

**HMCS Business Information**

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**Subject: Interim solution to the wordings of N28 – Order for possession (rented premises) (suspended) following the Court of Appeal decision in *Harlow District Council v Hill***

**Purpose:**

- The attached note has been produced following the Court of Appeal decision in the case of *Harlow District Council v Hill*. This decision highlights unintended consequences of the current wordings of N28.
- However, the policy intention when County Court judges make an order for possession in 28 days, suspended on terms, is that the tenancy should continue until the suspension term is breached.
- The Court of Appeal held that the current wordings of N28 means that when a suspended possession order is made, the tenancy comes to an end at the 28 day point and it does not continue after that date, even if the tenant is complying with the terms of suspension.
- An interim solution is attached.

**Attachments:** one

**Is it a replacement item?** no

**Is it further guidance?** no

**Audience:** County Court Managers

**Timing:** Routine

**Further action required:** Yes. Court managers are asked to ensure this BI is circulated to all staff responsible for issuing possession claims and the district judiciary.

**Contact:**

Purnima Mehta  
Debt and Housing Branch  
Civil, Family and Customer Services  
HMCS  
Department for Constitutional Affairs  
5<sup>th</sup> Floor, Selborne House  
54/60 Victoria Street  
London SW1E 6QW  
Telephone: 0207 210 1354  
E-mail: [purnima.mehta@hmcourts-service.gsi.gov.uk](mailto:purnima.mehta@hmcourts-service.gsi.gov.uk)

**Issue: Interim solution to the wordings of N28 – Order for possession (rented premises) (suspended) following the Court of Appeal decision in *Harlow District Council v Hill*.**

**Interim solution to the wordings of N28 – Order for possession (rented premises) (suspended) following the Court of Appeal decision in *Harlow District Council v Hill***

1. The Court of Appeal in the case of *Harlow DC v Hill* considered the effect of a suspended possession order and concluded that the qualification in para 5 of N28 does not succeed in postponing the obligation to give possession on or before the date specified. Therefore, the current wording of N28 means that when a suspended possession order is made the tenancy comes to an end at the 28 day point and it does not continue after that date even if the tenant is complying with the terms of suspension.
2. Following the CA decision the wording of N28 must be amended as follows with immediate effect:
  - The title must be changed from Order for possession (rented premises) (suspended) to Order for possession (rented premises) (postponed).
  - Para 1 should be amended to read:  
*"The defendant give the claimant possession of (address of the property) on or before (date) provided that the date for possession will be postponed and the defendant's tenancy of the premises will continue, so long as the defendant pays the claimant the current rent and in addition the rent arrears and costs by the instalments set out below."*
  - Para 2, 3 & 4 remain the same.
  - Para 5:  
*Will be deleted and then the list of payments required will appear below as it does now.*
3. The order will have to be manually edited in CaseCops to insert these changes. This will remedy the situation in the interim.
4. A permanent solution will be considered in conjunction with ODPM. You will be advised of this once it has been agreed upon.