



Scotland

e-manual appendix





**This publication was funded
by the European Union's
Justice Programme
(2014–2020)**

Disclaimer:

The content of this publication represents the views of the authors, only, and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

What is enforced

Scotland has a long and proud tradition for professional and highly regulated civil enforcement, which seeks to strike the appropriate balance between the commercial interests of the creditor and the human rights of the debtor.

The Scottish court system and judiciary are responsible for administering both criminal and civil law, both of which are devolved issues in the context of the current UK political landscape. Since the establishment of the Scottish Parliament in 1999, the Scottish Government has sought to modernise all aspects of our legal system and support the key organisations, which are collectively responsible for supporting the administration of justice in Scotland.

The most common enforceable title is known as an “extract decree” typically in relation to a personal, commercial or family law dispute. This document is obtained by the creditor following a court process, where both parties will be represented in court and a judge will pronounce his decision or “decree”. Any judgment or document to be enforced in Scotland must contain specific wording: “grants warrant for all lawful execution hereon”

At the end of the litigation process, a decree will become enforceable after a brief period of time to allow for an appeal. If an appeal has been lodged against the judgement, then enforcement cannot proceed until the appeal has been disposed of. Where the court action goes undefended, then the creditor must wait either 7, 14 days or 28 days, dependent on the debt value and process used. Thereafter, the judgment can be issued by the court and passed to a judicial officer for enforcement.

We also have specialist, dedicated courts, called tribunals, which deal with employment disputes and private landlord matters. These tribunals are intended to be relatively low cost and follow the same legal principals as the traditional court process, with a “decision” being issued, which is the same as an extract decree.

To ensure harmonisation with other parts of the UK and our European neighbours, the Scottish Parliament have adopted both EU and UK legislation, to ensure that all rules and regulations remain compatible with UK and European legislation, including cross border regulations on service and enforcement. The final outcome of negotiations between the UK and EU, will shape and codify the future reciprocal arrangements for cross border enforcement in Scotland.

Who enforces

The key actor and judicial officer in Scotland, with unique responsibility for enforcing a civil court judgement, is the *Messenger-at-Arms* and *Sheriff Officer*. Both are ancient offices of court, predating the

establishment of our existing, modern police force. To understand the difference between a *Messenger-at-Arms* and *Sheriff Officer*, we must first consider the structure of the Scottish court system.

The supreme civil court is in the *Court of Session* in Edinburgh, which deals with the most complex and highest value civil litigation. A judicial officer authorized for this court, is called a *Messenger-at-Arms*. In addition to the Supreme Court, Scotland is divided into six geographical regions, called *Sheriffdoms*, which are subdivided into a further 39 *Sheriff Court* districts, which is the lower, local court. The judicial officer servicing these courts is known as a *Sheriff Officer*.

Judicial officers in Scotland are a liberal profession, responsible for operating a commercial business, with no direct financial support from government or the court system. All Judicial officers hold public office, by way of a *personal commission* from the Sheriff Principal, responsible for the administration of justice, in the area where the officer wishes to operate. Their fees and tariffs are regulated and not normally subject to commercial negotiation and discounting.

Access to the profession is controlled by specific regulation, culminating in a professional examination, prior to formally applying for an appointment by way of a petition to the relevant court. At the point of receiving a commission, the judicial officer will swear an oath to discharge their duties "*without fear nor favor*" to either party, which enshrines impartiality as an essential requirement of their public appointment.

All judicial officers will commence their career as a *Sheriff Officer*, which will require a training period of three years with an established Sheriff Officer business. This is to ensure that the trainee officer will have an opportunity to learn all the practical and technical skills necessary to function as an effective judicial officer. A key aspect of this training, is the ability to engage with citizens in the correct manner, by being both compassionate and assertive, dependent on the varied, individual circumstances and social environment of the people they deal with every day. This three-year training period can be reduced to not less than 12 months, if the candidate has other relevant life skills, such as a legal background, police or possibly military training. The decision to reduce this training period is authorized by the *Sheriff Principal* upon request.

After being qualified for two years, most *Sheriff Officers* will wish to progress their career by qualifying as a *Messenger-at-Arms*. The qualification process is broadly similar, culminating with a challenging professional examination and on this occasion, a petition to the *Court of Session*, for a commission to serve Scotland's supreme court. If successful, the new commission will be issued by the *Lord Lyon King of Arms* who holds one of the most ancient offices of state, responsible for all heraldic matters in Scotland. By association, there is a real sense of dignity and prestige

associated with this granting of a commission to a newly qualified *Messenger-at-Arms*.

All matters relating to judicial officers in Scotland are regulated by the *Messenger-at-Arms and Sheriff Officer rules 1991*. Another important feature of the regulation of Scottish judicial officers, is the function and role of the national chamber; *The Society of Messengers-at-Arms and Sheriff Officers (SMASO)*.

This organization is the only statutory recognized, professional association for judicial officers, which requires mandatory membership for all judicial officers. At a practical level, with relevant support from the government and judiciary, *SMASO* deals with much of the day-to-day administration of judicial officers, by overseeing robust codes of conduct which demand the very highest standards of professionalism and integrity. This oversight role has worked well over many years and only when it is necessary to amend legislation or adapt codes of conduct, will *SMASO* consult and seek direction from the *Lord President of the Court of Session*, who is Scotland's most senior civil court judge, with ultimate control over the country's judicial officer profession.

In terms of managing complaints, typically most disputes are resolved amicably between the complainer and the judicial officer concerned. Where this is not possible, then a complainer can seek redress via *SMASO*, which will thoroughly investigate any alleged misconduct by a judicial officer. Again, the focus will be on finding a rapid and acceptable resolution to the complaint. The officer concerned will be required to account for their actions and co-operate fully with the investigation.

Where it is established that there has been significant misconduct, then *SMASO* will escalate the complaint to the appropriate *Sheriff Principal*, who will deal the matter in accordance with the aforementioned, judicial officer regulation.

It is also possible for the complainer to contact the *Sheriff Principal* direct, without first approaching *SMASO*. As appropriate, the matter will be fully considered, possibly resulting in an impartial lawyer being appointed to conduct a full investigation, by interviewing everyone concerned and gathering relevant evidence of misconduct. Based on these findings, the *Sheriff Principal* will consider the most appropriate formal sanction, which may include temporary or permanent loss of office and/or a financial penalty. Possibly due to the professional status of the judicial officers in Scotland, there has been remarkably few instances of formal complaint proceedings in recent years, which suggests that the current arrangements for controlling the profession are operating satisfactorily.

Enforcement procedure

All enforcement will be carried out by the judicial officer, strictly in accordance with current legislation and only with the authority of a judgement or other enforceable title. The process for initiating a legal action in Scotland, is known as *citation*. Typically, a claim will be served by a lawyer by registered post and if unsuccessful, then it will be passed to a judicial officer for hand service, always in accordance with specific rules of service.

An interesting feature of the Scottish system is that the officer is normally accompanied by a colleague who will “witness” or verify the service of the court document. A certificate of service is then provided by both the officer and witness, which describes when and how the document was served. This robust approach means that it is very rare for a judicial officer’s, hand service to be later challenged, significantly strengthening the integrity of the whole litigation process.

Once the claim form has been served, the case will be heard in court and the judge (*Sheriff*), will issue his decision which if not defended or later appealed, is published in the form of an *extract decree*, which must be properly formatted, including the words “*grants warrant for all lawful execution hereon*”. Without this document, the judicial officer will have no authority or involvement.

In the majority of cases, the starting point for enforcement known as *Diligence*, is the service of a formal command to pay, called a *Charge for Payment*, delivered by hand by the judicial officer and witness. This form will contain all relevant details from the extract decree, including a statement of debt, with all sums owed including court expenses, judicial interest and judicial officer costs. The debtor will have either 14 or 28 days (dependent on their whereabouts) in which to respond, by paying the debt or negotiating a suitable repayment plan, failing which then enforcement will proceed to the next stage.

Dependent on the circumstances, the judicial officer will recommend the most appropriate next stage always using professional judgment and any intelligence obtained from the previous visit.

If the debtor’s place of employment is known, then an *Earnings Arrestment* will be served by registered post. This must be actioned by the employer, by taking approximately 10% from the net salary on every pay day, until the debt is paid in full.

Another enforcement option is a *Bank Arrestment*, which will freeze funds in the debtors’ account. Timing is critical as there must be a credit balance at the exact date and time of the hand service. Also, if it is a personal account, then the debtor must be left with a protected sum of approximately **600 euros** for essential living expenditure. This protection is not applicable for a business bank account.

The procedure in Scotland for seizing and selling moveable goods is known as *Attachment and Auction*. This is only used in business premises or out-with the debtor's home.

The process for seizing goods within the debtor's home, known as an *Exceptional Attachment*, is very rarely used due to practical considerations and unless there is a real abundance of non-essential, luxury assets, then the process is not worth considering. There are strict debtor protection measures in place for *attachment*, which are more fully explained elsewhere in this report.

A useful preventative measure available to a creditor is *Inhibition*, which will block the sale of immovable property, such as land or buildings. It will also stop the debtor from using the property to secure future borrowings. Most types of judgement authorize *Inhibition* which can be renewed every five years. At present, there is no effective process in Scotland which will force the sale of immovable property apart from formal bankruptcy proceedings.

Duration of enforcement procedure

The starting point from any enforcement process, unless the creditor already holds a judgement, will be initial litigation process. The value of debt, nature of the dispute and whether the action is defended, will dictate the timeline, which might be 2/3 months or several years if held up by lawyers, debating complex legal issues.

Once the judgement has been obtained, the actual enforcement process is relatively quick. The judgement will be passed to a judicial officer who will initiate the most effective process, dependent on the debtor's circumstances.

Typically, where the debtor's employment is established, then the process will take approximately one month to have an *Earnings Arrestment* in operation. This is the most effective process for all concerned, as the debtor will be left with most of their salary and the creditor will eventually be paid in full, unless the employment is terminated for any reason.

A *Bank Arrestment* can be served immediately following the issue of a judgment. The bank must declare if money has been successfully frozen within 3 weeks and then released to the creditor after 14 weeks.

The seizure and sale of moveable goods, known as *Attachment*, is likely to take approximately 2 to 3 months to complete, as there are several stages, with strict timelines to be observed. It is also necessary to submit a report to court, to be audited before any money from an auction can be released to the creditor.

The process for stopping the debtor from selling immovable property (land or buildings), known as *Inhibition* takes approximately two weeks, from the initial service and then the registration in the appropriate *Inhibition Register*. Typically, this is used for large debts and remains a useful option if

the creditor is patient and prepared to wait. The *Inhibition* will remain in force for five years if not extended.

Cost of enforcement procedure

The fees payable to judicial officers are strictly controlled by procedural rules from the Court of Session. They are reviewed regularly by an independent body of experts, under the supervision of the *Scottish Civil Justice Council*, which will then make a recommendation to the *Lord President*, to adjust the statutory table of fees, typically in line with inflation.

To provide an indication of the cost of typical service or enforcement measures in Scotland, the following is a brief summary what a foreign creditor may be required to pay (as at Q4 2020). We have converted pounds sterling (GBP) into euros, at a rate of £1.00 = euro 1.10

Service	Fee
Service of document under EU Regulation 1393/2007	£142.51 GBP / Euro 157.00
Initial demand to pay (Charge for Payment)	Euro 115.00
Service of bank attachment	Euro 115.00
Service of and Earnings Arrestment (postal)	Euro 72.00
Attachment of moveable goods value of Euro 1,000.00	Euro 180.00
Attachment of moveable goods value of Euro 5,000.00	Euro 510.00
Auction of moveable goods	Euro 300.00 + expenses (removal/tradesmen)
Serving Inhibition (stops sale of immovable property)	Euro 115.00

Although Scottish judicial officers have ancient origins and traditions, they remain trusted, regulated and professional, always ready to adapt and react positively to changes in society and the challenges which modern technology and digitization will offer. In the meantime, all stakeholders continue to have fair access to justice, delivered by dedicated judicial officers, who will continue to enforce the authority of the courts in a fair, proportionate and compassionate manner.

