

EXECUTIVE NOTE

THE EUROPEAN COMMUNITIES (SERVICE OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS) (SCOTLAND) AMENDMENT REGULATIONS 2008 (S.S.I. 2008/ 372)

The above instrument is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. It is subject to negative resolution procedure.

Policy Objectives

The purpose of the instrument is to update the European Communities (Service of Judicial and Extrajudicial Documents) (Scotland) Regulations 2001 (S.S.I. 2001/172), implementing, for Scotland, part of Regulation (EC) No. 1393/2007 of the European Parliament and Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (“the EC Service Regulation”). That EC Regulation, which comes into force on 13 November 2008, replaces and repeals Council Regulation (EC) No. 1348/2000. The EC Service Regulation is directly applicable in domestic law, but the Member States require to bring their domestic procedures into line with the new Regulation.

The EC Service Regulation arises from Article 24 of Council Regulation (EC) No. 1348/2000, which required the Commission every 5 years to review its application, accompanied if need be by proposals for adaptations. The aim of the new EC Service Regulation is to improve service and transmission of documents by simplifying certain provisions of the EC Regulation and improving legal certainty for the applicant and the addressee. Like its predecessor it covers civil and commercial matters where a judicial or extrajudicial document is transmitted from one Member State to another for service there, and the address of the person to be served is known, but not revenue, customs or administrative matters, nor service between jurisdictions within a Member State (e.g. between Scotland and England). It contains rules on transmission and service of documents, to be achieved through designated receiving and transmitting agencies.

Under S.S.I. 2001/172 messengers-at-arms and accredited solicitors approved by the Law Society of Scotland were designated as receiving and transmitting agencies. Following consultation with the Law Society it has been agreed that solicitors should no longer be designated as only 2 solicitors provide the service in practice—this instrument accordingly removes solicitors. Messengers-at-arms remain designated and under Article 11 of the EC Service Regulation the advance fee for receiving agencies has been fixed by Act of Sederunt (Fees of Messengers-at-Arms) (EC Service Regulation) 2008 (S.S.I. 2008/366) for both personal and postal service.

This instrument also updates the references to the EC Regulation implemented by S.S.I. 2001/172 (although the EC Service Regulation contains a directly applicable cross-referencing provision in Article 25).

The instrument reflects the outcome of discussions with the Scottish Courts Service, the Law Society of Scotland, the Lord President’s Office and the Society of Messenger-at-Arms and Sheriff Officers (SMASO), but delays in the consultation process meant this instrument could not be brought in force prior to the relevant provisions of the EC Regulation becoming applicable on 13 November 2008. The Law Society were the last organisation we consulted

and as a result confirmation of the Law Society's views was not received until 12 November 2008. However, public notice to those in other Member States serving documents is provided through the European Judicial network which is updated European Commission when they receive information from Member States. The Commission has been informed of the fixed fees for Scotland and that solicitors will no longer be designated. In practice there will thus not be any service of documents by solicitors before this instrument comes into force. For the same reason, it was not considered necessary to break the 21-day rule with respect to this instrument.

Consultation

The following bodies have been consulted during the preparation of the instrument and the related Act of Sederunt:

The Lord President's Office
The Society of Messengers-at-Arms and Sheriff Officers
The Law Society of Scotland

Financial Effects

The instrument has no financial effects on the Scottish Government or on local government. The limited number of solicitors who act will no longer receive fees for serving judicial and extra-judicial documents under Regulation (EC) No. 1393/2007.

Scottish Government
November 2008