

Unauthorised Encampments – Legal Procedure

1. When Council land/property is occupied by persons without right or title to be there, we would initially contact the person/persons on the site to ascertain when they intend to vacate and formally ask them to leave. This approach is taken so that there is no suggestion that the Council has agreed to or acquiesced in their presence on the site. The Council will make efforts to identify the occupiers of the site. Whether they can be identified or not, the Court rules allow an action to be raised against an unauthorised occupier without a name being specified.
2. In the event that the unauthorised occupiers have not moved on within a set timescale, usually the following day, the Council would commence proceedings for recovery of possession of the site. A summons is lodged at the Sheriff Court. The normal period of notice to the Defenders/Occupiers in such a case is not less than 21 days. The Sheriff can, however, on cause shown reduce this period. When the Council is taking such action our Solicitor will write to the Court to advise that the Council is seeking to reduce the period of notice to be given to the Defenders in relation to the Action and a Warrant to serve the Action on the Occupiers. The Council has usually been successful in obtaining the shortened periods of notice for service of the Summons and a reduction of the time between the return date and the actual Hearing date. The Hearing date is the date on which the case will call in Court and the date on which it is likely the Court Action will be determined.
3. After the Sheriff grants the Warrant to serve the Action on the Occupiers, the Council arranges for this to be done by Sheriff Officers so that there is proper evidence that intimation of the Application has been made to all relevant persons. There is a cost involved in instructing Sheriff Officers and this can be included in any claim for Court expenses as part of the Action. The Council would usually arrange for the Sheriff Officers to serve the Court papers on the Occupiers the same day as it receives the Warrant.
4. Two Court dates are fixed by the Sheriff. The first of these is a return date by which time, if there is any opposition to the Application a Notice should be lodged at Court. It is for the Defenders/Occupiers to take this step. The second date is the Hearing date which is the date on which the Sheriff can determine the Application. On the Hearing date, it is necessary to attend Court and ask the Sheriff for Decree for Recovery of Possession. If there is not opposition to the Application, the Sheriff will usually grant this. If the Council wishes to recover the Court expenses, a request for these is made at this time. The Council would also ask the Court to grant an Immediate Extract of the Decree, to dispense with the requirement to serve a charge, and to dispense with the need to serve notice of the date of removal. All of these, if granted, would allow steps to remove the Defenders/Occupiers to be taken immediately.

5. It may be that there is opposition from the Defenders/Occupiers to the Action. To date there has been no such opposition to such Actions raised by the Council. It is difficult to see what objection there could be other than perhaps failure to notify all relevant persons.
6. Once the Decree is obtained the Sheriff Officers are instructed to enforce it. The Decree would allow removal of the Occupiers from the site together with their vehicles and belongings. This can be a difficult process and if such Action is contemplated, the Council tries to give the Sheriff Officers as much notice as possible so that they can make arrangements for appropriate vehicles to be available, e.g. to move caravans. The Council may also notify Police Scotland that it was to be taking this Action so that there could be Police presence there if need be. Once the removal from the site is complete, steps may be taken to secure the site.