

EUROPEAN PROCEDURES

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78.1 Scope of this Part and interpretation

- (1) Section I contains rules about European orders for payment made under Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure¹.
- (2) Section II contains rules about the European small claims procedure under Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure².
- (2A) Section III contains rules about mediated cross-border disputes that are subject to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.
- (3) In this Part –
 - (a) unless otherwise stated, a reference to an Annex is to an Annex to Practice Direction 78; and
 - (b) ‘Service Regulation’ means Regulation (EC) 1393/2007 on service, within the same meaning as rule 6.31(e).
- (4) Except where –
 - (a) the EOP Regulation (which has the same meaning as in rule 78.2(2)(a));
 - (b) the ESCP Regulation (which has the same meaning as in rule 78.12(2)(a)); or
 - (c) the Service Regulationmakes different provisions about the certification or verification of translations, every translation required by this Part or such Regulation must be accompanied by a statement by the person making it that it is a correct translation. The statement must include that person’s name, address and qualifications for making the translation.

I EUROPEAN ORDER FOR PAYMENT PROCEDURE

78.2 Scope of this Section and interpretation

- (1) This Section applies to applications for European orders for payment and other related proceedings under Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.
- (2) In this Section –
 - (a) ‘EOP Regulation’ means Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure. A copy of the EOP Regulation can be found at Annex 1;
 - (b) ‘court of origin’ has the meaning given by article 5(4) of the EOP Regulation;
 - (c) ‘EOP’ means a European order for payment;
 - (d) ‘EOP application’ means an application for an EOP;
 - (e) ‘EOP application form A’ means the Application for a European order for payment form A, annexed to the EOP Regulation at Annex I to that Regulation;
 - (f) ‘European order for payment’ means an order for payment made by a court under article 12(1) of the EOP Regulation;
 - (g) ‘Member State’ has the meaning given by article 2(3) of the EOP Regulation;
 - (h) ‘Member State of origin’ has the meaning given by article 5(1) of the EOP Regulation;

¹ OJ No L399, 30.12.2006, p.1.

² OJ No L199, 31.7.2007, p.1.

- (i) 'statement of opposition' means a statement of opposition filed in accordance with article 16 of the EOP Regulation.

EOP applications made to a court in England and Wales

78.3 Application for a European Order for Payment

Where a declaration provided by the claimant under article 7(3) of the EOP Regulation contains any deliberate false statement, rule 32.14 applies as if the EOP application form A were verified by a statement of truth.

(An EOP application is made in accordance with the EOP Regulation and in particular article 7 of that Regulation.)

78.4 Withdrawal of EOP application

- (1) At any stage before a statement of opposition is filed, the claimant may notify the court that the claimant no longer wishes to proceed with the claim.
- (2) Where the claimant notifies the court in accordance with paragraph (1) –
 - (a) the court will notify the defendant that the application has been withdrawn; and
 - (b) no order as to costs will be made.

78.5 Transfer of proceedings where an EOP application has been opposed

- (1) Where a statement of opposition is filed in accordance with article 16 of the EOP Regulation and the claimant has not opposed the transfer of the matter –
 - (a) the EOP application will be treated as if it had been started as a claim under Part 7 and the EOP application form A will be treated as a Part 7 claim form including particulars of claim; and
 - (b) thereafter, these Rules apply with necessary modifications and subject to this rule and rules 78.6 and 78.7.
- (2) When the court notifies the claimant in accordance with article 17(3) of the EOP Regulation the court will also –
 - (a) notify the claimant –
 - (i) that the EOP application form A is now treated as a Part 7 claim form including particulars of claim; and
 - (ii) of the time within which the defendant must respond under rule 78.6; and
 - (b) notify the defendant –
 - (i) that a statement of opposition has been received;
 - (ii) that the application will not continue under Part 78;
 - (iii) that the application has been transferred under article 17 of the EOP Regulation;
 - (iv) that the EOP application form A is now treated as a Part 7 claim form including particulars of claim; and
 - (v) of the time within which the defendant must respond under rule 78.6.

78.6 Filing of acknowledgment of service and defence where an EOP application is transferred under article 17 of the EOP Regulation

- (1) The defendant must file a defence within 30 days of the date of the notice issued by the court under rule 78.5(2)(b).

- (2) If the defendant wishes to dispute the court's jurisdiction, the defendant must instead –
 - (a) file an acknowledgment of service within the period specified in paragraph (1); and
 - (b) make an application under Part 11 within the period specified in that Part.
- (3) Where this rule applies, the following rules do not apply –
 - (a) rule 10.1(3);
 - (b) rule 10.3; and
 - (c) rule 15.4(1).

78.7 Default judgment

- (1) If –
 - (a) the defendant fails to file an acknowledgment of service within the period specified in rule 78.6(2)(a); and
 - (b) does not within that period –
 - (i) file a defence in accordance with Part 15 (except rule 15.4(1)) and rule 78.6(1); or
 - (ii) file an admission in accordance with Part 14,the claimant may obtain default judgment if Part 12 allows it.
- (2) Where this rule applies, rule 10.2 does not apply.

78.8 Review in exceptional cases

An application for a review under article 20 of the EOP Regulation must be made in accordance with Part 23.

Enforcement of EOPS in England and Wales

78.9 Enforcement of European orders for payment

- (1) A person seeking to enforce an EOP in England and Wales must file at the court in which enforcement proceedings are to be brought the documents required by article 21 of the EOP Regulation.
- (2) Where a person applies to enforce an EOP expressed in a foreign currency, the application must contain a certificate of the sterling equivalent of the judgment sum at the close of business on the date nearest preceding the date of the application.

(Parts 70 to 74 contain further rules about enforcement.)

78.10 Refusal of enforcement

- (1) An application under article 22 of the EOP Regulation that the court should refuse to enforce an EOP must be made in accordance with Part 23 to the court in which the EOP is being enforced.
- (2) The judgment debtor must, as soon as practicable, serve copies of any order made under article 22 on –
 - (a) all other parties to the proceedings and any other person affected by the order ('the affected persons'); and
 - (b) any court in which enforcement proceedings of the EOP are pending in England and Wales ('the relevant courts').

- (3) Upon service of the order on the affected persons, all enforcement proceedings of the EOP in the relevant courts will cease.

78.11 Stay of or limitation on enforcement

- (1) Where the defendant has sought a review and also applies for a stay of or limitation on enforcement in accordance with article 23 of the EOP Regulation, such application must be made in accordance with Part 23 to the court in which the EOP is being enforced.
- (2) The defendant must, as soon as practicable, serve a copy of any order made under article 23 on –
- (a) all other parties to the proceedings and any other person affected by the order; and
 - (b) any court in which enforcement proceedings are pending in England and Wales, and the order will not have effect on any person until it has been served in accordance with this rule and they have received it.

II EUROPEAN SMALL CLAIMS PROCEDURE

78.12 Scope of this Section and interpretation

- (1) This Section applies to the European small claims procedure under Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure.
- (2) In this Section –
- (a) ‘ESCP Regulation’ means Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure. A copy of the ESCP Regulation can be found at Annex 2;
 - (b) ‘defendant’s response’ means the response to the ESCP claim form;
 - (c) ‘ESCP’ means the European small claims procedure established by the ESCP Regulation;
 - (d) ‘ESCP claim form’ means the claim form completed and filed in the ESCP;
 - (e) ‘ESCP counterclaim’ has the meaning given to counterclaim by recital 16 of the ESCP Regulation;
 - (f) ‘ESCP judgment’ means a judgment given in the ESCP;
 - (g) ‘Member State’ has the meaning given by article 2(3) of the ESCP Regulation;
 - (h) ‘Member State of enforcement’ is the Member State in which the ESCP judgment is to be enforced;
 - (i) ‘Member State of judgment’ is the Member State in which the ESCP judgment is given.

ESCP claims made in a court in England and Wales

78.13 Filing an ESCP claim form

Where a declaration provided by the claimant in the ESCP claim form contains any deliberate false statement, rule 32.14 applies as if the ESCP claim form were verified by a statement of truth.

(An ESCP claim form is completed and filed in accordance with the ESCP Regulation, in particular article 4(1), and in accordance with this paragraph.)

78.14 Allocation of ESCP claims

- (1) ESCP claims are treated as if they were allocated to the small claims track.
- (2) Part 27 applies, except rule 27.14.

78.15 Transfer of proceedings where the claim is outside the scope of the ESCP Regulation – article 4(3) of the ESCP Regulation

- (1) Where the court identifies that the claim is outside the scope of the ESCP Regulation, the court will notify the claimant of this in a transfer of proceedings notice.
- (2) If the claimant wishes to withdraw the claim, the claimant must notify the court of this within 21 days of the date of the transfer of proceedings notice.
- (3) Where the claimant has notified the court in accordance with paragraph (2), the claim is automatically withdrawn.
- (4) Where the claimant has not notified the court in accordance with paragraph (2) and the claim is instead to be transferred under article 4(3) of the ESCP Regulation –
 - (a) the claim will be treated as if it had been started as a claim under Part 7 and the ESCP claim form will be treated as a Part 7 claim form including particulars of claim; and
 - (b) thereafter, these Rules apply with necessary modifications and subject to this rule, and the court will notify the claimant of the transfer and its effect.

78.16 Defendant's response

Where a declaration provided by the defendant in the defendant's response contains any deliberate false statement, rule 32.14 applies as if the defendant's response were verified by a statement of truth.

(The defendant's response is made in accordance with the ESCP Regulation and in particular article 5(3) of the ESCP Regulation.)

78.17 Transfer of proceedings where the defendant claims that the non-monetary claim exceeds the limit set in article 2(1) of the ESCP Regulation – article 5(5) of the ESCP Regulation

- (1) This rule applies where, under article 5(5) of the ESCP Regulation, the defendant claims that the value of a non-monetary claim exceeds the limit in article 2(1) of the ESCP Regulation.
- (2) When the court dispatches the defendant's response to the claimant, it will –
 - (a) notify the claimant that the court is considering whether the claim is outside the scope of the ESCP Regulation in a consideration of transfer notice; and
 - (b) send a copy of the notice to the defendant.
- (3) If the claimant wishes to withdraw the claim in the event that the court decides that the claim is outside the scope of the ESCP Regulation the claimant must notify the court and the defendant of this within 21 days of the date of the consideration of transfer notice.
- (4) The court will notify the defendant as well as the claimant of its decision whether the claim is outside the scope of the ESCP Regulation.

(Article 5(5) of the ESCP Regulation provides that the court shall decide within 30 days of dispatching the defendant's response to the claimant, whether the claim is within the scope of the ESCP Regulation.)

- (5) If the court decides that the claim is outside the scope of the ESCP Regulation and the claimant has notified the court and defendant in accordance with paragraph (3), the claim is automatically withdrawn.
- (6) If the court decides that the claim is outside the scope of the ESCP Regulation and the claimant has not notified the court and defendant in accordance with paragraph (3) –
 - (a) the claim will be treated as if it had been started as a claim under Part 7 and the ESCP claim form will be treated as a Part 7 claim form including particulars of claim;
 - (b) the defendant's response will be treated as a defence; and
 - (c) thereafter, these Rules apply with necessary modifications and subject to this rule, and the court will notify the parties.
- (7) This rule applies to an ESCP counterclaim as if the counterclaim were an ESCP claim.

78.18 Transfer of proceedings where the ESCP counterclaim exceeds the limit set in article 2(1) of the ESCP Regulation – article 5(7) of the ESCP Regulation

- (1) Where the ESCP counterclaim exceeds the limit set in article 2(1) of the ESCP Regulation, the court will –
 - (a) notify the defendant of this in a transfer of proceedings notice; and
 - (b) send a copy of the notice to the claimant, when the court dispatches the defendant's response to the claimant.
- (2) If the defendant wishes to withdraw the ESCP counterclaim, the defendant must notify the court and the claimant of this within 21 days of the date of the transfer of proceedings notice.
- (3) If the defendant notifies the court and claimant under paragraph (2), the ESCP counterclaim is automatically withdrawn.
- (4) If the defendant does not notify the court and claimant in accordance with paragraph (2) –
 - (a) the claim will be treated as if it had been started as a claim under Part 7 and the ESCP claim form will be treated as a Part 7 claim form including particulars of claim;
 - (b) the defendant's response and ESCP counterclaim are to be treated as the defence and counterclaim; and
 - (c) thereafter, these Rules apply with necessary modifications and subject to this rule, and the court will notify the parties.

78.19 Review of judgment

An application for a review under article 18 of the ESCP Regulation must be made in accordance with Part 23.

Enforcement of ESCP judgments in England and Wales

78.20 Enforcement of an ESCP judgment

- (1) A person seeking to enforce an ESCP judgment in England and Wales must file at the court in which enforcement proceedings are to be brought the documents required by article 21 of the ESCP Regulation.

- (2) Where a person applies to enforce an ESCP judgment expressed in a foreign currency, the application must contain a certificate of the sterling equivalent of the judgment sum at the close of business on the date nearest preceding the date of the application.

(Parts 70 to 74 contain further rules about enforcement.)

78.21 Refusal of enforcement

- (1) An application under article 22 of the ESCP Regulation that the court should refuse to enforce an ESCP judgment must be made in accordance with Part 23 to the court in which the ESCP judgment is being enforced.
- (2) The judgment debtor must, as soon as practicable, serve copies of any order made under article 22 on –
- (a) all other parties to the proceedings and any other person affected by the order ('the affected persons'); and
 - (b) any court in which enforcement proceedings are pending in England and Wales ('the relevant courts').
- (3) Upon service of the order on the affected persons, all enforcement proceedings of the ESCP judgment in the relevant courts will cease.

78.22 Stay of or limitation on enforcement

- (1) An application by the defendant under article 23 of the ESCP Regulation must be made in accordance with Part 23 to the court in which the ESCP judgment is being enforced.
- (2) The defendant must, as soon as practicable, serve a copy of any order made under article 23 on –
- (a) all other parties to the proceedings and any other person affected by the order; and
 - (b) any court in which enforcement proceedings are pending in England and Wales, and the order will not have effect on any person until it has been served in accordance with this rule and they have received it.

III MEDIATION DIRECTIVE

78.23 Scope of this Section and interpretation

- (1) This Section applies to mediated cross-border disputes that are subject to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.
- (2) In this Section –
- 'Mediation Directive' means Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. A copy of the Directive can be found at Annex 3;
 - 'cross-border dispute' has the meaning given by article 2 of the Mediation Directive;
 - 'mediation' has the meaning given by article 3(a) of the Mediation Directive;
 - 'mediation administrator' means a person involved in the administration of the mediation process;
 - 'mediation evidence' means evidence arising out of or in connection with a mediation process;
 - 'mediation settlement' means the content of a written agreement resulting from mediation of a relevant dispute;

‘mediation settlement agreement’ means a written agreement resulting from mediation of a relevant dispute;
‘mediation settlement enforcement order’ means an order made under rule 78.24(5);
‘mediator’ has the meaning given by article 3(b) of the Mediation Directive; and
‘relevant dispute’ means a cross-border dispute that is subject to the Mediation Directive.

78.24 Making a mediation settlement enforceable (mediation settlement enforcement orders)

- (1) Where the parties, or one of them with the explicit consent of the others, wish to apply for a mediation settlement to be made enforceable, the parties or party may apply –
 - (a) where there are existing proceedings in England and Wales, by an application made in accordance with Part 23; or
 - (b) where there are no existing proceedings in England and Wales, by the Part 8 procedure as modified by this rule and Practice Direction 78 – European Procedures.
- (2) Where rule 78.24(1)(b) applies, rules 8.3 to 8.8 will not apply.
- (3) The mediation settlement agreement must be annexed to the application notice or claim form when it is filed.
- (4) Except to the extent that paragraph (7) applies, the parties must file any evidence of explicit consent to the application under paragraph (1) when the parties file the application or claim form.
- (5) Subject to paragraph (6), where an application is made under paragraph (1), the court will make an order making the mediation settlement enforceable.
- (6) The court will not make an order under paragraph (5) unless the court has evidence that each of the parties to the mediation settlement agreement has given explicit consent to the application for the order.
- (7) Where a party to the mediation settlement agreement –
 - (a) has agreed in the mediation settlement agreement that a mediation settlement enforcement order should be made in respect of that mediation settlement;
 - (b) is a party to the application under paragraph (1); or
 - (c) has written to the court consenting to the application for the mediation settlement enforcement order,
that party is deemed to have given explicit consent to the application for the mediation settlement enforcement order.
- (8) An application under paragraph (1) will be dealt with without a hearing, unless the court otherwise directs.

78.25 Mediation settlement enforcement orders: foreign currency

- (1) Where a person applies to enforce a mediation settlement enforcement order which is expressed in a foreign currency, the application must contain a certificate of the sterling equivalent of the sum remaining due under the order at the close of business on the day before the date of the application.

(Parts 70 to 74 contain further rules about enforcement.)

78.26 Mediation evidence: disclosure or inspection

- (1)** Where a person seeks disclosure or inspection of mediation evidence that is in the control of a mediator or mediation administrator, that person must apply –
 - (a)** where there are existing proceedings in England and Wales, by an application made in accordance with Part 23; and
 - (b)** where there are no existing proceedings in England and Wales, by the Part 8 procedure.
- (2)** Where the application is made –
 - (a)** under paragraph (1)(a), the mediator or mediation administrator who has control of the mediation evidence must be named as a respondent to the application and must be served with a copy of the application notice; and
 - (b)** under paragraph (1)(b), the mediator or mediation administrator who has control of the mediation evidence must be made a party to the claim.
- (3)** Evidence in support of the application under paragraph (1)(a) or (1)(b) must include evidence that –
 - (a)** all parties to the mediation agree to the disclosure or inspection of the mediation evidence;
 - (b)** disclosure or inspection of the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or
 - (c)** disclosure or inspection of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.
- (4)** This rule does not apply to proceedings in England and Wales that have been allocated to the small claims track.
- (5)** Where this rule applies, Parts 31 to 34 apply to the extent they are consistent with this rule.

78.27 Mediation evidence: witnesses and depositions

- (1)** This rule applies where a party wishes to obtain mediation evidence from a mediator or mediation administrator by –
 - (a)** a witness summons;
 - (b)** cross-examination with permission of the court under rule 32.7 or 33.4;
 - (c)** an order under rule 34.8 (evidence by deposition);
 - (d)** an order under rule 34.10 (enforcing attendance of witness);
 - (e)** an order under rule 34.11(4) (deponent's evidence to be given orally); or
 - (f)** an order under rule 34.13(1A) (order for the issue of a letter of request).
- (2)** When applying for a witness summons, permission under rule 32.7 or 33.4 or an order under rule 34.8, 34.10, 34.11(4) or 34.13(1A), the party must provide the court with evidence that –
 - (a)** all parties to the mediation agree to the obtaining of the mediation evidence;
 - (b)** obtaining the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or
 - (c)** the disclosure or inspection of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.
- (3)** When considering a request for a witness summons, permission under rule 32.7 or 33.4 or an order under rule 34.8, 34.10, 34.11(4) or 34.13(1A), the court may invite any person, whether or not a party, to make representations.
- (4)** This rule does not apply to proceedings in England and Wales that have been allocated to the small claims track.

- (5) Where this rule applies, Parts 31 to 34 apply to the extent they are consistent with this rule.

78.28 Mediation evidence: small claims

Where a party wishes to rely on mediation evidence in proceedings that are allocated to the small claims track, that party must inform the court immediately.

