



# Civil Trespass and Possession Orders

## What is civil trespass?

Trespass means encroachment onto or occupation of land without a legal right to be there: either because you do not own or lease the land, do not have permission or 'licence' to use it or there is no existing right of way.

When protesters occupy a building or land, landowners can lawfully use reasonable force to remove trespassers in an emergency (for example, to prevent damage to the property or land, or protect people's safety).

If, however, they use violence, landowners risk committing an assault or breaching **Section 6 of the Criminal Law Act 1977**, which prohibits the use of violence to secure entry onto 'premises' (which includes buildings, land around it or a site with a number of buildings).

The fact that people are trespassing does not give an automatic right for landowners to use force. Section 6 explicitly says "the fact that a person has any interest in or right to possession or occupation of any premises shall not... constitute lawful authority for the use or threat of violence."

## What are possession orders?

Rather than use reasonable force, landowners, leaseholders or holders of a licence to use land or property are more likely to therefore apply to the civil courts for a 'possession order'. This ensures the claimant is granted possession (exclusive physical control). Claimants can include local authorities, which

may claim for possession of public spaces if this right is implicit in its statutory management powers.

A possession order may cover land occupied by trespassing protesters or a larger area that includes it – for example, it may cover not only a small area of woodland where protesters are camped, but the whole forest. In one case, a possession order was granted for the entire University of Essex campus, although students had occupied only some buildings.

‘Serving a claim’ means delivering the possession order to other parties named within it. When a claim is brought against ‘persons unknown’, it must be served by attaching a copy to the main door of the building or to a fence post or stake on an area of land. Documents must be ‘clearly visible’ and so are usually placed in a transparent envelope addressed to ‘the occupiers’.

To regain possession more quickly, landowners may also seek an **interim possession order (IPO)**, which they must file at the same time as a standard possession order. Courts may grant an IPO in limited circumstances: for example, if a landowner is claiming possession only but not damages or an injunction (see **Injunctions**), or only possession of a building solely occupied by trespassers but not a wider surrounding area.

An IPO imposes criminal sanctions, under Section 10 of the Criminal Law Act 1977, on trespassers if they refuse to end an occupation of land or buildings. If an IPO is granted against protesters, it is a criminal offence to remain for more than 24 hours after an IPO is served and anyone who remains is considered a trespasser, even if they were not part of the initial occupation.

Although in theory an IPO is granted for a limited period only, until a main court hearing, in practice it usually means the end of a protest occupation. A landowner must file an IPO at the same time as a standard possession order.

### ***Is it necessary to attend the hearing and do we need a lawyer?***

An initial possession hearing is most often held at a county court and is very short – if no-one contests the claim, the possession order is granted immediately. If someone does intend to contest the claim, they are expected to file a defence that includes any evidence that they wish to rely on. A defence against a possession order involving protesters may include procedural failings,

such as failing to serve documents correctly, or providing insufficient time before a hearing for protesters to obtain legal representation. It may also involve a public law or human rights grounds, such as whether the order is proportionate when balanced against the rights of freedom of expression and assembly.

If the court assesses that the claim is genuinely disputed on grounds that appear to be substantial, it is likely to set out procedural instructions that both parties must follow, called case management directions, and then a new hearing date.

The court might also grant an adjournment if there are procedural failures or if defendants need more time to prepare. In September 2013, West Sussex County Council went to the High Court to evict protesters from land beside the road through Balcombe but the application was adjourned because it was “flawed”. It took another month before the possession order was finally granted.

It is therefore essential that activists planning an occupation of private land consider in advance how they intend to deal with an application for possession and arrange for legal representation.

## ***Are you likely to face huge costs?***

Possession orders may name individual defendants who are known participants in an occupation, or ‘persons unknown’, or often both. Often, a defendant has no choice about whether they are named. One advantage of having at least one named defendant is that it allows someone to present a defence in court, which can significantly delay the eventual eviction. However, with little prospect of protesters obtaining civil legal aid, there is a risk that an individual who is named faces thousands of pounds in costs if, as is likely, the case is lost.

Often, one named individual can present a defence on behalf of a group of people who have ‘the same interest in the claim’. Courts have discretion over costs and are more likely to treat a losing party more sympathetically if proceedings are not disrupted, the court’s time is not wasted, a defendant is unable to pay or if a judge accepts an argument that occupation of land was for moral or ethical reasons rather than personal benefit. However, this is dependent completely on how understanding – or otherwise – the judge is.

Whilst a losing party is liable for costs, the inability of a defendant to pay may sway a sympathetic court to reduce the costs, or order that each party is responsible for their own costs.

## ***When can the landowner seek an eviction?***

Once a possession order is granted, a landowner has three months to apply for a warrant of possession, which is usually granted automatically. A landowner may also decide to apply to the High Court to seek a writ enforcing the order, which is usually quicker than a county court.

A warrant gives authority to **county court bailiffs** to attend the property and execute it, whilst a writ is executed by **High Court Enforcement Officers**.

## ***Powers of Bailiffs***

Bailiffs can use reasonable force to gain possession and remove all those in occupation of a building or land. They will attend a protest site with police who can arrest any trespasser who resists bailiffs, often for breach of the peace.

However, legally bailiffs are expected to act reasonably and are not allowed to use violence against you or threaten you.

If you want to make a complaint about a bailiff's actions or behaviour, or if you are asking for the return of your belongings after an occupation, you should complain to the bailiff firm in the first instance. You should do this in writing.

If this is unsuccessful, you can complain to the courts, or bring legal action against the bailiffs firm. You should seek advice from a solicitor before starting any court action.