guidance but are repeated here for ease of reference.)

10.1 How can a tenant check if their landlord has obtained the necessary consent to let?

Professional letting agents should request evidence from a landlord that the property has received consent to let from the landlord's lender. Letting agents should not market a property for letting if they have not satisfied themselves that this has been obtained. The tenant can request this assurance from their landlord.

10.2 What if the tenancy agreement pre-dates the mortgage agreement?

If a tenant was in the property before the mortgage was taken out the tenancy will usually be binding on the lender. This is a complicated area of law. Tenants who find themselves in this situation should immediately take independent legal advice from a local housing law centre.

10.3. Does the tenant always get two months delay?

Any postponement of possession must not exceed two months but it does not have to be two months, for example if the tenant feels that one month is adequate for their circumstances and there is a mutual agreement to this with the lender. The court will make the final determination if necessary. Tenants may not get any delay if the court does not allow their application.

10.4 Deposit arrangements

If the tenancy started on, or after, 6 April 2007, the landlord should have protected the deposit using the Deposit Protection Scheme. The tenant should have been notified of this by the scheme provider and informed of how to recover their deposit.

The deposit belongs to the tenant and should be returned to the tenant unless the landlord can show that they have had to deduct money because of the condition of the property. The tenant can ask to be shown receipts or estimates for items that have been deducted from their deposit. The tenant should take up any issues connected with the deposit with their landlord or, if this is not possible, the deposit scheme provider. There is no role for the lender.

10.5 Can the Notice of Execution of Possession Order be served before an absolute order becomes effective?

Yes. The Notice of Execution of the Possession Order can be served so it is running concurrently with an absolute possession order. To minimise delay lenders could serve the notice before the possession order is effective. In the majority of cases therefore there would not be any additional time to add to the possession process, as the recipients of the notice will be owner-occupiers or authorised

tenants, in both cases known to the lender. The only delay would occur if an unauthorised tenant made themselves known and came forward to the lender. The lender would then need to engage with the tenant as per the legislation.

10.6 When exactly do the legislation and regulations take effect?

The Mortgage Repossessions (Protection of Tenants etc) Act 2010 and The Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010 both come into effect on 1 October 2010.

Where a lender has obtained a possession order under the old rules, but seeks a warrant of possession on or after 1 October, it will have to serve notice in accordance with section 2 of the Act and the new regulation on the execution of possession orders.

10.7 How does the legislation work where there is more than one tenant?

If there are joint tenants, there would still be only one period of delay.

10.8 Compatibility with FSA *Mortgage Conduct of Business (MCOB)*

The Financial Services Authority (FSA) imposes a number of requirements on lenders repossessing a property which are set out in the *Mortgages and Home Finance: Conduct of Business (MCOB) Rules*. This includes the requirement that lenders must market a repossessed property as soon as possible and must obtain the best price that might reasonably be paid.

In guidance supporting this rule, the FSA recognises that a balance has to be struck between the need to sell the property as soon as possible, to reduce or remove the outstanding debt, and other factors which may prompt the delay of the sale, which may include, for example, things necessary to achieve the optimal selling price.

Whilst much will depend on the facts of each case, lenders giving tenants reasonable notice to leave the property will not necessarily conflict with the current requirements under MCOB which imply to delay a sale would be detrimental to the borrower.

10.9 What happens if a landlord hands in the keys?

It is feasible, although likely to be rare, for a landlord to hand in the keys to a property – a so called ‘voluntary possession’ - whilst tenants are still in occupation. Lenders are likely to still request a possession order and apply for a warrant to enforce the possession in order to be sure that they have legal vacant possession. In this instance therefore the lender will need to send the notice of execution of possession order to comply with the legislation. Any tenants will be captured this way.

10.10 What happens if a tenant is in receipt of Housing Benefit which has been paid direct to the landlord?

If the court delays possession for a tenant who is in receipt of housing benefit, which is paid directly to the landlord and the court has made an order that the rental payments must be paid to the lender, then the tenant will need to apply to their local authority to have their housing benefit/local housing allowance payments directed to the lender for the period that possession is postponed. The lender may need to accept some delay in receipt of payments whilst this is administered.

10.11 Can the tenant request another delay to possession if their landlord clears arrears and then falls into arrears again?

A landlord may receive a suspended possession order and at the same time the tenant may have requested and received a delay to possession. If the landlord complies with the terms of the suspended possession order in full then the order may fall away. If this happens quickly the tenant, despite having previously received a delay to possession, may decide to remain in the property now that the possession will not be enforced. If subsequently the landlord falls into arrears again, the lender will have to bring new proceedings and seek a new possession order. In this situation it is our view that there is nothing to prevent a tenant requesting a delay to possession again as this is a new possession process and that it would be within the jurisdiction of the court to allow this. This is ultimately a matter for the courts to decide.

Annex A: Mortgage Repossessions (Protection of Tenants etc.) Act 2010



Mortgage Repossessions (Protection of Tenants etc) Act 2010

2010 CHAPTER 19

An Act to protect persons whose tenancies are not binding on mortgagees and to require mortgagees to give notice of the proposed execution of possession orders. [8th April 2010]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Power of court to postpone giving of possession

- (1) This section applies if—
 - (a) the mortgagee under a mortgage of land which consists of or includes a dwelling-house brings an action (other than an action for foreclosure) in which the mortgagee claims possession of the mortgaged property, and
 - (b) there is an unauthorised tenancy of all or part of the property.
- (2) When making an order for delivery of possession of the property, the court may, on the application of the tenant, postpone the date for delivery of possession for a period not exceeding two months.
- (3) Subsection (4) applies where an order for delivery of possession of the property has been made but not executed.
- (4) The court may, on the application of the tenant (“the applicant”), stay or suspend execution of the order for a period not exceeding two months if—
 - (a) the court did not exercise its powers under subsection (2) when making the order or, if it did, the applicant was not the tenant when it exercised those powers,

- (b) the applicant has asked the mortgagee to give an undertaking in writing not to enforce the order for two months beginning with the date the undertaking is given, and
 - (c) the mortgagee has not given such an undertaking.
- (5) When considering whether to exercise its powers under this section, the court must have regard to—
 - (a) the circumstances of the tenant, and
 - (b) if there is an outstanding breach by the tenant of a term of the unauthorised tenancy—
 - (i) the nature of that breach, and
 - (ii) whether the tenant might reasonably be expected to have avoided breaching that term or to have remedied the breach.
- (6) The court may make any postponement, stay or suspension under this section conditional on the making of payments to the mortgagee in respect of the occupation of the property (or part of the property) during the period of the postponement, stay or suspension.
- (7) The making of any payment pursuant to—
 - (a) a condition of an undertaking of a kind mentioned in subsection (4)(c), or
 - (b) a condition imposed by virtue of subsection (6),is not to be regarded as creating (or as evidence of the creation of) any tenancy or other right to occupy the property.
- (8) For the purposes of this section there is an “unauthorised tenancy” if—
 - (a) an agreement has been made which, as between the parties to it (or their successors in title), is or gives rise to—
 - (i) an assured tenancy (within the meaning of the Housing Act 1988), or
 - (ii) a protected or statutory tenancy (within the meaning of the Rent Act 1977), and
 - (b) the mortgagee’s interest in the property is not subject to the tenancy.
- (9) In this section “the tenant”, in relation to an unauthorised tenancy, means the person who is, as between the parties to the agreement in question (or their successors in title), the tenant under the unauthorised tenancy (or, if there is more than one tenant, any of them).

2 Notice of execution of possession order

- (1) This section applies where the mortgagee under a mortgage of land which consists of or includes a dwelling-house has obtained an order for possession of the mortgaged property.
- (2) The order may be executed—
 - (a) only if the mortgagee gives notice at the property of any prescribed step taken for the purpose of executing the order, and
 - (b) only after the end of a prescribed period beginning with the day on which such notice is given.
- (3) “Prescribed” means prescribed by regulations made by the Secretary of State.

- (4) Regulations made by the Secretary of State may prescribe the form of notices and the way in which they must be given.
- (5) The regulations may make supplementary, incidental, transitional or saving provision.
- (6) Regulations under this section may be made only with the consent of the Lord Chancellor.
- (7) Regulations under this section are to be made by statutory instrument.
- (8) A statutory instrument containing regulations made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

3 Interpretation

- (1) This section applies for the purposes of this Act.
- (2) “Dwelling-house” includes any building, or part of a building, that is used as a dwelling.
- (3) The fact that part of the premises comprised in a dwelling-house is used as a shop or office, or for other business, trade or professional purposes, does not prevent the dwelling-house from being a dwelling-house for the purposes of this Act.
- (4) “Mortgage” includes a charge, and “mortgagee” is to be read accordingly.
- (5) “Mortgagee” includes any person deriving title under the original mortgagee.
- (6) “Order” includes a judgment, and references to the making of an order are to be read accordingly.

4 Commencement, extent and short title

- (1) This Act (except this section) comes into force on such day as the Secretary of State may by order made by statutory instrument appoint (and different days may be appointed for different purposes).
- (2) An order under subsection (1) may make transitional or saving provision.
- (3) This Act extends to England and Wales only.
- (4) This Act may be cited as the Mortgage Repossessions (Protection of Tenants etc) Act 2010.

Annex B: The Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010

2010 No. 1809

LANDLORD AND TENANT, ENGLAND AND WALES

**The Dwelling Houses (Execution of Possession Orders by
Mortgagees) Regulations 2010**

<i>Made</i> - - - -	<i>13th July 2010</i>
<i>Laid before Parliament</i>	<i>19th July 2010</i>
<i>Coming into force</i> - -	<i>1st October 2010</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) to (5) of the Mortgage Repossessions (Protection of Tenants etc) Act 2010(a) (“the Act”).

The Lord Chancellor has consented to the making of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010 and come into force on 1st October 2010.

Notice of execution of possession order: prescribed step and prescribed period

2. The prescribed step referred to in section 2(2)(a) of the Act is the mortgagee making an application to the court for a warrant for possession of the property.

3. The prescribed period referred to in section 2(2)(b) of the Act is fourteen days.

Prescribed form of notice of execution of possession order

4. The mortgagee’s notice of execution of the possession order must be in the form set out in the Schedule to these Regulations.

Manner of giving notice

5.—(1) The mortgagee’s notice under regulation 4 may be given in any of the following ways—

- (a) by sending the notice to the property by first class post or registered post in an envelope addressed—
 - (i) to the tenant by name, or
 - (ii) if the tenant’s name is not known, to “The Tenant or Occupier”;

- a housing aid centre;
- a Law Centre;
- a solicitor.

2. The law gives certain tenants the right to apply to the Lender to ask it not to enforce the order for a period of two months. You should contact the Lender or its Agent on the number given to ask for this delay if you require it. This is to give you time to find somewhere else to live. If you are unsure whether you may qualify, you should seek advice immediately from one of the organisations listed, or a similar organisation. If the Lender agrees to your request, they must confirm this to you in writing. If the Lender refuses your request, or if you receive no reply, you may be able to make an application to court for a similar delay. The Lender may make any agreement with you conditional on you continuing to pay to live at the property. An application to the Lender or to the court should be accompanied by any evidence you have to prove the existence of your tenancy.

3. This notice is not directed at owner occupiers. If you pay a mortgage to live at the property, you should urgently seek advice on your position as you have different rights.

4. If you do not ask for a delay, the Lender can go ahead to obtain possession of this property. Although the warrant for possession cannot be executed earlier than 14 days after the date on which the Lender sent you this notice **you must act quickly if you are seeking the delay, otherwise you may run out of time.**

Served on:.....
 (Insert address of the property. Address to: “Tenant/Occupier” or name of tenant(s) if known).

Served by:..... (“the Lender”)

Tel:.....

Address:.....

(Insert full name of Lender, telephone number and address where enquiries about this notice can be made.)

If served by Lender’s Agent:

Served on:.....
 (Insert address of the property. Address to: “Tenant/Occupier” or name of tenant(s) if known).

Served by:..... (“the Lender’s Agent”)

On behalf of:..... (“the Lender”)

Tel:.....

Address:.....

(Insert full name of Lender’s Agent, telephone number and address where enquiries about this notice can be made.)

Signed..... Date.....

To be signed and dated by the Lender or the Lender's Agent

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Mortgage Repossessions (Protection of Tenants etc) Act 2010 ("the Act") empowers the Secretary of State to make Regulations providing for the giving of notice of execution of possession orders by mortgagees in relation to dwelling houses. These Regulations, which extend to England and Wales, provide for a notice of execution of possession order to be given at all residential properties where the mortgage lender ("the mortgagee") is seeking to execute a possession order against the borrower.

Regulation 2 specifies that the prescribed step for the purposes of section 2(2)(a) of the Act is the making, by the mortgagee, of an application to the court for a warrant for possession of the mortgaged dwelling house. Regulation 3 prescribes a period of fourteen days after the mortgagee has given notice of this step at the premises, during which the possession order may not be executed (see section 2(2)(b) of the Act).

Regulation 4 introduces the Schedule to the Regulations which prescribes a form for the purposes of giving notice at the property. Regulation 5 prescribes acceptable methods of giving the notice of execution of the possession order.

An impact assessment has been prepared in respect of the Act. It has been deposited in the Library of each House of Parliament and is available from the Department for Communities and Local Government, Eland House, Bressenden Place, London SW1E 5DU or email kirstin.blagden@communities.gsi.gov.uk.

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Annex C: Changes to the Civil Procedure Rules

Part 55 Possession Claims and CCR O.26 Warrants of Execution, Delivery and Possession

Amendments are made to allow unauthorised tenants living in a mortgaged property to apply to the court for postponement of the date of delivery of possession. Amendments are also made requiring a lender to notify all tenants/occupiers of a property before taking steps to enforce a possession order.

An unauthorised tenant may then apply to the lender for a delay in execution of the warrant of possession to allow the tenant time to find another home. If the lender does not agree to an extension of time the unauthorised tenant may apply to the court for a decision. Note: Form N325 is amended to support this change.

Annex D: Relevant court forms

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Form N11M: Defence Claim form for Mortgaged Residential Premises)	33-38
Form N325: Warrant for Possession of Land	39
Form N244: Application Notice	40-42



Claim form for possession of property

In the

Claim No.

Claimant

(name(s) and address(es))



Defendant(s)

(name(s) and address(es))

The claimant is claiming possession of :

which (includes) (does not include) residential property. Full particulars of the claim are attached. (The claimant is also making a claim for money).

This claim will be heard on: _____ 20 _____ at _____ am/pm
at _____

At the hearing

- The court will consider whether or not you must leave the property and, if so, when.
- It will take into account information the claimant provides and any you provide.

What you should do

- Get help and advice immediately from a solicitor or an advice agency.
- Help yourself and the court by **filling in the defence form** and **coming to the hearing** to make sure the court knows all the facts.

Defendant's name and address for service

Court fee	£
Solicitor's costs	£
Total amount	£

Issue date	
------------	--

Claim No.

Grounds for possession

The claim for possession is made on the following ground(s):

- rent arrears
- other breach of tenancy
- forfeiture of the lease
- mortgage arrears
- other breach of the mortgage
- trespass
- other (please specify) _____

Anti-social behaviour

The claimant is alleging:

- actual or threatened anti-social behaviour
- actual or threatened use of the property for unlawful purposes

Is the claimant claiming demotion of tenancy? Yes No

Is the claimant claiming an order suspending the right to buy? Yes No

See full details in the attached particulars of claim

Does, or will, the claim include any issues under the Human Rights Act 1998? Yes No

Statement of Truth

*(I believe)(The claimant believes) that the facts stated in this claim form are true.

* I am duly authorised by the claimant to sign this statement.

signed _____ date _____

*(Claimant)(Litigation friend (where the claimant is a child or a patient))(Claimant's solicitor)

**delete as appropriate*

Full name _____

Name of claimant's solicitor's firm _____

position or office held _____

(if signing on behalf of firm or company)

Claimant's or claimant's solicitor's address to which documents or payments should be sent if different from overleaf.

Postcode

if applicable

Ref. no.	
fax no.	
DX no.	
e-mail	
Tel. no.	

Defence form

(mortgaged residential premises)

Name of court	Claim No.
Name of Claimant	
Name of Defendant	
Date of hearing	

Personal details

1. Please give your:

Title Mr Mrs Miss Ms Other

First name(s) in full

Last name

Date of birth

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

Address *(if different from the address on the claim form)*

Postcode

Disputing the claim

2. Do you agree with what is said about the property and the mortgage agreement in the particulars of claim? Yes No

If No, set out your reasons below:

3. Do you agree that there are arrears of mortgage repayments as stated in the particulars of claim? Yes No

If No, state how much the arrears are: £ _____ None

4. If the particulars of claim give any reasons for possession other than arrears of mortgage repayments, do you agree with what is said? Yes No

If No, give details below:

(Only answer these questions if the loan secured by the mortgage (or part of it) is a regulated consumer credit agreement)

5. Do you want the court to consider whether or not the terms of your original loan agreement are fair? Yes No
6. Do you intend to apply to the court for an order changing the terms of your loan agreement (a time order)? Yes No

Arrears

7. Have you paid any money to your mortgage lender since the claim was issued? Yes No

If Yes, state how much you have paid and when:

£ _____ date _____

8. Have you come to any agreement with your mortgage lender about repaying the arrears since the claim was issued? Yes No

I have agreed to pay £ _____ each (week)(month).

9. If you have not reached an agreement with your mortgage lender, do you want the court to consider allowing you to pay the arrears by instalments? Yes No

10. How much can you afford to pay in addition to the current instalments? £ _____ per (week)(month)

About yourself

State benefits

11. Are you receiving Income Support? Yes No

12. Have you applied for Income Support? Yes No

If Yes, when did you apply? _____

13. Does the Department of Social Security pay your mortgage interest? Yes No

Dependants (people you look after financially)

14. Have you any dependant children? Yes No

If Yes, give the number in each age group below:

under 11 11-15 16-17 18 and over

Other dependants

15. Give details of any other dependants for whom you are financially responsible:

Other residents

16. Give details of any other people living at the premises for whom you are not financially responsible:

Money you receive

		Weekly	Monthly
17. Usual take-home pay or income if self-employed <i>including overtime, commission, bonuses</i>	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Job Seekers allowance	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Pension	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Child benefit	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Other benefits and allowances	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Others living in my home give me	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
I am paid maintenance for myself (or children) of	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Other income	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Total income	£ _____	<input type="checkbox"/>	<input type="checkbox"/>

Bank accounts and savings

18. Do you have a current bank or building society account? Yes No

If Yes, is it

in credit? If so, by how much? £ _____

overdrawn? If so, by how much? £ _____

19. Do you have a savings or deposit account? Yes No

If Yes, what is the balance? £ _____

Money you pay out

20. Do you have to pay any court orders or fines? Yes No

Court	Claim/Case number	Balance owing	Instalments paid
Total instalments paid £			per month

21. Give details if you are in arrears with any of the court payments or fines:

22. Do you have any loan or credit debts? Yes No

Loan/credit from	Balance owing	Instalments paid
Total instalments paid £		per month

23. Give details if you are in arrears with any loan / credit repayments:

Regular expenses*(Do not include any payments made by other members of the household out of their own income)*

24. What regular expenses do you have?
(List below)

		Weekly	Monthly
Council tax	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Gas	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Electricity	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Water charges	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
TV rental & licence	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Telephone	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Credit repayments	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Mail order	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Housekeeping, food, school meals	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Travelling expenses	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Clothing	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Maintenance payments	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Other mortgages	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Other	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Total expenses	£ _____	<input type="checkbox"/>	<input type="checkbox"/>

Priority debts

25. This section is for arrears only. Do not include regular expenses listed at Question 24.

		Weekly	Monthly
Council tax arrears	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Water charges arrears	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Gas account	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Electricity account	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Maintenance arrears	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
Others (give details below)			
	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
	£ _____	<input type="checkbox"/>	<input type="checkbox"/>
	£ _____	<input type="checkbox"/>	<input type="checkbox"/>

26. If an order for possession were to be made, would you have somewhere else to live? Yes No

If Yes, say when you would be able to move in: _____

27. Give details of any events or circumstances which have led to your being in arrears with your mortgage (for example divorce, separation, redundancy, bereavement, illness, bankruptcy). If you believe you would suffer exceptional hardship by being ordered to leave the property immediately, say why.

Statement of Truth

*(I believe)(The defendant believes) that the facts stated in this defence form are true.

* I am duly authorised by the defendant to sign this statement.

signed _____ date _____

*(Defendant)(Litigation friend(where defendant is a child or a patient))(Defendant's solicitor)

**delete as appropriate*

Full name _____

Name of defendant's solicitor's firm _____

position or office held _____

(if signing on behalf of firm or company)

Request for Warrant of Possession of Land

To be completed and signed by the claimant or his solicitor and sent to the court with the appropriate fee

1. Claimant's name and address

2. Name and address for service and payment (if different from above)

Ref/Tel No.

3. Defendant's name and address

4. Warrant details

(A) Balance due at the date of this request

(B) Amount for which warrant to issue

Issue fee

Solicitor's costs

Land Registry fee

TOTAL

If the amount of the warrant at (B) is less than the balance at (A), the sum due after the warrant is paid will be

5. Property/land details

Date of judgment/order

Date of possession

Describe the land (as set out in the particulars of claim)

In the

County Court

Claim No.

For court use only

Warrant No.

Issue date:

Warrant applied for at o'clock

Foreign court code/name (execution only):

I certify that

(1) the defendant has not vacated the land as ordered (*and that the whole or part of any instalments due under the judgment or order have not been paid) (†and the balance now due is as shown)

(2) notice has been given in accordance with The Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010.

Signed

Claimant (Claimant's solicitor)

Dated

* delete unless defendant is in arrears with the suspended possession order or judgment

† delete unless warrant is to issue for execution also

IMPORTANT

You must inform the court immediately of any payments you receive after you have sent this request to the court

If there is more than one defendant and you are not proceeding against all of them, enter here the name(s) of the defendant(s) you wish to proceed against

You should provide a contact number so that the bailiff can speak to you if he/she needs to:

Daytime phone number:

Evening phone number (if possible):

Contact name (where appropriate):

Defendant's phone number (if known):

If you have any other information which may help the bailiff or if you have reason to believe that the bailiff may encounter any difficulties you should write it below.

Application notice

For help in completing this form please read the notes for guidance form N244Notes.

Name of court	
Claim no.	
Warrant no. (if applicable)	
Claimant's name (including ref.)	
Defendant's name (including ref.)	
Date	

1. What is your name or, if you are a solicitor, the name of your firm?

2. Are you a Claimant Defendant Solicitor
 Other (*please specify*)

If you are a solicitor whom do you represent?

3. What order are you asking the court to make and why?

4. Have you attached a draft of the order you are applying for? Yes No

5. How do you want to have this application dealt with? at a hearing without a hearing
 at a telephone hearing

6. How long do you think the hearing will last? Hours Minutes
Is this time estimate agreed by all parties? Yes No

7. Give details of any fixed trial date or period

8. What level of Judge does your hearing need?

9. Who should be served with this application?

10. What information will you be relying on, in support of your application?

- the attached witness statement
- the statement of case
- the evidence set out in the box below

If necessary, please continue on a separate sheet.

Statement of Truth

(I believe) (The applicant believes) that the facts stated in this section (and any continuation sheets) are true.

Signed _____ Dated _____
Applicant('s Solicitor)('s litigation friend)

Full name _____

Name of applicant's solicitor's firm _____

Position or office held _____
(if signing on behalf of firm or company)

11. Signature and address details

Signed _____ Dated _____
Applicant('s Solicitor)('s litigation friend)

Position or office held _____
(if signing on behalf of firm or company)

Applicant's address to which documents about this application should be sent

Postcode <table border="1" style="display: inline-table;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> <table border="1" style="display: inline-table; margin-left: 20px;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>										

If applicable	
Phone no.	
Fax no.	
DX no.	
Ref no.	

E-mail address	
----------------	--

Application Notice (Form N244) – Notes for Guidance

Court Staff cannot give legal advice. If you need information or advice on a legal problem you can contact Community Legal Service Direct on 0845 345 4 345 or www.clsdirect.org.uk, or a Citizens Advice Bureau. Details of your local offices and contact numbers are available via their website www.citizensadvice.org.uk

Paying the court fee

A court fee is payable depending on the type of application you are making. For example:

- To apply for judgment to be set aside
- To apply to vary a judgment or suspend enforcement
- To apply for a summons or order for a witness to attend
- To apply by consent, or without service of the application notice, for a judgment or order.

No fee is payable for an application by consent for an adjournment of a hearing if it is received by the court at least 14 days before the date of the hearing.

What if I cannot afford the fee?

If you show that a payment of a court fee would involve undue hardship to you, you may be eligible for a fee concession.

For further information, or to apply for a fee concession, ask court staff for a copy of the combined booklet and form EX160A - Court fees - Do I have to pay them? This is also available from any county court office, or a copy of the leaflet can be downloaded from our website www.hmcourts-service.gov.uk

Completing the form

Question 3

Set out what order you are applying for and why; e.g. to adjourn the hearing because..., to set aside a judgment against me because... etc.

Question 5

Most applications will require a hearing and you will be expected to attend. The court will allocate a hearing date and time for the application. Please indicate in a covering letter any dates that you are unavailable within the next six weeks.

The court will only deal with the application 'without a hearing' in the following circumstances.

- Where all the parties agree to the terms of the order being asked for;
- Where all the parties agree that the court should deal with the application without a hearing, or
- Where the court does not consider that a hearing would be appropriate.

Telephone hearings are only available in applications where at least one of the parties involved in the case is legally represented. Not all applications will be suitable for a telephone hearing and the court may refuse your request.

Question 6

If you do not know how long the hearing will take do not guess but leave these boxes blank.

Question 7

If your case has already been allocated a hearing date or trial period please insert details of those dates in the box.

Question 8

If your case is being heard in the High Court or a District Registry please indicate whether it is to be dealt with by a Master, District Judge or Judge.

Question 9

Please indicate in the box provided who you want the court to send a copy of the application to.

Question 10

In this section please set out the information you want the court to take account of in support of the application you are making.

If you wish to rely on:

- **a witness statement**, tick the first box and attach the statement to the application notice. A witness statement form is available on request from the court office.
- **a statement of case**, tick the second box if you intend to rely on your particulars of claim or defence in support of your application.
- **written evidence** on this form, tick the third box and enter details in the space provided. You must also complete the statement of truth. Proceedings for contempt of court may be brought against a person who signs a statement of truth without an honest belief in its truth.

Question 11

The application must be signed and include your current address and contact details. If you agree that the court and the other parties may communicate with you by Document Exchange, telephone, facsimile or email, complete the details

Before returning your form to the court

Have you:

- signed the form on page 2,
- enclosed the correct fee or an application for fee concession,
- made sufficient copies of your application and supporting documentation. You will need to submit one copy for each party to be served and one copy for the court.

Annex E: Lenders step-by-step checklist

1. Compliance with Mortgage Pre Action Protocol

Possession proceedings:

2. Completion of claim form N5: *Claim for Possession of Property*.
3. Service of documents on mortgage-holder (landlord) (including defence form).
4. Defendant should complete and return defence form to the court within 14 days.)
5. Notice of commencement of possession proceedings sent to tenant/occupier (within five days of the lender receiving hearing date).
6. Notice of commencement of possession proceedings served on the Head of Housing (Homelessness) Service of the local authority within which the property is located.
(This notice must contain the same information in the notice to the tenant/occupier and must state the full address of the property).

[Possession hearing takes place].

Enforcement proceedings:

7. Completion of claim form N325: *Request for Warrant of Possession of land form*.
8. *Notice of Execution of Possession Order* sent to tenant/occupier allowing 14 days between service of the notice and the date of execution of the warrant of possession. (NB: if the online request form is used the lender can certify the notice of Execution has been served, if a paper request the lender will need to file a certificate of service (the legal requirement to send the notice is applicable to all properties whether owner occupied, containing authorised or unauthorised tenants.)

Annex F: Contact details (implementation partners and advice agencies)

Council of Mortgage Lenders

The Council of Mortgage Lenders is the trade association for the mortgage lending industry, and their members account for around 94 per cent of UK residential mortgage lending. CML are not able to answer consumer or non-member enquiries.

For information on mortgages and the home buying process, please see:

<http://www.cml.org.uk/cml/consumers>

For other advice please see:

<http://www.cml.org.uk/cml/consumers/conslinks> where you can find contact details for organisations that may be able to help.

The Building Societies Association

The Building Societies Association (BSA) is a trade association, representing mutual lenders and deposit takers in the UK including all 49 UK building societies.

<http://www.bsa.org.uk/consumer/index.htm>

Community Legal Advice

Community Legal Advice is a free and confidential advice service paid for by legal aid. Telephone: 0845 345 4 345.

Community Legal Advice centres and networks are opening through England and Wales. See:

<http://www.communitylegaladvice.org.uk/en/directory/directorysearch.jsp>

Community Legal Advice is also available on digital interactive television.

<http://www.communitylegaladvice.org.uk/en/about/website.jsp>

Citizen's Advice Bureaux

Citizens Advice provides free, confidential and independent advice from over 3,000 locations including bureaux, GP surgeries, hospitals, colleges, prisons and courts. Advice is available face-to-face and by telephone; and some also provide email advice.

<http://www.citizensadvice.org.uk/index/getadvice.htm>

Shelter

Shelter has a free housing advice helpline available on 0808 800 4444 (calls are free from UK landlines and main mobile networks).

<http://england.shelter.org.uk/>

DirectGov

<http://www.direct.gov.uk/en/HomeAndCommunity/index.htm>

Communities and Local Government – for policy background to the legislation

Andrew Gough: 0303 444 3772 andrew.gough@communities.gsi.gov.uk
Kirstin Blagden: 0303 444 3761 kirstin.blagden@communities.gsi.gov.uk

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