



FORMAL MEMORANDUM

EXTENSIONS FOR FURTHER REPRESENTATIONS/SUBMISSIONS

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Introduction

1. This Formal Memorandum sets out the Commission’s policy in relation to the granting of extensions of time for receipt of further representations or submissions (hereinafter referred to as “submissions”) in response to a provisional decision.
2. The Commission will always permit an applicant to respond to a provisional decision. 20 working days will be permitted for further submissions in the majority of cases. In some more complex cases 40 days will be permitted.

The Policy

3. It is a key objective of the Commission to deal with cases both efficiently and expeditiously. Providing an opportunity for further submissions is a legal requirement, but there is no statutory or other provision which sets a time limit for such submissions.
4. The Commission has determined that the periods set out above are the minimum to be granted to an applicant to respond to a provisional decision. There are however some cases where, for a variety of reasons, it is

unreasonable to require a response within that period. This policy advises when and how the discretion to permit additional time might be exercised.

Further Submissions

5. At the same time as the applicant is provided with the initial opportunity to make further submissions s/he will also be advised that:
 - (i) no extension to the period for further submissions will be given unless the applicant or representative contacts the Commission within that period with good reasons why further time is required; and
 - (ii) in the absence of a response within the usual period allowed, a final decision will be made.

Extensions of time

6. In all cases a further 20 working days may be granted by the case reviewer. Any subsequent extensions may be granted only with the agreement of the decision-maker or Lead Commissioner (LC).
7. Initial or subsequent extensions of time for the making of further submissions may be appropriate having regard to factors such as the complexity of the issues involved, the likely difficulty of obtaining or giving necessary instructions or the fact that lengthy documents obtained by the Commission have been disclosed for the first time with the provisional decision. Subsequent extensions should not normally be granted for longer than two months at a time.
8. The opportunity to respond to the provisional view is afforded in order to elicit further submissions on the issues addressed in the provisional decision, not to invite the raising of new issues or the submission of new arguments or evidence. Where genuinely new matters are raised in the further submissions it is at the Commission's discretion whether to respond to them within the existing case review, or to require a new application to be submitted. Any decision as to whether or not to require a new application to be submitted in those circumstances should be made by the decision-maker or LC.
9. The overriding factors in the exercise of the discretions referred to above should be fairness (a) to the applicant in question and (b) to other applicants to the Commission.

10. The Commission will not normally consider the following reasons as being by themselves sufficient to justify an extension of time for further submissions:
 - (i) the applicant has only recently identified a new issue, argument or matter which, so it is contended, merits consideration and/or investigation by the Commission;
 - (ii) a change of legal representative, or the initial appointment of a legal representative, by the applicant after the issue of the provisional decision;
 - (iii) delays by the applicant or his representative in the consideration of the provisional decision.
11. Should an applicant or his representative indicate within the relevant time limit that there will be no further submissions, then there is no requirement for the Commission to await the expiry of the period granted before progressing the case further.