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# Applying for an Extension of Time

## Why you may want an extension of time

You may want an extension of time to restore a registered design that has ceased or a design application that has lapsed because you did not pay a fee or take some other action in time. Perhaps you have lost your priority rights because you did not file an application within six months from the filing date in a convention country.

## What do I have to do?

So long as you unintentionally missed doing something, you can apply for an extension of time under section 137 of the Designs Act. You must:

- act quickly;
- pay any unpaid fees that are due, and (where possible) carry out the action which was not done in time; and
- pay a fee for an extension of time, based on the number of months extension needed.
- lodge an application for the extension of time that shows you failed to take the required action because of:
  - an error or omission by yourself, your employees, agent or attorney, OR
  - circumstances beyond your control, eg delays by post or courier, a sickness or accident. It does not cover lack of funds to pay a fee or excessive workloads.

## Remember

1. You cannot get an extension of time if your failure to do an act was intentional
2. Failing to pay a fee, or to do an act, is not itself an error or omission
3. If you make an application for an extension of time for more than three months we must advertise your application so that other people have an opportunity to oppose the extension. If this happens we recommend that you obtain legal advice.

If no opposition is filed to your extension request, the Registrar will then go ahead and consider the request.

## Seek professional advice

This sheet provides only basic information. Applying for an extension of time can sometimes involve complex legal issues and it may be in your best interests to obtain professional advice.

## How do I apply?

You can write your application on the official form attached. You must attach to it one or more declarations setting out the reasons why the fee was not paid, or act not done, by the required date.

## Declarations

Declarations are written statements of fact witnessed by an authorised person, eg a justice of the peace. The declaration must:



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- give a full and frank disclosure of all the relevant circumstances;
- describe the chain of events that caused the relevant fee not to be paid, or act not to be done, in time. You may have to get declarations from a number of people involved;
- explain the error or omission, or the circumstances beyond your control;
- explain any delays in making the application for an extension of time; and
- include copies of any relevant documents which support the explanations.

## Fees

When you file your application for extension of time, you will have to pay a fee.

- If you are relying on an error or omission by yourself, or by your agent or attorney, the fee increases for every month of extension required.
- If you are relying on circumstances beyond your control, there is a single fee irrespective of the length of the extension sought.

The Designs Office can supply you the current fee information.

## What do we do with your application?

If your application meets the requirements of the Designs Act 2003 we will approve your extension of time. If not, we will notify you of the reason, and give you an opportunity to file further material to support your request. If the matter cannot be resolved, you can ask to be heard by the Registrar of Designs. A decision of the Registrar refusing to grant an extension of time may be appealed to the Administrative Appeals Tribunal.