

The Summary Cause

Information and procedural guide

1. What is a Summary Cause?

The uses and purpose of the procedure described:

Getting advice

When the procedure is appropriate

Types of action which you can raise

Monetary limits

Legal terms explained

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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.

1.01 ABOUT THE GUIDE

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

The guide is divided into four parts. This has been done to save you reading information you may not need. The four parts are designed for use as follows:

Part 1 – What is a Summary Cause?

Tells you about 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 if you receive a summons as a defender.

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 some information about enforcing any order made by the court.

As well as the four parts mentioned above, there is also a brochure containing addresses of some organisations which may be able to help you if you wish to begin or defend a 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.

1.02 What is a summary cause? – A brief description

A summary cause is a type of court procedure.

You do not need to use a solicitor, but you can if you wish.

If it relates to payment of money, it is used where the value of the claim is over £3000 and up to (and including) £5000.

A summary cause can only be raised in the sheriff courts.

A list of some useful legal terms can be found at Appendix 'A' of this guide.

1.03 Where can I go for advice?

There are many organisations which can help if you are considering beginning or defending a summary cause. For example, you may receive free advice and assistance from any of the following:

- Scottish Association of Law Centres
- Citizens Advice Bureaux
- Consumer Advice centres
- Consumer Protection departments
- In-Court Adviser at Aberdeen, Airdrie, Dundee, Edinburgh, Hamilton and Kilmarnock Sheriff Courts
- Money Advice, Scotland
- Sheriff clerks' offices
- Trading Standards departments

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

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

There are several other organisations, for example money advice services, who also may 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 and find the addresses of their offices in your area 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 and their staff 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 raise or defend a summary cause. This will depend on your income.

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

1.04 Alternatives to raising court proceedings

You should raise court proceedings only as a last resort. Before taking this step, it is advisable to try and find another way of settling any dispute.

For example, if someone owes you money, you may wish to write formally to them first. In this case, you should send the letter by recorded delivery post.

Below is an example of the type of letter you might send:

<p>21 Station Road GLASGOW G21 4ED 9 August 2008</p>
<p>Dear Sirs,</p> <p>On 3 August this year I purchased a stereo system from your shop. The system was delivered on 5 August, but when I unpacked it I found that the cabinet was cracked.</p> <p>I called at your premises this morning and spoke to your salesman, Mr. Mackay. He said that the damage was not the shop's responsibility and that I should take the matter up with the manufacturers under the guarantee.</p> <p>You are responsible for goods which you sell and I am not prepared to accept this system in a damaged condition. Please therefore change it or refund the purchase price within seven days from this date.</p> <p>Yours faithfully</p> <p>James McMillan</p>

If you do not receive a response, or remain dissatisfied, you could write again as follows:

<p>21 Station Road GLASGOW G21 4ED 19 August 2008</p>
<p>Dear Sirs,</p> <p>I have not received any reply from you to my letter of 9 August, in which I told you that the stereo system you sold me was delivered in a damaged condition.</p> <p>Unless I hear from you, within seven days from today, that you are prepared to replace the system or return the purchase price, I intend to raise court proceedings against you without further notice.</p> <p>Yours faithfully</p> <p>James McMillan</p>

If you do not receive a satisfactory reply, you will then have to decide if you wish to commence court proceedings.

1.05 Should I raise an action?

There are several things you might wish to consider before deciding to start court proceedings, such as:

- Is the person or company likely to be able to pay?
- Do you have a note of their correct name and their present address?
- Are they bankrupt or insolvent?
- Are they on the Debt Arrangement Scheme (DAS)? (For information see www.moneyscotland.gov.uk, or phone the DAS Administrator helpline on 0845 6126425, or ask at the Citizens Advice Bureau)
- Do they have any money or other items of value?
- If a company, has it ceased trading?
- Are you raising the action against the correct party?
- Can you afford to go to court? (See paragraph 1.08)
- Can you afford the time to prepare your case for the court hearing if the action is defended?
- Can you afford to pay the cost of having any order made in your favour enforced if it is not complied with? (See paragraph 1.08)

You should also consider whether you will be able to prove your case. Considering the following questions may help you to decide this:

- Do you still have any faulty goods?
- Is there a written agreement you can produce?
- Are there any witnesses who would be able to come to court to support your case?
- Do you have any receipts for any payments you may have made?
- Is there any photographic evidence available which might assist your case?

If in doubt, you should seek advice before raising any court proceedings.

Please note that, if you are successful in your action, you will have to arrange to have the court's order complied with yourself. The court cannot do so for you. Further information on this can be found in Part 4 of this guide – 'Going to Court'.

1.06 Do I need a solicitor?

You do not need to employ a solicitor to raise or defend a summary cause. However, you can if you wish, and it may be advisable to consider this if you think your case, as occasionally happens, is more complex than usual or involves some point of law which the court may have to consider.

You may be entitled to receive legal advice or legal aid (see paragraph 1.03).

Sometimes, if you are successful, you may be able to recover all or part of any solicitor's fees through an award of expenses from the court (see paragraph 1.08).

At certain stages of the court proceedings, you can also be represented by any person you authorise, for example:

- A friend
- A relative
- A representative of a Citizens Advice Bureau, Consumer Protection/Trading Standards department, or other advice agency, who may be able to do this for you free of charge (see paragraph 1.06).

Such a person is referred to as a 'lay representative'.

When a lay representative can appear for you will be discussed in more detail in other parts of this guide. Broadly speaking, however, you cannot be represented in this way in an action which is defended after the first occasion when it calls in court.

If you are raising an action as an individual, the sheriff clerk can give you procedural advice. He or she cannot give you legal advice, for example, tell you if you have a good case or not, or tell you what to say to the court in support of it.

1.07 Value of actions for payment of money

The upper limit for an action for payment of money in a summary cause is £5000. The lower limit is any sum over £3000.

If the claim is for a sum greater than £5000, an alternative form of procedure known as an ordinary action must be used. If the sum is £3000 or less, the action must be raised as a small claim.

Further information on these alternative procedures can be obtained from any of the organisations listed in paragraph 1.03. Guidance on small claim procedure, similar to this, is available from these organisations.

There are some types of summary cause where a claim for payment of money may be asked for as an alternative if the defender fails to perform some act when ordered to do so by the court.

The various types of action which can be raised as a summary cause are discussed in paragraph 1.09.

1.08 What will it cost?

The procedure is designed to be cheap, but some expenditure will be necessary. There are two areas to consider here:

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.

There is no fee payable for defending an action.

The sheriff clerk will advise you of the current fees or you can check 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 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 person who succeeds in the case. These expenses must then be paid by the unsuccessful party.

Expenses are normally calculated at the end of the case by the sheriff clerk, who then has his or her 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 by the court complied with by the other party. (See Part 4 of the guide for further information about this.)

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 are fixed by reference to an approved table.

1.09 Types of summary cause

There are several different kinds of action which can be raised under the summary cause procedure. Information about each of these, and when they should be used, is contained in paragraphs 1.10 to 1.18.

The most common type of action raised as a summary cause is for payment of a sum of money.

Most other types of action are less frequently used, and some of them have special rules of procedure in addition to those provided for payment actions. It is beyond the scope of this guide to discuss these procedural differences in depth.

Should you wish to raise an action other than one for payment of a sum of money, you may wish to consider taking legal advice. If you do decide to raise such an action yourself, you will be able to ask the sheriff clerk for help on the procedure to be followed, but he or she cannot give you any legal advice.

1.10 Action for payment of money

Actions for payment of money are used to recover debts, for example:

- Unpaid bills
- Expense incurred in repairing damage done to a car in a road accident
- Money owed from a loan
- Compensation for damage caused by faulty workmanship
- Goods ordered and paid for but not supplied

Remember that the value of any monetary claim must be over £3000 and up to and including £5000.

1.11 Action for recovery of possession of heritable property

If you are the owner of heritable property which is being occupied by someone else, you can use this type of action to have them removed from the building or land and to have your property returned to you. 'Heritable property' simply means property which cannot be moved – for example, a house or a piece of land.

The procedure is commonly used to remove occupiers who have fallen behind with payments for rent. It can also be used to remove people who have no right, lease or other title to the property.

You can add a claim for payment of a sum of money, not exceeding £5000, to an action for recovery of possession of heritable property. You might wish to do this, for example, to recover rent arrears.

As certain procedures require to be carried out before this type of action can be raised, you may wish to consider obtaining legal advice before commencing any court action.

1.12 Action of multiplepointing

The purpose of this type of action is to resolve disputes over who is entitled to possession of something. For example, if someone died without leaving a will, there might be a family dispute about who should receive a particular item of the estate. Here, an action of multiplepointing could be raised. The court would then be asked to decide who had the best claim to the property, or decide how it should be divided up amongst those with an interest.

An action of multiplepointing can only be raised as a summary cause if the value of the disputed items does not exceed £5000.

1.13 Action of furthcoming

This is another kind of action you can use to help you to recover a debt.

Suppose that someone owes you money and you obtain a decree against them. You become aware that money or property belonging to that person is held by someone else. You could then instruct a sheriff officer to serve a document on that third person which would prevent them from disposing of the money or property. (This is known as 'arresting' the property.)

After that, you could raise an action of furthcoming. You would ask the court to make an order transferring the money or property arrested to you in payment (or part payment) of your original debt.

This kind of action can only be raised as a summary cause if the sum of money or value of the property arrested does not exceed £5000.

1.14 Action for delivery

You would raise an action for delivery to recover moveable property which someone else had possession of. 'Moveable property' simply means something which can be moved – for example, a car. This type of action could not, therefore, be used to recover possession of a house, or other property which could not be moved.

An example of this is:

You send your washing machine to a shop for repair. When you go to collect it, you are told it has been sent back to the manufacturer. After some time you have still not got the machine back. You are not satisfied with the explanation given by the repair shop.

In such a situation, you could then proceed to raise an action for delivery of the washing machine.

You could also, if you wished to, include an alternative claim for payment of a sum of money up to a limit of £5000. This sum would represent the value of the washing machine. If the court made an order for delivery of the machine, and this was not complied with, then you would be entitled to come back to the court and ask for an order for payment of the alternative sum claimed.

1.15 Action for implement of an obligation

This kind of action is used when you want the court to order someone else to fulfil an obligation or perform a duty. For example:

You employ a builder to put up a wall in your garden. The wall is partially completed and the builder says he will return in a few days to finish the work. He does not do so. Despite repeated complaints from you, nothing further is done.

You could then proceed to raise an action against the builder asking the court to order him to complete the wall.

You could also, if you wished, include an alternative claim for payment of a sum of money up to a limit of £5000. You would ask for this to compensate you for the cost of having the wall completed by someone else, if the builder failed to carry out any order the court made about

having him complete the wall. If he did not complete the work, you would then be entitled to come back to court and ask for an order for payment of the alternative sum claimed.

1.16 Action of count, reckoning and payment

If someone else has property or money belonging to you which they are using in some way on your behalf (for example, an investment company, a trustee or a bank) you are entitled to ask them to give you a statement of how they have been handling your affairs. This should be done by asking that person or company to give you a written account detailing what they have been doing with your property or money.

If the other party does not do this, you would be entitled to raise an action of count, reckoning and payment. In the action, you would ask the court to order the party to produce the account to you. You would also ask for payment of whatever sum of money you felt you were entitled to receive from the other party. If the account was not produced, you could then ask the court to make an order for payment of the sum of money claimed.

This type of action could only be raised as a summary cause if the amount of payment claimed did not exceed £5000.

1.17 Action for damages for personal injury

This is the kind of action you would raise if you felt someone else was responsible for an injury you had received. For example, if you were involved in an accident and received an injury, you could raise an action for damages against any person you felt was to blame for the accident.

The action would be for payment of a sum of money to compensate you for any inconvenience and loss caused by the fact that you had been injured. So it's similar to an action for payment, but differs in having special rules of procedure.

You can only raise this kind of action when a personal bodily injury is involved. If the damage was caused to your property, you would raise an action for payment.

To raise this kind of action as a summary cause, the amount of damages claimed must not exceed £5000.

1.18 Can I appeal?

There is a right of appeal from the sheriff's final decision, and also about any decision of the sheriff regarding an application about the way in which sums of money found due are to be paid.

These rights of appeal are limited to questions of law.

You cannot appeal the sheriff's decisions on the facts of any case.

Appeal procedure is discussed more fully in Part 4 of this guide – 'Going to Court'.

1.19 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 which you may come across if you become involved in court proceedings is attached as Appendix 'A' of this guide.

1.20 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 do whatever it can to make your visit as comfortable as possible. It may, for example, be able to arrange for your case to be heard in a courtroom having a loop system (for those with hearing difficulties), or to arrange access for wheelchair users.

A list of sheriff clerk's offices, for those courts in which summary causes are heard, is included in the brochure of useful addresses.

1.21 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 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.