

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5050 GIBRALTAR Thursday 4th May 2023

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LEGAL NOTICE NO. 114 OF 2023

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### EUROPEAN ENFORCEMENT ORDER, EUROPEAN ORDER FOR PAYMENT AND EUROPEAN SMALL CLAIMS PROCEDURE (AMENDMENT ETC) (EU EXIT) REGULATIONS 2023

In exercise of the powers conferred upon her by section 11(1) and 11B of and paragraph 1 of Schedule 3 to the European Union (Withdrawal) Act 2019 the Minister with responsibility for Justice has made the following Regulations-

#### PART 1

#### INTRODUCTION

##### **Title.**

1. These Regulations may be cited as the European Enforcement Order, European Order for Payment and European Small Claims Procedure (Amendment etc) (EU Exit) Regulations 2023.

##### **Commencement.**

2. These Regulations come into operation on the day of publication.

##### **Interpretation.**

3. In these Regulations-

“Regulation (EC) No 805/2004” means Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims;

“Regulation (EC) No 1869/2005” means Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure;

“Regulation (EC) No 861/2007” means Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.

## PART 2

### AMENDMENT AND REVOCATION OF RETAINED DIRECT EU LEGISLATION

4. The following regulations are revoked-

- (a) Regulation (EC) No 805/2004.
- (b) Commission Regulation (EC) No 1869/2005 of 16 November 2005 replacing the Annexes to Regulation (EC) No 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims.
- (c) Regulation (EC) No 1896/2006.
- (d) Regulation (EC) No 861/2007.
- (e) Commission Regulation (EU) No 936/2012 of 4 October 2012 amending the Annexes to Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure.
- (f) Regulation (EU) No 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure.
- (g) Commission Delegated Regulation (EU) 2017/1259 of 19 June 2017 replacing Annexes I, II, III and IV to Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure.
- (h) Commission Delegated Regulation (EU) 2017/1260 of 19 June 2017 replacing Annex I to Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure.

5. In Regulation (EC) No 1103/2008 of the European Parliament and of the Council of 22 October 2008 adapting a number of instruments subject to the procedure laid down in Article 251 of the Treaty to Council Decision 1999/486/EC, with regard to the regulatory procedure with scrutiny in the Annex, delete paragraph 4(7).

## PART 3

### SAVING PROVISIONS

**Saving: application of Article 67 of the withdrawal agreement – European Enforcement Orders and European Orders for Payment applied for before IP completion day and European Small Claims Procedures commenced before IP completion day.**

6. Nothing in these Regulations affects the application of paragraphs 2(d), 3(d) and (e) of Article 67 of the withdrawal agreement and legislation amended or revoked by these Regulations continues to have effect for the purposes of those paragraphs as if the amendments and revocations had not been made.

**Saving: Regulation (EC) No 805/2004 – European Enforcement Orders applied for after IP completion day and before commencement.**

7.(1) Regulation (EC) No 805/2004 continues to apply as if it had not been revoked by these Regulations with the modifications set out in subregulation (2) in relation to a case where-

- (a) one or more of the following has occurred-
  - (i) a judgment has been given after IP completion day and before commencement of these Regulations;
  - (ii) a court settlement has been approved or concluded after IP completion day and before commencement of these Regulations;
  - (iii) an authentic settlement has been drawn up or registered after IP completion day and before commencement;
- (b) the application for certification as a European Enforcement Order is made after IP completion day and before commencement; and
- (c) enforcement of the certified judgment, court settlement, or authentic instrument is being sought in Gibraltar.

(2) These modifications are that Regulation (EC) No 805/2004 is to be read as if-

- (a) the term “Member State” included Gibraltar;
- (b) Article 29 (information on enforcement procedures and authorities) were omitted;
- (c) Article 30 (information relating to redress procedures, languages and authorities) were omitted;
- (d) Article 31 (amendments to the Annexes) were omitted;
- (e) Article 32 (committee) were omitted-

(3) In this regulation-

- (a) “authentic instrument” means –

- (i) a document which has been formally drawn up or registered as an authentic instrument, and the authenticity of which –
    - (aa) relates to the signature and the content of the instrument; and
    - (bb) has been established by a public authority or other authority empowered for that purpose by the member State in which it originates; or
  - (ii) an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them;
- (b) “judgment” means any judgment given by a court or tribunal of a member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

**Saving: Regulation (EC) No 1896/2006 – European orders for payment applied for after IP completion day and before commencement.**

8.(1) Regulation (EC) No 1896/2006 continues to apply as if had not been revoked by these Regulations with the modifications set out in subregulation (2) in relation to a case where-

- (a) the application for a European order for payment is made after IP completion day and before the commencement of these Regulations; and
- (b) enforcement of that European order for payment is being sought in Gibraltar.

(2) Those modifications are that Regulation (EC) No 1896/2006 is to be read as if-

- (a) references to “Member State” included Gibraltar;
- (b) in Article 6(1) (jurisdiction) the words “the relevant rules of Community law, in particular” were omitted;
- (c) in the second subparagraph of paragraph 5 of Article 16 (opposition to the European order for payment) the final sentence were omitted;
- (d) Article 28 (information relating to service costs and enforcement) were omitted;
- (e) Article 29 (information relating to jurisdiction, review procedures, means of communication and languages) were omitted;
- (f) Article 30 (amendments to the Annexes) were omitted;
- (g) Article 31 (committee) were omitted;
- (h) Article 32 (review) were omitted.

**Savings: Regulation (EC) No 861/2007 – European Small Claims Procedures commenced after IP completion day and before commencement.**

9.(1) Regulation (EC) No 861/2007 continues to apply as if it had not been revoked by these Regulations with the modifications set out in subregulation (2) in relation to a case where-

- (a) the claim form is lodged after IP completion day and before the commencement of these Regulations;
- (b) enforcement of the judgment given in the European Small Claims Procedure is being sought in Gibraltar.

(2) Those modifications are that Regulation (EC) No 861/2007 is to be read as if –

- (a) references to “Member State” included Gibraltar;
- (b) Article 4(2) (Member States informing the Commission regarding means of communication) were omitted;
- (c) Article 17(1) (Member States informing the Commission regarding appeals) were omitted;
- (d) Article 24 (information) were omitted;
- (e) Article 25 (information relating to jurisdiction, means of communication and appeals) were omitted;
- (f) Article 26 (information relating to jurisdiction, means of communications and appeals) were omitted;
- (g) Article 27 (committee) were omitted;
- (h) Article 28 (review) were omitted.

**Transitional and saving provision – Part 74 and Part 78 Civil Procedure Rules.**

10.(1) Where in relation to any proceedings the relevant savings provision applies, the relevant rules continue to apply on or after IP completion day, or commencement day as the case may be, for the purposes of those proceedings as if the amendments made to those rules by the UK Civil Procedure Rules 1998 (Amendment)(EU Exit) Regulations 2019 had not been made.

(2) In this regulation –

- (a) “the relevant savings provision” means regulations 6 to 9 of these Regulations;
- (b) “the relevant rules” means Part 78, or Section IV of Part 74, as applicable.

Dated: 4<sup>th</sup> May 2023

S. SACRAMENTO,  
Minister with responsibility for Justice.

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### **EXPLANATORY MEMORANDUM**

These Regulations are made in exercise of the powers in section 11 and 11B of the European Union (Withdrawal) Act 2019 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

The Regulations make amendments to legislation in the field of cross-border civil judicial cooperation relating to (i) the European Enforcement Order (EEO) as provided for by Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, (ii) the European order for payment procedure (EOPP) as provided for by Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 and (iii) the European Small Claims Procedure (ESCP) as provided for by Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.

Part 2 revokes Regulation (EC) No 805/2004, Regulation (EC) No 1896/2006 and Regulation (EC) NO 861/2007.

Part 3 make provision in accordance with the EU Withdrawal Agreement and saves and modifies certain legislation relating to the EEO, EOPP and ESCP for application to certain proceedings commenced after IP completion day and before commencement of these Regulations.