

# The Small Claim

## Information and procedural guide

### 3 Responding to a Claim

What to do if you receive a small claim summons

What is a small claim?

Documents you will receive

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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.

### **3.01 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 claim 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 Summons**

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. So, if you know you will have to attend at court, you may find this part of the guide helpful.

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](http://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 might 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](http://www.scotcourts.gov.uk).

Alternatively, you could 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.

### **3.02 Where can I go for advice?**

There are many organisations which can help if you are considering 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 defend your case, 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 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 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. Legal aid is not available for small claims, except in an appeal, so you would be liable to pay any fees charged. However, you might be entitled to some free general legal advice, depending on your circumstances. Any solicitor will be able to give you more information about this.

### **3.03 The copy summons**

If a claim is made against you, the first formal notice you will receive is a document called a copy summons.

This usually comes by recorded delivery post, but you may also receive it from a sheriff officer. A sheriff officer is authorised by the court to deliver the copy to you personally, or leave it with someone in your household or place of business.

The copy summons contains details of the claim and information about how to respond to it. Forms are also included to assist you in making a response to the court.

The person raising the claim is called the pursuer. The person or company against whom the claim is made is called the defender.

There are three different types of small claim which can be raised:

- A claim for payment of money
- A claim for delivery or recovery of possession of moveable property
- A claim for implement of an obligation (performance of a duty).

You will be able to tell from the heading at the top of the summons which type of claim has been raised against you.

Further information about the different types of claim can be found in Part 1 of the guide – ‘What is a Small Claim?’.

There are two different forms of copy summons – Form 1a and Form 1b. Form 1a is used when the defender is an individual. Form 1b is used when the defenders are a company or other organisation.

The reason there are two different forms is that, while an individual can apply to the court to pay a claim by instalments or within a specified period (known as an application for a time to pay direction, or for a time order under the Consumer Credit Act 1974 allowing him to pay by instalments), a company may not do so. The two forms reflect the different procedures involved.

Further information about time to pay directions and time orders is contained further on in this part of the guide.

An example of Form 1a is shown below. Form 1b is very similar, but contains no information about applying for a time to pay direction or time order.



# Small Claim Summons

Action for/of  
(state type, e.g. payment of money)

**DEFENDER'S COPY: Claim for or including Payment of Money**  
(Where Time To Pay Direction or Time Order may be applied for)

Sheriff Court  
(name, address, e-mail  
and telephone no.)

1

Name and address  
of person making  
the claim (**Pursuer**)

2

Name and address of  
person against whom  
claim raised (**Defender**)

3

Claim (form of decree or  
other order sought)

4

(Complete as in section 4  
of Form 1)

Name, full address,  
telephone no, and e-mail  
address of Pursuer's  
solicitor (if any) acting in  
the case

5

6

RETURN DAY	20				
CALLING DATE	20	at		am.	

NOTE: You will find details of claim on page 2

**7. STATE DETAILS OF CLAIM HERE OR ATTACH A STATEMENT OF CLAIM  
(To be completed by the Pursuer. If space is insufficient, a separate sheet may be attached)**

The details of the claim are:

**8. CITATION OF DEFENDER**

(Place)

(Date)

To:

(defender)

You are hereby served with this summons. The Pursuer has been authorised by the court to serve it on you

\*Solicitor / sheriff officer

*\* delete as appropriate*

**NOTE: The pursuer should complete boxes 1 to 6 on page 1, the statement of claim in box 7 on page 2 and section A on page 5 before service on the defender. The person serving the Summons will complete box 8.**

PAGE 2

## **WHAT CAN I DO ABOUT THIS SUMMONS?**

**Decide whether you wish to dispute the claim and/or whether you owe any money or not, and how you wish to proceed.** Thereafter, look at the four options listed below. Find the one which covers your decision and follow the instructions given there. You will find the RETURN DAY and the HEARING DATE on page 1 of the summons.

**Written guidance on small claims procedure can be obtained from the Sheriff Clerk at any Sheriff Clerk's office. Further advice can also be obtained by contacting any of the following:**

Citizen's Advice Bureau, Consumer Advice Centre, Trading Standards or Consumer Protection Department or a solicitor. (Addresses can be found in the guidance booklets.)

### **OPTIONS**

**1. ADMIT LIABILITY FOR THE CLAIM and settle it with the pursuer now.**

If you wish to avoid the possibility of a court order passing against you, you should settle the claim (including any question of expenses) with pursuer or his solicitor **in good time before the return day**. Please do not send any payment direct to the court. **Any payment should be made to the pursuer or his solicitor.**

**2. ADMIT LIABILITY FOR THE CLAIM and make written application to pay by instalments or by deferred lump sum.**

Complete Box 1 of section B on page 5 of this form and return pages 5 and 6 to the court **to arrive on or before the return day**. You should then contact the court to find out whether or not the pursuer has accepted your offer. If he has not accepted it, the case will then call in court on the hearing date, and the court will decide how the amount claimed is to be paid.

If the claim is for delivery, or implement of an obligation, and you wish to pay the alternative amount claimed, you may also wish to make an application about the method of payment. If so, follow the instructions in the previous paragraph.

**NOTE: If you fail to return pages 5 and 6 as directed, or if, having returned them, you fail to attend or are not represented at the hearing date if the case is to call, the court will almost certainly decide the claim in your absence.**

**3. ADMIT LIABILITY FOR THE CLAIM and attend at court to make application to pay by instalments or deferred lump sum.**

Complete Box 2 on page 5. Return page 5 to the court so that it arrives **on or before the return day**.

If the claim is for delivery, or implement of an obligation, you may wish to pay the alternative amount claimed, and attend at court to make an application about the method of payment.

**You must attend personally, or be represented, at court on the hearing date.** Your representative may be a solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

**NOTE: If you fail to return page 5 as directed, or if, having returned it, you fail to attend or are not represented at the hearing date, the court will almost certainly decide the claim in your absence.**

**DISPUTE THE CLAIM and attend at court to do any of the following:**

- Challenge the jurisdiction of the court
- State a defence
- State a counterclaim
- Dispute the sum claimed

Complete Box 3 on page 5. Return page 5 to the court so that it arrives on or before the return day. You must attend personally, or be represented, at court on the hearing date.

Your representative may be a solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

**NOTE: If you fail to return page 5 as directed, or if, having returned it, you fail to attend or are not represented at the hearing date, the court will almost certainly decide the claim in your absence.**

**WRITTEN NOTE OF PROPOSED COUNTERCLAIM**

You must send to the court a written note of any counterclaim. If you do, you should also send a copy to the Pursuer. You must also attend or be represented at court on the hearing date.

**PLEASE NOTE**

If you do nothing about this summons, the court will almost certainly, where appropriate, grant decree against you and order you to pay the pursuer the sum claimed, including any interest and expenses found due.

If the summons is for delivery, or implement of an obligation, the court may order you to deliver the article or perform the duty in question within a specified period. If you fail to do so, the court may order you to pay the pursuer the alternative amount claimed, including interest and expenses.

**YOU ARE ADVISED TO KEEP PAGES 1 AND 2, AS THEY MAY BE USEFUL AT A LATER STAGE OF THE CASE.**

**SECTION A**

This section must be completed before service


Summons No
Return Day
Hearing Date

SHERIFF COURT (Including address)



PURSUER'S FULL NAME AND ADDRESS

DEFENDER'S FULL NAME AND ADDRESS

**SECTION B**

**DEFENDER'S RESPONSE TO THE SUMMONS**

**\*\* Delete those boxes which do not apply**

**\*\*Box 1**

**ADMIT LIABILITY FOR THE CLAIM and make written application to pay by instalments or by deferred lump sum.**

I do not intend to defend the case but admit liability for the claim and wish to pay the sum of money claimed.

I wish to make a written application about payment.

I have completed the application form on page 6.

**\*\*Box 2**

**ADMIT LIABILITY FOR THE CLAIM and attend at court**

I admit liability for the claim.

I wish to make application to pay the sum claimed by instalments or by deferred lump sum.

I intend to appear or be represented at court.

**\*\*Box 3**

**DISPUTE THE CLAIM (or the amount due) and attend at court**

- \* I do not admit the claim.
- \* I wish to dispute the amount due only
- \* I intend to challenge the jurisdiction of the court.
- \* I intend to state a defence
- \* I intend to state a counterclaim
- \* I intend to appear or be represented in court.
- \* I attach a note of my proposed defence/ counterclaim.
- \* *delete as necessary*

Please remember to send your response to the court to arrive on or before the return date if you have completed any of the responses above.

**APPLICATION IN WRITING FOR A TIME TO PAY DIRECTION OR A TIME ORDER**

**I WISH TO APPLY FOR A \*TIME TO PAY DIRECTION/TIME ORDER**

\* delete whichever does not apply

**I admit the claim** and make application to pay as follows:

(1) By instalments of £ \_\_\_\_\_ per \*week / fortnight / month

**OR**

(2) In one payment within \_\_\_\_\_ \*weeks / months from the date of the court order

**To help the court please provide details of your financial position in the boxes below**

**\*Please also indicate whether payments/receipts are weekly, fortnightly or monthly**

My outgoings are: *Weekly / fortnightly / monthly	
Rent/Mortgage	£
Council Tax	£
Gas/Electricity etc	£
Food	£
Loans and Credit Agreements	£
Other	£
Total	

My income is *Weekly / fortnightly / monthly	
Wages/Pensions	£
Social Security	£
Other	£
Total	

Number of Dependent Children

Number of Dependent Relatives

Please list details of all capital held. e.g. value of house; amount in savings account, shares or other investments:

**Notes: APPLICATION IN WRITING FOR A TIME TO PAY DIRECTION OR A TIME ORDER**

**(1) Time to pay directions**

The Debtors (Scotland) Act 1987 gives you the right to apply to the court for a 'time to pay direction'. This is an order which allows you to pay any sum which the court orders you to pay either in instalments or by deferred lump sum. A 'deferred lump sum' means that you will be ordered by the court to pay the whole amount at one time within a period which the court will specify.

If the court makes a time to pay direction it may also recall or restrict any arrestment made on your property by the pursuer in connection with the action or debt (for example, your bank account may have been frozen).

No court fee is payable when making an application for a time to pay direction.

If a time to pay direction is made, a copy of the court order (called an extract decree) will be sent to you by the pursuer telling you when payment should start or when it is you have to pay the lump sum.

If a time to pay direction is not made, and an order for immediate payment is made against you, an order to pay (called a charge) may be served on you if you do not pay.

**(2) Time Orders**

The Consumer Credit Act 1974 allows you to apply to the court for a 'time order' during a court action. A time order is similar to a time to pay direction, but can only be applied for in certain circumstances, e.g., in relation to certain types of credit agreement. Payment under a time order can only be made by instalments, so that you cannot apply to pay by deferred lump sum.

### 3.04 What can I do about the summons?

There are several choices open to you.

**If you are an individual person**, you will have received Form 1a. The choices for you are:

- Do nothing
- Admit the claim and settle the case
- Admit the claim and make a written application about payment of any sum due
- Admit the claim and attend court to make an application about payment
- Dispute the claim and attend court

**If the defender is not an individual** (for example, a company), they will have received Form 1b. The choices then are:

- Do nothing
- Admit the claim and settle the case
- Dispute the claim and attend court

We shall look at each of these options in detail shortly. First of all however, let us consider the importance of the return day and the hearing date, which you will see are shown at box 6 on page one of the copy summons.

The **return day**, which is fixed by the sheriff clerk when the summons is lodged, is the day by which you must respond to the summons if you wish to do any of the following:

- Admit the claim and, if appropriate, make a written application about payment
- Admit the claim and attend court to make any application about payment
- Dispute the claim and attend court

The **hearing date** is also fixed by the sheriff clerk at the time the summons is lodged. This date will be seven days after the return day.

**The case will only call in court on the hearing date if you:**

- **Have made an application about payment which the pursuer does not accept**
- **Intend to attend court to make an application about payment**
- **Wish to dispute the claim in any way**

### **3.05 Making no response – doing nothing**

If you do nothing in response to the summons, the court will almost certainly make an order against you on the hearing date. You will then be required to do what the pursuer has asked in the summons. You will also have to pay any interest and court expenses claimed.

In an action for delivery or recovery of moveable property or implement of an obligation, the court may order you to make delivery or carry out the obligation within a specified period. If you do not comply with the court's order, the pursuer will be entitled to come back to the court and make an application for payment of the alternative amount claimed.

If you do not dispute the claim you should consider seeking advice on whether to make an application to the court for a time to pay direction or a time order (see paragraphs 3.07 and 3.08)

**NOTE:** Orders for payment of debts contained in court records are regularly referred to as a way of establishing people's credit worthiness. Once a person's name is recorded, it may stay there for several years and it might be difficult for that person to obtain credit facilities in the future.

A leaflet entitled *Credit Explained* is available from the Information Commissioner and can be accessed at the Commissioner's website – <http://www.ico.gov.uk>

### **3.06 Admitting the claim and settling it before the case calls in court**

If you wish to avoid a court order being made against you, you should settle the claim (including any question of expenses) with the pursuer as soon as possible. If you intend to do this, but do not do so before the return date, it may then be too late to prevent a court order being made against you.

If you settle the claim in this way, the pursuer has to tell the court so that the claim can be brought to an end.

It may be in your interests to contact the sheriff clerk's office yourself to confirm that the pursuer has told the court that the claim has been settled.

### **3.07 Admitting the claim and making a written application about payment**

You may wish to admit the claim, and also to apply to pay any sum due by instalments, or within a specified period. To do this, you must apply to the court **for a time to pay direction** or a **time order**.

If the claim is one for delivery, or implement of an obligation, you may decide that you wish to settle the claim by paying the alternative amount claimed and also apply for a time to pay direction or time order.

To apply for a time to pay direction or a time order, you should complete box 1 at section B on page 5 of the copy summons, and also page 6, giving details of the

order for payment you wish the court to make and also details about your financial position.

**You must return pages 5 and 6 to the court on or before the return date shown on the first page of the copy summons.** If you do not, the court may grant the order sought by the pursuer, together with any interest and expenses claimed.

The pursuer is allowed until the time the sheriff clerk's office closes for business on the day, two days before the date of the hearing, to tell the court if he/she is accepting your offer or not. You should check with the court as soon as you can after the day two days before the date of the hearing to find out how the pursuer has responded to your offer.

**If the pursuer accepts your offer,** the court will grant an order on the hearing date in terms of your application. You will not have to attend at court.

**If the pursuer does not accept your offer,** the matter will then be considered by the court on the hearing date.

In this case, it will be in your best interests to attend the hearing so that the sheriff can hear both you and the pursuer on your application. If you do not attend, the court will decide the application in your absence.

### **3.08 Admitting the claim and attending at court to make an application about payment**

Instead of making a written application to the court about payment, as discussed in the previous paragraph, you may prefer to appear in court personally to make your application, or to be represented by someone else to do so. (See paragraph 4.04 of Part 4 of this guide for further information about who can appear for you in court.)

In this situation, you should complete box 2 at section B on page 5 of the copy summons. If you intend to appear in court, it is not necessary to complete the written application form for a time to pay direction, but it may be helpful to do this and send it to the court.

**You must return your response to the court on or before the return date shown on the first page of the copy summons. You must also appear or be represented at the hearing.** If you fail to do either, the court may grant the order sought by the pursuer, together with any interest and expenses claimed.

If you are attending court, you may find it helpful to refer to Part 4 of this guide – 'Going to Court'.

### **3.09 Disputing the claim and appearing at court**

**If you intend to dispute the claim, you must appear in court (or be represented) on the hearing date to state your position.**

To dispute the claim, you should complete box 3 at section B on page 5 of the copy summons. **You must return page 5 to the court on or before the return date**

**shown on the first page of the copy summons.** If you do not, the court may grant the order sought by the pursuer, together with any interest and expenses claimed.

You should send the court a written note of any counterclaim you propose to state at the hearing (see paragraph 3.13). You may do this at any time before the return date. If you do so, you should also send a copy of it to the pursuer at the same time.

If you have any doubt as to whether the court has jurisdiction to hear the case, you have the right to challenge this. Jurisdiction is the term used to describe the authority of the court to hear the case. The rules on this are quite complicated and beyond the scope of this guide. If you have any concerns on this, you should seek advice before responding to the summons. Please note that the sheriff clerk cannot advise you on this particular matter.

If you defend the claim, you may make a written or oral application to the court for a time to pay direction or a time order at any time before the sheriff decides the claim.

If you are attending court, you may find it helpful to refer to Part 4 of this guide – ‘Going to Court’.

### **3.10 Restrictions on property – having an arrestment, attachment or inhibition recalled**

When a claim is raised for, or includes, payment of a sum of money, the pursuer may be able to prevent anyone holding money which belongs to the defender from disposing of it. The pursuer may also be able to prevent the defender from disposing of other assets, including property s/he holds before the court proceedings are finished. The different procedures used are known as ‘arrestment on the dependence’ ‘interim attachment’ and ‘inhibition on the dependence’.

- **Arrestment on the dependence** of a claim prevents money which belongs to the defender, but is held by a third party, such as a bank, from being disposed of.
- **Interim attachment** prevents the defender from parting with other items s/he might hold. (A number of items, such as any items kept in a dwelling house, or any items required to be used in the course of a trade, by law, cannot be included in this procedure. Advice on the items which can be included in an ‘interim attachment’ can be obtained from a sheriff officer.)
- **‘Inhibition on the dependence’** can be used where a claim is raised for, or includes, payment of a sum of money or where the claim asks for the transfer of property rights and can prevent property rights being transferred, before court proceedings are finished

The purpose of arrestment is to ensure that, if the pursuer is successful in his or her claim, the money, items or property will be available to cover any debt due from the defender.

If the pursuer wishes to make use of any of these procedures, they must lodge a document known as an ‘incidental application’ stating which of the procedures they wish to use. This can be lodged when they first take the summons to the sheriff

clerk's office or at any other time during the case before the sheriff makes a final decision. Information on how to make an incidental application can be found in Part 4 of this guide – 'Going to Court'.

If at the end of the incidental application procedure the sheriff grants the application, the pursuer will then require to have the items legally arrested, or have an order for interim attachment or an inhibition on property rights legally served so that they cannot be disposed of. This is done by a sheriff officer on his/her behalf.

Once any items have been arrested, or an interim attachment or an inhibition on property served, the defender is entitled to apply to the court to have the order for arrestment or inhibition or the interim attachment recalled or restricted. The defender does this by making an 'incidental application' to the court. Incidental applications are described in Part 4 of the guide.

Sometimes, if at the end of the incidental application procedure the sheriff grants the application to recall the arrestment, attachment or inhibition it is done on condition that the defender pays into court a sum equal to the sum claimed, plus a sum to cover the expenses of the claim.

### **3.11 Amending the claim**

After you have lodged your response to the summons, you may wish to change something in it. For example, you may have forgotten to include some important information in any written defence you have sent to the court, or you may discover that something you have stated is wrong.

If you wish to amend your response, you may apply to the court to do so at any time during the case before the sheriff finally decides it. You could do this by lodging a document known as an incidental application, or, if appearing personally in court for a hearing, you could ask the sheriff to allow the amendment at that time.

Information on how to make an incidental application can be found in Part 4 of this guide – 'Going to Court'.

### **3.12 Bringing the case to a temporary halt (sisting the case)**

If, as an alternative to having the case continued, you wish the proceedings to be brought to a temporary halt, you may apply to the court to have this done. You might want this to happen if for example, you are trying to settle the case with the pursuer and you feel you need more time to come to a suitable arrangement with him or her. This procedure is known as sisting the case.

You may apply to the court to have the case sisted at any time before the sheriff finally decides it. You could do this by lodging an incidental application, or, if appearing in court, you could ask the sheriff to allow the sist at that time.

The reason you wish the sist to be made must be stated in the application, or explained to the sheriff if you apply for it by appearing in court. The sheriff is not, however, obliged to sist the case as a result of your application.

When a case is sisted, no further steps can be taken until the sist is recalled. An application to recall a sist is made by incidental application.

The pursuer is also entitled to apply to have the case sisted.

Information on how to make an incidental application can be found in Part 4 of this guide – ‘Going to Court’.

### **3.13 Making a counterclaim**

#### **What is a counterclaim?**

If the pursuer has raised a claim against you, and you have a claim against him/her arising from the same matter, then, instead of raising a separate action, you can raise your claim against the pursuer in the pursuer’s own action. This procedure is known as making a counterclaim.

You do not have to use the counterclaim procedure. You are entitled to raise a separate action if you wish. However, it is often quicker and more convenient to state a counterclaim in the pursuer’s action, rather than start a new claim altogether. The counterclaim can be for whatever sum of money you think appropriate.

If a counterclaim results in the claim becoming more complex, the court may order that the case be removed from the small claim procedure and dealt with as a summary cause. (Guidance on summary cause procedure, similar to that for small claims, is also available.)

Please note that you can only make a counterclaim if your claim against the pursuer relates to the same matter as the pursuer’s claim against you. Here is an example of when making a counterclaim might be appropriate:

The pursuers are a firm of plumbers. You purchase a new bathroom suite from them. However, soon after it is installed, water pours through your ceiling, causing extensive damage to your home.

You refuse to pay the pursuer’s bill for the work done, and he makes a claim against you. In those circumstances, you could raise a counterclaim against the pursuer for the damage caused to your property by the pursuer’s shoddy workmanship. Your counterclaim would then be joined with the pursuer’s claim and both considered by the court as one case.

If, however, you wanted to sue the same pursuer because, say, he had damaged your car in a road accident, then you could not do this by way of a counterclaim (in the pursuer’s claim for payment for work done to your bathroom) because this would be an entirely separate matter.

#### **What is included in a counterclaim?**

There is no specific form of counterclaim provided. However, a counterclaim should include:

- Details of the claim you wish to make
- A response to the pursuer’s claim (if you have not already made one)

- A statement setting out the facts upon which you rely to support the counterclaim

You may at the same time as lodging the counterclaim, or at any other time during the case before the sheriff makes a final decision, submit an incidental application, along with a required statement in Form 9a, for warrant to arrest, or inhibit, on the dependence of the counterclaim or make an application for interim attachment on the counterclaim. (See paragraph 3.10 for an explanation of these terms. An example of Form 9a can be found in Part 2 of this guide – ‘Taking a claim to court’.)

Information on incidental application procedure can be found in Part 4 of this guide – ‘Going to Court’.

A counterclaim might therefore look something like this:

Sheriff Court, Glasgow

Case No: 221/08

**COUNTERCLAIM**

In the case of

**PLUMBING MATERIALS LIMITED,**

**35 Buccleuch Street, Glasgow,**

**PURSUERS**

Against

**Mr Brian Smith, 41 Devlin Street, Glasgow**

**DEFENDER**

The Defender claims from the Pursuer the sum of £740.43 with interest on that sum at the rate of % annually from (date) together with the expenses of bringing the counterclaim.

**Response to the Pursuer’s Claim and Statement of Facts**

I agree that the pursuers sold me the bathroom suite on the date specified. I also agree that I have not paid them the sum sued for. However, the installation work done by the pursuer’s workmen was of such poor quality that, as a result, a considerable amount of water escaped through the bathroom floor and down through the ceiling of my living room within three days of the work being done. As a result, my home has sustained substantial damage.

The cost of putting the damage right amounted to £740.43, which is the sum claimed for in this counterclaim. I have repeatedly asked the pursuers to compensate me for the damage caused, but they have not done so. That is why it has been necessary to bring this counterclaim against them. In the circumstances, I feel I am not obliged to pay to the pursuers the sum they have claimed from me until my claim against them has been settled to my satisfaction.

(Date)

### **At what stage can I make a counterclaim?**

If you know that you wish to make a counterclaim when you receive the copy summons, you must tell the court as part of your response to the summons that you intend to make a counterclaim in the case. Information about how to do this is contained in the copy summons.

The details of the counterclaim may be included in the form of response to the summons. If you do include these details, you must send a copy of the form of response to the other parties to the claim at the same time as you send it to the court.

Alternatively, you can tell the court the details when you appear at the hearing. If you wish to proceed in this way, you should indicate your intention to do so on the form of response. When you attend at the hearing, the court may, if necessary, continue the hearing to allow the pursuer time to answer the counterclaim.

If you decide at a later stage while you are defending the claim that you wish to make a counterclaim, you may lodge details of the counterclaim, with the court's permission, at any time before the case is decided (see Part 4 of this guide – 'Going to Court.'). You would do this by lodging an incidental application in court. How to make an incidental application is discussed fully in Part 4 of the guide.

### **3.14 Enforcing the court's order**

Guidance on enforcement is included in Part 4 of this guide – 'Going to Court'. You may wish to refer to this to find out what may happen if you are found liable by the court to meet the pursuer's claim. Alternatively, if you successfully resist the claim and are found entitled to expenses, or the court makes an order for payment in your favour resulting from a counterclaim, this section may help you if you have difficulty in recovering any award by the court in your favour.

**It is important to note that the court cannot arrange for enforcement of any order on your behalf. You must attend to this yourself.**

### **3.15 Fees and expenses**

The procedure is designed to be cheap, but some expenditure may be necessary.

There are two areas of expenditure to consider:

#### **A – Court Fees**

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

There is a fee for making an appeal against the court's decision. Further information about appeals can be found in Part 4 of this guide. The sheriff clerk will advise you of the current fee or you can check on [www.scotcourts.gov.uk](http://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 application form can be obtained from the sheriff clerk or at [www.scotcourts.gov.uk/library/civil/docs/fee\\_exemption\\_app.pdf](http://www.scotcourts.gov.uk/library/civil/docs/fee_exemption_app.pdf)

## **B – Court expenses**

As a general rule, court expenses are awarded to the person 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 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 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. Full court expenses may be awarded if:

- 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 decides that either the pursuer's or the defender's conduct in the case has been unreasonable

The limits for awarding 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 the calculation approved by the sheriff.

Expenses which you may incur include:

- The cost of any solicitor, if you choose to 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 court order made in your favour enforced if it is not complied with by the pursuer

Even if you win the case, an award of expenses may not necessarily cover all of the money you have spent in defending the case.

### **3.16 Recalling the decree of the court**

In certain circumstances, either the pursuer or the defender may apply to the court to have the court's final order (decree) recalled. This usually happens when one party or the other has failed to do something – for example, attend at court for a hearing or lodge a document in time.

Further information on recalling the court's decree can be found in Part 4 of this guide – 'Going to Court'.

### **3.17 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](http://www.scotcourts.gov.uk).

### **3.18 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.

### **3.19 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 3.01.)

### **3.20 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 <b>defender</b> .
Absolvitor	An order of the court granted in favour of and exonerating the <b>defender</b> which means that the <b>pursuer</b> 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 <b>summary cause</b> 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 <b>decree</b> of the court for <b>service</b> 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 <b>summons</b> 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 <b>diligence</b> 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 <b>citation of the defender</b> 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 <b>Certificate of execution of service</b> .
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 <b>statement of claim</b> .
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 <b>ordinary cause</b> 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.