



Time to pay in simple procedure actions

Fact sheet no. 37 SCOT Time to pay in simple procedure actions

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Use this fact sheet to:

- understand which court procedures you will use;
- find out if you can apply for time to pay for the debt you have;
- apply for a time to pay using the correct procedure and court forms; and
- understand how time to pay can protect you from further action by creditors.

Information:

INFO

changes to court procedures

On **28 November 2016**, the Scottish court procedures for dealing with most debts of **£5,000** or less changed. The information in this fact sheet is based on our understanding of the new rules.

Which court procedure do I use?

Since **28 November 2016**, there are two different sheriff court procedures.

- 'Simple procedure' for debts **up to £5,000**.
- 'Ordinary cause' for debts **over £5,000**.

If a claim for a debt of up to £5,000 was started before **28 November 2016**, the procedure may be different, contact us for advice.

Claims for child support (aliment), personal injury, defamation, and mortgage or rent repossession do not use the simple procedure. From **1 December 2017**, in private residential tenancies there is no court option as the process is run through the First-tier Tribunal (Housing and Property Chamber).

Some debts, for example council tax, can also be enforced in the sheriff court using a summary warrant.

This fact sheet explains how to ask for time to pay in simple procedure actions. You may still be able to ask for time to pay in an ordinary cause action or when a summary warrant has been issued against you, but there are different rules about how and when you can do this.

See our fact sheet:
Time to pay directions and orders





When can I ask for time to pay?

You can ask for time to pay at any time after the claim has been made against you.

There are three different ways to ask for time to pay, depending on how far the case against you has gone.

Apply for time to pay when you respond to the claim

You can respond on the [Civil Online website](#) or complete the separate Time to Pay Application that was sent with the claim.

See our fact sheet:

[Sheriff court action for debt](#)



Extra advice:



admitting the claim

You can only ask to time to pay if you admit the claim. This means you must agree with the claim that is being made against you. You could not continue to try and defend the claim and also ask for time to pay.

Apply for time to pay after you have sent your response

If you have already returned the Response Form but have not asked for time to pay, you may still be able to hand in a Time to Pay Application. You should give it to the sheriff clerk, but can only do so at an arranged discussion or hearing at the court.

Apply for time to pay after a decision has been made

You can apply for time to pay at any time after the sheriff has made a decision and granted a decree. You will just need to complete a Time to Pay Application form and send it to the court.

Extra advice:



refusing time to pay

You cannot be given time to pay again if you have previously been given time to pay but didn't pay. You can be given time to pay if you have applied before but this was refused, so it can be worth asking again, especially if your circumstances have since changed.



Asking for time to pay

You can request time to pay by responding to the claim form on the [Civil Online website](#). Alternatively, you should receive a **Time to Pay Application** with the Claim Form and Response Form, when you first receive the claim from the court.

Once you return the Time to Pay Application, the sheriff clerk will send a copy to the claimant. They have **two weeks** to tell the court whether they agree with the offer you have made.

- If they agree, the sheriff may decide the case and grant the application.
- If they disagree the sheriff will arrange a hearing. The sheriff will decide at the hearing whether to grant the application or not.
- If they don't respond at all, the sheriff will decide the case and may grant your application.

What can I ask the court to accept?

You can ask the court to:

- allow you time so that you can clear the debt at a later date in one lump sum; or
- allow you to repay by instalments at an affordable rate.

You can also ask the court to reduce or freeze any interest that is being added to the debt, but only if the debt is regulated by the **Consumer Credit Act 1974**. Most loans, credit cards and other credit agreements are regulated. However, it may be harder to get the court to agree to do this, **contact us for advice**.

Your loan or credit card may be regulated depending on how much you borrowed and when you took out your credit agreement. The maximum amount you could borrow on a regulated agreement has changed over the last few years, with the following limits.

- **£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 out your credit after **6 April 2008**, but some business agreements can be exempt.

Extra advice:



Hire purchase and conditional sale

If you have goods on hire-purchase or conditional-sale that you want to keep but the creditor is trying to repossess, make sure you tell the court that you want to keep the goods and the reasons for this.



What should the court consider?

The court will consider the following factors before deciding to grant your application:

- the type of debt you have, and the reasons why the money was borrowed;
- whether the creditor has done anything to help you;
- your financial position;
- the reasonableness of your offer (you should point out that you are offering to pay as much as you can afford); and
- if the creditor is objecting, the reasons for them doing so.

Information: completing your application

INFO

The court should try to make you repay the debt at a rate that is fair to both you and your creditor.

You are asked several questions on the **Time to Pay Application form**. Make sure you include all the relevant information the court needs to understand your situation.

If you ask the court to reduce or stop any interest from being added to the debt, the court will also have to consider whether this is 'just'.

You should add points that may help the court decide that your case is just.

- 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.
- Have you taken out further credit since? If so, then was there a good reason for this?
- Did you have a good payment record in the past?
- Have you tried to sort out your problems and ask the creditor for a payment arrangement?

By asking the court to freeze or reduce the interest, you are asking for a time order.

See our fact sheet:
[Time orders](#)



What if I don't ask for time to pay?

If the court makes a decision that you owe the claimant money and you do not ask for time to pay, the claimant can enforce the debt. They have to wait for **4 weeks** after the decision is made before they taking any further action. They can then send a 'charge to pay' giving you a further **14 days** to pay.



Once this time has run out, they can apply for diligence (enforcement). There may be a number of different options available to them, depending on your circumstances.

See our fact sheet:
Diligence - how creditors can enforce debts



The Debt Arrangement Scheme

You may be able to apply for a debt-payment programme under the Debt Arrangement Scheme (DAS). This is a way of putting all your debts together and making one monthly payment that you can afford. This is paid to an approved payment distributor who sends the money to your creditors for you.

- A debt-payment programme will cancel most forms of diligence (enforcement action) such as arrestment of your bank account, or an earnings arrestment.
- A DAS also freezes interest, fees and charges on all of your debts, from the date that you apply for your debt-payment programme.

See our fact sheet:
Debt Arrangement Scheme (DAS)



See our fact sheet:
Business Debt Arrangement Scheme (BDAS)



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