Na področju civilnega pravosodja se bodo postopki, ki še potekajo, in postopki, ki so se začeli pred koncem prehodnega obdobja, nadaljevali po pravu EU. Evropski portal e-pravosodje bo na podlagi vzajemnega priznavanja ohranil informacije, povezane z Združenim kraljestvom, do konca leta 2024.

European payment order

Gibraltar

1 Existence of an order for payment procedure

There is no specific order for payment procedure in Gibraltar. There is, however, an equivalent procedure by which a claimant can obtain a judgment by default.

1.1 Scope of procedure

The default judgment procedure is part of the normal civil court procedures in Gibraltar. Once a claimant issues a claim the defendant should respond within 14 days of having received notification of the claim form. If the defendant does not reply to the claim, the claimant can ask the court to enter judgment 'by default' (that is, make an order that the defendant pay the amount claimed because no reply has been received). A claimant should do this as soon as possible after the 14 days have passed. Until the court receives the request to enter judgment, the defendant can still reply to the claim. If the court receives the defendant's reply before the claimant's request, that reply will have priority even if it had been filed late.

If a claimant does not request judgment within six months of the end of the period for filing a defence, the claim is 'stayed' (stopped or halted) and the only action a claimant can take is to apply to a judge for an order lifting the stay.

1.1.1 What types of claims are eligible (e.g. only pecuniary claims, only contractual claims etc.)?

Default judgment can be granted in almost all types of case/action in the civil courts in Gibraltar. They are not limited to pecuniary and contractual claims. Unless specifically excluded by the rules of court (known as the Civil Procedure Rules) a default judgment can be sought by the claimant in any civil action in Gibraltar.

In order to obtain default judgment the claimant must provide evidence that he or she has complied with procedural requirements and also that the defendant has failed to comply with those procedural requirements.

Exceptionally, part 8 of the Civil Procedure Rules allows an alternative procedure for a claim to be followed in cases where a claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact or where this procedure is allowed in specific proceedings. In such circumstances a default judgment is not available.

1.1.2 Is there an upper limit regarding the value of the claim?

There is no upper limit on the value of the claim.

1.1.3 Is the use of that procedure optional or obligatory?

As mentioned above, the procedure for a judgment by default is part of the normal civil proceedings. It is not a separate procedure as known in many other Member States. The use of the procedure is optional in the sense that default judgment is not automatically granted upon the defendant's failure to respond to a claim in the relevant time limit. This time limit is clearly given on the claim form that is served upon the defendant. In order to obtain default judgment, the claimant must either make a request or an application for a default judgment. Alternatively the claimant can choose not to pursue the claim.

1.1.4 Is the procedure available if the defendant lives in another Member State or in a third country?

Subject to agreements between countries on the recognition and enforcement of judgments between Member States (e.g. Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) or similar agreements made with third countries, the procedure is available if the defendant lives in another Member State or in a third country. The claimant must ensure that he has properly served the claim form on a defendant in accordance with the rules that apply to service of documents outside Gibraltar (e.g. Council Regulation (EC) No 1393 /2007 of of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters). Where the defendant fails to respond to the claim, the claimant must make an application to the court to obtain a default judgment in the normal way.

1.2 Competent court

The Supreme Court of Gibraltar in its various jurisdictions would be a competent court. This includes the Small Claims Jurisdiction of the Supreme Court which deals with claims of up to £10,000.

1.3 Formal requirements

In addition to the requirements listed above - i.e. that the claimant followed the correct procedures in issuing the claim and that the defendant did not respond in the required time - the formal requirements to obtain a judgment by default depend on the type of claim.

Generally speaking, if the claim is for a specified sum a claimant is only required to make a request for a default judgment. Such requests are usually dealt with by the Registrar of the court, rather than a judge. In such cases the court staff check that there has been no acknowledgement of service or defence lodged by the defendant, that the relevant time periods have expired and that the claimant has provided the court with the necessary evidence.

Where the claim is for an unspecified amount a claimant must make an application to the court. In such cases a judge considers the matter. He or she decides whether a court hearing is necessary and what the claimant will need to provide to help the judge to decide the amount of money to which the claimant is entitled - e.g. what evidence should be provided.

1.3.1 Is the use of a standardised form obligatory? (if yes, where can that form be obtained?)

For both types of claim the use of a standard form is obligatory.

Where a claim is for a specified amount and the court has issued the claim, the court sends the claimant form N205A - Notice of Issue (Specified Amount). This form includes a section for the claimant to complete and return to the court to request a default judgment in the event that the defendant fails to respond to the claim in the required time. There are notes for guidance on the form to help complete it.

Before a claimant completes the form he or she should think carefully about how he or she wants the defendant to pay the amount owing. A claimant may want the money paid immediately but may be more likely to get it if the defendant is allowed to pay by installments over a period of time. This will depend on the defendant's circumstances.
If the claim was for an unspecified amount, the claimant would have received form N205B - Notice of Issue (Unspecified Amount) from the court when the claim was issued. This form also includes a section where the claimant can ask the court to make an order that the defendant is 'liable' (responsible) for the claim. The court will decide what amount the defendant should pay. This is called 'entering judgment for an amount to be decided by the court'.
Certain types of cases require an application to be made for a judge to decide whether a default judgment can be granted. These include cases where the claim is served upon a defendant in another jurisdiction, where the defendant is a State, the Crown or a person or body immune from civil proceedings. An application is also necessary where the claim is against a child or patient, or is a claim in tort by one spouse against another. In such cases Form N244 (Application Notice) should be used.
For further information, including obtaining copies of the relevant forms, contact the Supreme Court Registry, 277 Main Street, Gibraltar, telephone number (+350) 200 75608.

1.3.2 Is representation by a lawyer required?

As with all types of cases, there is no requirement for a person to seek the advice of, or be represented by, a lawyer. As a general rule, however, if a claim is for a sum over £10,000 and particularly if it includes complicated issues, it is advisable to seek the advice of a solicitor. More details about the advisability of legal representation can be found on the page Bringing a Case to Court.

1.3.3 In how much detail do I have to describe the reason for the claim?

As a request or an application for a default judgment is part of normal civil court procedures in Gibraltar, it will have been necessary for a claimant to issue a claim in the normal way - see the page How to proceed. In general terms, a claim form must contain details of the parties, brief details of the claim and, if possible, a statement as to the amount of money being claimed and whether the amount expected to recover falls into one of the following bands:
not more than £10000
more than £10000 but not more than £15000
more than £15000.
In claims for personal loss or injury the claimant should state whether he or she expects to recover:
not more than £1000
more than £1000.
If a claimant is unable to put a value on the claim he or she should say “I cannot say how much I intend to recover”. The claim form includes notes for guidance for both the claimant and the defendant.

1.3.4 Is it necessary to present written evidence of the claim at issue? If yes, which documents are admissible as proof?

In addition to the claim form a claimant should provide the particulars of claim which include:
a concise statement of the facts
a statement (if applicable) to the effect that the claimant is seeking particular types of damages.
details of any interest claimed
any other matters required for the type of claim as set out in the court rules.
Where court staff are able to issue a judgment by default they need to be satisfied that the particulars of the claim have been served on the defendant; that the defendant has not responded to the claim in the relevant time period; and that the defendant has not satisfied the claim.
If these requirements are fulfilled, court staff issue a judgment for the claimant which tells the defendant how much to pay, when to pay it and the address to which the money should be sent. A copy of the judgment is sent to the claimant and the defendant.
Where it falls to a judge to make the decision, as mentioned above, where a claim is for an unspecified amount he or she may decide whether a hearing is necessary or whether further evidence is required. This is called giving directions. Once the judge has made a decision, the claimant and the defendant will be sent an order. The judge may give directions either allocating the claim to the small claims track; or directing that the claim is given a disposal hearing.
At the disposal hearing the judge will either: give more detailed directions about, for example, the documents and evidence needed, to help the judge make a final decision about the amount; or decide the amount the defendant has to pay, if it is a simple case which does not need a lengthy hearing.
Which will happen depends on the likely amount of the damages; whether the defendant is likely to dispute the amount of damages; and whether the judge feels there is sufficient proof in the papers available at the hearing to make a final decision.
A judge will not normally use the disposal hearing to make a final decision unless any written evidence provided to the court was sent to the defendant at least three days before the disposal hearing was due to take place.
After the disposal hearing, court staff set out what the judge decided in an order. Copies are sent to the claimant and the defendant.
In addition to the above, where the defendant does not reside in Gibraltar the court must satisfy itself under the relevant international agreements etc. that it has power to hear and decide the claim; that no other court has exclusive jurisdiction; and that the claim has been properly served.

1.4 Rejection of application

The court will reject a request or application for default judgment where the claimant has not complied with the rules of court. For example if the particulars of the claim form or its service do not comply with the Civil Procedure Rules the court will not grant a default judgment. The court will also reject the application for default judgment where the claimant does not provide the necessary evidence required to satisfy the court (see above). Providing these procedural requirements are followed, whether the court examines the justification of the claim before issuing a judgment by default depends (as mentioned above) on whether the claim is for a specified amount or not, or whether it falls into the category of claims that can only be considered on application by a judge (see 1.3).

1.5 Appeal

Refusal to grant a default judgment will only arise as a result of the claimant's failure to satisfy the court that he or she followed the correct procedures. The claimant cannot appeal this decision. Where the court refuses to grant judgment in default the claimant can normally start afresh by serving a new claim form against the defendant in accordance with the procedures and requirements of the Civil Procedure Rules.
An order for a default judgment which has been wrongly granted can be varied or set aside on application by the defendant. An application can be made to have the default judgment varied (e.g. changed to a lower amount where part of the debt was paid prior to judgment) or set aside (i.e. cancelled).
Where the claimant has reason to believe that the particulars of the claim did not reach the defendant before default judgment, he or she has a duty to apply to the court to ask the court to set aside the default judgment which was granted in his or her favour.

1.6 Statement of opposition

The default judgment procedure only becomes available as a result of the defendant's failure to defend or acknowledge the claim in the time required (see above). If the defendant defends the claim then the case proceeds as a normal defended claim.

If a defendant wishes to have an order for default judgment cancelled or changed after it has been granted he or she must act promptly to apply to the court to have the judgment set aside or varied. The court can vary or cancel the default judgment if it considers that there is good reason for doing so or that the defendant has a real prospect of successfully defending the case.

1.7 Effect of statement of opposition

If the defendant lodges a defence to the claim within the required time the case proceeds as a normal contested claim as described in the page Bringing a Case to Court.

1.8 Effect of lack of statement of opposition

The default judgment procedure only becomes available as a result of the defendant's failure to defend or acknowledge the claim in the required time. Only then can the claimant file a request or application for judgment in default.

1.8.1 What needs to be done in order to obtain an enforceable decision?

The default judgment is a decision that the claimant can enforce against the defendant. The procedures that need to be followed to obtain the judgment are described in 1.3 above.

1.8.2 Is this decision final or is there still a possibility for the defendant to appeal against that decision?

As described above, the defendant can ask the court to vary or set aside (i.e., to change the terms of the judgment or to cancel it in its entirety) the default judgment. This is not an appeal as such as it is heard by the same court that would have heard the original case had the defendant defended the claim. The court can vary or set aside the default judgment if it considers that there was some procedural impropriety or that the defendant has a real prospect of successfully defending the claim or that there is a good reason for doing so.

Either party can appeal against a decision to set aside or to refuse to set aside, a default judgment, subject to obtaining permission from either the court that made the decision or the appeal court.

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