

## **The European Small Claims Procedure CP(L) 12/05.**

Your comments are invited on the European Commission's proposal for a European Small Claims Procedure (ESCP) which was published on 15 March 2005: a copy of which is attached together with an initial regulatory impact assessment that indicates that individuals and businesses are likely to be affected. Comments on this Regulatory Impact Assessment are particularly welcome. The ESCP is intended to provide a simplified and speedy procedure for low value claims as an alternative to Member States' schemes and to abolish, for defended claims, the special procedure ('exequatur') otherwise needed to enable the recognition and enforcement of a judgment in another Member State.

**Cathy Ashton Parliamentary Under Secretary of State** for the Department of Constitutional Affairs has commented 'I welcome this European initiative which should make life easier for consumers and businesses alike in resolving cross border disputes, ensuring effective redress can be achieved. As part of the UK Presidency of the European Union I will be seeking to ensure, by working with other Member States, that the final format of the Regulation meets the needs of all who are affected by it.'

The basic principles of the proposal are for a purely written procedure, unless the court considers an oral hearing is necessary. Parties need not be legally represented, but may choose to be represented. Unrepresented individuals are protected from the risk of having to pay the other side's legal costs if they lose. This provision is intended to ensure that they are not deterred inappropriately from seeking redress. The process for enforcing ESCP judgments for defended cases will be simpler.

The Government considers that the ESCP will provide real benefits for ordinary citizens and businesses in enforcing their rights, potentially saving them time and money, generating consumer confidence and giving a boost to the internal market. However, if it is to be effective it needs to take into account the views of those who are likely to use or be affected by the procedure. Your views are therefore an important part of the process.

There are some elements of the ESCP on which we propose to negotiate with other Member States. For example the Commission proposes that the procedure should apply to internal cases as well as cross-border cases, i.e. a person would be able to bring a claim in either the small claims track in England and Wales, or alternatively via the ESCP. The Government's view is that there is no legal basis for applying the provision to internal cases and that the proposal is likely to be administratively complex, costly and confusing for litigants.

The ESCP proposed limit is €2000, i.e. considerably lower than the general limit for small claims in England and Wales. The Government is discussing with other Member States the possibility of making this a minimum limit. If agreement is reached this would enable those wishing to pursue a cross border claim in England and Wales to take advantage of the higher limit in this country. This gives the proposed Regulation greater flexibility, whilst recognising that in other Member

States the standards of living and costs are significantly lower than in England and Wales.

A part of the Government's strategy is to raise the issue of litigants' exposure to costs. Currently there are strict costs limits on small claims brought in England and Wales. The Regulation proposes that the unsuccessful party should bear the costs of the proceedings, except where this would be unfair or unreasonable in which case, the court will make the order costs on an equitable basis. However when the unsuccessful party is unrepresented and acting in their own right (not a business capacity) he will not be obliged to reimburse legal fees of the other party. It does not therefore offer the same degree of protection for costs as in England and Wales. The Government proposes to discuss with other Member States ways of limiting the parties exposure to costs. This is particularly important for small businesses where the impact of costs can be as significant as for an individual.

Because discussions in Europe are already underway Cathy Ashton has agreed that the time for consultation should be limited to 6 weeks. I would therefore be grateful for your comments both on the proposed Regulation and the Regulatory Impact Assessment by 27 July 2005.

Yours sincerely,

Pat Reed