

---

STATUTORY INSTRUMENTS

---

**1998 No. 3132**

**The Civil Procedure Rules 1998**

**[<sup>F1</sup>PART 55 E+W**  
**POSSESSION CLAIMS**

**[<sup>F1</sup>I—GENERAL RULES**

**Textual Amendments**

**F1** Pt. 55 inserted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rule 1(d), [Sch. 1](#) (with [rule 31](#))

**Scope E+W**

**55.2.**—(1) The procedure set out in this Section of this Part must be used where the claim includes—

- (a) a possession claim brought by a—
    - (i) landlord (or former landlord);
    - (ii) mortgagee; or
    - (iii) licensor (or former licensor);
  - (b) a possession claim against trespassers; or
  - (c) a claim by a tenant seeking relief from forfeiture.
- (2) This Section of this Part
- (a) is subject to any enactment or practice direction which sets out special provisions with regard to any particular category of claim; and
  - (b) does not apply where the claimant uses the procedure set out in Section II of this Part. (CCR Order 24, rule 10(1) provides that where an application for an interim possession order is made, unless otherwise provided, Part 55 does not apply)

**Starting the claim E+W**

**55.3.**—(1) The claim must be started in the county court for the district in which the land is situated unless paragraph (2) applies or an enactment provides otherwise.

(2) The claim may be started in the High Court if the claimant files with his claim form a certificate stating the reasons for bringing the claim in that court verified by a statement of truth in accordance with rule 22.1(1).

(3) The practice direction refers to circumstances which may justify starting the claim in the High Court.

*Status: Point in time view as at 15/10/2001.*

*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Cross Heading: 1-GENERAL RULES. (See end of Document for details)*

(4) Where, in a possession claim against trespassers, the claimant does not know the name of a person in occupation or possession of the land, the claim must be brought against “persons unknown” in addition to any named defendants.

(5) The claim form and form of defence sent with it must be in the forms set out in the relevant practice direction.

### **Particulars of claim** **E+W**

**55.4** The particulars of claim must be filed and served with the claim form.

(The relevant practice direction and Part 16 provide details about the contents of the particulars of claim)

### **Hearing date** **E+W**

**55.5.**—(1) The court will fix a date for the hearing when it issues the claim form.

(2) In a possession claim against trespassers the defendant must be served with the claim form, particulars of claim and any witness statements—

- (a) in the case of residential property, not less than 5 days; and
- (b) in the case of other land, not less than 2 days,  
before the hearing date.

(3) In all other possession claims—

- (a) the hearing date will be not less than 28 days from the date of issue of the claim form;
- (b) the standard period between the issue of the claim form and the hearing will be not more than 8 weeks; and
- (c) the defendant must be served with the claim form and particulars of claim not less than 21 days before the hearing date.

(Rule 3.1(2)(a) provides that the court may extend or shorten the time for compliance with any rule)

### **Service of claims against trespassers** **E+W**

**55.6** Where, in a possession claim against trespassers, the claim has been issued against “persons unknown”, the claim form, particulars of claim and any witness statements must be served on those persons by—

- (a) (i) attaching copies of the claim form, particulars of claim and any witness statements to the main door or some other part of the land so that they are clearly visible; and  
(ii) if practicable, inserting copies of those documents in a sealed transparent envelope addressed to “the occupiers” through the letter box; or
- (b) placing stakes in the land in places where they are clearly visible and attaching to each stake copies of the claim form, particulars of claim and any witness statements in a sealed transparent envelope addressed to “the occupiers”.

### **Defendant’s response** **E+W**

**55.7.**—(1) An acknowledgment of service is not required and Part 10 does not apply.

(2) In a possession claim against trespassers rule 15.2 does not apply and the defendant need not file a defence.

(3) Where, in any other possession claim, the defendant does not file a defence within the time specified in rule 15.4, he may take part in any hearing but the court may take his failure to do so into account when deciding what order to make about costs.

(4) Part 12 (default judgment) does not apply in a claim to which this Part applies.

### The hearing **E+W**

**55.8.**—(1) At the hearing fixed in accordance with rule 55.5(1) or at any adjournment of that hearing, the court may—

- (a) decide the claim; or
- (b) give case management directions.

(2) Where the claim is genuinely disputed on grounds which appear to be substantial, case management directions given under paragraph (1)(b) will include the allocation of the claim to a track or directions to enable it to be allocated.

(3) Except where—

- (a) the claim is allocated to the fast track or the multi-track; or
- (b) the court orders otherwise,

any fact that needs to be proved by the evidence of witnesses at a hearing referred to in paragraph (1) may be proved by evidence in writing.

(Rule 32.2(1) sets out the general rule about evidence. Rule 32.2(2) provides that rule 32.2(1) is subject to any provision to the contrary)

(4) Subject to paragraph (5), all witness statements must be filed and served at least 2 days before the hearing.

(5) In a possession claim against trespassers all witness statements on which the claimant intends to rely must be filed and served with the claim form.

(6) Where the claimant serves the claim form and particulars of claim, he must produce at the hearing a certificate of service of those documents and rule 6.14(2)(a) does not apply.

### Allocation **E+W**

**55.9.**—(1) When the court decides the track for a possession claim, the matters to which it shall have regard include—

- (a) the matters set out in rule 26.8 as modified by the relevant practice direction;
- (b) the amount of any arrears of rent or mortgage instalments;
- (c) the importance to the defendant of retaining possession of the land; and
- (d) the importance of vacant possession to the claimant.

(2) The court will only allocate possession claims to the small claims track if all the parties agree.

(3) Where a possession claim has been allocated to the small claims track the claim shall be treated, for the purposes of costs, as if it were proceeding on the fast track except that trial costs shall be in the discretion of the court and shall not exceed the amount that would be recoverable under rule 46.2 (amount of fast track costs) if the value of the claim were up to £3,000.

(4) Where all the parties agree the court may, when it allocates the claim, order that rule 27.14 (costs on the small claims track) applies and, where it does so, paragraph (3) does not apply.

*Status: Point in time view as at 15/10/2001.*

*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Cross Heading: 1-GENERAL RULES. (See end of Document for details)*

**Possession claims relating to mortgaged residential property** **E+W**

**55.10.**—(1) This rule applies where a mortgagee seeks possession of land which consists of or includes residential property.

(2) Not less than 14 days before the hearing the claimant must send a notice to the property addressed to “the occupiers”.

(3) The notice referred to in paragraph (2) must—

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

(4) The claimant must produce at the hearing—

- (a) a copy of the notice; and
- (b) evidence that he has served it.]

**Status:**

Point in time view as at 15/10/2001.

**Changes to legislation:**

There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Cross Heading: I-GENERAL RULES.