

# The Summary Cause

## Information and procedural guide

### 3. Responding to a Summons

What to do if you receive a summary cause summons

What is a summary cause?

Documents you will receive

How to respond to a summons

Applying for time to pay a debt

Contesting the action

Expenses

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

### **3.01 About the guide**

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

The guide has been divided into four parts. This has been done to save you unnecessary reading of 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 a claim 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.

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](http://www.scotcourts.gov.uk). The website version will be amended whenever any of the information contained in the guidance requires to be updated.

#### **PLEASE NOTE:**

**The guidance cannot cover every situation which might arise in the course of 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](http://www.scotcourts.gov.uk).

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

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

There are many organisations which can help if you are considering defending a 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 Kilmarnock sheriff courts
- Money Advice, Scotland
- Sheriff clerks' offices
- Trading Standards departments

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

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

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

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

Alternatively you may wish to consult a solicitor. 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 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.

### **3.03 The copy summons**

If an action is raised against you, the first formal notice you will receive is a document called a copy summons.

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

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

The person raising the action is called the pursuer. The person or company against whom the action is raised is called the defender.

There are different types of summary cause actions which can be raised. These include:

- Payment of money
- Recovery of possession of heritable property
- Multiplepoinding
- Furthcoming
- Delivery
- Implement of an obligation
- Count reckoning and payment
- Damages for personal injury

You will be able to tell from the heading at the top of the summons, or by reading the statement of claim, which type of action has been raised against you.

Further information about the different types of action can be found in Part 1 of the guide – ‘What is a Summary Cause?’.

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.

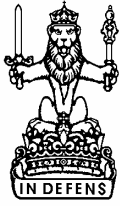
**Form 1c** – For use in all cases when the claim does not include payment of money.

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

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 can't do this. Forms 1a and 1b simply reflect the different procedures to be followed.

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

An example of Form 1a is 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.



# 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 or  
other order sought)

4

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

5

6 RETURN DAY                      20  
CALLING DATE                    20                    at                    am.

NOTE: You will find details of claim on page 2

PAGE 1

7.

**STATEMENT OF CLAIM**

**PARTICULARS OF ARRESTMENT (forthcoming 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. **CITATION OF DEFENDER**

(Place)

(Date)

To:

(defender)

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

\*Solicitor / sheriff officer

*\* delete as appropriate*

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

PAGE 2

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

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

Written guidance on summary cause procedure can be obtained from the Sheriff Clerk at any Sheriff Clerk's office. Advice can also be obtained by contacting any of the following:

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

### **OPTIONS**

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

If you wish to avoid the possibility of a court order passing against you, you should settle the claim (including any question of expenses) with pursuer or his 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 solicitor.**

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

Complete Box 1 of section B on page 5 of this form and return pages 5 and 7 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 5 and 7 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 will almost certainly decide the claim in your absence.**

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

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

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

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

- Challenge the jurisdiction of the court or the competency of the action
- Dispute the sum claimed
- Support your written note of defence

Complete Box 3 on page 5. Return page 5 to the court so that it arrives **on or before the return day. You must attend personally, or be represented, at court on the 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 5 as directed, or if, having returned it, you fail to attend or are not represented at the calling date, the court will almost certainly 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.

**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.**

**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**

<b>ADMIT LIABILITY FOR THE CLAIM and make <u>written</u> application to pay by instalments or by <u>deferred</u> lump sum.</b>
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 page 7.

**\*\*Box 2**

<b>ADMIT LIABILITY FOR THE CLAIM and <u>attend at court</u> to make application to pay by instalments or deferred lump sum.</b>
I admit liability for the claim.
I intend to appear or be represented at court on the calling date.

**\*\*Box 3**

<b>DISPUTE THE CLAIM (or the amount due) and attend at court</b>
* I intend to challenge the jurisdiction of the court.
* I intend to challenge the competency of the action.
* I do not admit the action.
* I wish to dispute the amount due only.
* I apply for warrant to serve a third party notice (see page 8).
* 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).
* <i>delete as necessary</i>

**WRITTEN NOTE OF PROPOSED 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 intend 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.**

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**APPLICATION IN WRITING FOR A TIME TO PAY DIRECTION UNDER THE DEBTORS (SCOTLAND) ACT 1987 OR A TIME ORDER UNDER THE CONSUMER CREDIT ACT 1974**

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

*\* delete whichever does not apply*

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

- (1) By instalments of £ \_\_\_\_\_ per \*week / fortnight / month  
**OR**  
 (2) In one payment within \_\_\_\_\_ \*weeks / months from the date of the court order

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

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

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

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

Number of Dependent Children

Number of Dependent Relatives

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

**Notes: TIME TO PAY DIRECTIONS AND TIME ORDERS**

**(1) Time to pay directions**

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

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

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

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

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

**(2) Time Orders**

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

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

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

Date:

*\*Delete if inapplicable*

## 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 or to arrest on the dependence of the action 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 arrest on the dependence/to found jurisdiction**

\* delete as appropriate

Date :

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

There are several choices open to you.

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

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

**If the defender is not an individual** (for example, a company), they will have received Form 1b, 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 us consider the importance of the return day and the calling date, which you will see are shown at the top right hand corner of page 1 of the copy summons.

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

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

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

The action will only call in court on the calling date if you:

- Have made a written application which the pursuer does not accept; or
- Intend to attend court to make an application about payment; or
- Wish to dispute the action in any way

**OR**

The action is one for recovery of possession of heritable property or sequestration for rent.

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

If you do nothing in response to the summons, the court will almost certainly make an order against you on the calling date. You will then be required to do what the

pursuer has asked for in the summons. You will also have to pay any interest and court expenses claimed.

In actions which contain an alternative claim (for example, an action for delivery with an alternative claim for payment), the court may order you to comply with the terms of the principal (original) claim within a specified period. In this example, the court might order you to deliver the article claimed to the pursuer within fourteen days of the date of the court's order. If you did not then comply with the court's order, the pursuer would be entitled to come back to the court and make an application for payment of the alternative amount claimed.

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

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

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

### **3.06 Admitting the claim and settling**

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

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

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

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

You may wish to admit the claim, and also (if you have received Form 1a), apply to pay any sum due by instalments, or within a specified period. To do this, you must apply to the court for a **time to pay direction** or a **time order**.

If the action is one which has an alternative claim for payment of a sum of money, you may decide that you wish to settle the action by paying the alternative amount claimed and also apply for a time to pay direction or time order.

To apply for a time to pay direction or time order, you should complete box 1 on page 5 and also the application form on page 7 of the copy summons, giving details of the order for payment which you wish the court to make and also details about your financial position.

**You must return pages 5 and 7 to arrive at the court on or before the return day shown on the first page of the copy summons.** If you do not, the court will almost certainly grant the order sought by the pursuer, together with any interest and expenses claimed.

The pursuer is allowed until the time the sheriff clerk's office closes for business on the day, two days before the calling date, to tell the court if he or she is accepting your offer or not. To find out what the pursuer has done, contact the sheriff clerk's office as soon as you can after the day two days before the calling date.

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

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

If your offer has not been accepted, it will be in your best interests to attend court on the calling date so that the sheriff can hear both you and the pursuer on your application. If you do not attend, the court will decide the application in your absence.

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

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

In this situation, you should complete box 2 on page 5 of the copy summons. If you intend to appear in court, it is not necessary to complete the written application form on page 7 for a time to pay direction or time order, but it may be helpful to do this and send it to the court.

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

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

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

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

You should complete box 3 on page 5 of the copy summons and send page 5 to the court on or before the return day.

You must send the court a written note of any defence or counterclaim you wish to make. To do this, complete page 6 of the form and send this to the court along with page 5.

Further information on counterclaims can be found at paragraph 3.14, further on.

**You must return your response to arrive at the court on or before the return day shown on the first page of the copy summons.** If you do not, the court will almost certainly grant the order sought by the pursuer, together with any interest and expenses claimed.

If you have any doubt as to whether the court has jurisdiction to hear the case, you have the right to challenge this. Jurisdiction is the term used to describe the authority of the court to hear the case. This matter can be quite complicated, and is beyond the scope of this guide. If you have any concerns about this, you should seek advice before responding to the summons.

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

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

### **3.10 Arrested property – having the arrestment recalled**

When an action is raised for, or includes, payment of a sum of money, the pursuer may be able to prevent anyone holding money (or certain other kinds of property) belonging to the defender from parting with it before the court proceedings are finished. The procedure used to achieve this is known as ‘arrestment on the dependence’ of an action.

The purpose of arrestment is to ensure that, if the pursuer is successful in his action, the money or items are available to cover any debt due from the defender.

If the pursuer wishes to make use of this procedure, (s)he must first obtain authority to do so from the court, and then the items must be legally arrested, so that they cannot be disposed of until the case is finished. This is done for the pursuer by a sheriff officer.

Once any items have been arrested in this way, the defender is entitled to apply to the court to have the order for arrestment recalled or restricted. The defender may do this either by completing the application provided on the copy summons (see page 7 of the example shown at paragraph 3.03 above), or, if they want to make the application at a later stage of the case, by making an ‘incidental application’ to the court.

**If you do not wish to make an application for recall of arrestment, please remember to delete the application form on the copy summons before you return your response to the court.**

The court will hear the parties to the action on the application to have the arrestment recalled. If the application is made by the defender as part of the response to the summons, it will be considered by the court when the case calls on the calling date.

Sometimes, if the application to recall the arrestment is granted, it is done on condition that the defender pays into court a sum equal to the sum claimed, plus a sum to cover the expenses of the action.

### **3.11 Adding a third party to the case**

If you believe that you have a right of relief in respect of the claim against some other person or organisation (a claim against a third party) you can apply to the court to have that party added to the action. This is usually referred to as 'third party procedure'.

You can apply to have a third party added to the action if:

(A) Regarding the matter which the action is about, you think that other party has a duty to:

- Indemnify you in respect of it
- Make a contribution towards it
- Relieve you from any responsibility as regards it

**OR**

(B) Regarding the matter, you think that the other party is:

- Solely liable to the pursuer
- Liable to the pursuer along with you
- Has a liability to you as a result of the pursuer's claim against you

If you wish to apply to have a third party brought into the action, you should complete the section provided on the last page of the copy summons and send it to the court as part of your response. You may apply for warrant to arrest on the dependence of the action (see 3.10) as regards this party. If you wish to make use of this procedure you will have to include in your response a statement justifying why such a warrant should be granted, and if the sheriff accepts your explanation, he or she will grant the warrant.

If you do not need arrestment delete the words "I apply for warrant to arrest on the dependence/to found jurisdiction".

Your application will be considered by the court on the calling date. If the court decides to allow your application to proceed, the sheriff will grant you authority to serve (send) the following documents on the person you wish to call as a third party:

1. A copy of the summons
2. A copy of the page of the copy summons containing your application
3. A notice like the one below
4. A form of response

You can obtain a copy of the Form of Notice and the Form of Response from any sheriff clerk or the Scottish Court Service website.

*Form of third party notice*

Court ref. no.

SHERIFF COURT (insert name of court)

**THIRD PARTY NOTICE**

**in the cause**

**(A.B.) (insert designation and address), Pursuer**

**against**

**(C.D.) (insert designation and address), Defender**

To (E.F.)

You are given notice by (C.D.) of an order granted by the Sheriff at (insert name of court) in which (A.B.) is the pursuer and (C.D.) is the defender. A copy of the order is enclosed herewith.

In the action, the pursuer claims from the defender..... (insert a brief account of the circumstances of the claim) as more fully appears in the copy summons enclosed.

The defender claims that, (\*delete as appropriate)

\*if he is liable to the pursuer, you are liable to relieve him wholly/partially of his liability, as more fully appears in the copy grounds upon which the defender relies for this, which are also enclosed.

\*he is not liable to the Pursuer for the claim made against him. He maintains that any liability to the pursuer in respect of this claim rests solely on you, as more fully appears in the copy grounds upon which the defender relies for this, which are also enclosed.

\*if he is liable to the pursuer in respect of this claim, he shares that liability with you, as more fully appears in the copy grounds upon which the defender relies for this, which are also enclosed.

\*You are liable to him in respect of the claim, as more fully appears in the copy grounds upon which the defender relies for this, which are also enclosed.

**If you wish to resist the claim(s) made by the defender as detailed above, you must return the form of response enclosed to the Sheriff Clerk at (address) by (date seven days before the date of hearing).**

(Date) (Signature of person serving notice)

You will then have to fill in the form above, and the first part of the Form of Response below, and have these and the other documents mentioned served on the person concerned (who is referred to here as the 'third party') by a solicitor or a sheriff officer. **You cannot serve these documents yourself.**

At the same time as the sheriff grants you authority to serve these documents (at the hearing on the calling date), another date will be fixed for the case to be heard again.

The purpose of this next hearing will be to allow the court to decide how the case should proceed. This will depend on how the third party responds.

You must lodge a copy of the third party notice, along with a certificate of service on the third party, before the date of this next hearing. You can obtain a certificate of service from the solicitor or sheriff officer who serves the documents for you.

If the third party wishes to respond, they will send the Form of Response (below) to the court no later than seven days before the date set for the next hearing. The sheriff clerk will send you a copy of the response when it is received by the court.

**Form of Response to third party notice**

**in the cause**

**(A.B.) (insert designation and address), Pursuer**

**against**

**(C.D.) (insert designation and address), Defender**

I wish to answer the claim made against me by (C.D.), defender. (Here state briefly the grounds of opposition to the defender's claim.)

(date)

You should then attend court on the date fixed for the next hearing, when the sheriff will hear you, the pursuer and the third party and decide whether the application should be granted. If the sheriff does grant the application, the third party will then become a party in the action.

### **3.12 Amending your case**

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

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

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

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

If, as an alternative to having the case continued, you wish the proceedings to be brought to a temporary halt, you may apply to the court to have this done. You might want this to happen if, for example, you are trying to settle the action with the pursuer and 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 do this by lodging an incidental application, or, if appearing in court, you could ask the sheriff to allow the sist at that time.

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

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

When a case is sisted, no further steps can be taken until the sist is recalled. An application to recall a sist is made in the same way as an application to have it granted.

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

### **3.14 Making a counterclaim**

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

If the pursuer has raised an action against you, and you have a claim against him arising from the same matter, then, instead of raising a separate action, you can raise your claim against the pursuer in his 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.

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

You can only make a counterclaim against the pursuer if your claim relates to the same matter as his or her claim against you. Here is an example of when making a counterclaim might be appropriate:

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

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

If, however, you wanted to sue the same pursuers because, say, they had been responsible for damage sustained to your car in a road accident, then you could not do this by way of a counterclaim (in the pursuer's action for payment for work done to your bathroom) because this would be an entirely separate matter.

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

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

- Details of the claim you wish to make
- A response to the pursuer's claim (if you have not already made one)
- A statement setting out the facts upon which you rely in support of your counterclaim

You may also include in your counterclaim an application for warrant to arrest on the dependence of the counterclaim, in the same way as a pursuer may do in the action. Arrestment on the dependence is explained at paragraph 3.10 of this guide.

If you wish to make use of this procedure you will have to include a statement justifying why such a warrant should be granted. If you do not need to arrest on the dependence delete the words "I also apply for a warrant to arrest on the dependence of the counterclaim".

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.

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

(Date)

**At what stage should I make a counterclaim?**

If you know that you wish to make a counterclaim when you receive the copy summons, you must send it to the court, as part of your response to the summons, on or before the return day. The counterclaim should be part of your defence and included on page 6 of the form. If there is not enough space, you may send it in on a separate piece of paper.

When the sheriff clerk receives your response, he or she will send a copy of it to the pursuer.

### **What happens next?**

If the pursuer wishes to oppose your counterclaim, he or she must respond by sending 'answers' to the court within seven days of the date on which you lodge 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 the pursuer sends answers to a counterclaim to the court, he or she must, at the same time, send a copy to you.

### **3.15 Enforcement of the court's order**

Guidance on enforcement is included in Part 4 of this guide – 'Going to Court'. You may wish to refer to this to find out what may happen if you are found liable by the court to meet the pursuer's claim. Alternatively, if you successfully resist the action and are found entitled to expenses, or the court makes an order in your favour

resulting from a counterclaim, this section may help you if you have difficulty in recovering any expenses awarded to you by the court.

**It is important to note that the court cannot arrange for enforcement of any order on your behalf. You must attend to this yourself, and recover any costs involved from the pursuer.**

### **3.16 Fees and expenses**

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

#### **A – Court Fees**

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

There is a fee for making an appeal against the court's decision. Further information about appeals can be found in Part 4 of this guide. The sheriff clerk will advise you of the current fees or you can check on [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk).

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

#### **B – Court Expenses**

As a general rule, court expenses are awarded to the 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 to give evidence
- The cost of having any court order made in your favour enforced if it is not complied with by the pursuer

Even if you win your case, an award of expenses may not necessarily cover all of the money you have spent. Expenses awarded are fixed by reference to an approved table.

### **3.17 Recalling the decree of the court**

In certain circumstances, either the pursuer or the defender may apply to the court to have the court's final order (decree) recalled. This usually happens when one party

or the other has failed to do something – for example, attend at court for a hearing or lodge a document in time.

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

### **3.18 Electronic transmission of documents**

Many documents can be sent electronically to and from the courts. Full guidance on this can be found on the Scottish Court Service website at [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk).

### **3.19 Legal terms explained**

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

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

### **3.20 Disabled persons**

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

A list of sheriff clerk's offices for those courts in which summary cause actions are heard is included in the brochure of useful addresses (see paragraph 3.01).

### **3.21 Language difficulties**

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

## Appendix A

### Glossary of Legal Terms

Absolve	To find in favour of and exonerate the <b>defender</b> .
Absolvitor	An order of the court granted in favour of and exonerating the <b>defender</b> which means that the <b>pursuer</b> is not allowed to bring the same matter to court again.
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 <b>diligence</b> or enforcement. It results in whatever has been subject to <b>arrestment</b> 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 <b>decree</b> of the court for <b>service</b> of documents

	has been effected.
Charge	An order to obey a decree of a court. A common type is one served on the defender by a sheriff officer, on behalf of the pursuer who has won a case, demanding payment of a sum of money.
Citation of defender	The bringing of a person into a case by serving on him or her the necessary court documents 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 <b>diligence</b> authorising the person appointed to require the attendance of the witness and the disclosure of documents.
Consignation	The deposit in court, or with a third party, of money or an article in dispute.
Continuation	An order made by the sheriff postponing the completion of a hearing until a later date or dates.
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 <b>heritable property</b> 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 <b>Certificate of execution of service</b> .
Execution of a charge	The intimation of the requirement to obey a decree or order of a court.
Execution of an arrestment	The carrying out of an order of arrestment
Expenses	The technical term for the costs of a court case
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 <b>multiplepoinding</b>
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 <b>statement of claim</b> .
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.
Multiplepinding <i>multiple pinding</i> )	(pronounced 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 <b>ordinary cause</b> 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.