



## Guidance on Applications for Time to Pay Orders

This document explains the process for submitting a request for a time to pay order, and also gives some further information on the process.

Parts A of the guidance note is structured to match the same numbered sections of the request and form, and gives details of what information you need to provide.

Part B of the application form is to be sent to the creditor and they will be required to complete Part B of the application form to be sent to the tribunal.

Part C of the guidance note gives some further information about how requests will be dealt with by the administration, and what the possible outcomes from the Tribunal could be.

### Part 1: The application form

#### 1. YOUR DETAILS

Please give your name and address, and any contact information you can provide.

#### 2. DETAILS OF THE PAYMENT ORDER AND ACTIONS TAKEN

In Section **2a**, you should confirm that you have attached the Payment Order, as we cannot proceed without this. You should then give details of the amount awarded in the Payment Order, and the total outstanding if this is different.

In Section **2b** you should indicate which action has been taken against you and confirm that you have attached the relevant document with your application. For example, if you have selected 'A charge for payment has been served on the debtor' you should provide a copy of the charge document served on you.

#### 3. YOUR REQUEST FOR A TIME TO PAY ORDER

In this section you should indicate how you propose to pay the full outstanding amount owed against the Payment Order issued by the Tribunal. You can request to pay by instalments or in a lump sum.

If you choose instalments, you should give an amount you are able to pay, and then tell us how frequently payments will be made.

If you choose to pay in a lump sum, you should indicate a time period within which you will be able to pay the full amount claimed. This will be the time you think it will take to be able to pay the full amount due, beginning on the date the Tribunal grants a time to pay order.

#### 4. YOUR FINANCIAL POSITION

In this section, you should tell us your employment status, your net income (take home pay) and your expenditure (outgoings).

Sections **4(a) to 4(c)** ask for information on your current employment status. For time to pay order requests, this information can be used to inform the tribunal of your long-term ability to make payments. Please answer the relevant questions as fully as possible.

Section **4(d)** relates to your current regular income. These include wages, fees, bonuses, commissions, pensions, State Benefits and other payments you receive on a regular basis. We ask for this information in either weekly, fortnightly or monthly amounts.

Section **4(e)** of the form relates to your regular outgoings. Please give weekly, fortnightly or monthly amounts for each of the different types of outgoing.

If a named income or outgoing type does not apply to you, please write a 0 or 'zero' in the box, so that the Tribunal know that part was not left blank unintentionally. Please also utilize the "other" sections for any income or outgoings that occur at least every month that are not covered by the specific options listed. You can use a separate sheet if you have more than 3 'other' income or outgoings types.

Any payments that you make or receive on a less regular basis than monthly, or one-off payments you are due to make or receive within the period in which you propose to pay the amount claimed should be listed under Section 6.

While you are entitled to supply the information weekly, fortnightly or monthly for each item, you should provide a single net figure at parts **4(d)(6)** and **4(e)(10)** in one format only. For example, if you wish to give us a weekly figure, but one of your incomes is given monthly, please adjust this accordingly when supplying the total. Simple conversion guides are given below:

Conversion Required	Calculation	Example
Weekly to monthly	[weekly figure] X 52 / 12	£25 per week X52 / 12 = £108.33 per month
Monthly to Weekly	[monthly figure] X 12 / 52	£360 per month X12 /52 = £83.07 per week
Weekly to Fortnightly	[weekly figure] X 2	£25 per week X2 = £50 per fortnight
Fortnightly to Weekly	[fortnightly figure] / 2	£100 per fortnight /2 = £50 per week
Fortnightly to Monthly	[fortnightly figure] X 26 / 12	£100 per fortnight X26 /12 = £216.67 per month
Monthly to Fortnightly	[monthly figure] X 12 / 26	£360 per month X12 /26 = £166.15 per fortnight

X means 'multiplied by' / means 'divided by'

#### 5. DEPENDANTS LIVING WITH YOU

Please give us details of the number of dependants living with you, and your relationship to them. For children under the age of 18, please also give their ages.

## **6. ASSETS AND DEBTS**

This section is to list all relevant assets and debts you have, along with the amount of each asset or debt. For assets, please include details of the value of any property you own, savings you hold, and shares and investments you have. Please also include any one-off payments you are guaranteed to receive within the timescale you have applied for time to pay.

For debts, please list the outstanding debts you have, which can include overdrafts, the amount outstanding on your mortgage, credit card balances and loans.

Where applicable, note beside any asset or debt the associated income or outgoing from Section 3 that applies to it. For example, you may have an outstanding credit card debt, for which you are making monthly payments that you have included as outgoings.

## **7. ABOUT YOUR APPLICATION**

This section asks for additional information on how the debt came about; reasons why the tribunal should grant the order; and why the offer of payment you have made is reasonable.

You should give any relevant information here that you think will assist your time to pay application. You should not make any representations that dispute the amount being paid, or offer to pay less than the amount claimed. If you wish to dispute the payment in any way you cannot apply for time to pay, and should instead seek advice on your rights to ask for a review of the Tribunal decision, or to seek permission to appeal the decision.

## **8. DECLARATION AND SIGNATURE**

This section asks you to confirm you are applying for time to pay and asks you to confirm that you have sent a copy of the full application to the creditor. You will also be required to evidence that this has been sent to the creditor.

You then need to give your name, and sign and date the form before returning it to the Tribunal office. The full form is sent to the other party so they can consider your offer.

## **PART C: Guidance on the process**

### **Who can make a request for a time to pay order?**

An individual has the right to apply for a time to pay order where an Order for payment has been made against them by the Tribunal, and a charge for payment has been served on the debtor; an arrestment has been executed; or an action of adjudication for debt has commenced. The most common type of Payment Order where time to pay may be requested would be an application for payment of rent arrears.

There are some circumstances under which a time to pay order cannot be made.

The Debtors (Scotland) Act 1987 (“the 1987 Act”) Act lists some criteria that can affect whether time to pay orders can be made, and the two that can affect applications to the Tribunal are as follows:

A time to pay order can only be made against an individual, not a Company or Organisation (Section 14(1) of the 1987 Act).

A time to pay order cannot be made where the amount of the outstanding debt exceeds £25,000 (section 1(5) of the 1987 Act).

A time to pay order cannot be made where a time to pay direction or time to pay order has previously been made in relation to the debt (whether the prior direction or order is in effect or not).

### **How do I submit an application for a time to pay order?**

If you wish to apply for a time to pay order you can only do so once a charge for payment has been served; an arrestment has been executed; or an action of adjudication for debt has commenced.

You should complete the form (using this guide) and return it along with any documents to support your application.

### **What happens when my application for time to pay is received?**

Your application for a time to pay order, and any supporting documents you have provided, will be copied to the other party. They will be given an opportunity to respond in writing to your application. Any response received will be sent to you for your information.

If the Tribunal is satisfied that the application is properly made, and unless the Tribunal thinks it would not be competent to make a time to pay order, the Tribunal will make an interim Order to sist diligence in respect of the debt to prevent further action being taken until the time to pay order application has been considered. An interim order to sist diligence stays in effect until the final decision of the Tribunal to grant/refuse the application for a time to pay order is issued.

### **I have been notified that the debtor has made an application for a time to pay order. What do I do?**

You should read the documentation you have been provided with. This will be the application form that the debtor completed, and any supporting documents they wish to rely on in making their application for time to pay.

You can choose to consent to the time to pay order request, by ticking the appropriate box and returning the signed, dated form to the Tribunal.

You can instead choose to object to the application for time to pay. If you object, there is space on the form for you to list your reasons for objecting. If you have any documents to support your reasons for objecting you should attach these to your response.

You should send your completed response to the tribunal within 14 days of the date you received intimation of the time to pay order request.

### **What happens if the application for a time to pay order is agreed by the parties?**

If an application for time to pay is made by a debtor, and the creditor agrees to the terms or does not respond within the time limit above, the Tribunal may proceed to make a time to pay order if they are satisfied that it is reasonable to do so.

### **What happens if the time to pay order is not agreed by the parties?**

In most circumstances where the application for time to pay is disputed, the case will proceed to a case management discussion or hearing. The Tribunal can proceed to make a time to pay order if they think it is reasonable to do so, having regard to the circumstances of the case and the representations of the parties. Or they can refuse the application for a time to pay order.

### **A time to pay order has been made, what happens next?**

The Tribunal will issue their decision to grant a time to pay order. Once the order is issued, the timescale for payment will begin. For lump sum payments, the date of issue of the order will trigger the start of the period by which full payment must be made. For instalments, the date of issue of the order will trigger the timescale for making the first payment, and subsequent payments must then be made at the appropriate intervals until the full amount has been paid.

The time to pay order prevents the creditor from using any new diligence in respect of the debt whilst it is in force.

### **The application for a time to pay order has been refused, what happens next?**

The Tribunal will issue their decision to refuse the application for a time to pay order. This decision will also recall the interim order to sist diligence, allowing further diligence in relation to the debt to take place.

### **Can a time to pay order be changed?**

Yes, either party can ask for the time to pay order to be amended or recalled. An application must be made in writing to the Tribunal, who can vary or recall the order if it is satisfied that it is reasonable to do so.

### **What if the payments aren't made?**

The time to pay order can cease to have effect if the payment terms are not followed. For instalment payments, the time to pay order will cease to have effect if:

- on the day on which an instalment payable under a time to pay order becomes due, there remains unpaid a sum, due under previous instalments, of not less than the aggregate of 2 instalments, or
- at the end of the period of 3 weeks immediately following the day on which the last instalment payable under a time to pay order becomes due, any part of the debt concerned remains outstanding

If any lump sum payable under a time to pay order under section 5(2)(b) of the 1987 Act remains unpaid 24 hours after the end of the period specified in the order, the order shall cease to have effect.

Where the time to pay order ceases to have effect, the debt in so far as it remains outstanding shall become enforceable by diligence.