

The Summary Cause

Information and procedural guide

2. Raising an Action

How to commence court proceedings

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

List of Contents

2.01	About the guide	Page 2
2.02	Getting started	Page 3
2.03	Which court do I go to?	Page 3
2.04	How to complete the summons	Page 4
2.05	Restrictions on property belonging to the defender	Page 8
2.06	The return day and the calling date	Page 10
2.07	Completing the defender's copy of the summons	Page 10
2.08	Sending the copy summons to the defender	Page 26
2.09	The defender's response to the summons	Page 26
2.10	Defender does nothing in response to the summons	Page 28
2.11	Defender admits the claim and settles the case	Page 29
2.12	Defender admits the claim and makes a written application about payment	Page 29
2.13	Defender admits the claim and attends at court to make an application about payment	Page 32
2.14	Defender denies or disputes the claim and intends to appear at court	Page 32
2.15	Amending the summons	Page 33
2.16	Bringing the case to a temporary halt (sisting the case)	Page 33
2.17	Defender makes a counterclaim	Page 33
2.18	Enforcement of the court's order	Page 36
2.19	Fees and expenses	Page 37
2.20	Recalling the decree of the court	Page 38
2.21	Legal terms explained	Page 38
2.22	Disabled persons	Page 38

2.23	Language difficulties
Appendix A	Glossary of legal terms

Page 38

Page 39

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 summary cause guide is designed to provide information to anyone who has decided to raise a summary cause in the sheriff court.

If you are undecided as to whether to raise proceedings 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 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 a court action against you.

Part 2 – Raising an Action

Tells you what to do if you decide to raise 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 it will be necessary to attend, how to prepare for doing so, and what is likely to happen. It also contains some information about enforcing any order made by the court.

As well as the four parts mentioned above, there is also a brochure available which contains 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.

2.02 Getting started

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

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

- Any 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 offices of the organisations listed in the brochure.

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, they 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 action should be taken, although you can get forms and advice from the sheriff clerk at any court.

In most cases, the court which will hear the action will be the one within whose area the person the case is to be raised 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, then they could only do so in the court within whose area you live.

It is possible, in certain circumstances, to raise a summary cause 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 to be used (Form 1) is basically the same in all cases. An example is given below.

You will only have to complete the parts shown. Section 6 and 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 the details for you when he registers the summons.

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

If you wish to raise a different type of action, 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.

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 rate.

If you wish to claim 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.

Sometimes, the type of action you wish to raise may require you to combine two claims in the form. For example, you may wish to raise an action for recovery of heritable property and also to make a claim for payment of a sum of money connected with it (such as rent arrears). You should check with the sheriff clerk, or the website, to find out whether a form which covers your situation already exists. If not, and if you have any difficulty in completing the form, you can ask the sheriff clerk for assistance.

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 case is about. The statement should include:

- The dates upon which 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 action necessary
- A statement that the defender has refused or delayed to pay any sum of money claimed

If the space on the form is insufficient for you to complete the statement of claim, you can add a separate sheet of paper 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.

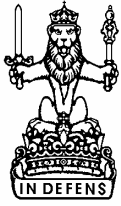
When you have completed the form you should take or send it to the sheriff clerk's office. A fee may be payable (see paragraph 2.19.). The sheriff clerk will advise you of the current fees, or you can check on www.scotcourts.gov.uk.

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

The summons will then be returned to you so you can send a copy to the defender. This must be done either by a solicitor or a sheriff officer.

You cannot send the copy summons yourself.

Remember to ensure that the summons is returned to the court at least two days before the calling date if the case is to call in court for any reason (see paragraph 2.09 below).



FORM 1

OFFICIAL USE ONLY
SUMMONS No.

Summary Cause Summons

Action for/of 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 raising
the action (**Pursuer**)

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

Name and address of
person against whom
action raised (**Defender,**
Arrestee, etc.)

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

Name(s) and address(es)
of any interested party
(e.g. connected person)

3a None

Claim (form of decree or
other order sought)

4 The pursuer claims from the defenders the sum of £3230 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/1c, on the defender, and give intimation to any interested party, not less than * 21/42 days before the RETURN DAY shown in the box above. The summons is warrant for service, 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 (all cases) and PARTICULARS OF ARRESTMENT (furthercoming actions only)

- (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 £3230. 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 £6000 from the pursuer. The defender paid a deposit of £500 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 instalments amounting to £600, leaving a balance of £4900 outstanding. In terms of the agreement, the pursuer seeks return of the car, failing which payment of the balance of £4900.

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 £6800. A copy of the estimate and a receipt for payment for £6800 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 £4450, 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
- Any facts agreed
- Reasons for any final disposal at hearing.

2.05 Restrictions on property belonging to the defender

When you raise an action for, or including, payment of a sum of money, you may be able to prevent anyone holding money which belongs to the defender from disposing of it. You may also be able to prevent the defender from disposing of other assets, including property s/he holds before the court proceedings are finished. The different procedures used are known as 'arrestment on the dependence' 'interim attachment' and 'inhibition on the dependence'.

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

The purpose of all these procedures is to ensure that, if you are successful in your action, the money, items or property rights will be available to you to help you to recover any debt due from the defender.

If you wish to make use of any of these procedures, you must lodge a document known as an 'incidental application' stating which of the procedures you wish to use and why you think the application should be granted and also lodge a statement in Form 15a below. These can be lodged when you first take the summons to the sheriff clerk's office or at any other time during the case before the sheriff makes a final decision. Information on how to make an incidental application can be found in Part 4 of this guide – 'Going to Court'.

If at the end of the incidental application procedure the sheriff grants your application, you will then require to have the items legally arrested, or have an order for interim attachment or an inhibition on property rights legally served so that they cannot be disposed of. You will have to ask a sheriff officer to do this on your behalf, as you cannot do this yourself.

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

SCHEDULE 2

Rule 6.A2(2)

Form 15a

Statement to accompany application for interim diligence

DEBTORS (SCOTLAND) ACT 1987 Section 15D [or DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002 Section 9C]

Sheriff Court:.....

In the Cause (Cause Reference No.)

[A.B.] (*designation and address*)

Pursuer

against

[C.D.] (*designation and address*)

Defender

STATEMENT

1. The applicant is the pursuer [or defender] in the action by [A.B.] (*design*) against [C.D.] (*design*).
2. [The following persons have an interest [*specify names and addresses*].]
3. The application is [or is not] seeking the grant under section 15E(1) of the 1987 Act of warrant for diligence [or section 9D(1) of the 2002 Act of interim attachment] in advance of a hearing on the application.
4. [*Here provide such other information as may be prescribed by regulations made by the Scottish Ministers under section 15D(2)(d) of the 1987 Act or 9C(2)(d) of the 2002 Act*]

(*Signed*)

Solicitor [or Agent] for A.B. [or C.D.] (*include full designation*)

2.06 The return day and the calling date

You will have noticed the expressions 'return day' and 'calling date' on the summons. These dates will be inserted by the sheriff clerk when the summons is first 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 he or she intends 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 **calling date** is the date set for the case to be heard, or otherwise dealt with, by the court. This takes place fourteen days after the return day.

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

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

2.07 Completing the defender's copy of the summons

Having had the summons accepted by the court, you will next have to complete a copy for the defender. There are four different types of copy summons:

Form 1a – For use when the defender is an individual and the action is for, or includes, payment of a sum of money.

Form 1b – For use when the defender is a company or other organisation and the action is for, or includes, payment of a sum of money.

Form 1c – For use in all cases when action does not include a claim for payment of a sum of money.

Form 1d – For use only in actions of multiplepoinding.

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

There are two different forms for cases where a sum of money is claimed because 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 or other organisation can't do this. Forms 1a and 1b simply reflect the different procedures to be followed.

An example of Form 1a is given below. Forms 1b,1c and 1d are very similar, but do not contain any procedure for making an application for a time to pay direction or a 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. These details are the same, whether you are using Form 1a, 1b, 1c or 1d.

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

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.

The only other part of Forms 1a, 1b, 1c or 1d you have to complete is section A – on page 6 (Form 1a) or page 4 (Forms 1b, 1c and 1d). The details required for this are contained in Form 1.

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



FORM 1a

OFFICIAL USE ONLY
SUMMONS No.

Summary Cause 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
raising the action (**pursuer**)

2

Name and address of person
against whom action raised
(**defender, arrestee, etc.**)

3

Name(s) and address(es) of
any interested party (e.g.
connected person)

3a

Claim (form of decree of
other order sought)

4

Name, full address,
telephone no., and e-mail
address of pursuer's solicitor
or representative (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.

PAGE 1

**7. STATEMENT OF CLAIM
PARTICULARS OF ARRESTMENT (furthcoming actions only)
(To be completed by the pursuer. If space is insufficient, a separate sheet may be attached)**

The details of the claim are:

8. SERVICE ON DEFENDER

(Place)

(Date)

To:

(Defender)

You are hereby served with a copy of the above summons.

**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 6 before service on the defender. The person serving the Summons will complete box 8, above.

PAGE 2

WHAT MUST I DO ABOUT THIS SUMMONS?

The RETURN DAY (on page 1 of this summons) is the deadline by which you need to reply to the court. You must send the correct forms back (see below for details) by this date if you want the court to hear your case. If you do not do this, in most cases there will not be a hearing about your case and the court will make a decision in your absence.

The CALLING DAY (on page 1 of this summons) is the date for the court hearing.

Note: If your case is about **recovery of possession of heritable property** (eviction) there will be a hearing even if you do not send back the forms, so you should attend court on the calling date. If you make an application for time to pay in such a case and the court accepts your application, it may still make an order for eviction, so you should attend court if you wish to defend the action for eviction.

You should decide whether you wish to dispute the claim and/or whether you owe any money or not, and how you wish to proceed. Then, look at the 5 options listed below. Find the one that covers your decision and follow the instructions given there.

If you are not sure what you need to do, contact the sheriff clerk's office before the return day. Written guidance can also be obtained from the Scottish Court Service website (www.scotcourts.gov.uk).

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 the pursuer or his representative **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 representative.

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 6 of this form and return pages 6, 8 and 9 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 calling date, when the court will decide how the amount claimed is to be paid.

NOTE: If you fail to return pages 6, 8 and 9 as directed, or if, having returned them, you fail to attend or are not represented at the calling date if the case is to call, the court may 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 6. Return page 6 to the court so that it arrives **on or before the return day**.

You must attend personally, or be represented, at court on the calling 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 6 as directed, or if, having returned it, you fail to attend or are not represented at the calling date, the court may 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 or the competency of the action
- Defend the action (whether as regards the sum claimed or otherwise)
- State a counterclaim

Complete Box 3 on page 6. Return page 6 to the court so that it arrives **on or before the return day. You must attend personally, or be represented, at court on the calling 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 6 as directed, or if, having returned it, you fail to attend or are not represented at the calling date, the court may decide the claim in your absence.

WRITTEN NOTE OF PROPOSED DEFENCE

You must send to the court by the return day a written note of any proposed defence, or intimate that you intend to dispute the sum claimed or wish to dispute the court's jurisdiction. You must also attend or be represented at court on the calling date.

5. ADMIT LIABILITY FOR THE CLAIM and make written application for a time order under the Consumer Credit Act 1974.

Complete Box 4 on page 6 and return pages 6 and 10 to 12 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. Where you have been advised that the pursuer has not accepted your offer then the case will call in court on the calling date. You should appear in court on the calling date as the court will decide how the amount claimed is to be paid.

NOTE: If you fail to return pages 6 and 10 to 12 as directed, or if, having returned them, you fail to attend or are not represented at the calling date if the case is to call, the court may decide the claim in your absence.

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.

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

PAGE 4

Notes:

(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) Determination of application

Under the 1987 Act, the court is required to make a time to pay direction if satisfied that it is reasonable in the circumstances to do so, and having regard in particular to the following matters—

- The nature of and reasons for the debt in relation to which decree is granted
- Any action taken by the creditor to assist the debtor in paying the debt
- The debtor’s financial position
- The reasonableness of any proposal by the debtor to pay that debt
- The reasonableness of any refusal or objection by the creditor to any proposal or offer by the debtor to pay the debt.

(3) Time Orders

The Consumer Credit Act 1974 allows you to apply to the court for a “time order” during a court action, to ask the court to give you more time to pay a loan agreement. **A time order is similar to a time to pay direction, but can only be applied for where the court action is about a credit agreement regulated by the Consumer Credit Act.** The court has power to grant a time order in respect of a regulated agreement to reschedule payment of the sum owed. This means that a time order can change:

- the amount you have to pay each month
- how long the loan will last
- in some cases, the interest rate payable

A time order can also stop the creditor taking away any item bought by you on hire purchase or conditional sale under the regulated agreement, so long as you continue to pay the instalments agreed.

No court fee is payable when making an application for a time order.

SECTION A
This section must be completed before service

Summons No
Return Day
Calling Date

SHERIFF COURT (Including address)

PURSUER'S FULL NAME AND ADDRESS

DEFENDER'S FULL NAME AND ADDRESS

SECTION B
DEFENDER'S RESPONSE TO THE SUMMONS
**** Delete those boxes which do not apply**

****Box 1**

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

I do not intend to defend the case but admit liability for the claim.

I wish to make a written application about payment.

I have completed the application form on pages 8 and 9.

****Box 2**

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

I admit liability for the claim.

I intend to appear or be represented at court on the calling date.

****Box 3**

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

*I intend to challenge the jurisdiction of the court.

*I intend to challenge the competency of the action.

*I intend to defend the action.

*I wish to dispute the amount due only.

*I apply for warrant to serve a third party notice (see page 14).

I intend to appear or be represented in court on the calling date.

*I attach a note of my proposed defence/counterclaim.

OR

*I return form 10b (personal injury cases only).

**delete as necessary*

****Box 4**

ADMIT LIABILITY FOR THE CLAIM and apply for a time order under the Consumer Credit Act 1974.

I do not intend to defend the case but admit liability for the claim.

I wish to apply for a time order under the Consumer Credit Act 1974.

I have completed the application form on pages 10 to 12.

WRITTEN NOTE OF PROPOSE DEFENCE / COUNTERCLAIM

State which facts in the statement of claim are admitted:

State briefly any facts regarding the circumstances of the claim on which you intent to rely:

State details of counterclaim, if any:

PLEASE REMEMBER: You must send your response to the court to **arrive on or before the return day** if you have completed a response in Section B. If you have admitted the claim, please do not send any payment direct to the court. **Any payments you wish to make should be made to the pursuer or his solicitor.**

PAGE 7

APPLICATION IN WRITING FOR A TIME TO PAY DIRECTION UNDER THE DEBTORS
(SCOTLAND) ACT 1987

I WISH TO APPLY FOR A TIME TO PAY DIRECTION

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.

The debt is for (*specify the nature of the debt*) and has arisen (*here set out the reasons the debt has arisen*)

Please also state why you say a time to pay direction should be made. In doing so, please consider the Notes (1) and (2) on page 5.

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

I am employed / self-employed / unemployed

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

My outgoings are:	*Weekly / fortnightly / monthly
Rent/mortgage	£
Council tax	£
Gas/electricity etc	£
Food	£
Loans and credit agreements	£
Phone	£
Other	£
Total	£

My net income is	*Weekly / fortnightly / monthly
Wages/pensions	£
State benefits	£
Tax credits	£
Other	£
Total	£

People who rely on your income (e.g. spouse/civil partner/ partner/children) – how many

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

I am of the opinion that the payment offer is reasonable for the following reason(s):

Here set out any information you consider relevant to the court's determination of the application. In doing so, please consider Note (2) on page 5.

***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*

	APPLICATION FOR A TIME ORDER UNDER THE CONSUMER CREDIT ACT 1974	
	By	
	DEFENDER	
	In an action raised by	
	PURSUER	
	PLEASE WRITE IN INK USING BLOCK CAPITALS	
	<p>If you wish to apply to pay by instalments enter the amount at box 3. If you wish the court to make any additional orders, please give details at box 4. Please give details of the regulated agreement at box 5 and details of your financial position in the spaces provided below box 5.</p> <p>Sign and date the application where indicated. You should ensure that your application arrives at the court along with the completed page 6 on or before the return day.</p>	
	<p>1. The Applicant is a defender in the action brought by the above named pursuer.</p> <p>I/WE WISH TO APPLY FOR A TIME ORDER under the Consumer Credit Act 1974</p>	
	<p>2. Details of order(s) sought</p> <p>The defender wishes to apply for a time order under section 129 of the Consumer Credit Act 1974.</p> <p>The defender wishes to apply for an order in terms of section of the Consumer Credit Act 1974.</p>	
	PAGE 10	

	<p>3. Proposals for payment</p> <p>I admit the claim and apply to pay the arrears and future instalments as follows:</p> <p>By instalments of £ per *week/fortnight/month</p> <p>No time to pay direction or time to pay order has been made in relation to this debt.</p>
	<p>4. Additional orders sought</p> <p>The following additional order(s) is (are) sought: (<i>specify</i>)</p> <p>The order(s) sought in addition to the time order is (are) sought for the following reasons:</p>
	<p>5. Details of regulated agreement</p> <p>(a) Date of agreement</p> <p>(b) Reference number of agreement</p> <p>(<i>Please attach a copy of the agreement</i>)</p>
	<p>(c) Names and addresses of other parties to agreement</p> <p>(d) Name and address of person (if any) who acted as surety (guarantor) to the agreement</p> <p>(e) Place where agreement signed (e.g. the shop where agreement signed, including name and address)</p> <p>(f) Details of payment arrangements</p> <p>i. The agreement is to pay instalments of £ per week/month</p> <p>ii. The unpaid balance is £ / I do not know the amount of arrears</p> <p>iii. I am £ in arrears / I do not know the amount of arrears</p>
	<p style="text-align: right;">PAGE 11</p>

Defender's financial position			
I am employed /self employed / unemployed			
My net income is:	weekly, fortnightly or monthly	My outgoings are:	weekly, fortnightly or monthly
Wages	£	Mortgage/rent	£
State benefits	£	Council tax	£
Tax credits	£	Gas/electricity etc	£
Other	£	Food	£
		Credit and loans	£
		Phone	£
		Other	£
Total	£	Total	£
People who rely on your income (e.g. spouse/civil partner/partner/children) – how many			
Here list all assets (if any) e.g. value of house; amounts in bank or building society accounts; shares or other investments:			
Here list any outstanding debts:			
Therefore the defender asks the court to make a time order			
Date:		Signed:	
		Defender:	
PAGE 12			

APPLICATION FOR SERVICE OF A THIRD PARTY NOTICE

NOTE:

You can apply to have another party added to the action if:

(A) You think that, as regards the matter which the action is about, that other party has a duty to:

1. Indemnify you; or
2. Make a contribution in respect of the matter; or
3. Relieve you from any responsibility as regards it.

or

(B) You think that other party is:

1. Solely liable to the pursuer; or
2. Liable to the pursuer along with you; or
3. Has a liability to you as a result of the pursuer's claim against you.

You may apply for warrant to found jurisdiction if you wish to do so.

FORM OF APPLICATION

(TO BE RETURNED TO THE COURT ALONG WITH YOUR RESPONSE)

I request the court to grant warrant for service of a third party notice on the following party:

Name:

Address:

The reason I wish a third party notice to be served on the party mentioned above is as follows:
(Give details below of the reasons why you wish the party to be made a defender in the action.)

*I apply for warrant to found jurisdiction

***delete as appropriate**

Date:

2.08 Sending the copy summons to the defender

You cannot serve the summons on the defender yourself, but a solicitor or sheriff officer can do it on your behalf. A fee will be payable.

Service involves sending the copy summons to the defender. This is usually done by recorded delivery letter, although this may vary if the defender is outwith Scotland.

If delivery by post is unsuccessful, the copy summons will be returned to the court, and you (or your solicitor, if you have one) will be informed of this. The copy summons will then be served by a sheriff officer, either personally on the defender, or by leaving it at the defender’s address. A further fee will be payable for this service.

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. You will have to arrange for the advertisement to be published (or have this done for you by a solicitor), pay the cost, and lodge a copy of the newspaper containing it with the sheriff clerk. If you choose to do this by yourself, a form of advertisement can be obtained from the sheriff clerk or the Scottish Court Service website.

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.

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, the Equality Act (Sexual Orientation) Regulations 2007, or the Equality Act 2010, a copy of the summons must also be sent to the Commission for Equality and Human Rights.

<p>FORM 14</p> <p style="text-align: center;"><i>Service on person whose address is unknown</i></p> <p style="text-align: center;"><i>Form of notice to be displayed on the Walls of Court</i></p> <p>A summary cause action has been raised in this court by A.B., pursuer against C.D., defender, whose last known address was.....</p> <p>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.</p> <p>(Date) Displayed on the walls of court of this date.</p> <p>Sheriff Clerk Depute</p>
--

2.09 The defender’s response to the summons

Once the defender has received the copy summons, they have several choices.

If the defender is an individual, he/she will have received Form 1a, 1c or 1d. 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, 1c or 1d. 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's look at the return day and the calling 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 in any way and attend court

The date of the return day will depend on the situation at each individual court. On average, it is about six weeks after the summons is lodged.

The defender responds by returning the appropriate pages of the copy summons to the court, outlining what they wish 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. The sheriff clerk will, however, send the pursuer a copy of any response made by the defender if the defender:

- Intends to challenge the jurisdiction of the court
- Intends to challenge the competency of the action
- Intends to defend the action
- Intends to dispute any amount claimed
- Applies for a time to pay direction or time order

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

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

The case will only call in court on the calling date in the following circumstances:

(1) 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

OR

(2) The action is one for:

- Recovery of possession of heritable property

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.

If the case is one for recovery of possession of heritable property, you tell the court orally what order you wish it to make when the case calls on the calling date. In all other cases, you lodge a written minute, using form 17 below:

FORM 17

Form of minute – no form of response lodged by defender

Sheriff Court, (name)

Calling date:

In respect that the defender(s) has/have failed to lodge a form of response to the summons, the pursuer respectfully craves the court to make the orders specified in the following case(s):

Case No.	Name(s) of defender(s)
----------	------------------------

Minute(s)

Form 17 can be obtained from any sheriff clerk’s office.

You must make your request by lodging the form at least two days before the calling date. 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 action, which means that the proceedings will be brought to an end.

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

1. Payment of any sum of money claimed, with interest and expenses.
2. 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

3. 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 2 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 lodge another form 17 at least two days before the continued date to let the court know what order you wish it to make on that date.

Sometimes, the court may not be prepared to grant your request on the calling date. Should this happen, the case will be continued to another date to give you an opportunity to be heard by the court. The sheriff clerk will write to let you know the continued date and the reasons why the court wishes to hear you on your request. You should then attend at court on the continued date, and be prepared to tell the sheriff why you wish your request to be granted by the court.

You may find Part 4 of this guide useful if you have to attend at court.

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 court in writing at once. In this situation you should normally enter a minute, following the procedure described in paragraph 2.10, requesting that the action be dismissed.

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

In an action which includes a claim for payment of money, the defender may admit the claim but make an application to the court to be allowed to pay the debt either by instalments, or by a lump sum within a specified period of time. (In an action with an alternative claim for payment – for example, an action 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**. Forms to apply for both of these applications are contained in the defender's copy summons. The defender must lodge either application with the court on or before the return day.

If the defender has made an application for a time to pay direction or a time order, the sheriff clerk will send you a copy of the application. You will then have to decide whether you are prepared to accept the defender's application or not, and let the court know of your decision by lodging a written minute, using either Form 18 or Form

19 below. If you object to the defender's application, you must also let the defender know by sending him or her, a copy of Form 19.

If the case is one for recovery of possession of heritable property, you can tell the court what order you wish it to make when the case calls on the calling date.

FORM 18

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)

Calling 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 in terms of the following minute(s)

**delete as appropriate*

FORM 19

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

Sheriff court (place):

Court ref no:

Name(s) of defender(s):

Calling date:

I oppose the defender's application for

*a time to pay direction

*recall or restriction of arrestment

*a time order

*delete as appropriate

1. The debt is (*please specify the nature of the debt*).
2. The debt was incurred on (*specify date*) and the pursuer has contacted the defender in relation to the debt on (*specify date(s)*).
3. The contractual payments were (*specify amount*).
4. (*Specify any action taken by the pursuer to assist the defender to pay the debt*).
5. The defender has made payment(s) towards the debt of (*specify amount(s)*) on (*specify date(s)*).
6. The debtor has made offers to pay (*specify amount(s)*) on (*specify date(s)*) which offer(s) was [were] accepted] [or rejected] and (*specify amount*) was paid on (*specify date(s)*).
7. (*Here set out any information you consider relevant to the court's determination of the application*).
8. The pursuer requests the court to grant decree.

*delete as appropriate

(Signed)
Pursuer [or Solicitor for Pursuer]

(Date)

Forms 18 and 19 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 **at least nine days before the calling date**. 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 may 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, unless it is an action for recovery of possession of heritable property. The court will grant an order on the calling date in terms of the defender's application. 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 calling date. **In this situation, you must attend or be represented at court on the**

calling date. The court will consider the defender's application and will want to know why you are objecting to it.

If you do not appear, your action may be dismissed, or the court may decide the defender's application in your absence. You may also have to pay the defender's expenses.

If you are attending 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

In an action for or including payment of money, the defender may respond to the summons by admitting the claim but also expressing a wish to attend at court to make an application about payment of the debt. 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 calling 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.

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
- Challenge the competency of the action
- State a defence
- Dispute the amount claimed

The defender will write to the court to this effect on or before the return day.

If the defender responds in any of the ways mentioned above, the sheriff clerk will send you a copy of his response.

In this situation, you must attend or be represented at court on the calling 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 you are attending court, you may find it helpful to refer to Part 4 of this guide – 'Going to Court'.

2.15 Amending the summons

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 an amount claimed.

If you wish to amend anything in the summons, you may apply to the court to do so at any time during the case before the sheriff finally makes a decision. You can 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 calling 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 come to an arrangement. 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 case to be sisted 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.

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

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 as an incidental application and can be made by any party to the action.

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 an action 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 claim against you in your own action. This procedure is known as making a counterclaim.

Once a counterclaim has been lodged, the court will consider it, together with the pursuer's case, as one combined action.

The defender does not have to use the counterclaim procedure and can raise a separate action instead. 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 could be for whatever sum of money the defender thinks appropriate.

If the counterclaim results in the claim becoming more complex, the court may order that the case be removed from the summary cause procedure and dealt with as an ordinary cause. (Ordinary cause actions, which are also heard before the sheriff, are more formal.)

The defender can only make a counterclaim against you if it relates to the same matter as your claim against him. 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 raise an action 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 at the same time as lodging the counterclaim or at any other time during the case, before the sheriff makes a final decision, submit an incidental application, along with the required statement in Form 15a, for warrant to arrest, or inhibit, on the dependence of the counterclaim, or make an application for interim attachment on the counterclaim.

(See paragraph 2.05 for an explanation of these terms and for an example of Form 15a)

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 £ 1540.43 with interest on that sum at the rate of _% annually from (date) together with the expenses of bringing the counterclaim.

Response to the Summons 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 £1540.43, which is the sum claimed for in this counterclaim. I have repeatedly asked the pursuers to compensate me for the damage caused, but they have not done so. That is why it has been necessary to bring this counterclaim against them. In the circumstances, I feel I am not obliged to pay to the pursuers the sum they have claimed from me until my claim against them has been settled to my satisfaction.

(Date)

At what stage can a counterclaim be made?

If the defender wishes to make a counterclaim when the copy summons is received, it must be sent it to the court, as part of the response to the summons, on or before the return day. The defender must also send a copy of the counterclaim to the other parties in the action at the same time as it is sent it to the court.

What should I do if I receive a counterclaim?

If you wish to oppose the defender's counterclaim, you must respond by sending 'answers' to the court within seven days of the date on which the defender lodges the counterclaim with the court. 'Answers' is simply a legal term used to describe one of the documents which can be used to respond to a claim made by another party in an action.

Answers to a counterclaim might look something like this:

Sheriff Court, Glasgow

Case No: 221/01

ANSWERS FOR THE PURSUER TO THE DEFENDER'S COUNTERCLAIM

In the case of

PLUMBING MATERIALS LIMITED,

35 Buccleuch Street, Glasgow,

PURSUERS

Against

Mr Brian Smith, 41 Devlin Street, Glasgow

DEFENDER

I do not agree that the work done by my employees was of poor quality. I personally attended at the defender's home on completion of the work to check that all was in order. I thoroughly inspected the work done, and tested the plumbing. There was no evidence of any leakage at that time.

I therefore deny that I am obliged to compensate the defender for any damage done to his home as a result of water escaping from his bathroom.

(date)

If you send answers to a counterclaim to the court, you must at the same time send a copy to the defender.

2.18 Enforcement of the court's order

If you are successful with your action, you may want to know 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 must do 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 or what to do if you

have any difficulty in recovering money the court has ordered the defender to pay, or on failure by the defender 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).

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. The sheriff clerk will advise you of the current fees or you can check on 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.

B – Court Expenses

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

These expenses must then be paid by the unsuccessful party.

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

Expenses which you may incur include:

- The cost of any solicitor, if you choose to employ one
- Loss of wages and travelling expenses for yourself and any witnesses you may require to bring to court
- The cost of having any order made in your favour by the court complied with by the defender

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. Expenses awarded are fixed by reference to an approved table.

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 order (decree) recalled. This usually happens when decree has been granted because one party has failed to do something, for example, attend at court for a hearing or lodge a document in time. Further information on recalling the court's decree can be found in Part 4 of this guide – 'Going to Court'.

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 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 summary cause actions are heard, is included in the brochure of useful addresses.

2.23 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 <i>case</i> or <i>claim</i> .
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 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 themselves.
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.

Multiplepointing (pronounced <i>multiple pointing</i>)	A special type of summary cause in which the holder of property, (referred to as the fund <i>in medio</i>) 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.