



Time Orders

What is a time order?

A 'time order' is a way of asking the court to give you more time to pay a loan agreement if you have fallen behind with the payments. It can change:

- the amount you have to pay each month;
- how long the loan will last; **and**
- in some cases, it is also possible to change the interest rate.

A time order is particularly useful if you have a secured loan and your lender is threatening to repossess your home.

Up until now, applications for a time order have not been made very often, but there have been some recent changes to the rules which mean that time orders may now be helpful to more people. Because there have been so few time orders in the past, you may find that your local advice agency, or even the sheriff clerk at your local sheriff court, has not dealt with an application before. If this happens to you, you could always refer them to the leading Scottish case on time orders: 'Muir McDougall Ltd v Sinclair'. This was heard by the sheriff court in 1994 and you could use the internet to look at the full case.

What credit agreements are covered?

You can apply for a time order if your credit agreement is regulated by the **Consumer Credit Act 1974**. This depends on when you took out your agreement and how much you borrowed at the time. Your loan will be

regulated if you borrowed less than the following amounts:

- **£15,000** if you took your credit agreement out before **1 May 1998**;
- **£25,000** if you took your credit agreement out between **1 May 1998** and **5 April 2008**;
- there is no financial limit if you took your credit agreement out from **6 April 2008** (unless your loan was taken out for business purposes).

i INFORMATION

Bank and building society mortgages taken out to buy your home are not covered. If you have a loan agreement it should state whether it is covered by the Consumer Credit Act. The agreement should have a heading that says:

Consumer Credit Agreement regulated by the Consumer Credit Act 1974.

When can you apply for a time order?

1. When an 'arrears notice' has been issued by your lender

From October 2008, the lender must send you an arrears notice if you have missed two payments on your agreement. This notice must be sent to you within 14 days. It should tell you how much you owe under the agreement,

how much the arrears are and if any interest or charges are being added.

New rules say that you can apply for a time order after you have received the arrears notice. You must write to your lender and give them 14 days notice that you are going to apply for a time order. You must include in the letter details of the offer of payment you are going to make in your application.



WARNING

Don't forget to keep a copy of your letter, as you will need to show this to the court when you apply for a time order.

The procedure and forms you need to use depends upon whether you have a secured loan, a hire purchase agreement, conditional sale agreement or an unsecured loan. See the sections below for details of how to apply.



INFORMATION

There is no charge for making an application to the sheriff court for a time order, although a fee will be payable to sheriff officers for serving the notice on the creditor.

2. When a 'default notice', 'calling in notice' or 'termination notice' has been issued by the lender

The lender can issue a default or termination notice and call in the loan if you have fallen behind with payments. Once you have received this, you can make an application to the sheriff court for a time order. You don't need to write to your lender to give notice that you are going to apply at this stage. See the section 'How to apply for a time order for details of how to apply.

3. When court action has been taken

If a creditor has already started court action against you then you can still apply for a time order. You can do this at the same time as replying to a sheriff court summons. See the

section 'How to apply for a time order' for details of how to apply.

What type of debt can you have a time order on?

Unsecured credit

If you have an ordinary credit agreement which is not a secured loan or second mortgage you would **not** normally need to ask for a time order to be made and an application for a DAS debt-payment programme, or a time to pay direction or time to pay order might be a better option. However, see the information box 'When is a time order a good idea?' for details of when it might be better for you to apply for a time order.

'Time to pay directions', 'time to pay orders' and 'time orders' - what is the difference?

It can be confusing because there are three different applications that can be made to the sheriff court about time to pay. This fact sheet is only about time orders, but it might be helpful to understand a little bit about the other two procedures.

- You can apply for a 'time to pay direction' if a creditor starts court action for an unsecured debt and you want to pay the 'decree' at a rate you can afford.
- 'Time to pay orders' allow you to pay the decree on an unsecured debt at an affordable rate as well, but **also** stop any action to enforce the decree. Enforcing a decree is called 'diligence'. A time to pay order can only be applied for once diligence has started.

Time orders have wider powers than time to pay directions and time to pay orders because they can also change the interest rate, but it is more difficult to get a court to agree to a time order. It will usually be your best option to apply for a

time to pay direction or a time to pay order if you can, but see the information box on the next page for details of when it might be better for you to apply for a time order. See the section 'Applying after court action' for how to do this.

WARNING

You cannot apply for a time order if a time to pay direction or time to pay order has been granted. Although it is possible to apply for a time order if an earlier application for a time to pay direction or order was unsuccessful.

FACT SHEET

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

INFORMATION

When is a time order a good idea?

You may want to ask for a time order if an arrears notice or a default notice has been issued but the creditors is refusing either to accept your offer of payment, or to freeze the interest. If interest is still being added on to the debt and the creditor refuses to take court action, then applying for a time order may be the only way to ask for the interest to be frozen. If the court makes a time order and you keep up to date with the payments, a creditor cannot insist on having a sheriff court decree against you.

WARNING

You need to check if the whole loan has been called in. See the section on 'Has the whole loan been called in?' **Phone us for advice.**

If you succeed in getting a time order before the creditor has taken court action, a decree will not appear on the sheriff court register or on credit reference agency files. Although the creditor may have registered the default on your credit reference file already, when you fell behind with the loan.

The procedure you have to follow to apply for a time order if you have an unsecured loan depends upon whether you apply before or after court action has started.

1. Applying before court action

To apply for a time order before court action you will need to use a formal application form. This is **Form 1 of the Schedule of Sederunt (Consumer Credit Act 1974)**. There is a sample copy at the end of this fact sheet. This is a complicated form and you will need help from a money adviser or a solicitor to complete the application and serve it.

2. Applying after court action

You can still apply for a time order after your creditor has started to take court action.

WARNING

If you have just received a court summons or writ and all you need is time to pay the decree at a rate you can afford, you will usually be better off applying for a time to pay direction rather than a time order. If you are unsure about which application you should be making, take advice first before applying.

The simplest way to apply for a time order if your creditor has started court action is to use the application form which you will receive along with your small claims or summary cause summons. This is the same form that you would use to apply for a time to pay direction and is called: **Application in writing for a time to pay direction or a time order**. There is a sample copy of this at the end of this fact sheet.

What if the creditor has started enforcement action?

Even if your creditor has started diligence or enforcement action it is not too late to make an application. You will know that enforcement action has started because a 'charge for payment' or 'bank arrestment' will have been served on you.



WARNING

If your creditor has started diligence action to enforce the decree and you want to stop the diligence and apply for time to pay at a rate you can afford, you will usually be better off applying for a time to pay order rather than a time order. If you are unsure about which application you should be making, take advice first before applying.

Whether you apply for a time order before or after court action, there will be a sheriff court hearing to decide on your application. The creditor can object to the time order being made and the sheriff will decide whether to make a time order in your case.

Since **October 2008** you are allowed 'lay representation' in court when your time order application is heard. This means that you may be able to take a representative from a local advice agency along with you to help explain your case instead of a solicitor.



WARNING

You cannot apply for a time order if a time to pay direction or time to pay order has been granted. Although it is possible to apply for a time order if an earlier application for a time to pay direction or order was unsuccessful.

Hire purchase or conditional sale agreement



INFORMATION

Hire purchase and conditional sale agreements are unlike ordinary credit agreements because the goods bought do not belong to you until you have paid off the credit agreement. Hire purchase and conditional sale are very similar and this fact sheet uses the term 'hire purchase' to describe both types of agreement.

If you fall behind with the payments under a hire purchase agreement, the lender can ask for the goods to be returned and then sell them to reduce the debt. If the goods are not returned voluntarily, the lender can start repossession proceedings.

If your creditor goes to court to get your hire purchase goods repossessed this is called an 'action for delivery' and they will ask for a 'decree of delivery'.

If a time order is in place the lender cannot terminate the agreement or repossess the goods. Time orders can be useful to reschedule hire purchase agreements as both the arrears **and** future instalments can be included in this rescheduling.



INFORMATION

There is confusion in Scotland about whether or not a creditor always has to get a court order to repossess hire purchase goods. In England it is not always necessary for the creditor to have a court order before repossessing but, because Scottish law on this is unclear, you may want to point out to the creditor that they should seek a court order before repossessing goods. If the creditor seizes the goods without a court order, the law on this point can only be clarified by going to court.

When a creditor goes to court to try to get hire purchase goods back, you can ask for the decree of delivery to be suspended on the condition that you pay a fixed amount per month. This will usually be to pay the normal monthly instalment plus an amount on top to clear the arrears.

You can ask the court to make a time order if you cannot afford to pay the full instalments. The court will often make a court order to let you keep the hire purchase goods and pay off the agreement at a reduced amount without stating they are making a time order.

The procedure you have to follow for a time order if you have a hire purchase agreement depends upon whether you apply before or after court action has started.

1. Applying before court action

If the creditor has not yet gone to court, but has issued an arrears notice or a default notice on a hire purchase agreement, then you can apply to the sheriff court for a time order. The court can look at changing the terms of the whole agreement, not just the arrears, even if the whole loan has not been called in.

ADVICE

For details of the application process, see the section on 'Unsecured credit'. **Phone us for advice.**

2. Applying after court action

The papers that you will get from the court will include a form that you can use to apply for a time order. This is called '**Application in writing for a time to pay direction or a time order.**

WARNING

If you have received court papers telling you that your creditor wants to repossess your hire purchase goods and you are trying to decide what to do – be careful. The form **Application in writing for a time to pay direction or a time order** that comes with the court papers is a standard form that is used in different types of court cases.

Time to pay directions are not available for hire purchase debt unless the goods are returned or repossessed. Unless this is the case, you can only use this form to apply for a time order.

FACT SHEET

We have a fact sheet on 'How to deal with hire purchase debt', which may be of assistance to you. **Phone us for a copy.**

Secured loans

You may be able to use a time order to reschedule the payments on a loan that is secured on your house. A time order may be a good option if you have fallen behind with a secured loan. You may be able to stop the lender repossessing your home.

You can apply for a time order once the arrears notice or default notice has been issued, but it may not be your best option if your lender has already started possession proceedings.

ADVICE

If you would like more details about the type of court action a secured lender may take, see our self-help pack 'Dealing with your debts' or **phone us for advice.**

REMEMBER

You can apply for a time order on secured loans and not first mortgages. If you have first mortgage arrears, **phone us for advice.**

1. Applying before court action

You may be able to use a time order to reschedule the payments on a loan secured on your home in order to stop repossession action.

You can also apply for a time order once the creditor has sent you an arrears notice. You must write to your lender to give them 14 days notice that you intend to apply for a time order. You must include details of the offer of payment you are going to make in your time order application.

WARNING

Don't forget to keep a copy of your letter as you will need to show this when you apply for a time order.

You can also apply for a time order once the creditor has sent you a default notice and called in the loan. You can do this without sending a

letter giving notice to your lender first. You will need to apply to your local sheriff court using a formal application. This is **Form 1 of the Schedule Act of Sederunt (Consumer Credit Act 1974)**. There is a sample copy at the end of this fact sheet. This is a complicated form and you will need help from a money adviser or a solicitor to complete the application and serve it.

Has the whole loan been called in?

The law has not been entirely clear on what the court's powers are when making a time order. Following two court of appeal cases, time orders seem to apply in two situations.

Time orders on arrears only

Sometimes a time order can only help with how much you should pay every month on the payments you have missed, leaving the ongoing monthly payments unchanged. This might mean the court also needs to look at changing or freezing the amount of interest being added to the arrears and possibly the interest rate on the whole balance you owe under the agreement.

This is the case if the lender has only sent you an arrears notice (or in some cases a default notice) but the whole loan has **not** been called in. This is more likely where you have only had an arrears notice, as under the terms of most agreements the whole loan is called in automatically when the lender sends a default notice to you.

Time order on the whole agreement

You may have to wait for the loan to be called in before making your time order application, if you want to ask the court to reduce the payments you have to make on the whole agreement and not just the arrears.

Sometimes a time order can be used to change the whole agreement, setting lower payments and interest charges, and in certain circumstances stopping interest being added at all. This can **only** be done when the whole loan has been called in by the lender, where the loan agreement has automatically terminated on default.



WARNING

You need to check if the whole loan has been called in. See the section on 'Has the whole loan been called in?' **Phone us for advice.**

There will be a hearing where your lender can object to a time order being made. It is up to the sheriff to make a time order or refuse your application. If the time order is refused the lender could start possession proceedings to try to repossess your home.



INFORMATION

See the section on 'What should you ask for?'

2. Applying after court action

The legal position about secured loans and time orders is different in Scotland to what happens in England. Scottish law is unclear about how a time order affects a secured lender's rights to repossession. In Scotland, it seems that if your secured lender has already started repossession action, it may be that your best option - instead of a time order - is to apply for a **section 2 order** under the **Mortgage Rights (Scotland Act 2001)**. If successful, this will prevent or delay repossession. **Phone us for advice.**



INFORMATION

Our information pack, 'Dealing with your debts' has a special section on how to deal with a lender who takes repossession action. **Phone us for a copy.**

i INFORMATION

It should be easier to ask the court to make a time order following a decision in the court of appeal in March 1995. The case is called **Southern & District Finance plc v Barnes**. This is very important as the court agreed that the whole amount of money owing on the agreement can be included in a time order. Also the monthly instalments and the interest rate on the loan agreement can be reduced if the court thinks it is just to do so and it is needed to make the time order work.

Do you have to be in temporary financial difficulties?

It should be easier to ask the court to make a time order following cases in the court of appeal called **Southern & District Finance plc v Barnes [1995]** and **Director General of Fair Trading v First National Bank [2001]**.

As part of the case of **Southern District Finance plc v Barnes**, the court of appeal also said that time orders should only normally be made if someone is in temporary financial difficulty. The court has not been very clear about how they should decide if your difficulties are 'temporary'. You may have to show that your case is not a normal one or there is a good chance of your circumstances improving. The court may well only give a time order for a limited period. You may have to ask for any exceptional circumstances to be taken into account to allow you to have a time order over a longer period.

However, in **Director General of Fair Trading v First National Bank** the court looked at whether you need to be in temporary financial difficulties to have a time order. They said that **section 129 of the Consumer Credit Act 1974** allows the court 'to make such order as seems just to it in all the circumstances'.

- Argue that in your case it is reasonable for the court to make a time order over a longer period.
- Make sure the court takes all your circumstances into account.
- Explain how your circumstances are likely to improve, even if this is some years away.
- Point out that in the Barnes case, one of the time orders was made over 15 years and this was considered 'just'.

“” ADVICE

Anything you can say to show your situation is through no fault of your own will help when applying for a time order as the court will look at your payment record. Make sure you show how you got into debt and why you took the loan out.

What should you ask for?

If you cannot afford the full instalments you need to ask for the loan and arrears to be re-scheduled.

- For the court to be able to make a time order you must be able to afford to make an offer of payment. The court will consider whether you can afford to pay what you have offered, or if you are offering as much as you realistically can afford.
- The court has to look at the position of the creditor as well as your situation when deciding if it is 'just' to make a time order. This means if you cannot make an offer at all, or are unlikely to ever be able to pay off the loan, the court may decide not to make a time order.

- If you have asked for a new instalment rate but want to repay the debt within the same period of time, then you can ask the court to change the interest rate to allow you to do this. Also, the interest may be so high that your reduced payments will have no effect unless the interest is reduced. You will also need to ask for any default interest and charges to be frozen.
- If you can afford to make the normal monthly payment you need to ask for a time order to fix payments on the arrears only. If you get a time order on the arrears only, you may want to ask the court to reduce or freeze the interest in order to let you repay the debt over a reasonable time.

This will be necessary where the interest to be added on to the arrears is the same or more than the amount you can afford to pay towards clearing the arrears.

Is it 'just' to make a time order?

Make sure you add any points that may help the court decide that your case is 'just'.

REMEMBER

The court needs to look at the creditor's position as well as your circumstances.

- Was the reason you took out the credit a good one?
- Could you afford the payments when you first took out the agreement?
- Was your agreement very expensive or not appropriate for your needs at the time? Point out a high interest rate and how much you would have to pay back over the whole period.
- Have you taken out further credit since? If so, then was there a good reason for this?
- Have you had a good payment record until the point you stopped paying?

- What is the reason for your non-payment? Have your circumstances changed? Explain the background to your situation.
- Have you tried to sort out your problems and ask the creditor for a payment arrangement (e.g. you haven't ignored the debt)? If the creditor has refused to negotiate you need to point this out. Start making the payments you have offered as a gesture of goodwill.
- Is your situation temporary and likely to improve in the future? The court is likely to want to make a time order for a time-limited period.

Costs

You need to be careful with time order applications in relation to secured loan agreements. The secured lender is usually allowed to add possession costs and charges to the outstanding balance you owe on your loan.

If your time order is refused you may have lots of extra costs added to your debt. This will usually happen automatically. If there is a good reason that you feel the costs are unfair, you can ask the court to refuse the lender's costs. This might be if the creditor has been 'unreasonable' in some way.

Unfair relationships

If you feel the interest rate charged on your agreement is excessively high, or that the terms and conditions of the agreement are unfair, you may be able to take action against your lender. This may also apply if your lender has behaved unfairly in the way in which they have dealt with your agreement. It will be up to the lender to prove that the agreement is not unfair. The court will have wide powers to alter the terms of the agreement or even order the lender to pay money back to you.

You may be able to use the new 'unfair relationships' test. This has replaced the idea of 'extortionate credit' in the **Consumer Credit Act 1974**. This applies to all agreements from **April 2008**, even if they are not regulated under the **Consumer Credit Act** (apart from a first mortgage). It doesn't matter when your agreement was first taken out. You can apply before your lender takes you to court. You can also ask for the court to look at this issue as part of an existing court case.



WARNING

It is unclear how the new unfair relationships test will work in practice. If you want to find out more, **phone us for advice**.



WARNING

If you think a time order may help your situation it is usually best to seek help from a solicitor or from a local advice agency. Although this fact sheet explains what time orders can do, the outcome will depend on how a sheriff views your circumstances, and what the court thinks its powers are under the **Consumer Credit Act 1974**.



INFORMATION

The relevant sections of the **Consumer Credit Act 1974** are shown on the next page.

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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National Debtline is a part of the Money Advice Trust. Money Advice Trust Registered Charity Number 1099506.

A company limited by guarantee. Registered in England and Wales Number 4741583.

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Section 129

1) If it appears to the court just to do so-

- (a) on an application for any enforcement order; or
- (b) on an application made by a debtor or hirer under this paragraph after service on him of-
 - (i) a default notice, or
 - (ii) a notice under Section 76 (1) or 98 (1); or
- (ba) on an application made by a debtor or hirer under this paragraph after he has been given a notice under section 86B or 86C; or
- (c) in an action brought by a creditor or owner to enforce a regulated agreement or any security, or recover possession of any goods or land to which a regulated agreement relates,

the court may make an order under this section (a 'time order'.)

2) A time order shall provide for one or both of the following, as the court considers just-

- (a) the payment by the debtor or hirer or any surety of any sum owed under a regulated agreement, or a security by such instalments, payable at such times, as the court, having regard to the means of the debtor or hirer and any surety, considers reasonable;
- (b) the remedying by the debtor or hirer of any breach of a regulated agreement (other than the non-payment of money) within such period as the court may specify.

3) Where in Scotland a time to pay direction or a time to pay order has been made in relation to a debt, it shall not thereafter be competent to make a time order in relation to the same debt.

Section 129A Debtor or hirer to give notice of intent etc. to creditor or owner

- 1) A debtor or hirer may make an application under section 129(1)(ba) in relation to a regulated agreement only if -
 - (a) following his being given the notice under section 86B or 86C, he gave a notice within subsection (2) to the creditor or owner; and
 - (b) a period of at least 14 days has elapsed after the day on which he gave that notice to the creditor or owner.
- 2) A notice is within this subsection if it -
 - (a) indicates that the debtor or hirer intends to make the application;
 - (b) indicates that he wants to make a proposal to the creditor or owner in relation to his making of payments under the agreement; and
 - (c) gives details of that proposal.

Section 136 Power to vary agreements and securities

The court may in an order made by it under this Act include such provision as it considers just for amending any agreement or security in consequence of a term of the order.

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:

Statutory Instrument 1995 No. 1877 (S.124)
Act of Sederunt (Consumer Credit Act 1974) 1985 (Amendment) 1995 -

SCHEDULE

Paragraph 2(d)

FORM 1

Paragraph 5A

The Consumer Credit Act 1974, Section 129

Sheriff Court

APPLICATION FOR TIME ORDER

(1) APPLICANT 19 (court reference no.)
(2) RESPONDENT	

(1) *insert your name and address*

(2) *insert full name and address of the person against whom the order is sought*

Part I

Order Sought

The applicant asks the court to make

* (a) a time order under section 129 of the Consumer Credit Act 1974;

* (b) an order in terms of section (3) of the Consumer Credit Act 1974

**delete as appropriate*

(3) *insert the section number of the Consumer Credit Act 1974 under which any ancillary order is craved*

* Part II

Proposals for Payment

My proposal for payment of the arrears and future instalments is £..... per week/month.

No time to pay direction or time to pay order has been made in relation to this debt.

* Part III

Proposals to Remedy Breach of Agreement

I have breached the terms of the agreement, as follows—

.....

.....

.....

My proposals for remedying the breach(es) are as follows—

.....

.....

.....

**delete whichever box not appropriate*

* Part IV

Ancillary orders sought

The ancillary order(s) sought in addition to the time order are sought for the following reasons (4).....

.....

.....

.....

**delete box if not appropriate*

(4) insert here the reasons why you have sought any ancillary order in addition to a time order

Part V

Details of Regulated Agreement

i. Date of agreement and reference number(5)

* A copy of the agreement is attached.

ii. Names and addresses of other parties to the agreement

.....

.....

iii. Name and address of person (if any) who acted as surety

.....

.....

iv. Reason why respondent is now creditor (applies where agreement transferred to another company)

.....

.....

v. Place where agreement signed (eg the shop where agreement signed, include name and address)

.....

vi. Details of payment arrangements

a. The agreement is to pay by instalments of £..... per week/ month *

b. The unpaid balance is £...../I do not know the unpaid balance*

c. I am £..... in arrears/I do not know the amount of arrears*

vii. The respondent served on me a—

default notice/section 76(1) notice/section 98(1) notice*

A copy of the notice is/is not* attached to this application.

(1) Attach a copy of the agreement to the application form if you have retained it or delete

insert details of the agreement where known—refer to your copy of the agreement if you have retained it

**delete as appropriate*

Signed APPLICANT/SOLICITOR FOR APPLICANT

Date

TO HELP THE COURT PLEASE PROVIDE DETAILS OF YOUR FINANCIAL POSITION IN THE BOXES BELOW

(If necessary attach a separate sheet)

INCOME	
My income is: <i>(give average weekly figures, after deductions)</i>	
Pay <i>(include overtime, bonuses etc)</i>	£
Pensions	£
State Benefits	£
Other income	£
Total	£

EXPENDITURE	
My expenditure is: <i>(give average weekly figures)</i>	
Rent/Mortgage	£
Council Tax	£
Heating/Light	£
Food	£
Payments for credit cards hire purchase etc	£
Other payments (specify)	£
Total	£

DEPENDANTS

List the names and ages of members of the household who are financially dependent on you.