

CPR Part 55

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Topics



- Part 55 generally (“ordinary” claims in the County Court)
 - Possession “in a hurry”
 - Interim Possession Orders
 - Possession claims in the High Court
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Part 55 generally – when does it apply?

- When does part 55 apply?
 - CPR r. 55.2(1)(b) – *“The procedure set out in this Section of this Part must be used where the claim includes - ... a possession claim against trespassers”*
 - CPR r. 55.1:
 - “a possession claim” means a claim for the recovery of possession of land (including buildings or parts of buildings);*
 - “A possession claim against trespassers” means a claim for the recovery of land which the claimant alleges is occupied only by a person or persons who entered or remained on the land without the consent of a person entitled to possession of that land but does not include a claim against a tenant or sub-tenant whether his tenancy has been terminated or not;*
 - Note also 55.2.4 – includes a former licensee



Part 55 generally – mechanics of a claim

- Claim usually started in County Court – CPR r. 55.3
- Claim Form
 - 55.3.4 In a prescribed form and verified by statement of truth
- Particulars of Claim
 - CPR r. 55.4 – *“must be filed and served with the claim form”*
 - Note 55.4.5
 - PD 55A – para. 2.6 – *“If the claim is a possession claim against trespassers, the particulars of claim must state the claimant’s interest in the land or the basis of his right to claim possession and the circumstances in which it has been occupied without licence or consent”*
 - See also para. 2.1 generally

Part 55 generally - mechanics

- Hearing date – CPR 55.5:

“(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.”

- Note “days” means “clear days” see 55.5.2 and CPR r. 2.8

Part 55 generally – mechanics of the claim

- Service – if persons unknown see CPR r. 55.6 –

“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’.



Part 55 generally - mechanics

- Defence – CPR r. 55.7(2) – “*In a possession claim against trespassers rule 15.2 does not apply and the defendant need not file a defence*”.
- Enforcement – normally enforced by means of a warrant for possession in the county court – but can transfer to the High Court – importantly, in a claim against trespassers no permission is needed to transfer.



IPOs - generally

- Sections 75 and 76 of the Criminal Justice and Public Order Act
- Failure to comply with an IPO is a criminal offence
- Section III of CPR Part 55 – see CPR r. 55.20

IPOs – conditions - CPR r. 55.21

- (1) An application for an IPO may be made where the following conditions are satisfied –
- (a) the only claim made is a possession claim against trespassers for the recovery of premises;
 - (b) the claimant –
 - (i) has an immediate right to possession of the premises; and
 - (ii) has had such a right throughout the period of alleged unlawful occupation; and
 - (c) the claim is made within 28 days of the date on which the claimant first knew, or ought reasonably to have known, that the defendant (or any of the defendants), was in occupation.
- (2) An application for an IPO may not be made against a defendant who entered or remained on the premises with the consent of a person who, at the time consent was given, had an immediate right to possession of the premises.

IPOs – application - CPR r. 55.22

- (1) Rules 55.3(1) and (4) apply to the claim.
- (2) The claim form and the defendant's form of witness statement must be in the form set out in Practice Direction 55A.
- (3) When he files his claim form, the claimant must also file –
- (a) an application notice in the form set out in Practice Direction 55A; and
 - (b) written evidence.
- (4) The written evidence must be given –
- (a) by the claimant personally; or
 - (b) where the claimant is a body corporate, by a duly authorised officer.
- (5) The court will –
- (a) issue –
 - (i) the claim form; and
 - (ii) the application for the IPO; and
 - (b) set a date for the hearing of the application.
- (6) The hearing of the application will be as soon as practicable but not less than 3 days after the date of issue.



IPOs – initial service and defence

- CPR r. 55.23 – Claimant must serve (a) claim form, (b) application notice (together with written evidence in support) and blank form for Defendant’s WS attached to application notice within 24 hours of issue of the application.
- CPR r. 55.6(a) also applies
- Must file a certificate of service “at or before the hearing”
- Defendant’s response by way of WS at any time before hearing



IPOs – hearing of the application

- CPR r. 55.25 –
 - Claimant’s undertakings:
 - If no PO – reinstate and pay damages
 - Before determination – not to damage premises, grant right of occupation to any other person and damage/dispose of defendant’s Property
 - Certificate of service or proved service
 - Satisfied that conditions in CPR r. 55.21 are satisfied
 - Defendant to vacate premises within 24 hours of service of order
 - Return date not less than 7 days after date IPO made



IPOs - consequential matters

- CPR r. 55.26 – service and enforcement of IPO
- CPR r. 55.27 – certificate of service and consequential orders
- CPR r. 55.28 – application to set aside IPO – can apply before return date on grounds of urgency



High Court – starting the claim

- See PD 55A and Practice Note at 55A PN
 - Para. 1.1(1) – “*exceptional circumstances*”
 - Para. 1.3:
 - Complicated disputes of fact
 - General points of law of general importance
 - Against trespassers and substantial risk of public disturbance or of serious harm to persons or property which properly requires immediate determination
 - Para 1.4 – value of property and amount of financial claim relevant but not determinative alone
 - CPR r. 55.3(2) - need a certificate of reasons



High Court – abridging time for service

- CPR r. 3.1(2)(a) – court may extend or shorten the time for compliance with any rule
- See PD55A at para. 3.2 and PN:
 - Assault or threatened assault of claimant, claimant’s staff or another resident in locality by defendant or defendant’s agent
 - Reasonable grounds for fearing such an assault
 - Caused or threatened to cause serious damage to the property or to the home or property of another resident in the locality



High Court - steps

- Urgent applications court
 - Application to abridge time for service & fix hearing date
 - Need whole claim “ready to go” including certificate of reasons, draft orders and witness evidence in support
 - Issue – immediately afterwards
 - Outdoor clerk/solicitor at court
 - Service – same day
 - Return date – also urgent applications court – could be same/next day
 - Enforce order immediately after final hearing