

Third party applications

Information for applicants

This document will help you make an application to The Pensions Regulator (TPR) for a particular power to be used.

Under section 10(6) of the Pensions Act 2004 (the 'Act'), an application can be made to TPR under certain provisions listed (see the attached schedule). For example, individuals may ask to have their trustee disqualification waived.

Although TPR's Case Team receives the application, Section 10(2)(b) of the Act says that the decision to grant or reject applications is made by the Determinations Panel (the 'Panel'). The Panel is a separate committee of TPR authorised to exercise certain powers on its behalf.

This guidance should be read alongside both the Case Team Procedure at www.tpr.gov.uk/caseteam and the Determinations Panel Procedure at www.tpr.gov.uk/dp-procedure.

When referring to 'you' we are referring to the Applicant. When referring to 'us' we are referring to the Case Team of TPR and/or the Panel.

Application

Section 10(6) of the Act covers a wide variety of circumstances so there is no standard form in which to make an application*. However, for an application to be sent to the Panel it should include (at the minimum):

- ▶ Your name and address.
- ▶ The name and address of any people or organisations who are likely to be directly affected by the application being made (Directly Affected Parties – DAPs). This will typically include scheme employer(s), scheme trustees and scheme members. Precisely who is 'directly affected' will be decided by the case team based on the information provided by you and will vary depending on the type of application. The Case Team may contact you further about this.
- ▶ If you are using a lawyer, the lawyer's name and contact details (address, phone and email).
- ▶ Details of how you would like us to contact you (ie by post or email) including whether you (or your lawyer) will accept service of/can receive legal documents by email.
- ▶ What action you are asking us to take.
- ▶ The reason for your application.
- ▶ How your application relates to section 10(6) of the Act.
- ▶ Evidence to support your application including, if appropriate, the agreement of others if they are affected by it. (More details of the type of information we need as evidence can be found below).
- ▶ Anything else that you think may be relevant to the application.

Receipt of your application will be acknowledged and TPR will then contact you to discuss your application further. Please note that, if not enough information is provided, it may not be possible for the Case Team to send the application to the Panel and your application may take longer to deal with as we may have to ask you to provide more details.

*

The exception to this is the CETV extension application form, which can be found at www.tpr.gov.uk/forms.

Evidence in support of the application

You should try to provide all relevant information with your application, including anything that you refer to or rely on. Different information will be relevant for different applications. For example, an application for 'waiver of disqualification' should include, at the very least:

- ▶ evidence of the disqualification and the circumstances/reasons leading up to it
- ▶ the reason(s) why you believe the disqualification should be lifted/waived and information supporting those reasons
- ▶ details of whether your co-trustees/members agree or object to your application together with a signed statement from each of them to confirm their position
- ▶ copies of trust deed and rules
- ▶ details of the impact on you if the waiver/your application is not granted

Similarly, an application for an extension of the period within which a Cash Equivalent Transfer Value (CETV) should be paid should include, but is not limited to:

- ▶ a statement of the grounds on which the trustees rely in making their application
- ▶ evidence to support the grounds of application
- ▶ where appropriate, details of any action taken by the trustees to allow them to make payment
- ▶ details of the extension period required by the trustees
- ▶ a statement of the impact on the scheme being asked to make the transfer if the extension is not granted, and of the impact on the member if the extension is granted

We are required by law to follow a standard procedure for CETV extension applications, so please make sure your application is submitted within six weeks of the deadline, along with all relevant documentation. This will help us take your application forward without asking you for additional documents, which may cause delays and prevent us from granting the extension.

The role of the Case Team

Receive the application and where appropriate request further information

The Case Team will consider the application and documents provided. It facilitates the application and sometimes may have to ask you (or any DAP) more questions to make sure the application provides enough information. The Case Team is not there to investigate the application but to try to make sure that the Panel has all that it needs to make a decision.

It is in your interest to provide all relevant supporting evidence. If the right information is not provided, it may not be possible for the Case Team to ask the Panel to consider the request. If requests for further information/clarification are ignored, the application may be considered incomplete and not progressed any further. In these circumstances, you will be told this by the Case Team.

Draft and circulate a Warning Notice

Once the Case Team has received any requested information, the next step is for the Case Team to prepare a notice (called a 'Warning Notice') which sets out the details of the application.

The Warning Notice will include a statement on the merits of the case. This is a statement of the Case Team's view of the application to help the Panel reach its decision.

The Case Team will circulate the Warning Notice to you and any other DAP to give you and any others affected a chance to make 'representations'. A representation gives all the DAPs the opportunity to give their views on the application and provide any evidence to support those views. You will usually have at least 14 days to make representations. This will be made clear in the Warning Notice.

In the representations you, and/or any DAP, can say what you think of the Warning Notice/Statement of Merits and add any further information if necessary.

Consider any representations received/submit the application to the Panel for decision

The Case Team will review any representations before submitting the Warning Notice and any representations received to the Panel for a decision. Sometimes something said in the representations may mean that the Case Team needs to ask for more information before the application can be sent to the Panel.

The role of the Panel

Once it has received the application from the Case Team, a case panel will be appointed to decide the application. This is usually three members of the Panel but may sometimes be two. The Panel will meet, by telephone or in person, to consider the case and make a decision. It is possible that, even if the Case Team has already asked you for more details, the Panel may decide it needs more information in order to make its decision. If this is the case, the Panel will request this from you, another DAP or from the Case Team.

Once the Panel has reached a decision, it will tell you this by sending you a 'Determination Notice'. This will also be sent to anyone else that the Panel thinks is directly affected and it will tell you the Panel's decision and the reasons for it.

Further action

If you are unhappy with the decision, you can ask the Upper Tribunal, to look at the decision. This is called a 'reference' and details of how to do this will be included with the Determination Notice.

Other useful information

Please note that under section 89 of the Pensions Act, we may publish a report setting out the decisions that the Panel has taken. Further details of publications can be found at www.tpr.gov.uk/determinations.

Details of where to send applications can be found on the back page.

Schedule

Pensions Act 2004

- ▶ s20(10) – to permit payments out of an account that is subject to a restraining order.
- ▶ s26(2) – for order validating action taken in contravention of freezing order.
- ▶ s41(7) – for the issue of a revised contribution notice under s41(9).
- ▶ s50(7) – for issue of a revised contribution notice under s50(9).

Pensions Act 1995

- ▶ s3(3) – for revocation of a prohibition order.
- ▶ s3A(3) – for waiver of prohibition.
- ▶ s4(5) – for revocation of a suspension order.
- ▶ s7(5A) – for appointment of a trustee under s7(3)(a) or (c) of the Pensions Act 1995.
- ▶ s29(5) – for waiver of disqualification.
- ▶ s58(7) – to extend or further extend the period referred to in s 58(6) of the 1995 Act in relation to a schedule of contributions.
- ▶ s60(7) – to extend or further extend the period applicable under s60(3) of the 1995 Act in relation to securing an increase in value.
- ▶ s69(1) – for order authorising modification or modifying a scheme.
- ▶ s71A(2) – for modifying a scheme to secure winding up.

Pensions Schemes Act 1993

- ▶ s99(4A) – for extension under s99(4) of a period for compliance.
- ▶ s101J(6)(a) – for extension under s101J(2) of Pensions Schemes Act 1993 for a period for compliance.

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Free online learning for trustees

www.pensionseducationportal.com

Free online learning for those running public service schemes

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