

2009 No.

COUNTY COURTS

**The County Court (Amendment No. 2) Rules (Northern Ireland)
2009**

Made - - - -

***** 2009

Coming into operation -

18th May 2009

The County Court Rules Committee makes the following Rules in exercise of the powers conferred by Article 47 of the County Courts (Northern Ireland) Order 1980(a).

Citation and commencement

1. These Rules may be cited as the County Court (Amendment No. 2) Rules (Northern Ireland) 2009 and shall come into operation on 18th May 2009.

Amendments

2. In the Arrangement of Orders in the County Court Rules (Northern Ireland) 1981(b) (“the principal Rules”), at the entry for Order 27, insert “European Small Claims Procedure”.

3. In Order 1, rule 1(1) of the principal Rules, after “Order 26 Rule 29,” insert “Order 27, Rule 8,”.

4. In Order 26, rule 46 of the principal Rules, for “Table 3” substitute “Table 2”.

5. After Order 26 of the principal Rules, insert the new Order 27 set out in Schedule 1.

6. In Appendix 1 to the principal Rules, after Form 125, insert the new Form 126 set out in Schedule 2.

(a) S.I. 1980/397 (N.I. 3) to which the most recent relevant amendments were made by the Constitutional Reform Act 2005 (c. 4).
(b) S.R. 1981 No.225 to which the most recent amendments were made by S.R. 2009 No.19.

The undersigned members of the County Court Rules Committee certify these Rules and submit them to the Lord Chancellor.

Dated

In exercise of the powers conferred by Article 47(4) of the County Courts (Northern Ireland) Order 1980 and after consultation with the Lord Chief Justice, I allow these Rules which shall come into operation on 18th May 2009.

Signed by the authority of the Lord Chancellor

Parliamentary Under-Secretary of State
Ministry of Justice

Dated

“ORDER 27

EUROPEAN SMALL CLAIMS PROCEDURE

Application, interpretation and scope

1.—(1) This Order applies to proceedings 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 Order—

- (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);
- (b) “ESCP” means the European small claims procedure established by the ESCP Regulation;
- (c) “ESCP claim form” means the claim form annexed to the ESCP Regulation as Form A;
- (d) “ESCP counterclaim” has the meaning given to “counterclaim” by recital 16 of the ESCP Regulation;
- (e) “ESCP judgment” means a judgment given in the ESCP;
- (f) “small claims court” means a court which processes small claims;
- (g) “the applicant” means the person who makes the initial claim under the ESCP;
- (h) “the judge” means the district judge;
- (i) “the officer” means the person in the small claims office who processes the application for a small claim;
- (j) “the respondent” means the person against whom the initial claim is made;
- (k) “the respondent’s response” means the response to the ESCP claim form annexed to the ESCP Regulation as Form C;
- (l) “the SCCPC” means the Small Claims Civil Processing Centre, PO Box 882, Royal Courts of Justice, Belfast BT1 3JF; and
- (m) “the small claims office” means the office of the small claims court or the SCCPC.

(3) This Order applies only to those applications that fall within the scope of the ESCP Regulation as prescribed in Article 2 of that Regulation.

Translations

2. Except where the ESCP Regulation makes different provision about the certification or verification of translations required by this Order, such translation 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.

(a) O.J. No. L 199, 31.07.07

ESCP proceedings

3. Proceedings are to be brought and conducted in accordance with the ESCP Regulation.
4. Where an applicant wishes to lodge the ESCP claim form, the original form and, where appropriate, relevant supporting documents should be lodged, together with two copies and the appropriate fee, with the small claims office.
5. If there is more than one respondent, the applicant must lodge one extra copy of the ESCP claim form for each additional respondent.
6. When the relevant forms and the appropriate fee are received in the small claims office, the officer will—
 - (a) complete Part I of the respondent's response and issue it to the respondent(s);
 - (b) file the original ESCP claim form;
 - (c) return one copy of the ESCP claim form to the applicant; and
 - (d) issue one copy of the ESCP claim form to the respondent(s).
7. The SCCPC shall keep a record of—
 - (a) the applications which are received; and
 - (b) the small claims office to which those applications are sent.

Venue for an ESCP hearing

8. If the judge determines that a hearing is required under Article 7 of the ESCP Regulation, this may take place—
 - (a) in a court in the county court division in which the applicant or one of the applicants lives or carries on business; or
 - (b) in a court in the county court division in which the respondent or one of the respondents lives or carries on business.

Procedure on an ESCP hearing

9. An ESCP hearing—
 - (a) shall be informal; and
 - (b) shall not be subject to the strict rules of evidence.
10. The judge may adopt any procedure which he considers to be fair.

Transfer of proceedings

11. If the judge is satisfied that a claim under the ESCP could be more conveniently or fairly dealt with in another small claims court, he may order the application to be transferred to that court and the officer of the small claims court in which the application is originally made must—
 - (a) inform all the parties of the transfer; and
 - (b) send to the officer of the other court any relevant court records and documents.
12. On receiving the relevant records and documents, the judge of the other small claims court shall determine the claim.

Transfer of proceedings where the claim is outside the scope of the ESCP Regulation

- 13.—(1) If the judge determines that the claim is outside the scope of the ESCP Regulation under Article 4(3), the officer must notify the applicant that the proceedings are to be transferred.

(2) If the applicant wishes to withdraw the claim, the applicant must notify the small claims office of this within 21 days of the date of the notice of the transfer of the proceedings.

(3) Where the applicant has notified the small claims office in accordance with paragraph (2), the claim is automatically withdrawn.

(4) Where the applicant has not notified the small claims office 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 commenced by civil bill or as a small claims application under Order 26, as appropriate; and

(b) thereafter, these Rules apply with necessary modification and subject to this rule,

and the small claims office will notify the claimant of the transfer and its effect.

Transfer of proceedings where the respondent claims that the non-monetary claim exceeds the limit set in Article 2(1) of the ESCP Regulation

14.—(1) This rule applies where, under Article 5(5) of the ESCP Regulation, the respondent claims that the value of a non-monetary claim exceeds the limit in Article 2(1) of the ESCP Regulation.

(2) When the small claims office issues the respondent's response to the applicant, it will—

(a) notify the applicant that the court is considering whether the claim is outside the scope of the ESCP Regulation; and

(b) send a copy of the notification to the respondent.

(3) If the applicant wishes to withdraw the claim in the event that the court decides that the claim is outside the scope of the ESCP Regulation, the applicant must notify the small claims office and the respondent of this within 21 days of the date of the notice under paragraph (2)(a).

(4) The small claims office will notify the respondent as well as the applicant of the court's decision whether the claim is outside the scope of the ESCP Regulation.

(5) If the court decides that the claim is outside the scope of the ESCP Regulation and the applicant has notified the small claims office and the respondent 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 applicant has not notified the small claims office and the respondent in accordance with paragraph (3)—

(a) the claim will be treated as if it had been commenced by civil bill or as a small claims application under Order 26, as appropriate;

(b) the respondent's response will be treated as a defence; and

(c) thereafter, these Rules apply with necessary modifications and subject to this rule,

and the small claims office will notify the parties.

(7) This rule applies to an ESCP counterclaim as if the counterclaim were an ESCP claim.

Transfer of proceedings where the ESCP counterclaim exceeds the limit set in Article 2(1) of the ESCP Regulation

15.—(1) Where the ESCP counterclaim exceeds the limit set in Article 2(1) of the ESCP Regulation, the small claims office will—

(a) notify the respondent of this; and

(b) send a copy of the notification to the applicant,

when the small claims office issues the respondent's response to the applicant.

(2) If the respondent wishes to withdraw the ESCP counterclaim, the respondent must notify the small claims office and the applicant of this within 21 days of the date of the notice under paragraph (1)(a).

(3) If the respondent notifies the small claims office and the applicant under paragraph (2), the ESCP counterclaim is automatically withdrawn.

(4) If the respondent does not notify the small claims office and the applicant in accordance with paragraph (2)—

- (a) the claim will be treated as if it had been commenced by civil bill or as a small claims application under Order 26, as appropriate;
- (b) the respondent's response and ESCP counterclaim will be treated as the defence and counterclaim; and
- (c) thereafter, these Rules apply with necessary modifications and subject to this rule,

and the small claims office will notify the parties.

Review of an ESCP judgment

16.—(1) An application for a review of an ESCP judgment under Article 18 of the ESCP Regulation must be made in Form 126, which should be lodged with the small claims office that issued the judgment.

(2) On receipt of an application for review, the judge shall give to the parties such directions for the conduct of the review as he considers necessary.

Inadequate or insufficient information

17. For the purpose of Article 4(4) of the ESCP Regulation, the time specified is within 30 days of the date of the request by the court to complete or rectify the claim form.

Costs

18. When the judge is awarding costs under Article 16 of the ESCP Regulation, the costs—

- (a) must not exceed those specified in Table 2 of Part I of Appendix 2;
- (b) must be determined in accordance with the amount of the claim; and
- (c) must not have been unnecessarily incurred.”

SCHEDULE 2

Rule 6

“Form 126

Application for a review of an ESCP judgment under Article 18 of the ESCP Regulation
ORDER 27, RULE 16

For Office Use Only Claim No. Liquidated/Unliquidated

Applicant:
Full name, postal address, postcode
and e-mail address (if appropriate) in
BLOCK CAPITALS

Respondent:
Full name, postal address, postcode
and e-mail address (if appropriate) in
BLOCK CAPITALS

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I, _____ wish to apply under Article 18 of the ESCP Regulation for a review of the judgment given in the above matter on the ground that:

(state briefly and precisely the reasons upon which the application is grounded).

Dated this day of 20 .

I certify that the above information is correct.

Signature

Date”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the County Court Rules (Northern Ireland) 1981 [S.R. 1981 No. 225] to make provision for procedures under 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.