

SERVICE WITHIN THE JURISDICTION

This Practice Direction Supplements FPR Part 6, Chapters 2 and 3

GENERAL PROVISIONS

Scope of this Practice Direction

1.1 This Practice Direction supplements the following provisions of Part 6 –

- (a) Chapter 2 (service of the application for a matrimonial order or civil partnership order in the jurisdiction);
- (b) Chapter 3 (service of documents other than an application for a matrimonial order or civil partnership order in the United Kingdom); and
- (c) rule 6.43(2) in relation to the method of service on a party in Scotland or Northern Ireland.

(Practice Direction B supplementing Part 6 contains provisions relevant to service on a party in Scotland or Northern Ireland, including provisions about the period for responding to an application notice.)

When service may be by document exchange

2.1 Subject to the provisions of rule 6.4 (which provides when an application for a matrimonial or civil partnership order may be served by document exchange) service by document exchange (DX) may take place only where –

- (a) the address at which the party is to be served includes a numbered box at a DX; or
- (b) the writing paper of the party who is to be served or of the solicitor acting for that party sets out a DX box number; and
- (c) the party or the solicitor acting for that party has not indicated in writing that they are unwilling to accept service by DX.

How service is effected by post, an alternative service provider or DX

3.1 Service by post, DX or other service which provides for delivery on the next business day is effected by –

- (a) placing the document in a post box;
- (b) leaving the document with or delivering the document to the relevant service provider; or
- (c) having the document collected by the relevant service provider.

Service by fax or other electronic means

- 4.1** This paragraph applies to the service of a document other than an application for a matrimonial or civil partnership order and documents in adoption proceedings and parental order proceedings.
- 4.2** Subject to the provisions of rule 6.26(6) and (7), where a document is to be served by fax or other electronic means –
- (a)** the party who is to be served or the solicitor acting for that party must previously have indicated in writing to the party serving –
 - (i)** that the party to be served or the solicitor is willing to accept service by fax or other electronic means; and
 - (ii)** the fax number, e-mail address or other electronic identification to which it must be sent; and
 - (b)** the following are to be taken as sufficient written indications for the purposes of paragraph 4.2(a) –
 - (i)** a fax number set out on the writing paper of the solicitor acting for the party to be served;
 - (ii)** an e-mail address set out on the writing paper of the solicitor acting for the party to be served but only where it is stated that the e-mail address may be used for service; or
 - (iii)** a fax number, e-mail address or electronic identification set out on a statement of case or an answer to a claim filed with the court.
- 4.3** Where a party intends to serve a document by electronic means (other than by fax) that party must first ask the party who is to be served whether there are any limitations to the recipient's agreement to accept service by such means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).
- 4.4** Where a document is served by electronic means, the party serving the document need not in addition send or deliver a hard copy.

Service on members of the Regular Forces and United States Air Force

- 5.1** The provisions that apply to service on members of the regular forces (within the meaning of the Armed Forces Act 2006) and members of the United States Air Force are annexed to this practice direction.

Application for an order for service by an alternative method or at an alternative place

- 6.1** An application in the High Court or a county court for an order under rule 6.19 may be made without notice.
- 6.2** Where an application for an order under rule 6.19 is made before the document is served, the application must be supported by evidence stating –
- (a)** the reason why an order is sought;
 - (b)** what alternative method or place is proposed; and
 - (c)** why the applicant believes that the document is likely to reach the person to be served by the method or at the place proposed.

- 6.3** Where the application for an order is made after the applicant has taken steps to bring the document to the attention of the person to be served by an alternative method or at an alternative place, the application must be supported by evidence stating –
- (a) the reason why the order is sought;
 - (b) what alternative method or alternative place was used;
 - (c) when the alternative method or place was used; and
 - (d) why the applicant believes that the document is likely to have reached the person to be served by the alternative method or at the alternative place.

6.4 Examples –

- (a) an application to serve by posting or delivering to an address of a person who knows the other party must be supported by evidence that if posted or delivered to that address, the document is likely to be brought to the attention of the other party;
- (b) an application to serve by sending a SMS text message or leaving a voicemail message at a particular telephone number saying where the document is must be accompanied by evidence that the person serving the document has taken, or will take, appropriate steps to ensure that the party being served is using that telephone number and is likely to receive the message.

Applications for an order to dispense with service

- 7.1** An application in the High Court or a county court for an order under rule 6.36 (power to dispense with service) may be made without notice.

Deemed service of a document other than an application for a matrimonial or civil partnership order

- 8.1** Rule 6.34 contains provisions about deemed service of a document other than an application for a matrimonial or civil partnership order. Examples of how deemed service is calculated are set out below.

Example 1

- 8.2** Where the document is posted (by first class post) on a Monday (a business day), the day of deemed service is the following Wednesday (a business day).

Example 2

- 8.3** Where the document is left in a numbered box at the DX on a Friday (a business day), the day of deemed service is the following Monday (a business day).

Example 3

- 8.4** Where the document is sent by fax on a Saturday and the transmission of that fax is completed by 4.30p.m. on that day, the day of deemed service is the following Monday (a business day).

Example 4

- 8.5** Where the document is served personally before 4.30p.m. on a Sunday, the day of deemed service is the next day (Monday, a business day).

Example 5

- 8.6** Where the document is delivered to a permitted address after 4.30p.m. on the Thursday (a business day) before Good Friday, the day of deemed service is the following Tuesday (a business day) as the Monday is a bank holiday.

Example 6

- 8.7** Where the document is posted (by first class post) on a bank holiday Monday, the day of deemed service is the following Wednesday (a business day).

Service of application on children and protected parties

- 9.1** Rule 16.14(1) and (2) are applied to service of an application form (other than an application for a matrimonial or civil partnership order) commencing proceedings on children and protected parties by rule 6.28. Rule 6.14(7) makes provision as to how an application form must be served where the respondent is a child or protected party. A document served in accordance with rule 6.14(7) must be endorsed with the following notice which is set out in Form D5 –

Important Notice

The contents or purport of this document are to be communicated to the Respondent

[or as the case may be], [full name of Respondent]

if s/he is over 16 [add if the person to be served lacks capacity within the meaning of the Mental Capacity Act 2005 to conduct the proceedings] unless you are satisfied [after consultation with the responsible medical officer within the meaning of the Mental Health Act 1983 or, if s/he is not liable to be detained or subject to guardianship under that Act, his/her medical attendant]* that communication will be detrimental to his/her mental condition].

PROVISIONS RELATING TO APPLICATIONS FOR MATRIMONIAL AND CIVIL PARTNERSHIP ORDERS

Acknowledgment of service to be sent to applicant

- 10.1** Where the court office receives an acknowledgment of service the court officer must send a photographic copy of it to the applicant.

Personal service of application by bailiff

- 11.1** The court will only consider a request for personal service of the application by a bailiff if the address for service is in England and Wales.
- 11.2** In normal circumstances, a request should only be made if postal service has been attempted. In this case, if –

- (a) a signed acknowledgment of service is not returned to the court within 14 days after posting; and
 - (b) the applicant reasonably believes the respondent is still living at the stated address, the applicant may make a request to the court for personal service by a bailiff.
- 11.3** A request for personal service by a bailiff should be made in writing to the court officer on the prescribed form and accompanied by the relevant fee. The request should also be accompanied by –
- (a) evidence that postal service has been attempted and failed; or
 - (b) if postal service has not been attempted, an explanation as to why postal service is not considered appropriate in the circumstances of the case.
- 11.4** A request will rarely be granted where the applicant is legally represented and it will be necessary for the representative to show why service by bailiff is required rather than by a process server.

Proof of personal service by bailiff

- 12.1** Once service of the application has been effected or attempted by the bailiff he must file a certificate of service in the issuing court.
- 12.2** If the respondent fails to sign and return an acknowledgment of service to the court office and –
- (a) the certificate contains a signature of receipt of the application by the respondent; or
 - (b) the identity of the respondent is to be proved by a photograph supplied by the applicant, the applicant must prove the signature or photograph in the affidavit filed by the applicant under rule 7.19(4).

Service by bailiff in proceedings in the Principal Registry

- 13.1** This paragraph applies where proceedings which are pending in the Principal Registry of the Family Division are treated as pending in a divorce county court.
- 13.2** Where a document is to be served by a bailiff it must be sent for service to the Principal Registry for onward transmission to the court officer of the county court in whose district the document is to be served.

Service of application on children and protected parties

- 14.1** A document served in accordance with rule 6.14(7) must be endorsed with the notice contained in paragraph 9.1.

Annex

Service on Members of the Regular Forces

1. The following information is for litigants and legal representatives who wish to serve legal documents in civil proceedings in the courts of England and Wales on parties to the proceedings who are (or who, at the material time, were) members of the regular forces (as defined in the Armed Forces Act 2006).
2. The proceedings may take place in the county court or the High Court, and the documents to be served may be claim forms, interim application notices and pre-action application notices. Proceedings for divorce or maintenance and proceedings in the Family Courts generally are subject to special rules as to service which are explained in a practice direction issued by the Senior District Judge of the Principal Registry on 26 June 1979.

(now see Practice Direction 1 Maintenance Orders:Service Personnel:2 Disclosure of Addresses (1995)2FLR 813.)

3. In this Annex, the person wishing to effect service is referred to as the 'claimant' and the member of the regular forces to be served is referred to as 'the member'; the expression 'overseas' means outside the United Kingdom.

Enquiries as to address

4. As a first step, the claimant's legal representative will need to find out where the member is serving, if this is not already known. For this purpose the claimant's legal representative should write to the appropriate officer of the Ministry of Defence as specified in paragraph 10 below.
5. The letter of enquiry should in every case show that the writer is a legal representative and that the enquiry is made solely with a view to the service of legal documents in civil proceedings.
6. In all cases the letter must give the full name, service number, rank or rate, and Ship, Arm or Trade, Regiment or Corps and Unit or as much of this information as is available. Failure to quote the service number and the rank or rate may result either in failure to identify the member or in considerable delay.
7. The letter must contain an undertaking by the legal representative that, if the address is given, it will be used solely for the purpose of issuing and serving documents in the proceedings and that so far as is possible the legal representative will disclose the address only to the court and not to the claimant or to any other person or body. A legal representative in the service of a public authority or private company must undertake that the address will be used solely for the purpose of issuing and serving documents in the proceedings and that the address will not be disclosed so far as is possible to any other part of the legal representative's employing organisation or to any other person but only to the court. Normally on receipt of the required information and undertaking the appropriate office will give the service address.
8. If the legal representative does not give the undertaking, the only information that will be given is whether the member is at that time serving in England or Wales, Scotland, Northern Ireland or overseas.
9. It should be noted that a member's address which ends with a British Forces Post Office address and reference (BFPO) will nearly always indicate that the member is serving overseas.

10. The letter of enquiry should be addressed as follows –

(a) Royal Navy and Royal Marine Officers, Ratings and Other Ranks

Director Naval Personnel
Fleet Headquarters
MP 3.1
Leach Building
Whale Island
Portsmouth
Hampshire
PO2 8BY

Army Officers and other Ranks –

Army Personnel Centre
Disclosures 1
MP 520
Kentigern House
65 Brown Street
Glasgow
G2 8EX

Royal Air Force Officers and Other Ranks –

Manning 22E
RAF Disclosures
Room 221B
Trenchard Hall
RAF Cranwell
Sleaford
Lincolnshire
NG34 8HB

Assistance in serving documents on members

- 11.** Once the claimant's legal representative has ascertained the member's address, the legal representative may use that address as the address for service by post, in cases where this method of service is allowed by the Civil Procedure Rules. There are, however, some situations in which service of the proceedings, whether in the High Court or in the county court, must be effected personally; in these cases an appointment will have to be sought, through the Commanding Officer of the Unit, Establishment or Ship concerned, for the purpose of effecting service. The procedure for obtaining an appointment is described below, and it applies whether personal service is to be effected by the claimant's legal representative or the legal representative's agent or by a court bailiff, or, in the case of proceedings served overseas (with the leave of the court) through the British Consul or the foreign judicial authority.
- 12.** The procedure for obtaining an appointment to effect personal service is by application to the Commanding Officer of the Unit, Establishment or Ship in which the member is serving. The Commanding Officer may grant permission for the document server to enter the Unit, Establishment or Ship but if this is not appropriate the Commanding Officer may offer

arrangements for the member to attend at a place in the vicinity of the Unit, Establishment or Ship in order that the member may be served. If suitable arrangements cannot be made the legal representative will have evidence that personal service is impracticable, which may be useful in an application for service by an alternative method or at an alternative place.

General

- 13.** Subject to the procedure outlined in paragraphs 11 and 12, there are no special arrangements to assist in the service of legal documents when a member is outside the United Kingdom. The appropriate office will, however, give an approximate date when the member is likely to return to the United Kingdom.
- 14.** It sometimes happens that a member has left the regular forces by the time an enquiry as to address is made. If the claimant's legal representative confirms that the proceedings result from an occurrence when the member was in the regular forces and the legal representative gives the undertaking referred to in paragraph 7, the last known private address after discharge will normally be provided. In no other case, however, will the Ministry of Defence disclose the private address of a member of the regular forces.

Service on Members of United States Air Force

- 15.** In addition to the information contained in the memorandum of 26 July 1979, and after some doubts having been expressed as to the correct procedure to be followed by persons having civil claims against members of the United States Air Force in England and Wales, the Lord Chancellor's Office (as it was then) issued the following notes for guidance with the approval of the appropriate United States authorities.
- 16.** Instructions have been issued by the United States authorities to the commanding officers of all their units in England and Wales that every facility is to be given for the service of documents in civil proceedings on members of the United States Air Force. The proper course to be followed by a creditor or other person having a claim against a member of the United States Air Force is for that person to communicate with the commanding officer or, where the unit concerned has a legal officer, with the legal officer of the defendant's unit requesting the provision of facilities for the service of documents on the defendant. It is not possible for the United States authorities to act as arbitrators when a civil claim is made against a member of their forces. It is, therefore, essential that the claim should either be admitted by the defendant or judgment should be obtained on it, whether in the High Court or a county court. If a claim has been admitted or judgment has been obtained and the claimant has failed to obtain satisfaction within a reasonable period, the claimant's proper course is then to write to: Office of the Staff Judge Advocate, Headquarters, Third Air Force, R.A.F. Mildenhall, Suffolk, enclosing a copy of the defendant's written admission of the claim or, as the case may be, a copy of the judgment. Steps will then be taken by the Staff Judge Advocate to ensure that the matter is brought to the defendant's attention with a view to prompt satisfaction of the claim.