How to bring a case to court

Scotland

Content provided by:

European Judicial Network (in civil and commercial matters)

1 Do I have to go to court or is there another alternative?

Going to court should be your last resort. You should first consider other ways to settle the matter. For example, if you are owed money you could write a letter to the person who owes it, say how much they owe, what it is for, and what steps you have already taken to recover it. You could include a warning that if they do not pay by the suggested date you will start a court process. You may also want to consider alternative dispute resolution. Please refer to the information sheet on ADR for further information.

2 Is there any time limit to bring a court action?

In Scots law, there are time limits or limitation periods within which a court action must be raised. These are determined by the legal concepts of limitation and negative prescription. The applicable periods depend on the statute. You can find out whether the specific action you would like to raise is subject to specific time limits by seeking the advice of a lawyer or a Citizens Advice Bureau.

3 Should I go to a court in this Member State?

There are specific rules in EU legislation that determine the Member State in which claims should be brought.

General information on which courts deal with which types of cases within Scotland is provided in the sheet:

"Jurisdiction"

4 If yes, which particular court should I go to in this Member State, given where I live and where the other party lives, or other aspects of my case?

General information on which courts deal with which types of cases within Scotland is provided in the sheet:

"Jurisdiction"

5 Which particular court should I go to in this Member State, given the nature of my case and the amount at stake?

General information on which courts deal with which types of cases within Scotland is provided in the sheet:

"Jurisdiction"

6 Can I bring a court action by myself or do I have to go via an intermediary, such as a lawyer?

There is no requirement for a person to be legally represented in the Scottish civil courts.

A person who appears without legal representation is known as a “party litigant”. Some specific guidance is available for party litigants in the Court of Session: Guidance for party litigants

7 To initiate the case, who exactly do I apply to: to the reception office or the office of the clerk of the court or any other administration?

You should first contact the administrative staff in the court. You can contact the court either in writing, by phone or in person. If you write they will aim to reply to you either in writing or telephone you within 10 working days.

Information about opening times and contact details can be found on the website of the Scottish Courts and Tribunals Service under Court and Tribunal Locations.

The Scottish Courts and Tribunals Service provide staff who are properly trained to carry out the administrative, technical and organisational services necessary for the smooth running of the courts while giving an efficient and courteous service to court users. In that connection there is a Court Users Charter details of which are on the website of the Scottish Courts and Tribunals Service.

Scottish Courts and Tribunals staff are not legally qualified and therefore cannot provide you with legal advice. If you need legal advice, the Law Society of Scotland can provide contact details for solicitors in your area and the Scottish Legal Aid Board can provide information on eligibility for legal assistance.

8 In which language can I make my application? Can I do it orally or does it have to be in writing? Can I send my application by fax or by e-mail?

Court proceedings must be raised in English. Proceedings are conducted in English with the aid of interpreters if requested. Interpreters are paid for by the parties to the action. The necessary forms to raise an action must be taken in person or posted to the court.

9 Are there special forms for bringing actions, or, if not, how must I present my case? Are there elements that have to be included in the file?

In general, to start a claim you must complete a form. The Rules of Court for each type of court specify which forms should be used to raise proceedings in those courts.

Please see the website of the Scottish Courts and Tribunals Service for more information relating to specific courts: Scottish Courts and Tribunals Service.

10 Will I have to pay court charges? If so, when? Will I have to pay a lawyer right from the introduction of my application?

You will usually need to pay court fees at the start of proceedings. The fees differ according to the type of action raised and the court it is raised in. The fees are set in secondary legislation (referred to as Fee Orders) and are regularly updated by Fee Amendment Orders. For the most up-to-date fees, please see the website of the Scottish Courts and Tribunals Service.

In certain circumstances you may be entitled to exemption from paying court fees. Those circumstances are also available on the SCTS website.

Going to court involves fees but there may be further expenses. Usually the losing party will be responsible for

paying the court costs and other expenses incurred by the winning party and their own costs and expenses. In some cases, the judge has some discretion about how much the losing party has to pay. A winning party may still have to cover the costs of their own witnesses or expert evidence.

Lawyers' fees are usually payable at the end of a case. If you win your case the court may order the defender to pay some or all of your lawyers' fees. You should also bear in mind that although the court may make a judgment in your favour (this means ordering the defender to pay you), the court will not automatically take steps to make sure that the money is paid. If the defender does not pay, you will need to ask the court to take action (called 'enforcing your judgment') for which you may have to pay another fee. More information on enforcing judgments can be obtained in a number of leaflets: Leaflets on enforcing judgments

11 Can I claim legal aid?

There are different types of legal funding available in civil matters. The type of funding and eligibility to receive it depends upon a number of factors including the type of legal action and the income of the applicant. More information is available at the website of the Scottish Legal Aid Board.

12 From which moment is my action officially considered to have been brought? Will the authorities give me some feedback on whether or not my case has been properly presented?

An action is begun when the form, writ, summons or petition is served on the defender by the pursuer. Service is usually done by post, but may be done by a Sheriff Officer or Messenger-at-arms.

When a form, writ, summons or petition is presented to a Sheriff Clerk for warranting (or in the Court of Session, presented to the offices of the court for signetting), the administrative staff will check the document to make sure the necessary information has been provided. The administrative staff do not provide legal advice on the merits of a case. Once an action has commenced, the court may still conclude that the action has not been raised correctly.

13 Will I have detailed information about the timing of subsequent events (such as the time allowed for me to enter an appearance)?

The documents served on the defender will provide the defender with information about how to defend the action, within what timescale and when the next hearing of the case will take place.

The Scottish and Courts Tribunals Service tries to arrange all hearings as quickly as possible. In civil cases the target for hearings on evidence is 12 weeks from the date that a hearing on evidence is granted by the court.

Related links

Scottish Courts and Tribunals Service

The Scottish Legal Aid Board

Law Society of Scotland (solicitors, including those with extended rights of audience)

Faculty of Advocates (counsel)

Last update: 25/04/2019

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