

2008 No. 436

SHERIFF COURT

**Act of Sederunt (Sheriff Court European Order for Payment
Procedure Rules) 2008**

Made - - - - - *19th December 2008*

Coming into force - - - - - *12th January 2009*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a), and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of that Act, do hereby enact and declare:

Citation and commencement, etc.

- 1.—(1) This Act of Sederunt –
- (a) may be cited as the Act of Sederunt (Sheriff Court European Order for Payment Procedure Rules) 2008; and
 - (b) comes into force on 12th January 2009.
- (2) This Act of Sederunt is to be inserted in the Books of Sederunt.

Interpretation

- 2.—(1) In this Act of Sederunt –
- “the Regulation” means Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12th December 2006 creating a European order for payment procedure(b);
 - “the Ordinary Cause Rules” means the First Schedule to the Sheriff Courts (Scotland) Act 1907(c);
 - “the Summary Cause Rules” means the Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(d);

(a) 1971 c.58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2).

(b) O.J. No. L 399, 30.12.2006, p.1.

(c) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445 and S.S.I. 2000/239 and 408, 2001/8 and 144, 2002/7, 128 and 560, 2003/25 and 26, 2004/197 and 350, 2005/20, 189, 638 and 648, 2006/198, 207, 293, 410 and 509, 2007/6, 339, 440 and 463 and 2008/121, 223 and 365.

(d) S.S.I. 2002/132, amended by S.S.I. 2003/26, 2004/197, 2005/648, 2006/509, 2007/6, 339, 440 and 463 and 2008/121, 223 and 365.

“the Small Claim Rules” means the Small Claim Rules in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002(a);

(2) Expressions used in both the Regulation and this Act of Sederunt have the same meaning here as there.

(3) A form referred to in this Act of Sederunt by number means the form so numbered in the Schedule to this Act of Sederunt or a form substantially to the same effect, with such variation as circumstances may require.

(4) A reference in this Act of Sederunt to a numbered Article is a reference to the Article of the Regulation so numbered.

Communication by the court

3.—(1) This rule applies where, under the Regulation or this Act of Sederunt, the court requires to send a document to a person.

(2) The document is to be sent by the sheriff clerk.

(3) The document is to be sent—

(a) where it is being sent to an address within the United Kingdom, by first class recorded delivery;

(b) where it is being sent to an address outside the United Kingdom, by registered post.

(4) The sheriff clerk must complete a certificate of posting to which must be attached the relevant postal receipt.

Service on a representative

4.—(1) This rule applies where service is effected by virtue of Article 15 (service on a representative).

(2) The claimant must lodge a document signed by the person who effected service indicating the basis on which it was believed that the person on whom service was effected was the defendant’s representative.

(3) The document must be accompanied by any written material which the person effecting service relied upon in forming that belief.

Opposition to European order for payment

5.—(1) This rule applies where—

(a) the defendant lodges a statement of opposition to a European order for payment in accordance with Article 16 (opposition to European order for payment); and

(b) the claimant has not explicitly requested that the proceedings be terminated in that event.

(2) The proceedings shall continue under the Ordinary Cause Rules, the Summary Cause Rules or the Small Claim Rules, as the case may be, and the sheriff is to make an order containing such provision as the sheriff thinks fit for the purpose of bringing the proceedings into line with an appropriate stage of proceedings under those rules.

(3) The provision which may be made in an order under paragraph (2) includes—

(a) provision dispensing with any provision of the rules concerned; or

(b) provision deeming any document lodged in the proceedings for the European order for payment to constitute a document in proceedings under those rules.

(4) The court must, within 21 days after the statement of opposition was lodged—

(a) send to the claimant a notice in Form 1; and

(a) S.S.I. 2002/133, amended by S.S.I. 2003/26, 2004/197, 2005/648, 2006/509, 2007/6, 339, 440 and 463 and 2008/121, 223 and 365.

(b) send a copy of that form to the defendant.

Review in exceptional cases

6.—(1) An application under paragraph 1 of Article 20 (review in exceptional cases: defective service, etc.) is to be in Form 2.

(2) An application under paragraph 2 of Article 20 (review in exceptional cases: other grounds) is to be in Form 3.

(3) The sheriff may make such order as the sheriff thinks fit for the progress of an application under paragraph (1) or (2) of Article 20.

(4) An application under Article 23 (stay or limitation of enforcement) is to be made by motion.

(5) A motion under paragraph (4) is to be made in accordance with, and is regulated by, Chapter 15 of the Ordinary Cause Rules.

Refusal of enforcement

7.—(1) An application under paragraph (1) of Article 22 (refusal of enforcement) is to be in Form 4.

(2) The sheriff may make such order as the sheriff thinks fit for the progress of such an application.

A C HAMILTON
Lord President
I.P.D.

Edinburgh
19th December 2008

SCHEDULE

FORM 1

Rule 5(4)

Form of notice of statement of opposition to European order for payment

STATEMENT OF
OPPOSITION TO A EUROPEAN ORDER FOR PAYMENT

Sheriff Court at *[insert court]*

To: *[insert name and address of claimant]*

Date: *[insert date]*

Please note that on *[insert date]* a statement of opposition to the European order of payment issued in your favour on *[insert date]* was lodged. A copy is attached. In accordance with Article 17(1) of Regulation (EC) No. 1896/2006 of 12th December 2006, the proceedings shall now continue as *[an ordinary cause][a summary cause] [a small claim]**. Under rule 5(2) of the Act of Sederunt (Sheriff Court European Order for Payment Procedure Rules) 2008, the sheriff has made an order for the purpose of bringing the proceedings into line with an appropriate stage of the proceedings under the rules which apply to such a cause or claim. A copy of the sheriff's order is attached.

Further advice can be obtained by contacting a Citizen's Advice Bureau or a Solicitor.

** delete as appropriate*

Date: *[insert date]*

[signed]

Sheriff Clerk [Depute]

FORM 2

Rule 6(1)

Form of application for a review of a European order for payment under Article 20(1) of Regulation (EC) No. 1896/2006 of 12th December 2006

EUROPEAN ORDER FOR PAYMENT

Application for review under Article 20(1) of Regulation (EC) No. 1896/2006 of 12th December 2006

APPLICATION FOR
REVIEW OF A EUROPEAN ORDER FOR PAYMENT
UNDER ARTICLE 20(1) OF REGULATION (EC) NO 1896/2006

Sheriff Court at [*insert court*]

Court ref:

I, [*insert name and address*], apply under Article 20(1) of Regulation (EC) No 1896/2006 for a review of the European order for payment granted by the court on [*insert date*] in favour of [*insert name and address of claimant*] for the following reasons:

- Service was not effected in sufficient time to enable me to arrange for my defence, without any fault on my part*
- I was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on my part*

* *delete as appropriate*

I ask the court to intimate the application on the claimant.

[*signed*]

FORM 3

Rule 6(2)

Form of application for a review of a European order for payment under Article 20(2) of Regulation (EC) No. 1896/2006 of 12th December 2006

EUROPEAN ORDER FOR PAYMENT

Application for review under Article 20(2) of Regulation (EC) No. 1896/2006 of 12th December 2006

APPLICATION FOR
REVIEW OF A EUROPEAN ORDER FOR PAYMENT
UNDER ARTICLE 20(2) OF REGULATION (EC) NO 1896/2006

Sheriff Court at *[insert court]*

Court ref:

I, *[insert name and address]*, apply under Article 20(2) of Regulation (EC) No 1896/2006 for a review of the European order for payment granted by the court on *[insert date]* in favour of *[insert name and address of claimant]* as:

- the order for payment was clearly wrongly issued having regard to the requirements laid down in the Regulation*
- there are exceptional circumstances for doing so*

* *delete as appropriate*

My reasons are: *[state reasons for seeking review, under reference to the ground on which the review is sought]*.

I ask the court to intimate the application on the claimant.

[signed]

FORM 4

Rule 7(1)

Form of application for refusal of enforcement of a European order for payment under Article 22(1) of Regulation (EC) No. 1896/2006 of 12th December 2006

EUROPEAN ORDER FOR PAYMENT

Application for refusal of enforcement under Article 22(1) of Regulation (EC) No. 1896/2006 of 12th December 2006

APPLICATION FOR
REFUSAL OF ENFORCEMENT OF A EUROPEAN ORDER FOR PAYMENT
UNDER ARTICLE 22(1) OF REGULATION (EC) NO 1896/2006

Sheriff Court at *[insert court]*

Court ref:

I, *[insert name and address]*, apply under Article 22(1) of Regulation (EC) No 1896/2006 for the court to make an order refusing to enforce the European order for payment granted by the court on *[insert date]* in favour of *[insert name and address of claimant]* as:

- the order for payment is irreconcilable with an earlier decision or order given. *[Give details here of decision or order made and in which Member State or third country].**
- I paid the claimant the amount awarded in the order for payment on *[insert date].**

** delete as appropriate*

I ask the court to intimate the application on the claimant.

[signed]

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

Regulation (EC) No. 1896/2006 of the European Parliament and the Council creates a European order for payment procedure. This Act of Sederunt provides rules in connection with applications for European orders for payment made in the sheriff court. In particular, it provides:

- (a) rules on communications by the court under the Regulation (see rule 3);
- (b) rules on what must be lodged with the court where service under the Regulation is effected on a representative (see rule 4);
- (c) rules on what happens where the European order for payment is opposed and the proceedings require to continue under domestic procedure (see rule 5);
- (d) rules on review of a European order for payment (see rule 6);
- (e) rules on refusal of enforcement of a European order for payment (see rule 7).

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