



## Higher National Unit specification

### General information

**Unit title:** Sheriff Court Civil Procedure

**Unit code:** H4FT 35

**Superclass:** EC

**Publication date:** June 2013

**Source:** Scottish Qualifications Authority

**Version:** 01

### Unit purpose

The purpose of the Unit is to provide learners with the knowledge and skills required of paralegals working in a law firm, and those who aspire to the role, to gain an understanding of the procedures and documentation applicable to the various types of civil action commenced in the Sheriff Court. It is intended to provide learners with knowledge which can be applied in the workplace by those individuals who may wish to pursue a career within the legal sector.

### Outcomes

On successful completion of the Unit the learner will be able to:

- 1 Apply the correct procedures and documentation used in Small Claims actions.
- 2 Apply the correct procedures and documentation used in Summary Cause actions.
- 3 Apply the correct procedures and documentation used in Ordinary Cause actions.

### Credit points and level

2 Higher National Unit credits at SCQF level 8: (16 SCQF credit points at SCQF level 8)

### Recommended entry to the Unit

Access to this Unit is at the discretion of the centre. However, learners would normally be expected to have competence in *Communication* at SCQF level 6. Although no prior knowledge is assumed, prior achievement of D32B 12 *Scottish Legal Framework* or F1A7 34, *Scottish Legal System*, would be advantageous.

## **Higher National Unit specification: General information (cont)**

**Unit title:** Sheriff Court Civil Procedure

### **Core Skills**

Opportunities to develop aspects of Core Skills are highlighted in the Support Notes for this Unit specification.

There is no automatic certification of Core Skills or Core Skill components in this Unit.

### **Context for delivery**

If this Unit is delivered as part of a Group Award, it is recommended that it should be taught and assessed within the subject area of the Group Award to which it contributes.

### **Equality and inclusion**

This Unit specification has been designed to ensure that there are no unnecessary barriers to learning or assessment. The individual needs of learners should be taken into account when planning learning experiences, selecting assessment methods or considering alternative evidence.

Further advice can be found on our website [www.sqa.org.uk/assessmentarrangements](http://www.sqa.org.uk/assessmentarrangements).

## Higher National Unit specification: Statement of standards

### Unit title: Sheriff Court Civil Procedure

Acceptable performance in this Unit will be the satisfactory achievement of the standards set out in this part of the Unit specification. All sections of the statement of standards are mandatory and cannot be altered without reference to SQA.

Where evidence for Outcomes is assessed on a sample basis, the whole of the content listed in the Knowledge and/or Skills section must be taught and available for assessment. Learners should not know in advance the items on which they will be assessed and different items should be sampled on each assessment occasion.

### Outcome 1

Apply the correct procedures and documentation used in Small Claims actions.

#### Knowledge and/or Skills

- ◆ Types of Small Claim actions:
  - Payment
  - Recovery of moveable property
  - Implement of an obligation
- ◆ Small Claims documentation when litigant(s) is/are (i) Private individual (ii) Company
- ◆ Court Fees and exemptions
- ◆ Preparation of a summons
- ◆ Service and return of the summons
- ◆ The Return Date
- ◆ The Hearing Date
- ◆ Continued Hearings
- ◆ Defended and undefended causes
- ◆ Preparation for the proof:
  - Witnesses
  - Productions
  - Evidence
  - Incidental matters and sists
  - Representation of party litigants
- ◆ Sheriff Court Decrees and enforcement
- ◆ Criteria for expenses
- ◆ Award of expenses
- ◆ Recall of a Decree
- ◆ Appeals
- ◆ Acts of Sederunt
- ◆ Small Claims Rules

## Higher National Unit specification: Statement of standards (cont)

**Unit title:** Sheriff Court Civil Procedure

### Outcome 2

Apply the correct procedures and documentation used in Summary Cause actions.

#### Knowledge and/or Skills

- ◆ Types of Summary Cause actions:
  - Payment of money
  - Delivery
  - Specific implement
  - Recovery of possession of heritable property or moveables
  - Furthcoming
  - Multiplepinding
  - Count, reckoning and payment
  - Personal Injury Action
- ◆ Court Fees and exemptions
- ◆ Summary cause documentation
- ◆ Preparation and service of a summons
- ◆ The Return Date
- ◆ The Calling Date
- ◆ Preparation for the proof:
  - Witnesses
  - Productions
  - Evidence
  - Examination-in-chief
  - Cross-examination of litigants
  - Incidental matters
  - Representation of litigants causes
- ◆ Defended and undefended causes
- ◆ Summary Cause Decrees
- ◆ Award of expenses
- ◆ Recall of a Decree
- ◆ Appeals
- ◆ Summary Cause Rules
- ◆ Acts of Sederunt

## Higher National Unit specification: Statement of standards (cont)

**Unit title:** Sheriff Court Civil Procedure

### Outcome 3

Apply the correct procedures and documentation used in Ordinary Cause actions.

#### Knowledge and/or Skills

- ◆ Types of Ordinary Cause actions:
  - Payment of money
  - Delict
  - Specific implement of an obligation
  - Furthcoming
  - Declarator
  - Multiplepounding
  - Family
  - Heritable property
  - Personal Injury actions
  - Interdict
- ◆ Drafting an initial writ
- ◆ Service of the initial writ
- ◆ undefended causes
- ◆ Decree in absence
- ◆ Reponing
- ◆ Defended causes
- ◆ Standard Procedure
- ◆ Lodging defences
- ◆ Productions
- ◆ Recovery of documents
- ◆ Adjustments and amendments
- ◆ The Options Hearing
- ◆ Preparation for the Proof:
  - Witnesses
  - Evidence
  - Minutes of admission
  - Examination-in-chief
  - Cross-examination of litigants
  - Representation of litigants
- ◆ Sheriff Court Decrees
- ◆ Award of expenses
- ◆ Appeals
- ◆ Current Ordinary Cause Rules
- ◆ Acts of Sederunt

## Higher National Unit specification: Statement of standards (cont)

**Unit title:** Sheriff Court Civil Procedure

### Evidence Requirements for this Unit

Learners will need to provide evidence to demonstrate their Knowledge and/or Skills across all Outcomes.

Learners will be presented with two case studies dealing with civil disputes which are to be heard in the Sheriff Court under Ordinary Cause and Summary Cause procedures. Learners will take on the role of a paralegal who has been instructed by a litigant involved in the dispute and, under the guidance of a supervising solicitor, will advise the client accordingly.

The assessment will be in two parts:-

- (i) The case studies should provide the required information to allow learners to provide documentation for an Ordinary action and a Summary Cause action. For these actions, learners will draft an initial writ and a Summary Cause form. Learners will have a maximum of one week from receipt of the case study to complete and submit the necessary documentation in their own time.
- (ii) Learners will undertake an assessment under closed-book, controlled conditions which samples their knowledge across the three Outcomes.

Satisfactory achievement for (i) will consist of:

Ordinary action — drafting an initial writ

- the learner incorporating the relevant information from the case study into the initial writ which is to be in the correct format and must comply in all respects with the requirements of the current Act of Sederunt (Ordinary Cause Rules 1993 No. 1956 (S.223);

Summary Cause — Summary Cause forms

- the learner incorporating the relevant information from the case study into the correct summary cause forms, stating the facts clearly, accurately and in sufficient detail and in accordance with all requirements stated in the current Act of Sederunt (Summary Cause Rules) 2002 No. 132;

Satisfactory achievement for the assessment in (ii) will be the learner correctly explaining:

- ◆ the procedure between the expiry of the period of notice and the Options Hearing;
- ◆ who controls the procedure for serving the initial writ
- ◆ at least one of the types of Ordinary Cause actions



## Higher National Unit Support Notes

**Unit title:** Sheriff Court Civil Procedure

Unit Support Notes are offered as guidance and are not mandatory.

While the exact time allocated to this Unit is at the discretion of the centre, the notional design length is 80 hours.

### Guidance on the content and context for this Unit

This Unit is part of the Professional Development Award in Debt Recovery at SCQF level 8. The PDA in Debt Recovery delivers the essential skills and knowledge for practising debt recovery paralegals and is suitable for continuing professional development (CPD), or for anyone seeking to enter employment in this area.

With the implementation of the Law Society of Scotland Registered Paralegal Scheme, paralegals require a formal qualification such as the PDA in Debt Recovery to register under the new scheme.

This PDA is jointly awarded with the Scottish Paralegal Association (SPA) which is formally recognised by the Law Society of Scotland as the body that represents the interests and promotes the development of paralegals in Scotland. When registering for the PDA, learners can enrol with SPA as a student member — or at a higher level depending on relevant work experience. They will be able to:

- ◆ be part of a recognised Grading Scheme.
- ◆ keep abreast of developments in law through CPD.
- ◆ join the members' reward scheme.
- ◆ attend the SPA Annual Conference.
- ◆ be part of a national network of paralegals.

The purpose of the Unit is firstly to provide learners with knowledge of the Sheriff Court system of civil practice in Scotland. The Unit is mainly designed to aid law students, or learners whose professional roles do, or may in the future, involve the civil court system in Scotland.

Although civil law is not confined to the Sheriff Court system of Scotland, many civil court actions are privative within this structure — that is, only the Sheriff Court setup is able and competent to deal with certain actions.

With the implementation of the new Law Society of Scotland Registered Paralegal Scheme, paralegals will require a formal qualification such as the PDA in Debt Recovery to register under the new scheme. The ability to complete official Sheriff Court forms and understand and administrate coherently in this area is of paramount importance, particularly to learners who work or plan to work in a legal environment.

## Higher National Unit Support Notes (cont)

### Unit title: Sheriff Court Civil Procedure

There are various legal procedures and definitions which learners may not have come across, and may not come across again if they are not directly involved in the provision of civil law services. In Outcome 1, with regards to 'Small Claims' documentation, learners should be made aware that there are numerous Small Claim forms, for example, the learner should ultimately be able to differentiate between what are currently known as Forms 1a and 1b, depending on whether the action being taken is against a private individual or a company.

In Outcome 1, learners should be made aware of the differences between the Return Date, the Hearing Date and Continued Hearings.

In Outcome 2, learners should be made aware of the rules as they relate to expenses being claimed, and how this is decided and by whom. Further, it is vital that they are made aware of the differences between, and the importance of, the Return date and Calling date. Personal injury actions are also vital in terms of awareness and assessing centres may even wish to make this central to one or both of the case studies, possibly using the initial writ form PI1 as a style. Lecturers may wish to consider referring learners to the Scotcourts website or any other relevant resource to view styles.

Regarding incidental matters and sists, the potential difficulty for learners is that they may not fully appreciate how there can be a hearing within a hearing. This again could be resolved by the visual presentation of illustrated diagrams.

Regarding teaching on the recovery of possession of heritable or moveable property, this area of teaching could be integrated with teaching on what action of payment of money is ie if you are raising an action for recovery of possession of heritable property you could add a claim for payment of a sum of money (not exceeding £5000) for example, if the party was in rent arrears.

Assessment for Outcome 2 could also relate specifically to the area of Payment of Money, such as successful completion of the correct forms relating to debt recovery aspects such as unpaid bills, money owed from a loan, or compensation due to damaged caused by inferior workmanship.

In Outcome 3, one area that forms part of Knowledge and/or Skills are actions relating to Family Law. Family Law is just one example of an action that can be raised under the Ordinary Cause procedure. Other areas that could be taught and/or used for the basis of assessment purposes are civil partnership actions (including dissolution) and matters in relation to the Equality Act 2010, as well as divorce matters or even matters involving children, such as residence orders.

## Higher National Unit Support Notes (cont)

**Unit title:** Sheriff Court Civil Procedure

### Guidance on approaches to delivery of this Unit

The suggested allocation of teaching time when delivering this Unit is as follows:

- ◆ Outcome 1 — 30%
- ◆ Outcome 2 — 30%
- ◆ Outcome 3 — 40%

There is no need for learners to have an understanding or working background in civil or criminal law, Scots or otherwise, as this Unit is designed to develop knowledge and skills in civil law to the extent that they will then be able to deal with form completion, amongst other areas. The theoretical aspect of this Unit is important, but learners must be able to apply this theory into the successful completion of working examples in their assessment(s).

Further, with the areas of Decree in Absence and Reponing, these areas could be taught with an overview strategy.

These are areas where, productively, lecturing time could be spent describing one of the main areas of court procedure eg drafting an initial writ. The Knowledge and/or Skills topic of Award of Expenses could involve the lecturer explaining in detail the difference between court expenses and personal expenses. Both expenses can be claimed, however it is important to explain specifically what personal expenses can actually be reimbursed. Separately, Acts of Sederunt can be cumbersome and difficult for the learner to understand. More time would be beneficial to this particular element eg combine this section with Ordinary Cause Rules and explain how one compliments the other. The teaching of these particular elements holistically could make it easier to process for the learner.

### Guidance on approaches to assessment of this Unit

Evidence can be generated using different types of assessment. The following are suggestions only. There may be other methods that would be more suitable to learners.

Centres are reminded that prior verification of centre-devised assessments would help to ensure that the national standard is being met. Where learners experience a range of assessment methods, this helps them to develop different skills that should be transferable to work or further and higher education.

Evidence can be accepted from learners undertaking such activities in the workplace, such as practising paralegals.

Learners will provide written/oral evidence of knowledge to show in relation to the questions.

- ◆ The geographical, privative and concurrent jurisdiction of the Sheriff Court in relation to civil actions
- ◆ The different types of civil actions which may be commenced before the Court
- ◆ The most important characteristics of the relevant civil procedure
- ◆ How a party may appeal a decision of the Sheriff Court in a civil dispute
- ◆ The rules relating to prescription and limitation of civil actions

## Higher National Unit Support Notes (cont)

### Unit title: Sheriff Court Civil Procedure

It is highly recommended that learners be provided with computer templates or hard copies of styles of legal correspondence commonly used in civil actions. Learners should not be expected to attempt to draft styles of legal correspondence or official documentation.

The questions in part (ii) of the Assessment could allow learners to put their answers into the context of the case studies which they have completed in (i). Learners could provide written or oral evidence. Alternatively, the questions in part (ii) could be unrelated to the case studies, so long as they cover what is required.

Evidence can be generated using different types of instruments of assessment. The following are suggestions only. There may be other methods that would be more suitable to learners.

Centres are reminded that prior verification of centre devised assessments would help to ensure that the national standard is being met. Where learners experience a range of assessment methods, this helps them to develop different skills that should be transferable to work or further and higher education.

### Opportunities for e-assessment

E-assessment may be appropriate for some assessments in this Unit. By e-assessment we mean assessment which is supported by Information and Communication Technology (ICT), such as e-testing or the use of e-portfolios or social software. Centres which wish to use e-assessment must ensure that the national standard is applied to all learner evidence and that conditions of assessment as specified in the Evidence Requirements are met, regardless of the mode of gathering evidence. The most up-to-date guidance on the use of e-assessment to support SQA's qualifications is available at [www.sqa.org.uk/e-assessment](http://www.sqa.org.uk/e-assessment).

## Higher National Unit Support Notes (cont)

**Unit title:** Sheriff Court Civil Procedure

### Opportunities for developing Core and other essential skills

The Unit should provide learners with an opportunity to develop the following Core Skills/Core Skill components at SCQF level 6, although there is no automatic certification of Core Skills or Core Skills components:

- ◆ *Problem Solving*
- ◆ *Communication*
- ◆ *Working with Others*
- ◆ *ICT*
- ◆ *Numeracy*

All elements of the Core Skill of *Problem Solving* — Critical Thinking, Planning, Organising, Reviewing and Evaluating — will be naturally developed as learners analyse case studies, identify salient points of law and apply these as appropriate. Identifying the important and relevant parts of the information provided in both case studies, and being able to correctly transfer this information to the relevant forms requires a high level of analytical and strategic thinking. Applying accurate knowledge of Sheriff Court rules and procedures, under the guidance of the supervising solicitor as per the Evidence Requirements of the Unit, is critical to achievement. Discussion of case studies during formative work will offer opportunities to reinforce skills in analytical evaluation of issues and Outcomes.

Learners must research, analyse and critically evaluate a range of complex legal information before presenting written or oral responses that are technically accurate and to a professional standard. They need to be made fully aware of the crucial importance of technology in sourcing and presenting complex legal information and how it can be used to view examples of draft styles and writs, which would be beneficial to learners as in practice templates of styles and writs would be accessed and utilised. Accessing, utilising and storing electronic data should be in line with procedures in professional practice.

The specific Written and Oral Communication skills needed to build and maintain working relationships with clients and colleagues should be emphasised in formative work. Awareness of the need to establish the nature and scope of goals, roles and responsibilities while working with others could be encouraged by discussing practical methods to overcome any potential barriers and assure positive Outcomes. In depth understanding of issues will be further enhanced through directed personal study. Group discussion can provide opportunities to explore a range of communication techniques including adaptation of language and register to meet the needs of others.

*Numeracy* requires that learners are aware of the fiscal limits of each of the three distinct procedures under Sheriff Court rules, and are aware of the various rules as they pertain to these procedures with regards to issues including awards of expenses. The calculation of awards and monetary amounts is an integral part of the effective completion of forms in Small Claims, Summary Claims and Ordinary Claims in which the type of action involves monetary amounts being claimed for or central to the type of action.

## History of changes to Unit

| Version | Description of change | Date |
|---------|-----------------------|------|
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## General information for learners

### Unit title: Sheriff Court Civil Procedure

This section will help you decide whether this is the Unit for you by explaining what the Unit is about, what you should know or be able to do before you start, what you will need to do during the Unit and opportunities for further learning and employment.

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The Unit is aimed at those who work as Debt Recovery paralegals and intend to become a Law Society of Scotland Registered Paralegal; those already employed in the legal sector who may wish to broaden their expertise; and learners or others who aspire to the paralegal role.

This Unit will provide you with knowledge of the Sheriff Court system of civil practice in Scotland. Although civil law is not confined to the Sheriff Court system of Scotland, many civil court actions are privative within this structure — that is, only the Sheriff Court setup is able and competent to deal with certain actions.

On completion of the Unit you should be able to:

- 1 Apply the correct procedures and documentation used in Small Claims actions.
- 2 Apply the correct procedures and documentation used in Summary Cause actions.
- 3 Apply the correct procedures and documentation used in Ordinary Cause actions.

Holistic assessment will use a case study which will deal with civil disputes which are to be heard in the Sheriff Court under Ordinary Cause and Summary Cause procedures. You will take on the role of a paralegal who has been instructed by a litigant involved in the dispute and will advise the client accordingly. Additional short answer questions may be used to sample your knowledge and skills that cannot be inferred from the evidence generated by the case study.

There will be opportunities to develop the following Core Skills as well as skills in Enterprise and Employability:

- ◆ *Problem Solving*
- ◆ *Communication*
- ◆ *Working with Others*
- ◆ *ICT*
- ◆ *Numeracy*