

**EXPLANATORY MEMORANDUM TO  
THE HIGH COURT AND COUNTY COURTS JURISDICTION (AMENDMENT)  
ORDER 2008**

**2008 No. 2934**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 This Statutory Instrument amends the High Court and County Courts Jurisdiction Order 1991 (the “1991 Order”) (S.I. 1991/724) as a consequence of—
    - (a) [Regulation \(EC\) No 1896/2006](#) of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure comes into force on 12th December 2008; and
    - (b) [Regulation \(EC\) No 861/2007](#) of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure comes into force on 1st January 2009, andto supplement Sections I and II of Part 78 of the Civil Procedure Rules 1998 (S.I. 1998/3132) which also come into force on 12th December 2008 and 1st January 2009 respectively. Part 78 has been inserted into the Civil Procedure Rules 1998 by the Civil Procedure (Amendment Rules) 2008 (S.I. 2008/2178).
  - 2.2 The Statutory Instrument also revokes article 2(1)(h) of the 1991 Order. Article 2(1)(h) refers to section 139(5)(b) of the Consumer Credit Act 1974. which has now been repealed by sections 22(3) and 70 of and Schedule 4 to the Consumer Credit Act 2006.
3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Context**
  - 4.1 [Regulation \(EC\) No 1896/2006](#) of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure comes into force on 12th December 2008. It will allow creditors to recover their uncontested civil and commercial claims before the courts of the Member States according to a uniform procedure that operates on the basis of standard forms. The procedure can only be used for monetary claims and there is no limit in the amount for which a claim may be issued. Due to the existence of a procedure that will be common in all Member States, the need for creditors to familiarise themselves with foreign civil procedures will be reduced to a minimum.
  - 4.2 [Regulation \(EC\) No 861/2007](#) of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure comes into force on 1st January 2009. It will, for the first time provide citizens and businesses all over Europe with a speedy and affordable civil procedure which is uniform in all Member States and in all procedural steps from the commencement of the procedure to the final enforcement of the judgement. The procedure will apply in

civil and commercial matters where the value of a claim does not exceed €2000. The procedure applies to pecuniary claims as well as to non-pecuniary claims. The Regulation introduces standard forms to be used by the parties and the court and establishes time limits for the parties and for the court in order to simplify and speed up litigation concerning small claims.

4.3 Both Regulations, when they come into force, will be directly applicable in the United Kingdom. It is therefore unnecessary to transpose the Regulations into national law. The Civil Procedure (Amendment Rules) 2008 (SI2008/2178), inserts a new Part 78 into the Civil Procedure Rules 1998 so as to ensure that those Rules are not inconsistent with both above mentioned Regulations and to make them workable and enforceable in England and Wales.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 This Order provides that proceedings issued under the European order for payment Regulation will be subject to the general rule in article 4A of the 1991 Order, so that if the claim is worth £15,000 or less it will have to be commenced in a county court but if worth more than £15,000 it can be commenced in either the High Court or a county court. This requirement is necessary in order to allow litigants to be able to apply for the issue of a European order for payment on precisely the same jurisdictional basis that they can currently issue claims for a debt, that is from £0 up to £15,000 county court only and £15,000 upwards county court or High Court.

7.2 The Order also inserts a new provision in relation to the European small claims procedure, making it clear that such proceedings have to be commenced in a county court and not the High Court. This is because claims issued under this Regulation are limited to €2000 and will be treated as if they were allocated to the small claims track within the Civil Procedure Rules 1998. The small claims track is one of three case management “tracks” to which defended civil claims in the county courts are allocated by the court. The other tracks are the fast track and the multi-track. Through allocation, the court aims to ensure that cases are dealt with in a manner appropriate to their value and complexity, and at proportionate cost. The purpose of the small claims procedure is to provide a forum in which relatively straightforward, low value claims can be dealt with in an accessible and user-friendly way, quickly and at proportionate cost. In order to fulfill this function, the procedure is simple and informal. Under Part 27 of the Civil Procedure Rules 1998, a district judge in the county court normally carries out claims allocated to the small claims track.

## **8. Consultation outcome**

8.1 The “1991” Order is made under sections 1 and 120 of the Courts and Legal Services Act 1990. Section 1 provides, amongst other things, that the Lord Chancellor may by order make provision allocating proceedings to the High Court

or to county courts (s.1(1)(d)) and specifying proceedings which may be commenced only in a county court (s1 (1)(e)).

8.2 Before making the order, the Lord Chancellor must consult the Lord Chief Justice (or nominee), the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court and the Senior Presiding Judge (appointed under section 72). The Lord Chancellor, having undertaken such a consultation, has received agreement from all those consulted.

8.3 A range of key stakeholders were consulted on the European Commission's proposals for a European small claims procedure which was published on 15 March 2005 <http://www.dca.gov.uk/consult/smallclaims/smallclaims.htm> During the limited 6-week consultation period starting from 15th June 2005, consultees were invited to comment on both the proposed regulation and a Partial Regulatory Impact Assessment. In particular consultees were informed that the Government proposed to negotiate on the following issues:

- Whether the procedure should apply to internal cases as well as cross-border cases.
- The proposed €2,000 limit.
- The possibility of limiting parties' exposure to costs.

A total of 21 responses were received. 16 respondents supported the general principle of a European Small Claims Procedure, while the remaining 5 did not comment specifically on that issue.

8.4 A focused consultation exercise with key stakeholders was undertaken for the European Commission's proposals for creating the European order for payment procedure. The findings from both the informal consultation exercise and the views of stakeholders who attended the DCA Debt Strategy workshops in July and December 2004 provided a wide enough range of views on whether the proposals could be implemented in terms of the three options specified in the Partial Regulatory Impact Assessment published at the time.

8.5 The proposals for both of these European Union Regulations were the subject of the UK Parliamentary scrutiny process.

## **9. Guidance**

The 47<sup>th</sup> update to the Civil Procedure Rules 1998, containing the new Part 78 was published on the Ministry's website on 1st October 2008 and can be found at [http://www.justice.gov.uk/civil/procrules\\_fin/contents/practice\\_directions/pd\\_part78.htm](http://www.justice.gov.uk/civil/procrules_fin/contents/practice_directions/pd_part78.htm). This update informs all key stakeholders and court users about the new Regulations. Further guidance on the Regulations in the form of court user information leaflets are also being prepared to assist court users in using both procedures, and will be published in due course.

## **10. Impact**

10.1 A full and final Impact Assessment has not been prepared for this instrument, as it has merely implements one aspect of the Regulations which are directly applicable in England and Wales. Partial Regulatory Impact Assessments were undertaken for both Regulations.

10.2 Both Regulations will potentially affect all those in the UK (including Gibraltar) who wish to pursue a money claim, which is unlikely to be defended, or a low value claim against a defendant in another Member State. The Regulations will operate across Members States of the EU only (excluding Denmark) and will apply regardless of the nationality of the parties to the legal proceedings. They therefore have the potential to include anyone who travels abroad on holiday or business or does business with someone in another Member State. They are likely to be of particular assistance for dealings between commercial businesses established in different Member States. The affect will be limited to those who choose to make use of the procedures. It will remain open to creditors to continue to use the current procedures either in domestic cases or in cross-border litigation.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 No special measures have been introduced to minimise the impact of the requirements on firms employing up to 20 people.

11.3 As both Regulations are optional procedures, no special measures are foreseen for small businesses.

## **12. Monitoring & review**

12.1 By 12th December 2013 at the latest, the Commission will present a detailed report of the operation of the European order for payment procedure. The European Commission will report to the European Parliament, the Council and the Economic and Social Committee on the application of the Regulation creating the European small claims by 1st January 2014. To contribute to both reviews, the Ministry will collate statistical data on both procedures and may undertake further consultation of stakeholders and court users to obtain views on the effectiveness of the Regulations.

## **13. Contact**

Michael Anima-Shaun at the Ministry of Justice Tel: 0203 3334 3189 or email: Michael.animashaun@justice.gsi.gov.uk can answer any queries regarding the instrument.