Civilinės teisenos srityje nebaigtos procedūros ir procesai, pradėti iki pereinamojo laikotarpio pabaigos, bus tęsiami pagal ES teisę. Remiantis abipusiu susitarimu su Jungtine Karalyste, atitinkama su Jungtine Karalyste susijusi informacija E. teisingumo portale bus saugoma iki 2024 m. pabaigos.

European payment order

Škotija

1 Existence of an order for payment procedure

All claims go through a process where the opportunity is available to defend or respond to the case. If claims remain undefended or undisputed they do not have to be called in court and can dealt with in absence - in effect a simplified procedure for uncontested claims.

1.1 Scope of procedure

Such procedure is available in the Sheriff Court in simple procedure, summary cause and ordinary procedure and in the Court of Session by ordinary summons procedure.

1.1.1 What types of claims are eligible (e.g. only pecuniary claims, only contractual claims etc.)?

Simple Procedure deals with monetary claims up to £5000.

Summary Cause deals with some types of monetary claims up to £5000 i.e. Personal Injury. Simple Procedure has replaced Summary Cause Procedure, but only where it relates to actions for payment, delivery or for recovery of possession of moveable property, or actions which order someone to do something specific.

Ordinary Cause deals with claims over £5000.

The Court of Session deals with claims over £100,000.

1.1.2 Is there an upper limit regarding the value of the claim?

Simple Procedure - limit £5000.

Summary Cause - limit £5000.

Ordinary Cause in the Sheriff Court and Court of Session - no limit.

1.1.3 Is the use of that procedure optional or obligatory?

Each of simple procedure, summary cause and ordinary cause in the Sheriff Court has separate procedures and it is obligatory to follow them. In addition, the Court of Session has separate procedure for ordinary summons and only those claims with a value over £100,000 can be raised in that court.

1.1.4 Is the procedure available if the defendant lives in another Member State or in a third country?

Yes.

Simple Procedure - if the respondent is domiciled in another Contracting State the Sheriff shall not make a decision until it has been shown that the respondent has been able to receive the claim form in sufficient time to respond or that all the necessary steps have been taken to that end.

Summary Cause - if the defender is domiciled in another Contracting State the Sheriff shall not grant decree until it is shown that the defender has been able to receive the summons in sufficient time to arrange his defence or that all the necessary steps have been taken to that end.

Ordinary Cause - the Brussels I Regulation provides jurisdictional rules which must be followed by United Kingdom courts in proceedings whenever the defender is domiciled in another European Union State.

1.2 Competent court

Summary cause and simple procedure applications should be made to the Sheriff Court. Unless other grounds of jurisdiction can be established applications should be made to the court in the area where the defender (or respondent) resides.

Ordinary actions can normally be made either to the Sheriff Court or the Court of Session. The Court of Session has jurisdiction throughout Scotland. Again, in so far as the Sheriff Court is concerned, unless other grounds of jurisdiction can be established applications should be made to the Court in the area where the defender resides.

The procedures are all governed by separate rules of court, which are available on the Scottish Courts and Tribunals Service website.

1.3 Formal requirements

Simple Procedure - shall be commenced by claim form (Form 3A) with a statement to give the respondent fair notice of the claim, details of the basis of the claim and details of the goods etc if the claim arose from the supply of goods.

Summary Cause - shall be commenced by summons (Form 1) with a statement to give the defender fair notice of the claim, details of the basis of the claim and details of the goods etc if the claim arose from the supply of goods.

Ordinary Cause in the Sheriff Court - shall be commenced by initial writ in Form G1. An article of condescendence shall be included in the initial writ covering -

a. the ground of jurisdiction: and
b. the facts upon which the ground of jurisdiction is based.

Ordinary Cause in the Court of Session - by summons, a description and the form of which are set out in the Court of Session rules.

1.3.1 Is the use of a standardised form obligatory? (if yes, where can that form be obtained?)

Yes, in simple procedure a Form 3A and in summary cause a Form 1 must be completed. In ordinary cause the action shall be commenced by initial writ in the Sheriff Court and summons in the Court of Session. These are available on the Scottish Courts and Tribunals Service website under the rules for the respective forms of procedure.

1.3.2 Is representation by a lawyer required?

No, you can present an application on your own behalf but for ordinary cause it is advisable to have a solicitor, as the procedure is relatively complicated. A party litigant (a person not represented by a solicitor) can ask the court for permission for someone to help in civil court proceedings - this person is referred to as a Lay Representative. Further information on Lay Representatives is available on the Scottish Courts and Tribunals Service website.

1.3.3 In how much detail do I have to describe the reason for the claim?

The proceedings should include details of the claim including relevant dates. The larger and more complex the claim the greater is the need for description.

1.3.4 Is it necessary to present written evidence of the claim at issue? If yes, which documents are admissible as proof?

No.

1.4 Rejection of application

The court establishes from the content of the application that the debt is due. The order could be rejected because the forms may be incomplete, the Sheriff may not be satisfied that a ground of jurisdiction exists or the action may have been raised at the wrong court.

1.5 Appeal

Can the applicant appeal against the refusal of a decree in absence? Yes.

Ordinary cause - an appeal can be marked to the Court of Session or Sheriff Appeal Court.

Summary Cause - appeal to the Sheriff Appeal Court.

Simple Procedure - appeal to Sheriff Appeal Court.

In the Court of Session the appeal procedure is called “reclaiming”.

1.6 Statement of opposition

Summary cause - the defender is allowed 21 days within which to complete a form of response which includes a statement giving the pursuer fair notice.

Simple Procdure - the respondent must send a completed Response Form 4A to the court by the last date for a response, indicating that they dispute the claim or part of the claim (such as the amount the respondent should pay the claimant). They must submit any response to the court by the response date specified in the timetable served along with the claims form.

Ordinary Cause in the Sheriff Court - defender allowed 21 days within which to complete a notice of intention to defend in Form 07 and send a copy to the pursuer. The last date by which the notice of intention to defend is to be sent to the Sheriff Court is specified in Form 07.

In the Court of Session the defender if he wishes to oppose the application requires to “enter appearance” by marking a note to this effect on the summons within three days of the case “calling”. This case will not call until the period of notice has expired. The normal period of notice is 21 days.

1.7 Effect of statement of opposition

Simple Procedure - the Sheriff will issue a written order within 2 weeks of the response which which may do any of the following:

(a) refer parties to alternative dispute resolution

(b) arrange a case management discussion

(c) arrange a hearing

(d) if the Sheriiff thinks that a decision could be made without a hearing, indicate that the Sheriff is considering doing so

(e) use the Sheriff's powers to dismiss a claim or decide a case under rule 1.8(11), (12) and (13).

Summary Cause - parties attend a first hearing where the Sheriff will seek to negotiate a settlement.

Ordinary Cause in both the Sheriff Court and the Court of Session - defences require to be lodged, and thereafter the case will follow the rules for defended causes, which unless settled earlier between the parties, will culminate in a proof of the facts in dispute between parties.

1.8 Effect of lack of statement of opposition

In Summary Cause and Ordinary Procedure in both the Sheriff Court and the Court of Session the pursuer could lodge a minute or motion for decree.

In Simple Procedure the claimant can complete an Application for a Decision.

1.8.1 What needs to be done in order to obtain an enforceable decision?

The pursuer (or claimant) would lodge a minute or motion for the decree (or Application for a Decision) and the Sheriff or Judge may grant decree or other competent order in terms of that minute (or Application).

1.8.2 Is this decision final or is there still a possibility for the defendant to appeal against that decision?

Although the Sheriff or Judge grants decree (or makes a decision) it is open to the defender (or respondent) to apply to the court for a recall of that decree (or decision).

Related links

The Scottish Courts and Tribunals Service website includes the Ordinary, Summary Cause and Simple Procedure rules.

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