



Your Guide to English and Scottish Banking and Finance Terms

Although many of the legal concepts are similar, there are important distinctions between the law of Scotland and England when it comes to finance transactions. This Guide provides a comparison of terms and expressions and an explanation of some of the key concepts you may encounter in finance transactions with a Scottish element.



Glossary of Commonly used Terms	
English Term	Meaning and/or the Scottish Equivalent
Arbitrator	Arbiter – a person appointed to adjudicate outside the courts in a dispute. On a question of fact, his decision is final; on a question of law, unless otherwise agreed he may (on the application of either party) and must (if the Court of Session so directs) state a case for the court’s opinion on the question of law.
Assignment	Assignment – the act of transferring rights to incorporeal moveable property or the document transferring such rights.
Assignment of Rents	Assignment of Rents – the method by which fixed security over the right to receive rents is taken, perfected by intimating the Assignment of Rents to tenants.
Attachment, distress, execution (all relating to the legal process)	Diligence – a generic term for the methods of enforcing unpaid debts due under decrees of the Scottish courts; enforcement of judgments.
Claimant	Pursuer – a person instituting or suing in a civil action.
Defendant	Defender – the party against whom a civil action has been raised.
Easement	Servitude – an obligation or right attached to land.
Equity	There is no concept of equity under Scots law
Floating Charge	Floating Charge – a Scottish floating charge is a statutory creation (s462 of the Companies Act 1985) and there is no concept of a common law floating charge in Scotland.
Forfeiture	Irritancy – the forfeiture of a right, usually in a leasehold property, through failure to observe, or contravention of, the law or an agreement. Enforcement requires a court decree.



English Term	Meaning and/or the Scottish Equivalent
Freehold	Heritable – the term freehold is broadly equivalent to heritable title and usually referred to as “ownership” in Scotland. When the term “freehold” is used in Scotland, this is generally for the purposes of convenience, but it has no real legal meaning under Scots law.
Full title guarantee	Absolute warrandice – an express or implied personal obligation of a grantor in a grant or sale to indemnify the grantee from anything which conflict with that right.
Hypothecation	Hypothec – a right in security given over the property of a debtor, although (unlike pledge or lien) the creditor does not have possession of the subjects, which remain with the debtor.
Interlocutory injunction	Interim Interdict – a temporary interdict (i.e. a judicial remedy forbidding an act or course of action) granted by the court on an ex parte application for a limited period until both sides can be heard.
Injunction	Interdict (see above)
Land Registry	Registers of Scotland
Legal charge/mortgage	Standard Security – the only form in which an interest in land for the purpose of securing a debt by way of a heritable security may be created, effective upon registration/recording at Registers of Scotland.
Legal interest	Real right – a right enforceable against all (jus in re) (as opposed to a personal right, jus ad rem).
Legal owner	Heritable proprietor – the person having a right to heritable (land) property, even though his or her title is not complete.
Mortgage	Standard security – a form of interest in land for the purpose of security a debt by way of security. The equivalent in Scotland to a mortgage over moveable property in England would depend on the category of moveable in Scotland.
Mortgagee	Heritable creditor – the party to whom a standard security is granted, or, more generally, a security holder.
Notice	Intimation – the act of effective service of notice upon a recipient (often in the context of perfecting an assignation).
Restrictive covenants	Negative real burdens – conditions or burdens on the title, which run with the title and restrict how the property can be used.
Set-off	Retention, compensation and the balancing of accounts in insolvency – “set-off” has no technical meaning in Scots law although in practice it is normally used as a rough generic term for the similar but distinct institutions of Scots law noted above.
Share Charge	Share Pledge – fixed security granted by way of pledge over shares, perfected by registration of the security holder (or its nominee) in the company register of members.



English Term	Meaning and/or the Scottish Equivalent
Surety	Guarantor or cautioner – security for a debt or a deed given by one party in respect of the obligations of another.
Specific Performance	Specific implement – the performance of a contractual or common law obligation, other than by the payment of money.
Stay	Sist – to stay or suspend court proceedings by order of the court.
Suit	Action – civil proceedings to obtain from the court some civil remedy of advantage to the pursuer.
Surrender	Renunciation – the termination of a lease prior to the expiry of the lease term.
Tort	Delict - a civil wrong created by the deliberate or negligent breach of a legal duty, from which a liability to compensate consequential loss and injury may arise.

This guide is intended as a general guide to the common differences between Scottish and English law and practice and reflects the law as at December 2016. The information and expressions of opinions in this guide are not intended to be a comprehensive study, nor to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.