Sheriff Court, Scotland

The Summary Cause

Information and procedural guide

4. Going to Court

What to do if you have to attend court

Types of court hearing explained
Preparing for attendance at court
Court procedures
The court's decision and what it means
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Recalling the court's decision
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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.

4.01 About the guide

This guide has been compiled to provide information to anyone who wishes to find out more about summary cause actions.

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 Summary Cause?

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 an action against you.

Part 2 – Raising an Action

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.

If you are attending court, you may have already consulted some of the other parts of the guide. If you have not, you may wish to do so now, as they contain information which may help you prepare for your court appearance.

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 summary cause.

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 an action. 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 (Summary Cause 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, 26 Rutland Square, Edinburgh EH1 2BW (tel: 0870 600 5522) or from any other legal bookshop.

4.02 Where can I go for advice?

There are many organisations which can help if you are considering beginning or defending a summary cause. 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 Klimarnock sheriff courts
- Money Advice, Scotland
- Sheriff clerks' offices
- Trading Standards departments

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

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

Please note that sheriff clerks cannot give you legal advice, although they can help you to understand court procedures.

Alternatively, you may wish to consult a solicitor. You may be able to get help and advice under the legal advice and assistance scheme. You may also be entitled to receive full legal aid to help you pursue or defend a summary cause. This will depend on your income.

Any solicitor will be able to advise you about this, and about making an application to receive legal aid.

4.03 In what circumstances does the case call in court?

The circumstances in which a case has to call in court on the calling date have already been discussed in earlier parts of this guide. It may be useful, however, to summarise as follows:

You do not require to attend personally or be represented at court if:

- The defender has not responded to the summons
- The claim has been settled before the hearing date and the court has been informed
- The pursuer has accepted any application from the defender about the method of paying any debt due

You do require to appear or be represented if:

- The pursuer has not accepted a written application from the defender about payment
- The defender wishes to attend court to make an application about payment
- The defender wishes to challenge the jurisdiction of the court
- The defender wishes to defend or contest the case
- The defender wishes to contest the amount due

Additionally, the Pursuer requires to appear or be represented if:

- The action is one for recovery of possession of heritable property even although the case is undefended

Occasionally, circumstances may arise where the court may wish attendance by one, or all, of the parties to the action apart from the reasons outlined above. Should this happen, the parties will be informed of the reasons and the date of any hearing.

We shall look in detail about what happens in each of the situations where appearance is necessary shortly. Before doing so, however, it may be useful to give some general information about attending court.

4.04 Who can appear for me in court?

You can appear on your own behalf at any stage.

You do not need to employ a solicitor. If you do, however, you will be liable for payment of solicitor's fees. If you win your case, you may be able to recover all or part of these fees by means of an award of expenses.

Legal aid is available for summary cause actions (see paragraph 4.02 above).

You can be represented in court by any person you authorise, for example:

- A friend
- A relative
- A representative of the Citizens Advice Bureau, Consumer Protection/Trading Standards department, or other advice agency, who may be able to do this for you free of charge (see paragraph 4.02).

You cannot be represented by anyone other than a solicitor or an advocate at a diet of proof (see paragraph 4.17), although, of course, you can appear by yourself at that stage.

However, from 1st January 2011 new court rules apply and you will be able to ask the sheriff to permit a named individual to assist you during the court proceedings, known as "lay support". They will be able to sit beside or behind you during hearings in the courtroom or in the sheriff's chambers. Although they won't be able to speak on your behalf, they will be able to provide you with assistance in the following ways:

- by providing you with moral support
- by helping you to manage the court documents and other papers
- by taking notes of the proceedings
- by quietly advising on:
    - points of law and procedure
    - issues which you may wish to raise with the sheriff
    - questions which you may wish to ask witnesses

The supporter does not need to be legally qualified.

You can ask the sheriff to permit the named individual to assist you at any time during the proceedings. You would simply need to ask the sheriff to allow this when the case calls in court. The court must grant your request, unless the sheriff is of the opinion that the individual is not suitable to act as a lay supporter; or that it would not be appropriate for some other reason.

Where permission is granted, it remains in place until the case is finished or permission is withdrawn. You should also be aware that the individual cannot assist you during any period when you are represented by a solicitor.

The sheriff may withdraw permission on their own initiative or on the motion of any party but only if the sheriff is satisfied that if the permission were to continue it would result in the inefficient administration of justice.

You are allowed to show the individual providing you with support, any document, including court documents, and provide them with any information you have in connection with the proceedings. However, the supporter would then be subject to any prohibition or restriction on the disclosure of the document or the information which applies to you.

It is a condition of the permission being granted by the sheriff, that the lay supporter does not receive any payment from you for their assistance, either directly or indirectly. Also, you cannot claim any expenses you incur as a result of an individual's support in the proceedings.

4.05 Some general information about attending court

You may be worried about attending court, particularly if you do not have a solicitor or other representative to speak for you. The following information may help you to prepare for your appearance.

1. Prepare for any court hearing as well as you can

It will help you, and the court, if you have already thought about what you want to say in court. You should prepare your case as thoroughly as possible. Decide what papers or other items you wish to take with you to support your case.

2. Make sure you know the date and time of any court hearing you are attending

The calling date can be checked from the front page of the summons or copy summons which you will have. If you are in any doubt, contact the sheriff clerk. It will not help your case if you turn up on the wrong day, or at the wrong time, as the case will almost certainly be disposed of in your absence.

3. Check the whereabouts of the court, and how to get to it

If the court is situated in an unfamiliar city or town, make sure that you know the exact location of the court and how to get there. Find out about public transport to the

court, or where you can park your car. If in doubt, you can telephone the sheriff clerk for assistance. The sheriff clerk's telephone number is also contained on the front page of the summons or copy summons.

Maps showing the locations of the sheriff courts are available from the sheriff clerk or can be found on the Scottish Court Service website. The website address is: www.scotcourts.gov.uk.

4. Consider visiting the court in advance

If you're worried about attending court, or are concerned about finding it, you may want to go there before the day of your case, to familiarise yourself with the layout of the building. Most courts have a reception point, and staff will be pleased to answer any questions about the courtrooms and other facilities.

5. Allow yourself plenty of time to get to the court

If you are late the action will, in all probability, have been dealt with in your absence. Although this may not always be the end of the matter, it may not be easy trying to reopen the case.

Arriving early will let you familiarise yourself with the court and its surroundings. Some of the larger courts have facilities where you can obtain drinks and snacks.

6. Remember to bring any papers or items with you which might be useful

Examples of these might include:

- A copy of the summons or any response to it
- Any letters, receipts, invoices, contracts etc. which you may wish to refer to in court to support your case
- Any photographs (of faulty goods, for example) which you think might assist your case
- Any faulty goods which you can reasonably carry (for example, a lap top computer)
- A map showing the whereabouts of the court, if you are unfamiliar with the location
- A note of any legal matters you may wish the court to consider (for example, references in law books, or details of any court cases which you think might support your case)
- Material (pens, paper etc) for taking notes in court
- Original copies of any productions which have been lodged electronically (see paragraph 4.18)

7. Find out exactly where you have to go

When you arrive at the court, there will be a reception point at all but the smallest courts. If there is no receptionist available, you should go to the sheriff clerk's office for help.

This is especially important at the larger courts, which often have many courtrooms within the building. Make sure you know which courtroom your case is being held in, how to get there, and at what time your case is due to be called.

8. Be prepared for some delay

Please remember that courts can be very busy and that it is very difficult to forecast how long individual cases might take. This means that your case may not be called at the time stated. It can also be difficult to predict how long any hearing will last, once it gets underway.

You should therefore allow for delays, and arrange your affairs accordingly. Remember this if you leave your car at a parking meter!

It might be worth enquiring at the sheriff clerk's office, when you arrive at court, whether there's likely to be any delay to the start of your case.

9. In the courtroom

You should take a seat in the courtroom until the clerk of court or court officer calls your case. When he/she does so, you should go forward and stand where they indicate.

10. Addressing the court

The sheriff will give you some information about how the case will be conducted at the beginning of the hearing.

At various times during the hearing of the case, if you are representing yourself, the sheriff will invite you to address the court. You should not interrupt while others are speaking.

Try to make your points clearly and concisely, and don't talk about matters which are irrelevant. Listen carefully to any instructions or explanations about procedure which the sheriff or the clerk of court may give you.

The sheriff is normally addressed as My Lord/Lady.

11. Future court attendances

Sometimes, it may be necessary for the case to be continued to another date. Make sure you know any future dates when it would be difficult for you to attend.

12. Language difficulties

Please note that, if you have any difficulty in understanding English, the court cannot arrange an interpreter for you but may be able to put you in touch with one. It would be your responsibility to do this, and to pay any fees the interpreter charges.

13. Child care

As the courts do not, at present, offer any child care facilities, you must make your own arrangements.

4.06 The pursuer has not accepted a written application from the defender about payment

If the case is to call in court because the pursuer has not accepted a written application from the defender to pay by instalments or by a lump sum, the sheriff will hear both parties in turn on the matter. The sheriff will have seen the defender's written application, and will wish to know why the pursuer does not find it acceptable.

In an action with an alternative claim for payment of money (for example, one for delivery) the defender may have made an application to pay the alternative sum claimed rather than (in this example) deliver the item sought by the pursuer. The pursuer may not agree to this, because he would prefer to have the item delivered rather than accept a monetary payment.

Having listened to both sides, the sheriff will then consider what has been said and decide how the action is to be settled and, if appropriate, how any debt is to be paid.

4.07 The defender wishes to attend court to make an application about payment

The procedure in this situation will be similar to that outlined in the previous paragraph. If the defender has not submitted any written application, he or she will have to tell the sheriff how they want to pay any debt, and give details of their financial position. The sheriff will then hear the pursuer in reply (if the pursuer decides to attend or be represented) and decide how payment is to be made.

4.08 The defender wishes to challenge the jurisdiction of the court

If the defender wishes to challenge the court's jurisdiction, he or she will be invited to speak first and give reasons for so doing. The sheriff will then, if necessary, hear the pursuer in reply, and make a decision. If the matter is very complicated, the case might be continued to a later date to allow the court to consider what the parties have said. In that situation, the sheriff would fix a date for a further hearing and announce his decision at that time.

4.09 The defender wishes only to dispute the amount due

If the defender admits to owing the pursuer a sum of money, but does not agree with the amount claimed, the sheriff will invite the defender to state what sum he or she feels is appropriate, and why. The sheriff will then hear the pursuer in reply and make a decision or, if necessary, fix a diet of proof (see paragraph 4.10) so that evidence can be heard about what the appropriate sum should be.

The defender may then wish to make an application about payment. The procedure would then be the same as outlined above.

If the defender knows that he or she intends to make an application about payment after the court had decided what sum is due, he should consider this before attending court and be prepared to tell the sheriff exactly how they wish to pay the sum.

4.10 The defender wishes to defend or dispute the case

Where the defender does not admit the claim and wishes to defend or dispute the case, the sheriff will question the pursuer and the defender to find out the facts of the case and which issues the parties do not agree about.

The court will seek to negotiate and secure settlement of the action, though sometimes settlement will not be possible.

If agreement cannot be reached on the calling date, the court will normally want to hear evidence from witnesses. It would then be necessary to continue the action to another date to allow witnesses to attend and for both sides to prepare their case further. This type of hearing is normally called a **diet of proof** or a **proof diet**.

For the purposes of any proof the sheriff will, on the calling date, note on the summons any facts that are agreed alongside the issues in dispute. Parties should listen carefully to the sheriff so that they will be clear about what issues require to be addressed, and be able to prepare accordingly.

The sheriff will also ask parties whether any of their witnesses is a child or a vulnerable witness (see paragraph 4.20 for an explanation).

The date fixed for the diet of proof will be far enough ahead to allow parties to prepare their cases properly and arrange for any witnesses to attend.

If a diet of proof is fixed, you must send a list of the documents you have, and intend to refer to at the proof, to the sheriff clerk. You must also send a copy of the list to the other party. The list should state the address(es) where the documents are to be found and it (and the copies) must be sent out within 28 days of the date when the proof diet is fixed.

If you receive a list of documents from another party, you can look at them before the date of the proof if you want. You will have to arrange a date and time for this with the other party.

Any continued dates will be fixed by the court at the hearing on the calling date. No further reminders will be given, so parties should note carefully any dates and times fixed.

What happens at a diet of proof is discussed in paragraphs 4.17 to 4.23 of this part of guide.

4.11 Lists of Witnesses and Reports of Skilled Witnesses

You must lodge with the sheriff clerk (and send to other parties within 28 days of fixing of proof) a list of any witnesses you intend to call to give evidence (see paragraph 4.20). And if you have any skilled witnesses (for example, a surveyor who has inspected damage) you must lodge and disclose a copy of their report not less than 28 days before proof.

4.12 Reports on evidence by qualified persons

Sometimes, it may be necessary to ask the court for a report from someone who has specialist knowledge. The legal expression for this is a remit to a person of skill.

This is done by lodging an incidental application (this procedure is explained at paragraph 4.13).

Once submitted any such report cannot be challenged by the parties. This means that the sheriff will accept whatever opinions it contains on matters of fact and pay heed to these in deciding the case.

4.13 Incidental applications to the court

During the course of the case, either the pursuer or the defender may wish to apply to the court for an order to have something done. This happens by applying to the court for an 'incidental application.'

Here are some examples of the kind of applications a party might make:

- An order for recovery of any documents which might help prove the case (such as work records) when these cannot be otherwise obtained (see paragraph 4.19)
- A request to postpone the date of any hearing
- A request to transfer the case to another sheriff court
- An order for payment of an alternative sum claimed where the defender has failed to comply with a previous court order
- A request for a witness to give their evidence via a live TV link

The procedure for making an incidental application is quite straightforward but, if you do run into difficulties, the sheriff clerk will be able to offer guidance.

Your application should include:

- Details of the parties in the case (names and addresses)
- The court case details (the sheriff clerk can supply these)
- The order you seek
- The reasons for seeking the order

Here is an example of what an incidental application might look like:

Sheriff Court, Edinburgh

Summary Cause summons no 199/2008

Date of next hearing: 3rd June 2008

Mrs Margaret Elder, Pursuer, against **City Electrical Appliances, Defenders**

(address) (address)

The pursuer requests the court to postpone the diet of proof fixed for 3rd June 2008 as an essential witness for the pursuer, Mrs Margaret McKay, 159 Glasgow Road, Edinburgh is in hospital and unable to attend on that date.

Date: 15 May 2008

The incidental application should be taken or sent to the sheriff clerk.

The sheriff clerk will then fix a date for parties to be heard on the application.

The party lodging the application must give at least two days' notice of the date set for the hearing of the application to the other party. If the party receiving the application then tells the court that they are not opposing it, the application will not have to call in court. The sheriff will then decide the matter on the day set down for the hearing.

If the party receiving the application intends to oppose it (or fails to tell the court that they do not intend to oppose it) the case will call in court. The sheriff will hear those parties who attend on the application and decide the matter. **It is therefore essential that the party making the application appears or is represented at court on the hearing date**. If the party against whom the application is made does not appear, the court may grant the application in their absence.

4.14 Adding additional defenders to the action

Occasionally someone other than the defender (against whom the claim is made) may also wish to defend the action. For example, if an action is raised by a pursuer against a defender for damage done to the pursuer's car, then the defender's insurance company may wish to become involved in the case.

Anyone wishing to become an additional defender does so by making an incidental application to the court. In that application the person (or company) must detail their interest in the claim and provide a note of their defence to it.

When such an application is lodged, the court fixes a date for a hearing. When that has been done, the applicant has to send a copy of the application, and also a note of the date of this hearing, to the pursuer and the defender in the action.

At this hearing, the sheriff will hear the applicant (along with the pursuer and the defender if they wish to be heard) and decide whether or not the applicant is allowed to enter the action. If the application is granted, then the party making it becomes an additional defender.

The case then proceeds like any other defended action.

4.15 Application for summary decree

A ‘summary decree’ is an order which the court can grant if a party successfully persuades the court that there is no real defence to an action (or a counterclaim) or a part of it, even although a defence has been stated by the other party. If a summary decree is granted, it will result in the action (or the part of the action to which it relates) being brought to an end.

A summary decree may be applied for in the following circumstances:

- By a pursuer, at any stage of the action
- By a defender, where a pursuer has lodged answers to a counterclaim

A pursuer would not apply for summary decree simply because the action was not being defended. In that case, they would ask the court to grant a decree (as explained in Part 2 of this guide). The summary decree procedure is used only in a defended action, the most likely time being after considering the defender’s statement of defence.

If a party wishes to apply for a summary decree, they must make an incidental application (see paragraph 4.13). Please note that, in an incidental application for a summary decree, the party making the application must send a copy of it to every other party by registered or recorded delivery post not less than seven (rather than two) days before the date fixed for the hearing of the application.

The incidental application should specify whether the party wishes a summary decree in respect of the whole action, or to some particular part.

Here is an example of what an incidental application for a summary decree might look like.

Sheriff Court, Edinburgh

Summary Cause summons no 554/2008

Date of next hearing: 23rd August 2008

Mrs Fiona Kerr, Pursuer, against Messrs. McKay and White, Defenders

The Pursuer requests the court to grant a summary decree against the defenders on the ground that they have not stated a defence to the action.

Date: 15 August 2008

When the case is heard in court, the sheriff will hear both parties and decide whether the application should be granted or not.

4.16 Abandonment of the action by the pursuer

A pursuer may offer to abandon their action at any stage of the case though they will be then liable for the defender's expenses.

The pursuer abandons the action by using the incidental application procedure (see paragraph 4.13 of this guide.)

Here is an example of what such an incidental application might look like:

Sheriff Court, Edinburgh

Summary Cause summons no 344/2008

Date of next hearing: 11th October 2008

Mrs Sarah Tracey, Pursuer, against John Porteous, Defender

The Pursuer offers to abandon the action.

Date: 3 October 2008

When the incidental application is heard in court, the sheriff clerk will fix the amount of any expenses claimed by the defender, either at that time or at a separate hearing held later for the purpose (see paragraph 4.24). **It is essential that the defender appears at the hearing on the application**, and is able to give the sheriff clerk full details of any expenses they wish to claim.

After the sheriff clerk has fixed the amount of expenses due to the defender, the case will be continued to another date for a further hearing, at least 14 days later.

At that hearing, the court will do one of two things:

(1) If the pursuer has by then paid the defender's expenses, it will grant a decree dismissing the action or, if the pursuer agrees, grant a decree of absolvitor

(2) If the pursuer has not paid the defender's expenses, it will grant a decree of absolvitor, with expenses, in favour of the defender.

What is meant by a 'decree of dismissal' and a 'decree of absolvitor' is explained at paragraph 4.25.

4.17 Proof diet – court requiring to hear evidence from witnesses

If you know that you will have to attend a proof diet, it is essential that you prepare for it as thoroughly as you can. You may wish to refer back to paragraph 4.05, to remind yourself of some of the things you might want to do.

4.18 Lodging and inspecting productions in the case

Any party to the case may ask the court to consider documents or other items which they think might be helpful. Such documents or items are called 'productions'.

There are certain rules about productions which have to be complied with. Some of the most important are:

- You must take any productions you intend to rely on to the sheriff clerk's office **no later than 14 days before the proof diet**. Once you have taken productions to the sheriff clerk's office, they are then said to have been 'lodged'.
- You must send a copy of any document lodged to the other party, unless that is not practicable
- At the same time as you lodge the productions, you must also lodge a list detailing what they are with the sheriff clerk
- You must send a copy of that list to the other party at the same time as you lodge it in court
- You must lodge a copy of each production, marked with its reference number, at least 48 hours before the proof diet. (The sheriff clerk will give you the reference numbers if you do not already have a note of them)
- You cannot borrow any productions lodged without obtaining the court's permission, although a solicitor acting for you may do so. To obtain permission,

- You must give the sheriff clerk a receipt for any productions you borrow. (This requirement does not apply to any electronic copies you may ask for and which are sent directly from the court)
- Any productions borrowed must be returned to the court by 12 noon on the day before any proof diet
- You may inspect productions lodged by calling at the sheriff clerk's office during office hours. Where practicable, the sheriff clerk can provide you with copies, on payment of any appropriate copying fee
- After the case is completed, you must uplift your productions from the sheriff clerk as soon as you can after 14 days has expired from the date of the sheriff's decision (unless, by then, an appeal is due to be heard)
- If an appeal has been heard and decided, your productions should be uplifted from the sheriff clerk's office as soon as possible after 14 days has expired from the date of the sheriff principal's decision

4.19 Recovery of documents

Sometimes you may wish to lodge some document as evidence in the case but find that you cannot do so because it is in the possession of someone else and they are reluctant to give it to you. In this situation, you may make an incidental application to the court to have it produced. The application might look like this:

Sheriff Court, Edinburgh

Summary Cause summons no 43/2008

Date of next hearing: 23rd June 2008

James Brankin, Pursuer, against Margaret Smith, Defender

The defender seeks an order for recovery of the medical records of the pursuer in respect of the injury the pursuer sustained in a road accident in Princes Street, Edinburgh on 17 August 2006. These medical records are held by the pursuer's general practitioner, Doctor J. Brown, 33 Victoria Avenue, Edinburgh.

Date: 15 May 2008

You should make any incidental application for recovery of documents as soon as possible, to make sure that they can be produced in good time for the diet of proof.

If the application is granted, the sheriff will appoint someone (called a commissioner) and authorise them to obtain the documents you wish to have lodged in court from the person who has them.

You may wish to give the person having the documents an opportunity to lodge them with the court before the commissioner takes any formal steps. To do this, you will need to complete the order and certificate below and have a solicitor or a sheriff officer send them to that person. You can obtain copies of the forms of order and certificate from the sheriff clerk, who can help you to complete them.

Order by the court and certificate in optional procedure for recovery of documents

Sheriff Court, (address)

In the cause (ref.no.)

in which

A.B. (design) is the pursuer

and

C.D. (design) is the defender.

To: (name and designation of party or haver from whom the documents are sought to be recovered.)

You are required to produce to the sheriff clerk at (address) within days of the service upon you of this order:

(1) This order itself (which must be produced intact);

(2) The certificate marked ‘B’ attached;

(3) All documents within your possession covered by the specification which is enclosed; and

(4) A list of those documents.

You can produce the items listed above either:

(a) by delivering them to the sheriff clerk at the address shown above; or

(b) sending them to the sheriff clerk by registered or recorded delivery post.

(date) (Signature, name, address and designation of person serving order)

PLEASE NOTE:
If you claim confidentiality for any of the documents produced by you, you must still produce them. However, they may be placed in a separate envelope by themselves, marked ‘confidential’. The court will, if necessary, decide whether the envelope should be opened or not.

Claims for necessary outlays within certain specified limits may be paid. Claims should be made in writing to the person who has obtained an order that you produce the documents.

B

CERTIFICATE

Sheriff Court, (address)

In the cause (ref.no.)

in which

A.B. (design) is the pursuer

and

C.D. (design) is the defender.

Order for recovery of documents dated . . . . . .

With reference to the above order and relative specification of documents, I certify:

** delete as appropriate*

* that the documents produced herewith and the list signed by me which accompanies them are all the documents in my possession which fall under the specification.

* I have no documents in my possession falling under the specification.

* I believe that there are other documents falling within the specification which are not in my possession. These documents are (list the documents as described in the specification). These documents were last seen by me on (date) in the possession of (name and address of person/company, if known).

* I know of no documents falling within the specification which are in the possession of any other person.

(name) (date)

If the person having the documents does not then deliver the documents to the court within the time allowed, you can ask the commissioner to recover the documents on your behalf.

The sheriff clerk will inform parties about any documents he receives. They may then be inspected at the sheriff clerk's office and lodged as productions if necessary.

4.20 Bringing witnesses to court for the proof diet

Within 28 days after the date when the proof diet is fixed by the court, each party must send a list of the witnesses they intend to call at the proof to the sheriff clerk and to the other parties.

The list should contain the name, occupation (if known) and the address of each witness, and should indicate if any witness is a child (i.e. under 16) or a vulnerable witness (i.e. has a mental disorder, or is experiencing fear or distress in connection with giving evidence in the case).

If you plan to call a child or vulnerable witness, special procedures apply – see the leaflet "*Are you intending to cite witnesses in a civil court case?*" available from sheriff clerks' offices and at
www.scotland.gov.uk/Topics/Justice/criminal/18244/17416/InformationMaterials

At the proof diet, the court will decide the facts of the case after hearing evidence from those witnesses called to give evidence. Both the pursuer and the defender may themselves give evidence as witnesses.

You are responsible for ensuring that your witnesses attend court. You can either just ask them to attend on the day of the proof diet or, more formally, send them a document known as a 'citation'

You must give any witness at least seven days notice of the date of the proof diet.

If you wish witnesses to receive a citation, this can be done only by a solicitor or a sheriff officer. You will be responsible for instructing this and paying any fees which the solicitor or sheriff officer may charge.

You are responsible for paying any expenses the witnesses may claim (see next paragraph). If you lose the case, you may be liable to pay the expenses of your own witnesses and those of the other party. If you are successful, the court will usually make an award of expenses in your favour (see also paragraph 4.24).

Caution for expenses

If you do not have a solicitor acting for you, you will have to assure the court that you will be able to pay any witness expenses you become liable for. This is done by a procedure known as **finding caution**.

To find caution, you must lodge an incidental application with the court at least 28 days before the date of the proof diet (the actual hearing). Paragraph 4.13 tells you how to do this.

Your incidental application should ask the court to fix caution in such a sum as the sheriff considers reasonable.

When the application is heard by the court, you should be prepared to tell the sheriff:

- How many witnesses you intend to cite
- How long you think each witness will need to give their evidence

The sheriff will then decide at what sum caution should be fixed, and tell you how to arrange the caution.

Caution is usually found either by:

- Lodging the sum of money fixed by the court with the sheriff clerk
- Lodging a document, known as a bond of caution, with the court. You can obtain a bond of caution from one of the insurance companies who provide this service

If you are using a sheriff officer to cite a witness, you must find at least enough caution to cover what you estimate that witness's expenses will be before instructing the sheriff officer to do so.

At the end of the case, if you have found caution by lodging the money with the sheriff clerk, you will be able to ask the sheriff clerk to return the money to you.

It should not be necessary to ask the sheriff to fix caution where your witnesses will attend without the need for them to be served formally with a witness citation.

4.21 How the proof diet is conducted

The case will start when it is called by the clerk of court or court officer. If you are representing yourself, you should come forward and take a seat where indicated by the sheriff clerk or the court officer.

The proof will be conducted in public. The pursuer and the defender will be allowed to remain in court throughout the hearing.

Each party will call their witnesses to give evidence. Normally, the pursuer will give their evidence, and those of their witnesses, first. The defender will then do the same, after the pursuer's evidence has been completed.

The witnesses (apart from the pursuer and the defender) are not allowed to sit in court until after they have given their evidence. Normally, the pursuer and the defender (if they are giving evidence) and each witness will be asked to take an oath. If they wish, they may affirm (promise to tell the truth) instead of taking the oath.

Each witness will be questioned firstly by the party who has called them to give evidence. Next, they may be examined by the other party if that party wishes to do so. Finally, the first party may again question the witness, to challenge any points made by the other party. The sheriff can also question witnesses.

The witnesses may be shown any of the productions lodged in the case and asked for their opinions or comments.

When all the witnesses have been heard, both parties will be given an opportunity to address the sheriff and make a final statement about their case.

4.22 The evidence

We have already discussed some of the ways in which evidence might be obtained. We have also discussed productions and the oral statements of witnesses, both of which contribute evidence in the case.

You should note, however, that evidence need only be led (given) about facts which are not agreed.

To illustrate this, let us consider the following example:

The pursuer states in their claim that they bought a computer system from the defender for £3,500 on 23 June 2008. It was delivered to the pursuer's home on 26

June 2008. It consisted of the hardware, a cabinet, the monitor, speakers, cabling and a scanner. When they bought the computer system at the shop, the pursuer was told that a free workstation would be included as part of the deal. However, when the system arrived, no workstation was delivered. The pursuer now asks the defender to deliver a workstation, or pay a sum of money by way of compensation.

The defender agrees with all that the pursuer says, but contends that no offer of a workstation was included in the purchase price. In such a situation, evidence would only require to be led regarding whether or not a workstation was part of the deal. It would not be necessary to lead evidence about the other component parts, the purchase price, the delivery date and so on.

4.23 What happens at the conclusion of the proof diet

The sheriff may come to a decision at the end of the proof diet, or may wish time to consider it. If further time is required, a decision will be issued in writing within 28 days of the diet of proof. The sheriff clerk will send a copy of the decision to the parties on receiving it from the sheriff.

4.24 Expenses

At the end of the case, if the court makes an award of expenses, the amount to be awarded is calculated by the clerk of court (the sheriff clerk). Alternatively this may be done by the auditor of court, if the sheriff or sheriff clerk decides it is appropriate. The sum awarded will depend on the amount and nature of the work which has been done in the case.

In an action which has been defended, the clerk of court will first hear parties on the claim for expenses and costs incurred. This will usually be done at the conclusion of the final hearing of any case. However, if the sheriff issues his decision at a later date, or if there is insufficient time at the end of the hearing, the case may be continued to another date for a special hearing on expenses, when both parties will be able to appear. The sheriff clerk will notify parties of the date of this hearing at least 14 days before it takes place.

If the case is continued for a hearing on expenses, the successful party will need to produce an account of their expenses and send a copy of it to the other party before the sheriff clerk hears their claim for expenses. The account must be lodged with the sheriff clerk, and a copy sent to the other party, at least seven days before the date of any hearing fixed to consider the question of expenses.

If alternatively the auditor of court is to assess the expenses, the sheriff clerk will forward the account of expenses to the auditor. The auditor will advise the party who lodged the account of the date and time of the hearing on the expenses, and that party must send a copy of their account to every other party, along with details of the hearing. Any party may lodge a note of objections to the auditor's decision within 7 days of that decision. The note of objections should be lodged with the sheriff clerk, and will be considered by the sheriff.

Any receipts or vouchers for expense incurred which support the claim should be attached to the account 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.

Expenses which may be awarded to the successful party by the court include:

- The cost of any solicitor employed by the successful party
- Loss of wages and travelling expenses for the successful party and any witnesses who appeared on their behalf at court

Please note that the court expenses do not include the cost of having any court order enforced. You will have to arrange for this to be done and recover the cost from the other party yourself.

After the sheriff clerk or auditor of court has calculated (assessed) the amount of expenses, the account will be submitted to the sheriff for approval. If this has been done at a separate hearing for expenses, the sheriff clerk will fix a date and time for the case to call in court so that the account of expenses can be approved by the sheriff.

The sheriff's final decision (decree) on the case cannot be pronounced until the account of expenses has been approved by the sheriff. This will be done at the same time as approval of the account.

4.25 The court's final decision

The sheriff's final decision will normally be one of the following:

1. Decree in favour of the pursuer

This means that the pursuer has been successful, either totally or partially, in the action. The court might then order the defender to pay any sum of money claimed, or comply with any other order sought by the pursuer.

In an action with an alternative claim for payment, the court may order the defender to carry out the order sought within a specified period. If the defender does not comply with the court's order, the pursuer will be entitled to come back to court and ask for an order for payment of the alternative sum of money claimed.

2. Decree of absolvitor in favour of the defender

If decree of absolvitor is granted, this means the pursuer's claim has been rejected by the court. The pursuer cannot raise the same claim another time against the defender.

3. Dismissal of the action

A decree of dismissal is also a decree in favour of the defender, but the pursuer would be entitled to raise the same claim again if they chose to do so. Decree of

dismissal might be granted where, for example, the pursuer has abandoned the action.

In any of the above situations, the court may make an award of expenses (see previous paragraph).

4.26 Recalling the decision (decree) of the court

Normally, when the court has decided an action, that decision is final unless an appeal is made.

However, in certain circumstances it is possible to apply to the court to have the decree recalled. This usually happens where a party has failed to do something (see below) and there is an explanation for that failure. If a decree is recalled, the case proceeds as if no decree had ever been granted.

The circumstances in which a decree may be recalled are:

- The defender has failed to lodge a form of response to the summons
- The pursuer has not lodged a minute for decree and the case has been dismissed
- A party has failed to appear or be represented at a hearing

You cannot apply to have a decree recalled at the end of a defended action. If you are dissatisfied with the court's final decision you may, in certain circumstances, be entitled to appeal (see paragraph 4.27).

The party wishing to apply to have the decree recalled must lodge a minute in the form below:

Minute for recall of decree

Sheriff Court: (name)

Case reference:

A.B (pursuer) against C.D. (defender(s))

The *(pursuer/defender) moves the court to recall the decree pronounced on (date) in this case * and in which execution of a charge/arrestment was effected on (date)

Reason for failure to appear or be represented:

Proposed defence/answer:

Date

* delete as appropriate

A copy of the form of minute (and a copy of the form which must be sent to the other party) may be obtained from the sheriff clerk or the Scottish Court Service website. If you do not have a solicitor representing you, the sheriff clerk will assist you to complete the form if you have any difficulty in doing so.

There is no fee payable for lodging a minute to recall a decree.

There are time limits within which an application to recall a decree must be lodged. These are as follows:

- If the decree contains an order for payment of a sum of money, within fourteen days of the execution of a charge, or execution of an arrestment (which are steps relating to enforcement of payment) whichever occurs first
- In any other case, within fourteen days of the date of the decree

The party applying for recall of decree must explain their failure to appear at the hearing (or to lodge a response) and also state a defence to the claim (or counterclaim if there is one) if this has not already been done.

Each party may apply for recall of the decree once only.

The sheriff clerk will fix a date and time for a hearing on the minute for recall. A copy of the minute, and of the date, time and place for the hearing, must be served on (sent to) the other party at least seven days before the date of the hearing.

You cannot serve the minute yourself. You will have to ask a solicitor or sheriff officer to do this on your behalf.

The minute, when lodged, effectively stops the other party from taking any further steps to enforce the decree. When the copy minute for recall has been sent to the other party, they must immediately return any extract decree which has been issued to the sheriff clerk.

If a satisfactory explanation is given the sheriff will recall the decree at the hearing, and the case then proceeds as a defended action.

4.27 Can I appeal?

There are rights of appeal from the sheriff to a more senior judge. Any party to the case may appeal in this way against the final decision (decree) of the sheriff. There is also a separate right of appeal against any decision made by the sheriff in an application which relates solely to a time to pay direction.

If you have no legal knowledge, it would probably be difficult for you to put forward any appeal on a legal matter. If you are considering doing so, you may wish to consider taking legal advice. Legal aid may be available to you for an appeal – you can obtain advice on this from any solicitor.

1. Appeals against the final decision of the sheriff

(A) Appeal to the sheriff principal

An appeal against the sheriff's final decision in the case can be made to the sheriff principal of the sheriffdom in which the court is situated.

It is important to note that such an appeal is only available if you wish to challenge the sheriff's decision on a point of law. You cannot appeal any decision about the facts of the case.

Procedure in the appeal

What follows is a brief overview of the appeal procedure. If you do decide to make an appeal without the assistance of a solicitor, you should contact the sheriff clerk who will help you with more detailed procedural advice. The sheriff clerk cannot give you legal advice.

The person making the appeal is called the **appellant** and the other party the **respondent**.

A person wishing to make an appeal must lodge a note of appeal with the sheriff clerk within 14 days of the date of the sheriff's final decision, setting out the points of law upon which the appeal is made. A fee (currently £32) is payable to the sheriff clerk when an appeal is marked (registered).

Within 28 days of the appeal being marked, the sheriff will issue a document called a draft stated case to both parties in the appeal. This contains details of the facts which the sheriff has found proved in the case, the findings in law, the questions of law which will be considered at the appeal hearing, and a note stating the reasons for making the decision.

The draft stated case is then sent out to the parties, to let them suggest any amendments which they would like to propose. The sheriff may fix a hearing to consider these proposed amendments. After that, the sheriff adjusts the draft and signs the stated case. The sheriff clerk will then send the stated case and other documents in the case, to the sheriff principal.

Parties will then be informed of the date, place and time of the hearing of the appeal and will also receive a copy of the stated case from the sheriff clerk.

At the hearing, the sheriff principal will hear the parties and make a decision on the appeal. If the sheriff principal requires time to consider the matter, a written decision will be issued within 28 days of hearing the appeal, and the sheriff clerk will then send a copy to both parties.

An award of expenses may be included in the sheriff principal's decision.

(B) Appeal to the Court of Session

An appeal to the Court of Session is available regarding the decision of the sheriff principal, after decision on an appeal from the sheriff.

Before an appeal to the Court of Session can happen, a certificate that the case is suitable for such an appeal must be obtained from the sheriff principal. This application must be made within 14 days of the date the sheriff principal decides the appeal from the sheriff.

The form for applying for such a certificate can be obtained from the sheriff clerk, who can also give you further information about what you should do if the application is granted.

2. Appeals which relate solely to a decision made in an application for a time to pay direction

Both the pursuer and the defender are entitled to appeal against a decision made by the sheriff regarding an application for a time to pay direction.

The person making the appeal is called the **appellant** and the other party the **respondent**.

It is important to note that such an appeal is only available if you wish to challenge the sheriff's decision on a point of law. You cannot appeal any decision about the facts of the case.

If you have no legal knowledge, it would probably be difficult for you to put forward such an appeal on a legal matter. If you are considering doing so, you may wish to consider taking legal advice. Legal aid may be available to you for an appeal – you can obtain advice on this from any solicitor.

If you decide that you do wish to make an appeal without the assistance of a solicitor, you should contact the sheriff clerk who will help you with more detailed procedural advice.

The procedure is different from that used to make an appeal against the sheriff's final decision in the case. Before any appeal about a time to pay direction can proceed, permission to do so must be obtained from the sheriff. A form is available for this, and an example is given below:

Application for leave to appeal against time to pay direction

SHERIFF COURT, ABERDEEN

Case ref. no. 33/2008

Brian Jones (Pursuer) against Louise Brown (Defender)

The defender requests the Sheriff to grant leave to appeal the decision made on 14 October 2008 in respect of the defender's application for a time to pay direction to the Sheriff Principal/Court of Session.

The point(s) of law upon which the appeal is to proceed is/are: (give brief statement)

(date) (signature and designation)

The application for leave to appeal must be made in writing to the court within seven days of the date of the sheriff's decision, and must specify the question of law which the appeal is to be about.

The sheriff's decision about granting leave to appeal is final. If leave is refused, the appeal cannot proceed.

If leave is granted, you must then lodge a note of appeal with the sheriff clerk **within fourteen days of the date of the order granting leave**. At the same time as you lodge the note of appeal, you must send a copy of it to the other party.

A fee is payable to the sheriff clerk when the note of appeal is lodged. The sheriff clerk will advise you of the fee currently payable, or you can find it a 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.

An example of the form for lodging a note of appeal is given below:

Appeal against time to pay direction

SHERIFF COURT, ABERDEEN

Case ref. no. 33/2008

Brian Jones (Pursuer) against Louise Brown (Defender)

The defender appeals the decision made on 14 October 2008 in respect of the defender's application for a time to pay direction to the Sheriff Principal/Court of Session.

(date) (signature and designation)

After the note of appeal has been lodged, the sheriff will write a note of the reasons on the original decision about the time to pay application. The sheriff clerk will then send the note and other documents in the case to the sheriff principal (if the appeal is made to that office) and inform the parties of the date when the appeal will be heard.

At the hearing, the sheriff principal will hear parties and make a decision on the appeal. If the sheriff principal requires time to consider the matter, a written decision will be issued within 28 days of hearing the appeal, and the sheriff clerk will then send a copy to both parties

An award of expenses for the appeal may be contained in the sheriff principal's decision.

It is also possible to appeal against a time to pay direction to the Court of Session. The procedure is the same up to the point where the sheriff clerk sends off the note

and other documents. In this type of appeal, these documents are sent to the Court of Session in Edinburgh, which will hear the appeal using its own procedures.

4.28 What happens after the case is finished

If the pursuer has been successful, the court will have granted a decree (which may include an award of expenses) in their favour. This means that the defender will have to pay any sums which the court has found due, or comply with any other order the court has made.

However, as 14 days are allowed for the unsuccessful party to appeal (see paragraph 4.27) a copy of the court's order authorising enforcement of the decision cannot be issued until that period has expired.

If no appeal is registered, the sheriff clerk will issue the pursuer with a document called an extract decree, which gives authority to enforce the decree if the defender does not comply with it. The extract decree contains details of the court's order, and tells the defender about any date by which they are required to comply. If the defender has been allowed to pay by instalments, or by deferred lump sum, the extract decree will say when the first instalment (or the whole sum) must be paid.

We shall look at enforcement in paragraph 4.29.

If the pursuer has been unsuccessful, and an award of expenses has been made against them, they should pay these to the defender. If the pursuer does not do so, the defender will be entitled to enforce the court's decree for expenses in the same way as any other extract decree for payment.

If the defender has been successful, the case will have been decided by the granting of a decree of absolvitor or dismissal (see paragraph 4.25). If an award of expenses has been made in their favour, they will be entitled to enforce it in the same way as any other extract decree for payment (see paragraph 4.29).

If the defender has been unsuccessful, the court will have granted a decree (which may include an award of expenses) in favour of the pursuer. This means that the defender will have to pay any sums which the court has found due, or comply with any other order the court has made.

However, as 14 days are allowed to the unsuccessful party to appeal (see paragraph 4.27), a copy of the court's order authorising the decision cannot be issued until that period has expired. If no appeal is marked, the sheriff clerk will issue the successful party with a document called an extract decree, which gives authority to enforce the decree. The extract decree contains details of the court's order.

We shall look at enforcement in the next paragraph.

4.29 Enforcement of the court's order

It is the responsibility of the successful party to have the court's order enforced. The court cannot do so on their behalf. They will also be responsible for the cost of any enforcement action, although they may be able to recover this from the other party.

If any order of the court is not complied with, what happens next depends on the terms of the court's order. We shall look at the various possibilities below:

1. A decree for payment where a time to pay direction or time order has been made

If the court has granted a decree for payment, and allowed the defender to pay by instalments or within a specified period, **the pursuer must send a copy of the extract decree to the defender**. This is important, because the order for payment cannot be enforced until the defender has received a copy of it. It is therefore in the pursuer's interest to send it to the defender as quickly as possible. The pursuer should send it by recorded delivery letter, to ensure proof of posting if it becomes necessary to formally enforce the decree if the defender does not comply with it.

If the defender fails to pay instalments on time, the right to pay by instalments ceases, and the pursuer will be entitled to take steps to recover the entire amount.

2. A decree for payment where a time to pay direction or time order has not been made

If no time to pay direction has been made, the procedure for sending a copy extract (outlined above) does **not** apply. The court's order must be complied with as soon as the 14-day period for appealing the sheriff's decision has expired.

3. A decree for expenses only

If the only sum awarded by the court is a decree for expenses, the same rules for enforcing payment apply as for a decree for payment of any other sum.

4. A decree with an alternative claim for payment

If the court has granted this, the extract decree will state the period by which the court's order must be carried out. The pursuer should therefore send a copy of the extract to the defender as soon as possible after he obtains it, so that the defender may comply with the court's order.

If the defender does not comply with the order by the due date, the pursuer can make an incidental application to the court to ask for payment of the alternative amount claimed. If the court then grants decree for the alternative amount, the procedure for enforcement will be the same as for any other decree for payment of money.

Incidental applications are discussed at paragraph 4.13.

What happens if the court's final order is not complied with?

If the unsuccessful party does not comply with the court's final order, steps can be taken to compel them to do so. However, it is important to note that the court cannot assist with enforcement procedures. After the sheriff clerk has issued the extract decree, it is up to the successful party to do what they think fit to see that the court's order is carried out. If it becomes necessary to use any formal enforcement procedure, please note that this can only be carried out by a sheriff officer, who will also be able to advise you about the cost of doing so.

Before you consult or employ a sheriff officer, you may wish to write to the other party and allow them whatever final period you think fit to comply with the court's order. An example of such a letter might be as follows:

21 Station Road

Dundee DD4 5RT

4 September 2008

Dear Mr Cameron,

On 8 July, the sheriff at Dundee ordered you to pay me the sum of £3,230.25, plus expenses of £241.00, by 29 July this year. So far, you have not made any payment to me in terms of the court's order.

Unless these sums are paid to me in full by 18 September 2008, I may require to take steps to enforce the court's order without further notice.

Yours sincerely,

Brian McDonald.

Further guidance on enforcement can be obtained by consulting a sheriff officer or any of the advice agencies listed in the brochure containing lists of useful addresses.

4.30 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.

4.31 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 do whatever 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 summary cause actions are heard is included in the brochure of useful addresses (see paragraph 4.01 of this guide).

4.32 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.
Action of Count Reckoning and Payment	A legal procedure for requiring someone to account for their dealings with assets under their stewardship. For example, a trustee might be subject to such an action.
Action of Furthcoming	A final stage of **diligence** or enforcement. It results in whatever has been subject to **arrestment** being made over to the person who is suing. For example, where a bank account has been arrested, this results in the appropriate amount being transferred to the pursuer.
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 case. 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 summary cause.
Calling date	The date on which the case will first be heard in court.
Cause	Another word for *case* or *claim*.
Caution (pronounced *kay-shun*)	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 and the notice whereby this is effected.
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.
Contribution, Right of	The right of one person, who is legally liable to pay money to someone, to claim a proportionate share from others who are also liable.
Counterclaim	A claim made by a defender in response to the pursuer's case and which is not a defence to that case. It is a separate but related case against the pursuer which is dealt with at the same time as the pursuer's case.
Crave	The part of the summons which sets out the legal remedy (result) which the pursuer is seeking.
Curator Bonis	A person appointed by a court to look after the affairs of someone incapable of doing so for themself.
Damages	Money compensation payable for a breach of contract or some other legal duty.
Declarator of Irritancy of a Lease	A court decision that a tenant has failed to observe a term of a lease, which may lead to the termination of the lease.
Decree	An order of the court containing the decision of the case in favour of one of the parties and

	granting the remedy sought, or disposing of the case.
Decree of Removing/Ejection	A court order entitling someone to recover possession of **heritable property** and ordering a person to leave land which he or she is occupying. For example, it is used to remove tenants in arrears with their rent.
Decree of Ejection	A decree ordering someone to leave land or property which they are occupying. For example, it is used to remove tenants in arrears with their rent.
Defender	Person against whom a summary cause is started.
Deliverance	A decision or order of a court.
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 summary cause. It is usually possible for a new summary cause 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
Extract decree	The document containing the order of the court which is made at the end of the summary cause. For example, it can be used to enforce payment of a sum awarded.
First Calling	The first occasion on which a summary cause is heard in court.
Fund in medio	See **multiplepoinding**
Haver	A person who holds documents which are required as evidence in a case.
Heritable property	Land and buildings as opposed to moveable property
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 summary cause for certain orders. Examples are applications for the recovery of documents or to amend the **statement of claim**.
Inhibition on the dependence	A court order to freeze any of the defender's rights in property until the court has heard the case.
Interim attachment	A court order to stop the defender disposing of certain goods before the court has heard the case.
Interlocutor	The official record of the order or judgement of a court.
Interrogatories	Written questions put to someone during a court case which must be answered on oath.
Intimation	The technical term for giving notice to another party of some step in a summary cause.
Jurisdiction	The authority of a court to hear particular cases.
Ish	The date on which a lease terminates
Letters of Request	A document issued by the sheriff court requesting a foreign court to take evidence from a specified person within its jurisdiction or to serve Scottish court documents on that person.
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.
Multiplepoinding (pronounced *multiple pinding*)	A special type of summary cause in which the holder of property, (referred to as the fund *in medio*) requires claimants upon it to appear and settle claims in court. For example, where the police come into possession of a stolen car which two or more people claim to own, this procedure could be used.
Options hearing	A preliminary stage in an **ordinary cause** action
Ordinary cause	Another legal procedure for cases involving more money available in the sheriff court.

Party litigant	A person who conducts his or her own case
Process	The court file containing all the documents relating to a case.
Productions	Documents or articles which are used in evidence.
Pursuer	The person who starts a summary cause.
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 summary cause to another court procedure, such as small claim 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.
Small claim	Another legal procedure in the sheriff court having a

	lower value than summary cause.
Specification of documents	A list lodged in court of documents to be recovered, for which a party seeks a court order.
Stated case	An appeal procedure where the sheriff sets out his findings and the reasons for his 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 cases against defenders.
Summons	The form which must be filled in to begin a summary cause.
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.