

## INSIGHT

### Ordinary actions in the Sheriff Court

An overview of the procedures for raising a case in Scotland's Sheriff Court, including recent reforms expanding its jurisdiction to certain types of cases

The Sheriff Court is the local court for civil court claims in Scotland, similar to the County Court in England. Sheriff Courts deal with the vast majority of a civil court business across Scotland and, since 2015 have had exclusive jurisdiction to hear monetary claims of up to £100,000.

#### What type of claims are raised in the Sheriff Court?

A variety of claims (known as "ordinary actions") are raised in the Sheriff Court. They can best be described as the middle rungs of the civil litigation ladder in Scotland – more complex than claims that can be raised under Sheriff Court [Simple Procedure](#), but less so than claims that are ordinarily heard in the [Court of Session](#), Scotland's supreme civil court.

Among the claims raised as "ordinary actions" in the Sheriff Court are:

- claims with a monetary value of over £5,000
- claims for interdict (injunction) or interim interdict
- claims for specific implement (enforcement)
- claims to declare the existence of a right or fact
- family proceedings (divorce actions, child welfare and so on).

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Recent court reforms have also expanded the jurisdiction of the Sheriff Court so that some actions that previously had to be raised in the Court of Session can now be dealt with in the Sheriff Court. The most notable are:

- “reduction” actions (action to set aside documents including Wills and dispositions)
- “proving the tenor” actions (actions to provide the legitimacy or extent of a document).

Since it is less expensive to pursue such claims in the Sheriff Court than in the Court of Session, reforms open the door to claims that previously were not pursued on economic grounds. Our experienced Dispute Resolution and Litigation team can help you make decisions about whether to pursue such a claim, and also help you settle an issue without needing to go to the Sheriff Court.

### Before court proceedings are raised

With the exception of personal injury cases and commercial actions, there are no pre-action protocols to follow before issuing court proceedings in the Sheriff Court. However, litigation should always be the last resort in resolving disputes, and parties are encouraged to try to settle their differences outside court, for example by [ADR](#).

If the Sheriff considers that the dispute could have been resolved outside court, or that court proceedings were raised prematurely, a party may be subjected to [expenses](#) in the court action (even if they are successful). Defenders to a court action will routinely defend proceedings on the basis that the action was “unnecessary”.

It is therefore always recommended that pursuers (claimants) have a paper trail of pre-litigation correspondence setting out their claims before court action is considered. In some instances, this may be covered by a detailed letter of claim (or a demand letter for straightforward debt recovery matters) sent to the potential Defender and inviting a response within a specified period.

### Issuing court proceedings

To raise an ordinary action in the Sheriff Court, the claimant must present an “initial writ”. This must be drafted in the approved form and include the names and addresses of the parties, what the claim is for and the facts and law in support of the claim.

This initial writ is sent to the relevant Sheriff Court for a warrant to serve on the named Defender. It can be served on the Defender by recorded delivery post. Sheriff Officers or by the Defenders’ solicitors accepting it on their behalf. Until the writ has been effectively served, the court action will not be considered as raised.

### After the initial writ has been served

The Defender then has a period of 21 days to decide whether or not to defend the action. An action is defended by lodging a “notice of intention to defend” (NID) with the Sheriff Court within the 21-day period.

The NID can only be lodged by the Defender personally or by an admitted Scottish solicitor. Once the NID is lodged, the court will issue a date when the defender must lodge their written defences to the claim. Defences must be drafted in the correct form and take the shape of answers to the statements in the initial writ.

The court will also fix for an options hearing (see below) at this point.

If the Defender does not lodge a NID within the 21-day period, the pursuer can then apply to the court for the claim to be granted automatically. This application must be made in an approved format known as a “Minute for Decree”.

### After defences have been lodged

Once the Defender has lodged the NID and written defences, the parties are allowed time to take stock of their respective positions in the action. During this



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period of “adjustment”, which usually lasts around 8 weeks, the Pursuer and Defender can change and expand upon their written pleadings in order to respond adequately to the other side. This is useful in narrowing down the issues in dispute.

At the end of the adjustment period, the Pursuer must combine the adjusted initial writ and defences into one document known as a “record” and lodge it with the court at least two days before the options hearing.

### The options hearing

This is ordinarily the first calling of the action in court. At this hearing, the Sheriff will generally look to fix further procedure, which usually means one of four options:

- **Allow a further adjustment period:** this is common when one party requires a few more weeks to investigate the claim or gather evidence.
- **Sist (known in England and Wales as “stay”) the case:** this usually happens when a longer period is required for investigations, or because the parties consider they are capable of reaching an agreement and further time is required to implement settlement terms.
- **Fix a legal debate:** this is a substantive hearing on legal arguments, and may be used when a legal point (such as jurisdiction or prescription) requires to be determined before the factual elements of the case can be considered. Witness evidence is not heard at a legal debate.
- **Fix a proof/proof before answer:** a proof might be fixed after the options hearing or following all or any of the above. A proof is the vivil equivalent to a trial and is a substantive hearing on the facts of the dispute. Witnesses are usually led by both parties, with the parties then making submissions as to why their respective positions should be favoured. The Sheriff ultimately decides who is successful, either making the decision at the hearing or taking further time

(“avisandum”) to reach a decision.

### And finally...

Having decided on the merits of a case, the court will issue a formal court order (decree). This is sent to the successful party around four weeks after the Sheriff’s decision has been pronounced.

However, a decree does not necessarily mark the end of the road:

- **Appeal hearing:** if a party thinks the Sheriff has reached the wrong decision in a case, they may seek to appeal the decision. There are strict timescales for appeals, which are heard by the Sheriff Appeal Court.
- **Expenses:** once a claim has been settled between the parties or decided by the Sheriff, the [expenses](#) must be resolved. The general rule of thumb is that the unsuccessful party is found liable to pay the expenses of the successful party, but there can be exceptions. If parties cannot agree on the amount of expenses to be paid, a “diet of taxation” will be fixed and the Auditor of Court makes the final decision.

Our solicitors are experienced at lodging claims at Sheriff Courts across Scotland, and can guide you through everything required – whether you are based in Scotland or in another jurisdiction. This will include advising you on alternative ways to resolve a dispute – way that may be quicker, cheaper or offer better outcomes.

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