



Sheriff Courts (Scotland) Act 1971

1971 CHAPTER 58

PART III

CIVIL JURISDICTION, PROCEDURE AND APPEALS

Summary causes

35 Summary causes.

- (1) The definition of “summary cause” contained in paragraph (i) of section 3 of the ^{M1}Sheriff Courts (Scotland) Act 1907 shall cease to have effect, and for the purposes of the procedure and practice in civil proceedings in the sheriff court there shall be a form of process, to be known as a “summary cause”, which shall be used for the purposes of all civil proceedings brought in that court, being proceedings of one or other of the following descriptions, namely—
- (a) actions for payment of money not exceeding [^{F1}£5000] in amount (exclusive of interest and expenses);
 - (b) actions of multiplepoinding, actions of furthcoming and actions of sequestration for rent, where the value of the fund *in medio*, or the value of the arrested fund or subject, or the rent in respect of which sequestration is asked, as the case may be, does not exceed [^{F2}£5000](exclusive of interest and expenses);
 - (c) actions *ad factum praestandum* and actions for the recovery of possession of heritable or moveable property, other than actions in which there is claimed in addition, or as an alternative, to a decree *ad factum praestandum* or for such recovery, as the case may be, a decree for payment of money exceeding [^{F3}£5000] in amount (exclusive of interest and expenses);
 - (d) proceedings which, according to the law and practice existing immediately before the commencement of this Act, might competently be brought in the sheriff’s small debt court or were required to be conducted and disposed of in the summary manner in which proceedings were conducted and disposed of under the Small Debt Acts;

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and any reference in the following provisions of this Act, or in any other enactment (whether passed or made before or after the commencement of this Act) relating to civil procedure in the sheriff court, to a summary cause shall be construed as a reference to a summary cause within the meaning of this subsection.

[^{F4}(1A) For the avoidance of doubt it is hereby declared that nothing in subsection (1) above shall prevent the Court of Session from making different rules of procedure and practice in relation to different descriptions of summary cause proceedings.]

[^{F5}(2) There shall be a form of summary cause process, to be known as a “small claim”, which shall be used for the purposes of such descriptions of summary cause proceedings as are prescribed by the Lord Advocate by order.

(3) No enactment or rule of law relating to admissibility or corroboration of evidence before a court of law shall be binding in a small claim.

(4) An order under subsection (2) above shall be by statutory instrument but shall not be made unless a draft of it has been approved by a resolution of each House of Parliament.]

Textual Amendments

- F1** Words in s. 35(1)(a) substituted (14.1.2008) by [The Sheriff Courts \(Scotland\) Act 1971 \(Privative Jurisdiction and Summary Cause\) Order 2007 \(S.S.I. 2007/507\)](#), **art. 3** (with art. 4)
- F2** Words in s. 35(1)(b) substituted (14.1.2008) by [The Sheriff Courts \(Scotland\) Act 1971 \(Privative Jurisdiction and Summary Cause\) Order 2007 \(S.S.I. 2007/507\)](#), **art. 3** (with art. 4)
- F3** Words in s. 35(1)(c) substituted (14.1.2008) by [The Sheriff Courts \(Scotland\) Act 1971 \(Privative Jurisdiction and Summary Cause\) Order 2007 \(S.S.I. 2007/507\)](#), **art. 3** (with art. 4)
- F4** S. 35(1A) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), s. 59, **Sch. 2 para. 14**
- F5** S. 35(2)–(4) substituted for s. 35(2) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), **s. 18(1)**

Modifications etc. (not altering text)

- C1** S. 35: power to transfer functions conferred (19.5.1999) by [S.I. 1999/678](#), art. 2(1), **Sch.**
- C2** S. 35(1)(c) excluded by [Land Tenure Reform \(Scotland\) Act 1974 \(c. 38\)](#), **s. 9(6)**

Marginal Citations

- M1** 1907 c. 51.

36 Procedure in summary causes.

(1) In relation to summary causes the power conferred on the Court of Session by section 32 of this Act shall extend to the making of rules permitting a party to such a cause, in such circumstances as may be specified in the rules, to be represented by a person who is neither an advocate nor a solicitor.

(2) A summary cause shall be commenced by a summons in, or as nearly as is practicable in, such form as may be prescribed by rules under the said section 32.

(3) The evidence, if any, given in a summary cause shall not be recorded.

(4) ^{F6}

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Textual Amendments

F6 S. 36(4) repealed by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), s. 108, Sch. 7 paras. 5, 9(1), **Sch. 8**

Modifications etc. (not altering text)

C3 S. 36(3) excluded by [Maintenance Orders \(Reciprocal Enforcement\) Act 1972 \(c. 18\)](#), s. **4(4)(b)**

[^{F7}**36A Further provisions as to small claims.**

Where the pursuer in a small claim is not—

- (a) a partnership or a body corporate; or
- (b) acting in a representative capacity,

he may require the sheriff clerk to effect service of the summons on his behalf.]

Textual Amendments

F7 Ss. 36A, 36B inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), s. **18(2)**

[^{F8}**36B Expenses in small claims.**

- (1) No award of expenses shall be made in a small claim in which the value of the claim does not exceed such sum as the Lord Advocate shall prescribe by order.
- (2) Any expenses which the sheriff may award in any other small claim shall not exceed such sum as the Lord Advocate shall prescribe by order.
- (3) Subsections (1) and (2) above do not apply to a party to a small claim—
 - (a) who being a defender—
 - (i) has not stated a defence; or
 - (ii) having stated a defence, has not proceeded with it; or
 - (iii) having stated and proceeded with a defence, has not acted in good faith as to its merits; or
 - (b) on whose part there has been unreasonable conduct in relation to the proceedings or the claim;nor do they apply in relation to an appeal to the sheriff principal.
- (4) An order under this section shall be by statutory instrument but shall not be made unless a draft of it has been approved by a resolution of each House of Parliament.]

Textual Amendments

F8 Ss. 36A, 36B inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), s. **18(2)**

Modifications etc. (not altering text)

C4 s. 36B: power to transfer functions conferred (19.5.1999) by [S.I. 1999/678](#), art. 2(1), **Sch.**

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37 Remits.

- (1) In the case of any ordinary cause brought in the sheriff court the sheriff ^[F9]—
- (a) shall at any stage, on the joint motion of the parties to the cause, direct that the cause be treated as a summary cause, and in that case the cause shall be treated for all purposes (including appeal) as a summary cause and shall proceed accordingly ^[F10];
 - (b) may, subject to section 7 of the Sheriff Courts (Scotland) Act 1907, on the motion of any of the parties to the cause, if he is of the opinion that the importance or difficulty of the cause make it appropriate to do so, remit the cause to the Court of Session.]
- (2) In the case of any summary cause, the sheriff at any stage—
- (a) shall, on the joint motion of the parties to the cause, and
 - (b) may, on the motion of any of the parties to the cause, if he is of the opinion that the importance or difficulty of the cause makes it appropriate to do so, direct that the cause be treated as an ordinary cause, and in that case the cause shall be treated for all purposes (including appeal) as an ordinary cause and shall proceed accordingly:

Provided that a direction under this subsection may, in the case of an action for the recovery of possession of heritable or moveable property, be given by the sheriff of his own accord.

^[F11](2A) In the case of any action in the sheriff court ^[F12], being an action for divorce or an action] in relation to ^[F13]parental responsibilities or parental rights (within the meaning of sections 1(3) and 2(4) respectively of the Children (Scotland) Act 1995) in relation to a child or the^[F14] guardianship] or adoption of a child the sheriff may, of his own accord, at any stage remit the action to the Court of Session.]

^[F15](2B) In the case of any small claim the sheriff at any stage—

 - (a) may, if he is of the opinion that a difficult question of law or a question of fact of exceptional complexity is involved, of his own accord or on the motion of any party to the small claim;
 - (b) shall, on the joint motion of the parties to the small claim, direct that the small claim be treated as a summary cause (not being a small claim) or ordinary cause, and in that case the small claim shall be treated for all purposes (including appeal) as a summary cause (not being a small claim) or ordinary cause as the case may be.

(2C) In the case of any cause which is not a small claim by reason only of any monetary limit applicable to a small claim or to summary causes, the sheriff at any stage shall, on the joint motion of the parties to the cause, direct that the cause be treated as a small claim and in that case the cause shall be treated for all purposes (including appeal) as a small claim and shall proceed accordingly.]

^[F16](2D) In the case of any action in the sheriff court where the matter to which the action relates could competently be determined by the Land Court by virtue of the Agricultural Holdings (Scotland) Act 1991 (c. 55) or the Agricultural Holdings (Scotland) Act 2003 (asp 11), the sheriff may (of his own accord or on the motion of any of the parties) at any stage remit the case to the Land Court if he is of the opinion that it is appropriate to do so.]

^[F17](3) A decision—

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- (a) to remit, or not to remit, under subsection (2A) [^{F18}(2B) or (2C)] above; or
- (b) to make, or not to make, a direction by virtue of paragraph (b) of, or the proviso to, subsection (2) above,

shall not be subject to review; but from a decision to remit, or not to remit, under subsection (1)(b) above an appeal shall lie to the Court of Session.]

(4) In this section “sheriff” includes a sheriff principal.

Textual Amendments

- F9** “—(a)” inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 16(a)(i)(ii)
- F10** S. 37(1)(b) added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 16(a)(i)(ii)
- F11** S. 37(2A) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 16(b)
- F12** Words inserted by Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12, SIF 36:3), s. 6(1), **Sch. 1 para. 12**
- F13** Words in s. 37(2A) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 18(3)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F14** Word in S.37(2A) substituted (25.9.1991) by virtue of Age of Legal Capacity (Scotland) Act 1991 (c.50 SIF 49:1), s. 10(1), Sch. 1 para 35.
- F15** S. 37(2B)(2C) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 18(3)(a)
- F16** S. 37(2D) inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), **ss. 86(1), 95(3)** (with s. 95(2)); S.S.I. 2003/548, **art. 2(g)** (with art. 3, Sch.)
- F17** S. 37(3) substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 16(c)
- F18** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 18(3)(b)

38 Appeal in summary causes.

In the case of [^{F19}—

- (a) any summary cause an appeal shall lie to the sheriff principal on any point of law from the final judgment of the sheriff; and
- (b) any summary cause other than a small claim an appeal shall lie] to the Court of Session on any point of law from the final judgment of the sheriff principal, if the sheriff principal certifies the cause as suitable for such an appeal,

but save as aforesaid an interlocutor of the sheriff or the sheriff principal in any such cause shall not be subject to review.

Textual Amendments

- F19** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 18(4)

Modifications etc. (not altering text)

- C5** S. 38 excluded by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), ss. 103(1), 108(2), Sch. 7 paras. 5, 9(1)

Status:

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Changes to legislation:

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