

Glossary of Scottish Litigation Terms



SHEPHERD+ WEDDERBURN

Scotland has a separate court system to England & Wales. Although the overall procedure is quite similar, very different terminology is used in the two jurisdictions. This glossary provides the E&W equivalents for Scottish terms and procedures, or the closest thing to an equivalent as there are often subtle differences.

Scottish Term	English Term
Abandonment	Discontinuance
Absolvitor	Judgment pronounced when the court finds in favour of the defender – has <i>res judicata</i> effect i.e. the same claim cannot be raised again
Advocate	Member of the Scottish Bar – equivalent of Barrister
Answers	Statement of defences
Appearance	Where a defender intimates his intention to defend
Arrestment	Attachment / freezing money or moveable property
Assignment	Assignment
Articles of Condescence	Numbered paragraphs in Summons or Writ setting out case
Aver	To state in written pleadings
Avizandum	Literally, “to be considered”. An oral or written decision will be issued by the Court following deliberation
Brevitatis causa	For the sake of brevity
Caution (rhymes with ‘station’)	Security against the occurrence of a certain event, eg. for expenses / costs
Caveat	Legal document lodged so that warning will be given to party before any interim order granted
Conclusion	Statement of precise order sought in Court of Session
Crave	Statement of precise order sought in Sheriff Court
Debate	Hearing (legal argument)
Decree	Final Judgment
Decree by Default	Final Judgment, issued where one party fails to do something required by the court – no <i>res judicata</i> effect, i.e. same claim can be made again subject to prescription
Decree in Absence	As above, but where defender fails to lodge notice of intention to defend or defences
Defender	Defendant
Delict	Tort
Diet	Hearing date
Expenses	Costs
Extract Decree	A written form of decree signed by a clerk of court which can be enforced
Inhibition	Procedure which prohibits a debtor burdening or disposing of heritable property



Scottish Term	English Term
Initial Writ	Document by which proceedings are initiated in Sheriff Court
Interdict	Injunction
Interlocutor	Order of the court
Messenger-at-Arms (Court of Session) and Sheriff Officers (Sheriff Court)	Officers of the Court whose function is to execute civil warrants (like Process servers)
Motion	Application
Parole Evidence	Oral evidence of a witness, the usual method of presenting evidence in Scottish courts (as opposed to by witness statement)
Petition	Court document initiating civil action in Court of Session where an administrative order is sought as opposed to seeking to enforce a right against a defender
Petition for Directions	Trustees can ask the Court of Session to consider specific legal questions related to the trust, like a Part 8 Application
Precognition	Formal statement taken by another person – not for lodging in court
Preliminary Plea	Legal issue that could result in dismissal of proceedings
Proof	Trial
Pursuer	Claimant/Plaintiff
Reclaim	Appeal
Record (emphasis on second syllable)	Combined written pleadings of both parties
Section 1 Order	Order for pre-litigation recovery of documents or other physical evidence (covers dawn raids)
Signet	Seal of the Sovereign which must be embossed upon a Summons by the clerk of the Court of Session before it can be served on the Defender
Sist	Stay
Special Case	Alternative to a Petition for Directions, where Court of Session is asked to consider specific legal questions
Specification of Documents	Accompanies a motion for recovery of documents; lists the specific categories of documents sought
Stated Case	Appeal procedure involving original decision maker providing appeal court with a summary of the evidence and findings
Summons	Court document initiating civil action in Court of Session
Taxation	Assessment of costs/expenses
Tender	Part 36 offer to settle, but lodged with the court