

The Small Claim

Information and procedural guide

1 What is a Small Claim?

The uses and purpose of the procedure described

How the small claim procedure works

Getting advice

When the procedure is appropriate

Types of action which can be made

Monetary limits

Legal terms explained

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Please note: While every effort has been made to ensure the accuracy of the information contained in this guide, no legal responsibility can be accepted for any errors or omissions.

1.01 About the guide

This guide has been compiled to provide information to anyone who wishes to find out more about small claims.

The guide is divided into four parts. This has been done to save you reading information you may not need. The four parts are designed for use as follows:

Part 1 – What is a Small Claim?

Gives you a summary of the main features of the procedure. It should be helpful if you are thinking about raising a court action but wish to find out more before doing so. It may also be useful for you to consult should anyone raise a claim against you.

Part 2 – Taking a Claim to Court

Tells you what to do if you decide to start court proceedings.

Part 3 – Responding to a Claim

You should consult this part if you have been served with a summons and wish to find out what you can do in response.

Part 4 – Going to Court

Even after a case has begun, it is not always necessary to attend court in person. This part of the guide tells you in what circumstances attendance is necessary, how to prepare for going to court, and what is likely to happen. It also contains information about enforcing any order made by the court.

As well as the four parts mentioned above, there is also a brochure containing addresses of some organisations which may be able to help you if you wish to begin or defend a small claim.

This guide, as well as being available in printed form, is also available on the Scottish Court Service website at www.scotcourts.gov.uk. The website version will be amended whenever any of the information contained in the guidance requires to be updated.

PLEASE NOTE:

The guidance cannot cover every situation which may arise in the course of a claim. You should also note that the guidance is not the authority upon which the procedure is based. The formal rules are contained in a document called an Act of Sederunt. Its full title is: Act of Sederunt (Small Claim Rules) 2002.

You may be able to see a copy of the Act of Sederunt at one of the offices of the organisations listed in the brochure. It is also available on the Scottish Court Service website at www.scotcourts.gov.uk.

Alternatively, you can purchase a copy of the Act of Sederunt from The Stationery Office Bookshop, 71 Lothian Road, Edinburgh EH3 9AZ (tel: 0870 606 5566) or from any other legal bookshop.

1.02 What is a small claim? – a brief description

A small claim is a type of court procedure.

It is designed to be quick, cheap and easy to use.

You do not need to use a solicitor, but you can do so if you wish.

It is used where the value of the claim is up to (and including) £3000.

Small claims can only be raised in the sheriff courts.

Legal aid is not, however, available (except for appeals).

A list of some useful legal terms can be found in Appendix 'A' of this guide.

1.03 Where can I go for advice?

There are many organisations which can help if you are considering beginning or defending a small claim. For example, you may receive free advice and assistance from any of the following:

- Scottish Association of Law Centres
- Citizens Advice Bureaux
- Consumer Advice centres
- Consumer Protection departments
- In-Court Adviser at Aberdeen, Airdrie, Dundee, Edinburgh, Hamilton and Kilmarnock Sheriff Courts
- Money Advice, Scotland
- Sheriff clerks' offices
- Trading Standards departments

These organisations can advise you, and in some cases may also be willing to help you, to prepare your case for court, free of charge.

A full list of names, addresses and telephone numbers for their offices is available as a separate brochure.

There are several other organisations, for example money advice services, who may also be able to advise or assist you. Some of them produce leaflets and booklets giving information about various aspects of debt recovery. You can check their details and find the addresses of their offices in your area by consulting the Directory of Money Advice Services in Scotland, copies of which are available in many of the offices of the organisations listed above.

Please note that sheriff clerks and their staff cannot give you legal advice, although they can help you to understand court procedures and to complete any necessary forms.

Alternatively you may wish to consult a solicitor (see paragraph 1.06. for further information).

1.04 Alternatives to raising court proceedings

You should raise court proceedings only as a last resort. Before taking this step, it is advisable to try and find another way of settling any dispute.

For example, if someone owes you money, you may wish to write formally to them first. In this case, you should send the letter by recorded delivery post.

Here is an example of the type of letter you might send:

21 Station Road
GLASGOW G21 4ED
9 August 2008

Dear Sirs,

On 3 August this year I purchased a stereo system from your shop. The system was delivered on 5 August, but when I unpacked it I found that the cabinet was cracked.

I called at your premises this morning and spoke to your salesman, Mr. Mackay. He said that the damage was not the shop's responsibility and that I should take the matter up with the manufacturers under the guarantee.

You are responsible for goods which you sell and I am not prepared to accept this system in a damaged condition.

Please therefore change it or refund the purchase price within seven days from this date.

Yours faithfully

James McMillan

If you do not receive a response, or remain dissatisfied, you could write again as follows:

21 Station Road
GLASGOW G21 4ED
19 August 2008

Dear Sirs,

I have not received any reply from you to my letter of 9 August, in which I told you that the stereo system you sold me was delivered in a damaged condition.

Unless I hear from you, within seven days from today, that you are prepared to replace the system or return the purchase price, I intend to raise court proceedings against you without further notice.

Yours faithfully

James McMillan

If you do not receive a satisfactory reply, you will then have to decide if you wish to make a claim.

1.05 Should I raise a claim?

There are several things you might wish to consider before deciding to start court proceedings, such as:

- Is the person or company likely to be able to pay?
- Do you have a note of their correct name and their present address?
- Are they bankrupt or insolvent?
- Are they on the Debt Arrangement Scheme (DAS)? (For information see www.moneyscotland.gov.uk, or phone the DAS Administrator helpline on 0845 6126425, or ask at the Citizens Advice Bureau)
- Do they have any money or other items of value?
- If a company, has it ceased trading?
- Are you raising the action against the correct party?
- Can you afford to go to court? (See paragraph 1.08)
- Can you afford the time to prepare your case for the court hearing if the claim is defended?
- Can you afford to pay the cost of having any order made in your favour enforced if it is not complied with? (See paragraph 1.08)

You should also consider whether you will be able to prove your claim. Considering the following questions may help you to decide this:

- Do you still have any faulty goods?
- Is there a written agreement you can produce?
- Are there any witnesses who would be able to come to court to support your claim?
- Do you have any receipts for payment?
- Is there any photographic evidence available which might assist your case?

If in doubt, you should seek advice before raising any court proceedings.

Please note that if you are successful in your claim, you will have to arrange to have the court's order complied with yourself. The court cannot do this for you. Further information on this can be found in Part 4 of this guide – 'Going to Court'.

1.06 Do I need a solicitor?

You do not need to employ a solicitor to raise or defend a small claim. However, you can if you wish, and it may be advisable to consider this if you think your case, as occasionally happens, is more complex than usual or involves some point of law which the court may have to consider.

A list of solicitors can be found in the yellow pages of the telephone directory.

Legal aid is not available for small claims cases (except for appeals) so, if you do employ a solicitor, you will be liable to pay the solicitor's fees. However, you may be entitled to some general legal advice on debt recovery free of charge. Any solicitor will be able to advise you further about this.

Sometimes, if you are successful, you may be able to recover all or part of any solicitor's fees by means of an award of expenses from the court. However, complete recovery is unlikely in most cases, as the amount of expenses which can be awarded is limited. (See paragraph 1.08.)

You can also be represented by any other person you authorise to do so, for example:

- A friend
- A relative
- A representative of a Citizen's Advice Bureau, Consumer Protection/Trading Standards Department or other advice agency, who may be able to do this for you free of charge. (See paragraph 1.03.)

If you decide to raise an action as an individual, the sheriff clerk will usually be able to send a copy of the summons to the defender for you. Sheriff clerks can also give you procedural advice. They cannot give you legal advice – for example, tell you if you have a good case or not, or tell you what to say to the court in support of it.

1.07 Value of claims

The upper limit for a claim for payment of money is £3000. There is no lower limit.

If the claim is for a sum greater than £3000, an alternative form of procedure must be used.

Further information on these alternative procedures can be obtained from any of the organisations listed in paragraph 1.03.

There are some types of small claim where a claim for payment of money (but only up to £3000) may be asked for as an alternative if the defender fails to perform an act when ordered to do so by the court. These types of claim are discussed more fully at paragraphs 1.11 and 1.12.

1.08 What will it cost?

The procedure is designed to be cheap, but some expenditure will be necessary. There are two areas of expenditure to consider:

A – Court Fees

If you raise a claim, a court fee will be payable, unless you are entitled to claim fee exemption (see below).

If, as occasionally happens, the summons has to be served (sent) on the defender by a sheriff officer (when the first attempt by post by the sheriff clerk has been unsuccessful), an additional fee will be payable.

You will find further information about service in paragraph 2.08 of Part 2 of this guide – ‘Taking a Claim to Court’.

There is also a fee for making an appeal against the court’s decision, although this may be recovered as part of an award of expenses if the appeal is successful. Further information about appeals can be found in Part 4 of this guide – ‘Going to Court’.

There is no fee payable for defending an action, or for applying for a time to pay direction or a time order.

The sheriff clerk will advise you of the current fees, or you can check on the Scottish Court Service website at www.scotcourts.gov.uk

You may be entitled to claim fee exemption if you are in receipt of certain benefits or tax credits. Further information and a fee exemption form can be obtained from the sheriff clerk, or at www.scotcourts.gov.uk/library/civil/docs/fee_exemption_app.pdf.

B – Court expenses

As a general rule, any court expenses are awarded to the party who succeeds in the claim.

These expenses must then be paid by the unsuccessful party.

There is normally a limit on the amount of expenses which can be awarded.

If the value of the claim is £200 or less, and the case has been defended, there will normally be no award of expenses. In this situation, any court fees paid will not be recoverable.

If the value of the claim is between £200 and £1500, and the case has been defended, the maximum amount of expenses which can normally be awarded by the court to the successful party is £150.

If the value of the claim is between £1500 and £3000, and the case has been defended, the maximum amount of expenses which can normally be awarded by the court to the successful party is 10% of the value of the claim.

There are exceptions to the normal limits on awarding expenses where:

- The defender has not stated a defence
- The defender does not proceed with his defence
- The defender has not acted in good faith in defending the action
- The sheriff has found that either the pursuer’s or the defender’s conduct in the case has been unreasonable

The limits on expenses do not apply to the hearing of appeals.

Expenses are normally calculated at the end of the case either by the sheriff, or by the sheriff clerk, who then has his/her calculation approved by the sheriff.

Expenses which you may incur include:

- The cost of any solicitor, if you choose employ one
- Loss of wages and travelling expenses for yourself and any witnesses you may require to bring to court to give evidence
- The cost of having any order made by the court complied with by the other party. (See Part 4 of the guide for further information about this.)

Even if you win your case, you may not necessarily be able to recover all of the money you have spent in bringing the case to court by means of an award of expenses.

1.09 Types of claim

There are three types of claim which can be raised under the small claims procedure.

These are:

- A claim for payment of money
- A claim for delivery or recovery of moveable property
- A claim for implement of an obligation

Each of these, and when they may be used, is discussed more fully in the following paragraphs.

1.10 Claim for payment of money

Claims for payment of money are the most common. They are used to recover a debt. Examples include:

- Unpaid bills
- Expense incurred in repairing damage done to a car in a road accident
- Money owed from a loan
- Compensation for damage caused by faulty workmanship
- Goods ordered and paid for but not supplied

Remember that the value of the claim must not exceed £3000.

1.11 Claim for delivery or recovery of moveable property

You would use this type of claim to recover moveable property which someone else has possession of. 'Moveable property' simply means something which can be moved – for example, a car. This type of claim could not, therefore, be used to recover possession of a house, or other property which could not be moved.

Note that, if you wish to raise this kind of action as a small claim, you must include an alternative claim for payment (not exceeding £3000)

An example of this type of claim could be:

You send your washing machine to a shop for repair. When you go to collect it, you are told it has been sent back to the manufacturer. After some time you have still not got the machine back. You are not satisfied with the explanation given by the repair shop.

In this situation, you could then proceed to raise a claim for delivery of the washing machine. To raise such a case as a small claim, you would also have to include an alternative claim for payment. This would represent the value of the washing machine, and perhaps include something to compensate you for inconvenience caused.

1.12 Claim for implement of an obligation (getting someone to do something)

This kind of claim is used when you want the court to order someone else to fulfil an obligation or perform a duty. For example:

You employ a builder to put up a wall in your garden. The wall is half built and the builder says he will return in a few days to complete it. He does not do so. Despite repeated complaints from you, nothing is done.

You could then proceed to raise a claim against the builder, asking the court to order him to complete the wall and, if he does not do so, as an alternative ask for money. This sum would be to compensate you for the cost of having the wall completed by someone else and for the inconvenience you have suffered.

Note that, if you wish to raise this kind of action as a small claim, you must include an alternative claim for payment (not exceeding £3000)

1.13 Can I appeal?

There is a right of appeal from the sheriff's final decision on the claim to the sheriff principal.

This right of appeal is limited to questions of law. **You cannot appeal the sheriff's decisions on the facts of the case.**

You may be entitled to receive legal aid if you make an appeal.

Appeal procedure is discussed more fully in Part 4 of this guide – 'Going to Court'.

1.14 Legal terms explained

There are many specialised terms which are used by lawyers and others attending at court.

To help you, a list of some of the most common ones is attached as Appendix 'A' of this guide.

1.15 Electronic transmission of documents

Many documents can be sent electronically to and from the courts. Full guidance on this can be found on the Scottish Court Service website at www.scotcourts.gov.uk.

1.16 Disabled persons

If you have a disability, or have any special needs, and wish to attend at court, you should contact the sheriff clerk's office in advance to find out what assistance is available. The court will attempt to make whatever arrangements it can to make your visit as comfortable as possible. It may, for example, be able to arrange for your case to be heard in a courtroom having a loop system (for those with hearing difficulties), or to arrange access for wheelchair users.

A list of sheriff clerk's offices, for those courts in which small claims are heard, is included in the brochure containing useful addresses. (See paragraph 1.01.)

1.17 Language difficulties

If you have any difficulty in understanding English, the sheriff clerk may be able to put you in contact with someone who can assist you.

Appendix A

Glossary of Legal Terms

Absolve	To find in favour of and exonerate the defender .
Absolvitor	An order of the court granted in favour of and exonerating the defender which means that the pursuer is not allowed to bring the same matter to court again.
Ad factum praestandum	An obligation to do or perform some act (other than the payment of money).
Appellant	A person making an appeal against the sheriff's decision. This might be the pursuer or the defender.
Arrestment on the dependence	A court order to freeze the goods or bank account of the defender until the court has heard the case.
Arrestment to found jurisdiction	A court order used against a person who has goods or other assets in Scotland, to give the court jurisdiction to hear a claim. This is achieved by preventing anything being done with the goods or assets until the case has been disposed of.
Authorised lay representative	A person other than a lawyer who represents a party to a small claim.
Cause	Another word for <i>case</i> or <i>claim</i> , used for cases under the summary cause procedure
Caution (pronounced <i>kay-shun</i>)	A security, usually a sum of money, given to ensure that some obligation will be carried out.
Certificate of Execution of Service	The document recording that an order or decree of the court for service of documents has been effected.
Charge	An order to obey a decree of a court. A common type is one served on the defender by a sheriff officer, on behalf of the pursuer who has won a case, demanding payment of a sum of money.
Citation of defender	The bringing of a person into a case by serving on him or her the necessary court documents. It can also mean the notice on the copy of the summons served on the defender signed by the person serving it.
Commission and Diligence	Authorisation by the court for someone to take the evidence of a witness who cannot attend court, or to obtain the production of documentary evidence. It is combined with a diligence authorising the person appointed to require the attendance of the witness and the disclosure of documents.
Consignation	The deposit in court, or with a third party, of money or an article in dispute.
Continuation	An order made by the sheriff postponing the completion of a hearing until a later date or dates.

Counterclaim	A claim made by a defender in response to the pursuer's case and which is not a defence to that claim. It is a separate but related claim against the pursuer which is dealt with at the same time as the pursuer's claim.
Crave	The part of the summons which sets out the legal remedy (result) which the pursuer is seeking.
Damages	Money compensation payable for a breach of contract or some other legal duty.
Decree	An order of the court containing the decision on the claim in favour of one of the parties and granting the remedy sought, or disposing of the case.
Defender	Person against whom a summary cause is started.
Deliverance	A decision or order of a court.
Depending	A case is said to be depending when it is going through a court procedure. Technically, this begins with citation of the defender and ends with any final appeal.
Diet	Date for a court hearing
Diligence	The collective term for the procedures used to enforce a decree of a court. These include arrestment of wages, goods or a bank account.
Dismissal	An order bringing to an end the proceedings in a claim. It is usually possible for a new claim to be brought if not time barred.
Domicile	The place where a person is normally resident or where, in the case of a company, it has its place of business or registered office.
Execution of service	See Certificate of execution of service .
Execution of a charge	The intimation of the requirement to obey a decree or order of a court.
Execution of an arrestment	The carrying out of an order of arrestment
Expenses	The technical term for the costs of a court case
Extra-judicial settlement	An agreement between the parties to a case to settle it themselves rather than to await a decision by the sheriff.
Extract decree	The document containing the order of the court which is made at the end of the claim. For example, it can be used to enforce payment of a sum awarded.
Haver	A person who holds documents which are required as evidence in a case.
Huissier	An official in France, and some other European countries, who serves court documents.
Incidental application	An application that can be made during the course of a small claim for certain orders. Examples are applications for the recovery of documents or to amend the statement of claim .

Inhibition on the dependence	A court order to freeze any of the defender's rights in property until the court has heard the case.
Interim attachment	A court order to stop the defender disposing of certain goods before the court has heard the case.
Interlocutor	The official record of the order or judgement of a court.
Intimation	The technical term for giving notice to another party of some step in a small claim.
Jurisdiction	The authority of a court to hear particular cases.
Messenger-at-Arms	Officers of court who serve documents issued by the Court of Session.
Minute	A document produced during a case in which a party makes an application or sets out his or her position on some matter.
Minute for Recall	A form lodged with the court by one party asking the court to recall a decree.
Options hearing	A preliminary stage in an ordinary cause action
Ordinary cause	Another legal procedure for higher value claims available in the sheriff court.
Party litigant	A person who conducts his or her own case
Productions	Documents or articles which are used in evidence.
Pursuer	The person making a claim.
Recall of an arrestment	A court order withdrawing an arrestment.
Restriction of an arrestment	An order releasing part of the money or property arrested.
Recall of a decree	An order revoking a decree which has been granted.
Recovery of documents	The process of obtaining documentary evidence which is not in the possession of the person seeking it (such as hospital records necessary to establish the extent of injuries received in a road accident).
Remit between procedures	A decision of the sheriff to transfer the claim to another court procedure, such as summary cause or ordinary cause procedure.
Respondent	When a decision of the sheriff is appealed against, the person making the appeal is called the appellant. The other side in the appeal is called the respondent.
Return day	The date by which the defender must send a written reply to the court and, where appropriate, the pursuer must return the summons to court.
Schedule of Arrestment	The list of items which may be arrested.
Serve/Service	Sending a copy of the summons or other court document to the defender or another party.
Sheriff Clerk	The court official responsible for the administration

	of the sheriff court
Sheriff Officer	A person who serves court documents and enforces court orders.
Sist of Action	The temporary suspension of a court case by court order.
Sist as a Party	To add another person as a litigant in a case.
Stated case	An appeal procedure where the sheriff sets out his / her findings and the reasons for his / her decision and states the issues on which the decision of the sheriff principal is requested.
Statement of claim	The part of the summons in which pursuers set out details of their claims against defenders.
Summary cause	Another legal procedure available in the sheriff court. It is used for certain types of claim usually having a higher value than small claims, though less than those dealt with as ordinary causes.
Summons	The form which must be filled in to begin a small claim.
Time Order	A court order for which a defender who is an individual may apply, permitting a sum owed under certain types of credit agreement to be paid by instalments.
Time to pay direction	A court order for which a defender who is an individual may apply, permitting a sum owed to be paid by instalments or by a single payment at a later date.
Warrant for diligence	Authority to carry out one of the diligence procedures.
Writ	A legally significant document or piece of writing.