

The Small Claim

Information and procedural guide

2 Taking a Claim to Court

How to commence court proceedings

Where to raise the claim
How to complete the summons
How to serve the summons
The defender's initial response
What will it cost?

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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.

2.01 About the guide

This part of the small claims guide is designed to assist anyone who has decided to raise a small claim in the sheriff court.

If you are undecided as to whether you should raise a claim or not, you may wish to refer to Part 1 of the guide which provides information which may help you to decide how best to proceed.

The guide is divided into four parts 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 raise 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 commenced, it is not always necessary to attend at 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 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.

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.

2.02 Getting started

Let us assume that you have now decided that you want to start court proceedings.

The first thing you will have to do is to get the necessary claim forms (the summons). These can be obtained from:

- Your local sheriff clerk's office (see list of courts in the brochure of useful addresses)

or

- By downloading a copy from the Scottish Court Service website. The website address is: www.scotcourts.gov.uk

You may also be able to obtain copies of the forms from an office of one of the organisations listed in the brochure (see paragraph 2.01).

If you wish to use the website to complete the forms, you will find guidance there on how to do so, alongside information about sending forms and other documents to the court electronically.

If you choose to employ a solicitor, he or she will obtain the forms for you.

2.03 Which court do I go to?

There are 49 sheriff courts in Scotland. You will have to decide in which one your claim should be brought, although you can get forms and advice from the sheriff clerk at any court.

In most cases, the court which will hear the claim will be the one within whose area the person the claim is to be made against (the defender) lives or has a place of business.

Sometimes, the court closest to where you live can be the one which will hear the case.

A special rule applies, in most circumstances, to what are known as 'consumer contracts'. An example of a consumer contract would be where you have reached an agreement with a shop to purchase goods and pay for them by instalments. If you, **as the consumer** (the person purchasing the goods), wished to take court proceedings for any reason against the shop, you could choose to raise the proceedings **either** in the court within whose area you live or in the one within whose area the shop premises are situated. However, if the shop wished to take proceedings against you, it could only do so in the court within whose area you live.

It is possible, in certain circumstances, to raise a small claim in cases even where the defender does not live in Scotland, or when you do not know where he or she is.

Deciding which court is appropriate is, in most cases, quite straightforward. If in doubt, you might wish to seek advice from one of the organisations listed in the brochure.

2.04 How to complete the summons

The form of summons (Form 1) to be used is basically the same in all cases. An example is given below.

You will only have to complete the areas shown. Section 6 and all other parts of the form will be completed by the sheriff clerk's office.

The court details required for section 1 can be entered automatically if you use the website to complete the form. If you obtain the form from the sheriff clerk's office where the summons is to be lodged, these details will be entered already. If you obtain it from any other source, the sheriff clerk will fill in these details for you when they register the summons.

Section 4 will vary depending upon which kind of claim you raise. The example shown is a claim for payment of money.

If you wish to raise a claim for delivery, or for implement of an obligation, section 4 will be different. However, you can obtain forms with this section partially completed for you from the sheriff clerk or from the website. You will only have to fill in the blank spaces, like the example claim for payment of money shown below.

If you do not wish to make a claim for expenses, you should delete the words in brackets at the end of the form of claim at section 4. Paragraph 2.19 of this guide will give you information about when expenses can be claimed.

You will note that a blank space may have been left in the form of claim at section 4 to enable you to fill in the rate of interest (if any) you wish to claim. The normal rate of interest is the one approved by the court, known as the 'judicial rate'. The sheriff clerk or one of the organisations listed in the brochure will advise you of the current rates.

If you wish to claim interest at a different rate, or wish the interest to commence from a different date, you should seek advice before completing this section. Please note that this is not a matter which the sheriff clerk can assist you with.

You need only complete section 5a if you are submitting the forms electronically (further guidance about completing this section is available on the website).

In the statement of claim on page 2 of the form, you must give the defender fair notice of what the claim is about. The statement should include:

- The dates when any goods or services were ordered and supplied
- A description of any goods or services complained of
- Brief details of any agreement or contract
- The circumstances which have made the claim necessary
- A statement that the defender has refused or delayed to pay any sum of money claimed

The space on the form should normally be sufficient for you to complete the statement of claim. If not, you can add a separate sheet to the summons.

It is not necessary to produce any documents with the summons (although you may need to lodge them in court later if the case is defended).

Some examples of statements of claim are given on page 2 of the copy form below.

Once you have completed the summons, you should go on to complete the defender's copy of the summons (see paragraph 2.07) and take or send both to the sheriff clerk's office. A fee may be payable (see paragraph 2.19). The sheriff clerk will advise you of the current fees, or you can check on www.scotcourts.gov.uk.

The sheriff clerk will check that you have completed the forms correctly, complete section 6 of Form 1 and insert the summons number in the top right hand corner.

Please note that, if the case requires to call in court for any reason (as explained later in this part of the guide), you must return the principal summons to the court at least two days before the hearing date if it is in your possession.



FORM 1

OFFICIAL USE ONLY
SUMMONS No.

Small Claims Summons

Action for **PAYMENT OF MONEY**
(state type, e.g. payment of money)

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

1 Sheriff Court,
1 Carlton Place,
Glasgow.
Tel: e-mail:

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

2 Mrs Janice McMillan,
21 Station Road,
Glasgow,
G4 5RT

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

3 The Music Shop Limited,
13 Craigleith Row,
Glasgow,
G3 6WS

Claim (form of decree or
other order sought)

4 The pursuer claims from the defenders the sum of £630.00 with interest on that sum at the rate of 8% annually from the date of service (together with the expenses of bringing the action.)

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

5 None

Fee Details (Enter these
only if forms sent
electronically to court)

5a Not applicable

PAGE 1

*Sheriff Clerk to
delete as appropriate

Court Authentication

6	RETURN DAY	20		
	CALLING DATE	20	at	am.
The pursuer is authorised to serve a copy summons in form *1a/1b, on the defender(s) not less than * 21/42 days before the RETURN DAY shown in the box above. The summons is warrant for service, *arrestment on the dependence and for citation of witnesses to attend court on any future date at which evidence may be led.				
Sheriff clerk depute (name)		Date:	20	

NOTE: The pursuer should complete boxes 1 to 5a above and box 7 on page 2. The sheriff clerk will complete box 6.

**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:

Example 1 – Claim for payment of money

On 9 September 2008, the defenders sold to the pursuer a stereo system for £630. When the system was delivered on 19 September, the cabinet was found to be cracked.

The defenders have refused to replace the cabinet or refund the purchase price. A copy receipt for payment of the purchase price is attached.

Example 2 – Claim for delivery with an alternative claim for payment

On 26 July 2007 the defender bought a Vauxhall Cavalier motor car, registered number M331 OSC, for £17500 from the pursuer. The defender paid a deposit of £1000 and agreed to pay the balance at £50 per month. A copy of the written agreement will be produced in court.

The defender has paid one instalment of £50, leaving a balance of £700 outstanding. In terms of the agreement, the pursuer seeks return of the car, failing which payment of the balance of £700.

Example 3 – Claim for implement of an obligation with an alternative claim for payment

On 14 August 2008 the defender was instructed by the pursuer to build a wall in her garden at 13 Mansfield Gardens, Glasgow, at a price of £700. A copy of the estimate and a receipt for payment for £700 will be produced in court.

The defender started the work on 22 August 2008 and partially completed the wall. Since then, despite repeated requests, no further work has been done. The pursuer seeks an order against the defender ordering him to complete the wall, failing which payment of £350, being the estimated cost of completion, plus compensation for inconvenience caused. A copy estimate for completion will be produced in court.

FOR OFFICIAL USE ONLY

Sheriff's notes at hearing as to:

- Issues of fact and law in dispute
- Facts agreed
- Directions and guidance upon evidence to be led.

2.05 Arrestment of property belonging to the defender

You will see on the form of summons (below box 6) that it contains a ‘warrant to arrest on the dependence’. What does this mean?

When you raise a claim for, or including, payment of a sum of money, you may be able to prevent anyone holding money (or certain other kinds of property) which belong to the defender from parting with them before the court proceedings are finished. The procedure used to achieve this is known as ‘arrestment on the dependence’ of a claim.

The purpose of arrestment is to ensure that, if you are successful in your claim, the items will be available to you to help you to recover any debt due from the defender.

If you do not need arrestment, delete the words “arrestment on the dependence” in Box 6.

If you wish to make use of this procedure, you will have to include in Box 7, a statement justifying why such a warrant should be granted. If the sheriff accepts your explanation he or she will grant the warrant. You will then require to have the items legally arrested, so that they cannot be disposed of. You will have to ask a sheriff officer to do this on your behalf, as you cannot arrest property in this way yourself.

Once any items have been arrested, the defender is entitled to apply to the court to have the order for arrestment recalled or restricted. The defender usually does this by making an ‘incidental application’ to the court. Incidental applications are described in Part 4 of the guide.

The defender may also make such an application as part of the response to the summons. If this is done, the application will be considered when the claim is heard by the court on the hearing date (see next paragraph).

2.06 The return day and the hearing date

You will have noticed the expressions ‘return day’ and ‘hearing date’ on the summons. These dates will be inserted by the sheriff clerk when the summons is accepted by the court. What do they mean?

The **return day** is the day by which the defender must send a written reply to the court, if they intend to do so. When the return day will be depends on the situation at each individual court. On average, it is about six weeks after the date on which the summons is lodged.

The **hearing date** is the date set for the case to be heard, or otherwise dealt with, by the court. This takes place seven days after the return day.

Cases do not always need to be heard formally in court by the sheriff on the hearing date. Whether they have to or not depends very much on the defender’s response to the summons, as explained in paragraph 2.09.

We shall look at the significance of the return day and hearing date again later in this part of the guide.

2.07 Completing the defender’s copy of the summons

There are two different types of copy summons:

Form 1a – For use when the defender(s) is/are an individual or individuals.

Form 1b – For use when the defender is a company or other organisation.

You obtain these forms from the same source as you obtained form 1.

The reason why there are two different forms for defenders is that an individual defender can apply to the court for a time to pay direction or a time order (orders which regulate the way in which a debt is to be paid) whereas a company can't do this. The forms simply reflect the different procedures to be followed.

An example of Form 1a is given below. Form 1b is very similar, but does not contain any procedure for making an application for a time to pay direction or time order.

What you have to do now is to fill in the details on pages 1 and 2 of the defender's copy of the summons. The details required are the same, whether you are using Form 1a or Form 1b.

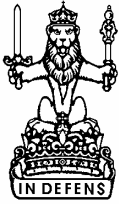
You have to copy the information contained in Form 1 (the principal summons) onto the copy summons (Form 1a or 1b). This should present no difficulty, but you can always ask the sheriff clerk for help if you are unsure.

You will be able to complete box 6 after the sheriff clerk has accepted the summons, and has inserted the return day and the hearing date.

You do not have to complete section 8 of the defender's copy. This will be done by the person sending the copy summons to the defender (see paragraph 2.08).

The only other part of Form 1a or 1b you have to complete is section A on page 5. The details required for this are contained in Form 1.

The rest of Forms 1a and 1b contain information for the defender on how to respond to the summons.



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 one 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.

4. 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 <u>written</u> application to pay by instalments or by <u>deferred</u> 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.
* <i>delete as necessary</i>

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.

***APPLICATION FOR RECALL OR RESTRICTION OF AN ARRESTMENT**

I seek the recall or restriction of the arrestment of which the details are as follows:-

Date:

**Delete if inapplicable*

2.08 Sending the copy summons to the defender

You cannot serve (send) the copy summons to the defender by yourself.

If you are raising a claim as an individual, or as a sole trader, the sheriff clerk, if you wish, can usually serve the summons for you.

The sheriff clerk will not do so in any other case.

If the sheriff clerk is serving the summons, you will be given a copy of the summons for reference. The principal summons will be kept by the court.

If necessary, or if you wish, a solicitor or sheriff officer can serve a summons on your behalf, but they will charge a fee for this service.

If you are making your own arrangements to send the defender's copy summons, the forms will be given to you to take to a solicitor or sheriff officer.

Service involves sending the copy summons to the defender. This is usually done by recorded delivery letter.

If delivery by post is unsuccessful, the copy summons will be returned to the court, and you will be informed of this. The copy summons must then be served by a sheriff officer, who does this either by delivering it personally to the defender, or leaving it at the defender's address.

If service by sheriff officer is necessary, the sheriff clerk can arrange for this on behalf of an individual pursuer. There is an additional fee payable to the sheriff clerk for this service. The sheriff clerk will advise you of the current fees, or you can check on www.scotcourts.gov.uk.

If the defender's address is unknown, the sheriff may allow the summons to be served either by the publication of an advertisement in a newspaper, or by having a notice about the case displayed in the court house. In either of these situations, you will have to give the defender's copy of the summons to the sheriff clerk. If you are an individual or a sole trader and you wish the sheriff clerk to arrange service for you, you will have to pay the cost of any newspaper advertisement to the sheriff clerk. If you arrange for the advertisement yourself, you will also have to pay the cost, and lodge a copy of the newspaper containing it with the sheriff clerk.

If service is to be made by having a notice displayed in the court house, you will have to complete the notice and take or send it to the sheriff clerk. There is a form available for this, which you can obtain from the sheriff clerk or the Scottish Court Service website. An example is shown below:

FORM 9

Service on person whose address is unknown

Form of notice to be displayed on the Walls of Court

A small claim action has been raised in this court by A.B., pursuer against C.D., defender, whose last known address was.....

If the said C.D. wishes to defend the action he should immediately contact the Sheriff Clerk's office, from whom the defender's copy summons may be obtained.

(Date) Displayed on the walls of court of this date.

Sheriff Clerk Depute

If you are arranging for service yourself, remember to return the summons to the court as soon as possible before the hearing date if the case is to call in court for any reason. (See paragraph 2.09 below.)

If the claim relates to a breach of duty under the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, or the Equality Act (Sexual Orientation) Regulations 2007, a copy of the summons must also be sent to the Equality and Human Rights Commission.

2.09 The defender's response to the summons

Once the defender has received the copy summons, there are several ways in which he or she can choose to respond:

If the defender is an individual, he/she will have received Form 1a. The choices for an individual are:

- Do nothing
- Admit the claim and settle the case
- Admit the claim and make a written application about payment
- 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 were first mentioned in paragraph 2.06.

The **return day**, which is fixed by the sheriff clerk when the summons is lodged, is the day by which defenders must respond to the summons if they wish to:

- Admit the claim and make a written application about payment; or
- Admit the claim and attend court to make an application about payment; or
- Dispute the claim and attend court

The defender responds by returning the appropriate pages of the copy summons to the court, outlining what he or she wishes to do (see style of copy summons at paragraph 2.07)

It is the pursuer's responsibility to find out from the court whether the defender has made a response. This should be done immediately after the return day.

If the summons has been served by anyone other than the sheriff clerk, and the case is to call in court on the hearing date (see next paragraph), the pursuer must return it – along with a certificate stating that it has been served on the defender – to the court at least two days before the date of the hearing. If the case is not to call in court, only the certificate of service needs be returned. (The certificate will be provided by the person serving the summons.)

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 the defender:

- Has made an application about payment which you do not accept
- Intends to attend court to make an application about payment
- Wishes to dispute or contest the claim in any way

2.10 Defender does nothing in response to the summons

If the defender does not respond to the summons, you will have to let the court know what order you wish it to make. This should be done by lodging a written minute, using Form 11 below:

<p>FORM 11</p> <p>Form of minute – no form of response lodged by defender</p>		
Sheriff Court, (name)		
Hearing date:		
In respect that the defender(s) has/have failed to lodge a form of response to the summons, the pursuer requests the court to make the orders specified in the following case(s):		
Case No.	Name(s) of defender(s)	Minute

‘Minute’ simply means the order you wish the court to make. You should enter details of the order you wish in this section of the form, (below the word ‘minute’).

Form 11 can be obtained from any sheriff clerk’s office.

You **must** make your request at least **two days before the date set for the hearing**. In particular, you must do so by the time the sheriff clerk’s office closes for business on that date. If you do not do so, the court will dismiss your claim, which means that the proceedings will be brought to an end.

The following are examples of orders you might wish the court to make:

- An order for the sum claimed, with interest and expenses.
- Delivery of any item or performance of any duty in a claim for either of these. (If the defender does not comply with the court’s order, you will be entitled to apply for payment of the alternative sum of money claimed by way of an incidental application. The procedure for this is as described in paragraph 4.13 of Part 4 of this guide – ‘Going to Court’).

- A request for the case to be continued. You must state the period for which you wish the case to be continued, and the reason you wish the continuation. An example might be:
'I request a continuation of the case for two weeks. The reasons for this request are that the defender has now paid the sum by cheque, and I am waiting for the cheque to clear.'

If you make a request for a continuation, and the request is granted, you must complete another copy of Form 11 and lodge it with the sheriff clerk at least two days before the date of the continued hearing, so that the court will know what order you wish it to make on that date.

2.11 Defender admits the claim and settles the case

If the claim is settled by the defender to your satisfaction, you should inform the sheriff clerk in writing at once. In this situation you should normally enter a minute, following the procedure described in paragraph 2.10, requesting that the claim be dismissed.

2.12 Defender admits the claim and makes a written application about payment

The defender may admit the claim but make an application to the court to be allowed to pay the debt by instalments or by a lump sum within a specified period of time. (In a claim for delivery or performance of a duty, this may be the response where the defender wishes to pay the alternative amount claimed, rather than deliver the item or perform the duty.)

The defender does this by making an application to the court for a **time to pay direction** or a **time order**. A form to apply for this is contained in the defender's copy summons. The defender must lodge this application with the court on or before the return day.

You should check with the court after the return day to find out if the defender has made an application for a time to pay direction or a time order. If an application has been made, you will then have to decide whether you are prepared to accept it or not, and let the court know of your decision. You should do this by lodging a written minute, using either Form 12 or 13 below:

FORM 12

Form of minute – pursuer not objecting to application for a time to pay direction or time order

Sheriff Court (name)

Case No.

Name(s) of defender(s)

Hearing date:

I do not object to the defender's application for

*a time to pay direction

*recall or restriction of an arrestment

*a time order

The pursuer requests the court to grant decree or other order in terms of the following minute(s)

**delete as appropriate*

FORM 13

Form of minute – pursuer opposing an application for a time to pay direction or time order

Sheriff Court (name)

Case No.

Name(s) of defender(s)

Calling date:

I oppose the defender's application for

*a time to pay direction

*recall or restriction of an arrestment

*a time order

**delete as appropriate*

Forms 12 and 13 can be obtained from any sheriff clerk's office, or from the Scottish Courts website at www.scotcourts.gov.uk.

You **must** make your request by lodging the form at least **two days before the date set for the hearing**. In particular, you must do so by the time the sheriff clerk's office closes for business on that date. If you do not, the court will dismiss your claim, which means that the proceedings will be brought to an end.

If you have not objected to the defender's application, the case will not call in court. The court will grant an order in terms of the defender's application on the hearing date. **In this situation, you do not need to appear in court.**

If you have objected to the defender's application, the case will call in court on the hearing date. **In this situation, you must attend or be represented at court on the hearing date.**

The court will consider the defender's application on the hearing date and will wish to know the reasons why you are objecting to it. **If you fail to attend or are not represented, your claim may be dismissed, or the court may grant the defender's application, and you may have to pay the defender's expenses.**

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

2.13 Defender admits the claim and attends at court to make an application about payment

The defender may respond to the summons by indicating that he or she admits the claim but wishes to attend at court to make an application about paying any sum of money due. The defender will indicate this by responding to that effect to the court on or before the return day. You should check with the court after the return day to find out whether the defender has responded in this way.

In this situation, you may attend or be represented at court on the hearing date. The court will consider the defender's application and any response to it. **If you do not attend or are not represented the court may grant the defender's application.**

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

2.14 Defender denies or disputes the claim and intends to appear at court

Apart from attending at court to make an application about payment, the defender may also wish to attend court to do any of the following:

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

The defender will indicate his or her position by sending an appropriate response to the court in writing on or before the return day.

In this situation, you must attend or be represented at court on the hearing date. If you fail to attend or are not represented, your claim may be dismissed, and you may have to pay the defender's expenses.

If attending court to state a counterclaim (see paragraph 2.17), the defender may send a note of the counterclaim to the court before the hearing date. If this happens, the defender is obliged to send a copy of it to you. If you receive a copy in this way, you should bring it with you to court on the hearing date.

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

2.15 Amending the claim

After you have lodged the summons in court and it has been served on the defender, you may wish to change something in it. For example, you may have forgotten to include some important information in the statement of claim, or you may discover that something you have stated is wrong. You may even wish to change the amount claimed.

If you wish to amend the claim, you may apply to the court to do so at any time during the case before the sheriff finally makes a decision. You could do this by lodging a document known as an incidental application, or, if appearing in court, 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'.

If an amendment is applied for and allowed in an undefended action, the court might ask that the summons, as amended, be served upon the defender again. If this happens, the sheriff clerk will fix a new return day and a new hearing date. The case would then proceed as if the original service had not been carried out.

2.16 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 wish this where, for example, you are trying to settle the case with the defender, and you feel you need more time to reach an agreement. 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 when 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 in it until the sist is recalled. An application to recall a sist is made by incidental application to have it granted, and it can be made by any party in the claim.

The defender is also entitled to apply for the case to be sisted.

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

2.17 Defender makes a counterclaim

What is a counterclaim?

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

The defender does not have to use the counterclaim procedure. He or she is entitled to raise a separate action if wished. 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 the defender thinks 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 this guidance on small claims, is also available.)

The defender can only make a counterclaim against you if it relates to the same matter as your claim. Here is an example of when making a counterclaim might be appropriate:

The pursuers are a firm of plumbers. The defender purchases a new bathroom suite from them. However, soon after it is installed, water pours through the defender's ceiling, causing extensive damage.

The defender refuses to pay the pursuers' bill for the work done, and the pursuers make a claim for payment. In those circumstances, the defender could raise a counterclaim against the pursuers for the damage caused to the property by the pursuers shoddy workmanship. The counterclaim would then be joined with the pursuers' claim and both considered by the court as one case.

If, however, the defender wanted to sue the same pursuers because, say, they had been responsible for damage sustained to the defender's car in a road accident, then this could not be done by way of a counterclaim, 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 the defender wishes to make
- A response to the pursuer's claim (if the defender has not already made one)
- A statement setting out the facts upon which the defender relies in support of the counterclaim

The defender may also include in the counterclaim an application for warrant to arrest on the dependence of the counterclaim. (See paragraph 2.05 for an explanation of arrestment)

A counterclaim might therefore look something like this:

Sheriff Court, Glasgow

Case No: 221/01

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.

I also apply for a warrant to arrest on the dependence of the counterclaim.

(Date)

At what stage can a counterclaim be made?

If the defender knows that he or she wishes to make a counterclaim when the copy summons is received, they must inform the court as part of the response to the summons that there is an intention to make a counterclaim in the case.

The details of the counterclaim may be included in the form of response to the summons. If the defender does include these details, he or she must send a copy of the form of response to the other parties to the claim at the same time it is sent to the court.

Alternatively, the defender can tell the court the details when appearing at the hearing. If the defender wishes to proceed in this way, he or she should indicate the intention to do so on the form of response. When the defender attends at the hearing, the court may, if necessary, continue the hearing to allow the pursuer time to answer the counterclaim.

If the defender decides at a later stage while defending the action that he or she wishes to make a counterclaim, details of the counterclaim, with the court's permission, may be lodged at any time before the case is finally decided.

You should note that, if the pursuer fails to appear at any hearing, or any continued hearing, fixed to consider the defender's counterclaim, a decree for the sum contained in the counterclaim may be granted in favour of the defender.

2.18 Enforcement of the court's order

If you are successful with your claim, you may wish information about how to enforce the court's order if the defender does not comply with it. It is important to note that the court cannot arrange for enforcement on your behalf. You require to attend to this yourself, and recover any costs involved from the defender.

Guidance on this is included in Part 4 of this guide – 'Going to Court'. You will find information there about what happens after the case is finished and what to do if you have any difficulty in recovering money the court has ordered the defender to pay or if he or she fails to comply with any other final order made by the court.

2.19 Fees and expenses

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

A – Court Fees

If you raise an action, 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 on the defender by a sheriff officer (usually because the initial postal service has not been successful), there will be an additional fee for this

The sheriff clerk will advise you of the current fees or you can check on www.scotcourts.gov.uk.

There is also a fee for making an appeal against the court's decision. Further information about appeals can be found in Part 4 of this guide – 'Going to Court'.

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.

B – Court Expenses

As a general rule, 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 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 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 decides 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 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 complied with by the other party

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.

2.20 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 decree (order) recalled. This usually happens when one party has failed to do something, for example, to 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'.

2.21 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.

2.22 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

2.23 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 try 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.

2.24 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 .
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.