

## **ANNEX D                      GLOSSARY OF LEGAL TERMS**

### **Consultation on the Case Management of Family and Civil Partnership Actions in the Sheriff Court**

A glossary of legal terms is available on the Judiciary of Scotland website at <http://www.scotland-judiciary.org.uk/29/0/Glossary>. Terms relevant to this consultation are provided below.

**Action** Proceedings raised by a person in a civil court seeking enforcement of a legal right against another (the defender).

**Acts of Sederunt** Rules passed by the Lords of Council and Session (the judges of the Court of Session) relating to civil procedure.

**Adjust** To alter the written pleadings of an action or its defence in its early stages.

**Affidavit** A signed statement made on oath. Some cases or evidence may be dealt with by affidavit evidence.

**Answers** A statement setting out the factual and legal response of a party to proceedings raised against him or her.

**Appeal** An appeal is a re-hearing of a case by a higher court than the court which first heard the case. A re-hearing means re-consideration by the appellate court of the evidence led and the legal issues considered by the court below.

**Cause** A case before a court.

**Child welfare hearing** A hearing before a sheriff in the sheriff court in family proceedings in which issues of residence and contact are discussed. The parties to the action are expected to appear personally.

**Cite / Citation** (1) To summon to court a party, witness, or juror. (2) To refer in argument to some authority such as a statute or decided case.

**Contact order** A formal order of the court allowing one person to see a child for residential or non-residential access.

**Court of Session** The supreme civil court. The judges of the Court of Session are also the judges of the High Court of Justiciary, the supreme criminal court.

**Crave** The statement of the precise order sought in a civil proceedings in the sheriff court.

**Curator *ad litem*** A person appointed by the court to look after the interests of a party to proceedings who is under legal disability but has no guardian.

**Decree** The common term for a final judgment. (The word is accented on the first syllable).

**Decree by default** A final order granted to a party against another party who has failed to appear, to lodge a document or do something required by the court or rules of court.

**Decree in absence** A final order granted to the pursuer in a civil action where the defender has not lodged a notice of intention to defend or has not lodged defences.

**Defences** The statement by way of defence lodged by a defender in a civil action, being the party against whom a civil action is raised.

**Defender** A person against whom a civil action is raised. The word "defendant" is not used in Scotland.

**Diet** The date fixed by the court for hearing a case for any one of a variety of purposes.

**Evidence** At a criminal trial or a proof in a civil proceedings, witnesses take the oath or affirm to tell the truth and given oral evidence in court in answer to questions. Sometimes written evidence (affidavit evidence) is allowed.

**Hearing** Any proceedings called before a judge.

**Initial writ** The document by which civil proceedings in the sheriff court are normally initiated.

**Interdict** A judicial prohibition or court order preventing someone from doing something. In an emergency, interim interdict can be obtained in the absence of the person against whom the order is sought (i.e. *ex parte*).

**Interim** In the meantime. A temporary court order made until a final order is made.

**Interlocutor** A formal order made by a court containing its decision.

**Inventory of process** A list of the documents in a court process.

**Judge** The judicial office holder who presides over proceedings, i.e. a senator of the College of Justice, a Lord Commissioner of Justiciary in the High Court, a Lord Ordinary in the Court of Session or a sheriff. A judge is addressed as "My Lord" or "My Lady", as the case may be.

**Judgment** (Not judgement.) The decision of a court setting out its reasons for the decision.

**Lord President** The head of the judiciary. He or she presides over the First Division of the Inner House of the Court of Session, the supreme civil court. As Lord Justice General of Scotland he or she is the senior judge of the High Court of Justiciary.

**Motion** An application made in court for an order during the course of court proceedings.

**Obtemper** To obey, usually of the decree or order of a court.

**Options hearing** A hearing in an ordinary action in the sheriff court to decide the next stage in the case. That could be a continuation of the hearing for up to a month to adjust the pleadings, the fixing of a debate on the law or a proof of the facts.

**Ordinary cause** All sheriff court civil actions other than simple procedure claims, summary causes and summary applications, are ordinary actions subject to the Ordinary Cause Rules 1993 in the First Schedule to the Sheriff Courts (Scotland) Act 1907. A claim for £5,000 or more must be by an ordinary action.

**Plea-in-law** A short proposition at the end of a written case showing exactly the legal remedy sought.

**Preliminary plea** A plea-in-law that raises a legal issue that does not relate to the merits of the proceedings but if sustained could result in the proceedings or a part of them being dismissed.

**Pre-proof hearing** A hearing in civil action proceedings to determine whether parties are ready for the proof, whether more or fewer days for proof are required and to establish what the issues are or whether they can be reduced.

**Process** The court papers relating to a cause.

**Production** An article produced and lodged as evidence in court.

**Proof** In addition to its general meaning, this word has the formal sense of a hearing of a case by a judge at which evidence is led orally or by affidavit.

**Proof before answer** Where evidence is heard on the facts before questions of law are determined, there may be a "proof before answer".

**Pursuer** The person suing in a civil action seeking an order against a defender.

**Record** (The accent is on the second syllable.) The pleadings, that is the averments or statements, of the respective claims and answers by parties in civil proceedings lodged in court. When finally adjusted between the parties it is closed by order of the court and becomes the Closed Record; up to then it is an "open" record.

**Reporter** A person, usually a lawyer or other professional person appointed by a court to investigate an aspect of a case.

**Residence Order** A formal order by a court stating with whom a child of a relationship should stay.

**Sheriff** The judge who presides in the sheriff court.

**Sheriff principal** A judge appointed to be in charge, and responsible for the speedy and efficient disposal of business, of a sheriffdom. He or she is also a judge to whom a litigant may appeal a decision from a sheriff.

**Sist** (1) To stay or stop proceedings from continuing in the meantime. (2) To summon or call someone as a party, e.g., sisting a mandatory, or a person seeking to become a party to civil proceedings.

**Warrant** A written authority, e.g. from court, authorising certain actions such as an arrest of a person, a search of premises or an eviction of occupiers. Also used to signify a document evidencing a right of some kind, e.g. in a title to heritable property. Also the formal authority by the court to cite a person to appear before it.