
STATUTORY INSTRUMENTS

2005 No. 2795

The Family Procedure (Adoption) Rules 2005

PART 6

SERVICE

SECTION 1

GENERAL RULES ABOUT SERVICE

Scope of this Part

34. The rules in this Part apply to the service of documents, including a document that is required to be given or sent by these Rules or any practice direction, except where—

- (a) any other enactment, a rule in another Part or a practice direction makes a different provision; or
- (b) the court directs otherwise.

Methods of service

35.—(1) Subject to paragraph (2), a document may be served—

- (a) where it is not known whether a solicitor is acting on behalf of a party—
 - (i) by delivering it to the party personally; or
 - (ii) by delivering it at, or by sending it by first class post to, the party's residence or last known residence; or
- (b) where a solicitor is known to be acting on behalf of a party—
 - (i) by delivering the document at, or sending it by first class post to, the solicitor's address for service; or
 - (ii) through a document exchange in accordance with the relevant practice direction.

(2) A notice of hearing must be served in accordance with paragraph (1)(a)(i) or (ii) irrespective of whether a solicitor is acting on behalf of a party.

(3) Where it appears to the court that there is a good reason to authorise service by a method not permitted by paragraph (1), the court may direct that service is effected by an alternative method.

(4) A direction that service is effected by an alternative method must specify—

- (a) the method of service; and
- (b) the date when the document will be deemed to be served.

Who is to serve

36.—(1) A document which has been issued or prepared by a court officer will be served by the court officer except where—

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- (a) a practice direction provides otherwise; or
- (b) the court directs otherwise.

(2) Where a court officer is to serve a document, it is for the court to decide which of the methods of service specified in rule 35(1) is to be used.

Service of documents on children and patients

37.—(1) The following table shows the person on whom a document must be served if it is a document which would otherwise be served on a child, non-subject child or patient—

Nature of party	Type of document	Person to be served
Child who is not also a patient	Any document	The solicitor acting for the child; where there is no such solicitor, the children's guardian or the children and family reporter.
Non-subject child who is not also a patient	Application form	One of the non-subject child's parents or guardians; if there is no parent or guardian, the person with whom the non-subject child resides or in whose care the non-subject child is.
Patient	Application form	The person authorised under Part VII of the Mental Health Act 1983(1) to conduct the proceedings in the name of the patient or on his behalf; if there is no person so authorised, the person with whom the patient resides or in whose care the patient is.
Non-subject child or patient	Application for an order appointing a litigation friend, where the non-subject child or patient has no litigation friend	See rule 57.
	Any other document	The litigation friend who is conducting proceedings on behalf of the non-subject child or patient.

- (2) Where a child is directed by the court to serve a document, service is to be effected by—
- (a) the solicitor acting for the child;

(1) 1983 c. 20.

- (b) where there is no such solicitor, the children’s guardian;
 - (c) where there is neither a solicitor or children’s guardian, the litigation friend; or
 - (d) where there is neither a solicitor, children’s guardian, or litigation friend, a court officer.
- (3) Where a non-subject child or patient is directed by the court to serve a document, service is to be effected by—
- (a) the solicitor acting for the non-subject child or patient; or
 - (b) where there is no such solicitor, the litigation friend.
- (4) The court may give directions permitting a document to be served on the child, non-subject child or patient, or on some other person other than the person specified in the table in this rule.
- (5) The court may direct that, although a document has been served on someone other than the person specified in the table, the document is to be treated as if it had been properly served.
- (6) This rule does not apply where a non-subject child is conducting proceedings without a litigation friend in accordance with rule 51.

Deemed service

38.—(1) Unless the contrary is proved, a document which is served in accordance with these Rules or any relevant practice direction will be deemed to be served on the day shown in the following table—

Method of service	Deemed day of service
First class post	The second day after it was posted.
Document exchange	The second day after it was left at the document exchange.
Delivering the document to address	The day after the document was delivered to that address.

- (2) If a document is served personally—
- (a) after 5 p.m. on a business day; or
 - (b) at any time on a day which is not a business day
- it will be treated as being served on the next business day.

Power of court to dispense with service

39. Where a rule or practice direction requires a document to be served, the court may direct that the requirement is dispensed with.

Certificate of service

40.—(1) Where a rule, practice direction or court order requires a certificate of service, the certificate must state the details set out in the following table—

Method of service	Details to be certified
Post	Date of posting.
Personal	Date of personal service.
Document exchange	Date of delivery to the document exchange.

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Method of service	Details to be certified
Delivery of document to address	Date when the document was delivered to the address.
Alternative method permitted by the court	As required by the court.

(2) Where an application form is to be served by the applicant he must file a certificate of service within 7 days beginning with the date on which the application form was served.

Notice of non-service

41. Where a person fails to serve any document under these Rules or as directed by the court he must file a certificate of non-service stating the reason why service has not been effected.

SECTION 2

SERVICE OUT OF THE JURISDICTION

Scope and definitions

42.—(1) This Section contains rules about—

- (a) service out of the jurisdiction; and
- (b) the procedure for serving out of the jurisdiction.

(Rule 6 defines “jurisdiction”.)

(2) In this Section—

“application form” includes application notice; and

“the Hague Convention” means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on November 15, 1965(2).

Service of documents

43.—(1) Any document to be served for the purposes of these Rules may be served out of the jurisdiction without the permission of the court.

(2) Subject to paragraph (4) or (5), any document served out of the jurisdiction in a country in which English is not the official language must be accompanied by a translation of the document—

- (a) in the official language of the country in which the document is to be served; or
- (b) if there is more than one official language of the country, in any one of those languages which is appropriate to the place in that country in which the document is to be served.

(3) Every translation filed under this rule must be signed by the translator to certify that the translation is accurate.

(4) Any document served out of the jurisdiction in a country in which English is not the official language need not be accompanied by a translation of the document where—

- (a) the person on whom the document is to be served is able to read and understand English; and
- (b) service of the document is to be effected directly on that person.

(5) Paragraphs (2) and (3) do not apply where service is to be effected in accordance with the Service Regulation.

Method of service – general provisions

44.—(1) Where an application form is to be served out of the jurisdiction, it may be served by any method—

- (a) permitted by the law of the country in which it is to be served; or
- (b) provided for by—
 - (i) rule 45 (service through foreign governments, judicial authorities and British Consular authorities); or
 - (ii) rule 47 (service in accordance with the Service Regulation).

(2) Nothing in this rule or in any court order will authorise or require any person to do anything in the country where the application form is to be served which is against the law of that country.

Service through foreign governments, judicial authorities and British Consular authorities

45.—(1) Where an application form is to be served on a respondent in any country which is a party to the Hague Convention, the application form may be served—

- (a) through the authority designated under the Hague Convention in respect of that country; or
- (b) if the law of that country permits—
 - (i) through the judicial authorities of that country; or
 - (ii) through a British Consular authority in that country.

(2) Where an application form is to be served on a respondent in any country which is not a party to the Hague Convention, the application form may be served, if the law of that country so permits—

- (a) through the government of that country, where that government is willing to serve it; or
- (b) through a British Consular authority in that country.

(3) Paragraph (2) does not apply where the application form is to be served in—

- (a) Scotland, Northern Ireland, the Isle of Man or the Channel Islands;
- (b) any Commonwealth State; or
- (c) any United Kingdom Overseas Territory listed in the relevant practice direction.

(4) This rule does not apply where service is to be effected in accordance with the Service Regulation.

Procedure where service is to be through foreign governments, judicial authorities and British Consular authorities

46.—(1) This rule applies where the applicant wishes to serve the application form through—

- (a) the judicial authorities of the country where the application form is to be served;
- (b) a British Consular authority in that country;
- (c) the authority designated under the Hague Convention in respect of that country; or
- (d) the government of that country.

(2) Where this rule applies, the applicant must file—

- (a) a request for service of the application form by the method in paragraph (1) that he has chosen;

- (b) a copy of the application form;
 - (c) any translation required under rule 43; and
 - (d) any other documents, copies of documents or translations required by the relevant practice direction.
- (3) When the applicant files the documents specified in paragraph (2), a court officer will—
- (a) seal, or otherwise authenticate with the stamp of the court, the copy of the application form; and
 - (b) forward the documents to the Senior Master of the Queen’s Bench Division.
- (4) The Senior Master will send documents forwarded under this rule—
- (a) where the application form is being served through the authority designated under the Hague Convention, to that authority; or
 - (b) in any other case, to the Foreign and Commonwealth Office with a request that it arranges for the application to be served by the method indicated in the request for service filed under paragraph (2) or, where that request indicates alternative methods, by the most convenient method.
- (5) An official certificate will be evidence of the facts stated in the certificate if it—
- (a) states that the application form has been served in accordance with this rule either personally, or in accordance with the law of the country in which service was effected;
 - (b) specifies the date on which the application form was served; and
 - (c) is made by—
 - (i) a British Consular authority in the country where the application form was served;
 - (ii) the government or judicial authorities in that country; or
 - (iii) any other authority designated in respect of that country under the Hague Convention.
- (6) A document purporting to be an official certificate under paragraph (5) will be treated as such a certificate, unless it is proved not to be.
- (7) This rule does not apply where service is to be effected in accordance with the Service Regulation.

Service in accordance with the Service Regulation

- 47.**—(1) This rule applies where an application form is to be served in accordance with the Service Regulation.
- (2) The applicant must file the application form and any translations or other documents required by the Service Regulation.
- (3) When the applicant files the documents referred to in paragraph (2), a court officer will—
- (a) seal, or otherwise authenticate with the stamp of the court, the copy of the application form; and
 - (b) forward the documents to the Senior Master of the Queen’s Bench Division.
- (The Service Regulation is annexed to the relevant practice direction.)

Undertaking to be responsible for expenses of the Foreign and Commonwealth Office

- 48.** Every request for service filed under rule 46 (service through foreign governments, judicial authorities etc.) must contain an undertaking by the person making the request—

- (a) to be responsible for all expenses incurred by the Foreign and Commonwealth Office or foreign judicial authority; and
- (b) to pay those expenses to the Foreign and Commonwealth Office or foreign judicial authority on being informed of the amount.