

EXECUTIVE NOTE

THE EUROPEAN COMMUNITIES (EUROPEAN ORDER FOR PAYMENT) (SCOTLAND) REGULATIONS 2009 SSI/2009/99

1. This Order is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 for the purpose of restricting the effect of the Regulation (EC) No. 1896/2006 of 12th December 2006 (“the Regulation”) creating a European order for payment procedure to the sheriff court only in Scotland. The instrument is subject to a negative resolution procedure.

Policy Objectives

2. The purpose of the EU Regulation No. 1896/2006 is to simplify, speed up and reduce cost of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure and to permit the free circulation of such orders throughout all participating Member States without having to bring intermediate proceedings in the Member State of enforcement.

3. It is left to the participating Member States to determine which courts have jurisdiction to issue a European order for payment. The policy in Scotland of Scottish Ministers is that such orders are to be dealt with exclusively in the sheriff court. Because the payment orders do not raise issues of legal complexity it would be a wasteful use of court time and resources if the orders could also be enforced in the Court of Session. Accordingly regulation 3 of the instrument gives the sheriff court exclusive jurisdiction in relation to the enforcement machinery, and therefore closes off the jurisdiction of the Court of Session.

Administration

4. The sheriff court will be responsible for the processing and granting or refusing of European payment orders.

Consultation

5. This is a technical measure with no political dimension and therefore no formal consultation was thought appropriate.

Financial effects

6. There is thought to be no adverse financial implications of this instrument. The Regulation itself when implemented will reduce the cost of cross-border litigation.