

Postponed Possession Orders

Following cases of Bristol CC –v- Hassan and Bristol CC –v- Glastonbury, a new Form N28A is a template for a postponed possession order with no date for possession specified in the Order. In force from 3 July this year.

Intended for secure tenancies only – there is currently no certainty whether tolerated trespass concept applies to Assured Tenancies. It is suggested that it is unlikely it applies to contractual periodic tenancies. It is however open to the Judge to use the amended Form N28A if s/he wishes.

Form of order is entirely a matter for judicial discretion.

Procedure

Amended Practice Direction specifies procedure to be followed:-

1. Written Notice to Defendant before applying for date to be fixed: Notice MUST

- (i) Be served at Least 14 days/Not more than 3 months before application made
- (ii) State C intends to apply for an order fixing date on which D is to give up possession of the Property.
- (iii) Record current arrears
- (iv) State how D has failed to comply with postponed possession order by reference to enclosed statement of rent account
- (v) Request reply within 7 days agreeing/disputing stated arrears
- (vi) Inform D of the right to apply for further postponement of date for possession or stay or suspension of enforcement under s85 Housing Act 1985.

2. D's Reply to Notice MUST

- (i) Where arrears disputed, provide details of payments or credits made
- (ii) If arrears agreed, explain why payment not made.

3. Application for Date to be fixed

- (i) Form N244
- (ii) C must state whether or not any outstanding claim by D for Housing Benefit
- (iii) Attach copy of Notice and any Reply and any subsequent relevant correspondence.
- (iv) Attach statement of rent account showing arrears since first failure to pay in accordance with PPO, and arrears in two years if appropriate.

4. Application

Usually determined by DJ without a hearing by fixing date for possession as the next working day, unless DJ feels hearing necessary.

Form N28A

1. The defendant is to give up possession of [address] to the claimant.
2. The date on which the defendant is to give up possession of the property to the claimant is postponed to a date to be fixed by the court on an application by the claimant. The defendant's tenancy of the property will continue until that date.
3. The defendant must pay the claimant £[_____] for rent arrears and £[_____] for costs. The total judgment debt is £[_____] to be paid by instalments as specified in paragraph 4 below.
4. The claimant shall not be entitled to make an application for a date to be fixed for the giving up of possession and the termination of the defendant's tenancy so long as the defendant pays the claimant the current rent together with instalments of £[_____] per week towards the judgment debt.
5. The first payment of the current rent and the first instalment must be made on or before [date].
6. Any application to fix the date on which the defendant is to give up possession may be determined on the papers without a hearing (unless the district judge considers that such a hearing is necessary).
7. This order shall cease to be enforceable when the total judgment debt is satisfied.

To the defendant

The court has ordered that **unless you pay the arrears** and costs at the rate set out above **in addition to your current rent**, you must leave the premises.

Payments should be made to the claimant, not to the court. If you need more information about making payments, you should contact the claimant.

If you do not make the payments or leave the premises, the claimant can ask the court, **without a further hearing**, to fix a date for you to leave the premises and if you do not do so, to authorise a bailiff or High Court Enforcement Officer to evict you. (You can apply to the court to stay the eviction; a judge will decide if there are grounds for doing so.)

(If there is an order to pay money)

If you do not pay the money owed when it is due and the claimant takes steps to enforce payment, the order will be registered in the Register of Judgments, Orders and Fines. This may make it difficult for you to get credit. Further information about registration is available in a leaflet which you can get from any court office.

Sample letter to give Notice of Date to be fixed.

Possession date: Notice of application for date to be fixed

(to be served at Least 14 days/Not more than 3 months before application made)

Dear

You will recall that on (insert date of order) the Court made an order for you to give up possession of your home, but did not fix the date on which that should happen – a “postponed” possession order.

The Court placed conditions upon this postponement, effectively allowing you to remain in your home as long as you paid the current rent plus an amount towards the arrears each week of £.....

The enclosed print out of your rent account shows that you have not kept to the conditions of postponement. Your current arrears are £.....

We would now ask that you contact us within seven days to confirm whether you agree, or disagree that you have not kept to the conditions.

If we don't hear from you in fourteen days, we intend to apply to the Court to ask for a date to be fixed for possession to be given up.

Should this be necessary, then we should inform you that you have a right to apply to the Court for further postponement of the date for possession or a “stay” or suspension of the enforcement under s85 Housing Act 1985.

You may want to take legal advice in respect of the contents of this letter.