



TIME TO PAY DIRECTIONS AND ORDERS

In this fact sheet we will look at how to get time to pay a debt before and after a decree, i.e. a court order. We will look at:

- time to pay directions; and
- time to pay orders.

Time to pay directions (TPD)

A 'time to pay direction' allows you time to pay the decree either by weekly or monthly instalments or by a lump sum payment.

If the creditor accepts the payment offer then a decree with a time to pay direction will be granted. Even if the creditor refuses your offer, the court can make an order for the time to pay direction at a court hearing anyway.

This means that no further steps, e.g. 'diligence' can be taken against you while the time to pay direction is in force. This means that your creditor cannot:

- serve a 'charge for payment' (the next stage in diligence);
- arrest your wages or bank account;
- instruct an attachment of non-domestic property; or
- apply for an exceptional attachment order of your domestic property.



WARNING

Even if you have a time to pay direction, creditors can still apply for an inhibition. This is a type of diligence and means that a creditor can stop you for selling your home.



FACT SHEET

We have a fact sheet 'Enforcing a debt against you by diligence', which may be of assistance to you. **Phone us for a copy.**



WARNING

If you have a time to pay direction and you miss two payments, on the date the third payment becomes due, the time to pay direction collapses. Your creditor can then begin to enforce payment.



INFORMATION

Time to pay directions cannot be made by the court when the debt is:

- over **£25,000**;
- for an award in connection with divorce;
- for maintenance; or
- for income tax, VAT or car tax.

The form which you need to use for a time to pay direction is included in the 'court summons' or 'writ' that you receive before a decree is made. You can see an example of a time to pay direction form at the end of this fact sheet.



REMEMBER

Check the particular time limit for replying and asking for time to pay.

The form does not include much room for details. It is a very basic income and expenditure sheet and does not give you a chance to mention dependants, health problems etc.

Instead of replying on the form, you could consider drawing up a separate statement of your overall financial situation – including all the details required on the court form but adding extra relevant information, including details of income and expenditure, other debts and personal details.



ADVICE

Send a copy of everything direct to your creditor or their representative. You need to do this because the sheriff clerk will only send details of the amount offered, not how you arrived at it, and the creditor may have no way of knowing whether or not your offer is reasonable.

If your financial circumstances change and you are unable to pay the amount you are supposed to pay under your time to pay direction, you can apply to have it varied. You will need to use **form 1** under the **Debtors (Scotland) Act 1987**. **Phone us for advice.**

After court action

Even in cases where you have not obtained a time to pay direction, or even ignored the summons or writ, you may still have a chance to get time to pay.

Although a creditor has taken court action against you and obtained a decree, the creditor may delay enforcing it and consider whether or not it is worthwhile to do so.

Many creditors will make a final attempt to negotiate payments with you before trying legal enforcement.

If the creditor decides to proceed they will need to try to enforce the debt by using diligence.



FACT SHEET

We have a fact sheet on 'Enforcing a debt by diligence', which may be of assistance to you. **Phone us for a copy.**



FACT SHEET

We have a fact sheet on 'Bankruptcy', which may be of assistance to you. **Phone us for a copy.**

Time to pay orders

Once the formal process of diligence has begun, i.e. a 'charge for payment' or a bank arrestment has been served on you, you may be able to ask the court for time to pay. This is done using a 'time to pay order'. Such orders are similar to the time to pay directions in that they freeze any further diligence against you.

You cannot use a time to pay order when the debt is;

- over **£25,000**;
- for an award in connection with a divorce;
- for maintenance; or
- for income tax, VAT or car tax.



WARNING

You cannot apply for a time to pay order if you had already been granted a time to pay direction and fallen behind on the payments ordered by the court.



INFORMATION

You can get an application for a time to pay order, called a **DSA 2**, from the sheriff clerk's office, a CAB, law centre or money advice centre. If you cannot get one **phone us for a copy**. (See the example form at the end of this fact sheet.)

The time to pay order application form is similar to a time to pay direction form but includes more room for extra details such as your other debts. This information will show the sheriff why you can't pay the full amount, but that you can pay instalments towards the debt. If you want help to complete the form, **phone us for advice**.

Send the form to the sheriff clerk's office. Time limits depend on the circumstances, but any delay will affect your ability to stop or reverse forms of diligence.



FACT SHEET

We have a fact sheet on 'Enforcing a debt against you by diligence', which may be of assistance to you. **Phone us for a copy.**

If your creditor does not object to the payment offer the sheriff will grant a time to pay order after **14 days**. This effectively freezes diligence and the creditor cannot carry out an attachment, apply for an exceptional attachment order or instruct an arrestment of your wages or bank account.

If the creditor objects to the payment offer a date for a hearing will be fixed. You or your adviser can speak before the sheriff who will decide on the rate of repayment. In practice debts need to be paid off in approximately two years.

Time to pay orders prevent creditors applying pressure on you to pay sums that you cannot afford.

If you find it difficult to maintain payments, e.g. because of a change in circumstances, you can apply to the sheriff to reduce instalments by using a 'variation of a time to pay order'. You need to complete a form and send it to the sheriff's clerk. Consult a CAB, law centre or local money advice centre for help or **phone us for advice.**

Time to pay and council tax debt

From **1 April 2008** the rules about time to pay and council tax arrears changed. Before then, council tax debt was excluded from the time to pay rules. From 1 April 2008 you can apply to the sheriff for time to pay your council tax debt. You can only do this after the council has issued a formal demand for the money you owe. This is called a charge for payment.

Remember: You can always contact us for advice about any difficulty you have in dealing with your debts.

Freephone 0808 808 4000 Website www.nationaldebtline.co.uk

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Whilst we endeavour to keep our fact sheets as up to date as possible, National Debtline cannot be held responsible for changes in legislation or for developments in case law since this edition of the fact sheet was issued.

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There is an example of the DSA2 application form at the end of this fact sheet. You might be sent an application form for a time to pay order along with the charge for payment. If not, and you are unable to get one from a local advice centre, **phone us for a copy.**

A word about time orders

A 'Time order' is another way of asking the court to give you more time to pay a loan agreement. You may be able to apply for a time order if your credit agreement is regulated by the **Consumer Credit Act 1974**. Whether or not your agreement is regulated will depend on when you took out your agreement and how much you borrowed at the time. The rules about time orders are complicated; if you think that a time order may be useful for you, **phone us for advice.**



FACT SHEET

We have a fact sheet on 'Time orders', which may be of assistance to you. **Phone us for a copy.**



REMEMBER

If your time to pay application is granted and you keep making the payments ordered, the council cannot make you bankrupt or use diligence against you.



FACT SHEET

We have a fact sheet on 'Recovery of council tax', which may be of assistance to you. **Phone us for a copy.**

APPLICATION IN WRITING FOR A TIME TO PAY DIRECTION
UNDER THE DEBTORS (SCOTLAND) ACT 1987 OR A TIME ORDER
UNDER THE CONSUMER CREDIT ACT 1974

I WISH TO APPLY FOR A *TIME TO PAY DIRECTION/TIME ORDER

*delete whichever does not apply

I admit the claim and make application to pay as follows:

(1) by instalments of £ _____ per *week / fortnight / month

OR

(2) In one payment within _____ *weeks / months from the date of the court order

To help the court, please provide details of your financial position in the boxes below

***Please also indicate whether payments/receipts are weekly, fortnightly or monthly**

My outgoings are:	*Weekly /fortnightly /monthly
Rent/Mortgage	£
Council Tax	£
Gas/electricity etc.	£
Food	£
Loans and credit agreements	£
Other	£

My income is:	*Weekly /fortnightly /monthly
Wages/Pensions	£
Social Security	£
Other	£

Number of dependent children Number of dependent relatives

Please list details of all capital held. e.g. value of house; amount in savings account, shares or other investments:

Notes: TIME TO PAY DIRECTIONS AND ORDERS

(1) Time to pay directions

The Debtors (Scotland) Act 1987 gives you the right to apply to the court for a 'time to pay direction'. This is an order which allows you to pay any sum which the court order you to pay either in instalments or by deferred lump sum. A 'deferred lump sum' means that you will be ordered by the court to pay the whole amount at one time within a period which the court will specify.

If the court makes a time to pay direction it may also recall or restrict any arrestment made on your property by the pursuer in connection with the action or debt (for example, your bank account may have been frozen).

No court fee is payable when making an application for a time to pay direction.

If a time to pay direction is made, a copy of the court order (called an extract decree) will be sent to you by the pursuer telling you when payment should start or when it is you have to pay the lump sum.

If a time to pay direction is not made, and an order for immediate payment is made against you, an order to pay (called a charge) may be served on you if you do not pay.

(2) Time Orders

The Consumer Credit Act 1974 allows you to apply to the court for a 'time order' during a court action. A time order is similar to a time to pay direction, but can only be applied for in certain circumstances, e.g. in relation to certain types of credit agreement. Payment under a time order can only be made by instalments, so that you cannot apply to pay by deferred lump sum.

***APPLICATION FOR RECALL OR RESTRICTION OF AN ARRESTMENT**

I seek the recall or restriction of the arrestment of which the details are as follows:-

Date:

***Delete if inapplicable**

DEBTORS (SCOTLAND) ACT 1987

Sheriff Court

(Court Ref No.)

APPLICATION BY _____

_____ *Applicant*

PERSON TO
WHOM DEBT DUE _____

_____ *Creditor*

* delete as
appropriate

*(a) The applicant is the defender in an action raised in this Sheriff Court/the Court of Session by the creditor in which decree was granted on

20 for £

*(b) The debt due by the applicant is payable under a document bearing a warrant for diligence (give details of this document)

The applicant states that to the best of his knowledge and belief that no time to pay direction or order relating to the debt has been made and that at the date of this application the amount outstanding is £

(this figure should take account of interest, court expenses and any payment made to the account)

The applicant states that the following steps have been taken in respect of the debt, namely

*(a) A charge for payment has been served on the applicant

*(b) An arrestment has been carried out (give details of arrestment served, person on whom served and date)

*(c) An attachment has been carried out on the instructions of the creditor at

on 20

*(d) An action for adjudication of the debt has been commenced.

The/

The applicant offers to pay the outstanding amount

*(a) By instalments of £ each Week Fortnight Month
 (tick one box only)

*(b) In one payment within weeks/months

The applicant's financial position is as follows:-

Outgoings			Income		
Weekly	Fortnightly	Monthly	Weekly	Fortnightly	Monthly
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Rent	£		Wages	£	
Mortgage	£		Pensions	£	
Heating	£		Social Security	£	
HP	£		Other	£	
Other	£			£	
	£			£	
TOTAL	£		TOTAL	£	

Dependents: Children - how many

Dependent relatives - how many

Here list all capital (if any) e.g. value of house; amount in bank building society account; shares or other investments:-

Here list outstanding debts:-

The applicant asks the court

*delete as appropriate

1. **To make a time to pay order**
- *2. To recall the attachment referred to
- *3. To recall or restrict the arrestment referred to (*specify order sought*)

OR

*4. To order that no further steps shall be taken by the creditor or the sheriff officer in the diligence concerned, other than in the case of an attachment making a report of the attachment under section 17 of the Debt Arrangement and Attachment (Scotland) Act 2002, or applying for an order under sections 17(1), 20(1) and 21(10) of that Act.

Date _____ Signed _____ (Applicant)

At

20

The Sheriff having considered the foregoing application and being satisfied that it is properly made, sists all diligence pending the disposal of the application.

Appoints the creditor to furnish the Sheriff with particulars of the decree or other document under which the debt is payable within _____ days of intimation hereof.

Appoints the Sheriff Clerk to intimate a copy of the application and this interlocutor to the creditor; appoints him if he objects to the granting of this application to make written representation to the Court within 14 days of the date of intimation hereof.

Sheriff

I,

, Sheriff Clerk Depute

did lawfully intimate the foregoing application and interlocutor to the said creditor by posting a certified copy of the application and warrant by recorded delivery post. The Post Office receipt for said recorded delivery letter is attached hereto.

Sheriff Clerk Depute

EXTRACT FROM SECTION 5(4) AND 5(5) OF THE DEBTORS (SCOTLAND) ACT 1987

(4) It shall not be competent for the sheriff to make a time to pay order:-

- (a) where the amount of the debt outstanding at the date of the making of the application under subsection (2) above (exclusive of interest) exceeds £25,000 or such other amount as may be prescribed in regulations made by the Lord Advocate;
- (b) where, in relation to the debt, a time to pay direction or a time to pay order has previously been made (whether such direction or order is in effect or not);
- (c) [...];
- (d) in relation to a debt including any sum of money recoverable by or on behalf of the Inland Revenue in respect of tax or as if it were tax;
- (e) [...];
- (f) in relation to a debt including-
 - (i) any duty due under the Betting and Gaming Duties Act 1981;
 - (ii) car tax due under the Car Tax Act 1983; or
 - (iii) value added tax under the Value Added Tax Act 1983 or any sum recoverable as if it were value added tax.

(5) Where in respect of a debt to which this section applies: -

- (a) moveable property of the debtor has been arrested and in respect of the arrested property-
 - (i) a decree in an action of forthcoming has been granted but has not been enforced;or
- (b) a decree in an action of adjudication for debt has been granted and the creditor has, with the debtor's consent or acquiescence, entered into possession of any property adjudged by the decree or has obtained a decree of mails and duties, or a decree of removing or ejection, in relation to any such property,

it shall not be competent for the sheriff to make a time to pay order in respect of that debt until the diligence has been completed or has otherwise ceased to have effect.