

SCHEDULE 1

RSC ORDER 11

SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

Principal cases in which service of claim form out of jurisdiction is permissible

Rule 1.—(1) Provided that the claim form does not contain any claim mentioned in Order 75, r.2 (1) and is not a claim form to which paragraph (2) of this rule applies, a claim form may be served out of the jurisdiction with the permission of the Court if—

- (a) a remedy is sought against a person domiciled within the jurisdiction;
- (b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);
- (c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;
- (d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain any other remedy in respect of the breach of a contract, being (in either case) a contract which—
 - (i) was made within the jurisdiction; or
 - (ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or
 - (iii) is by its terms, or by implication, governed by English law, or
 - (iv) contains a term to the effect that the High Court shall have jurisdiction to hear and determine any claim in respect of the contract;
- (e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
- (f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction;
- (g) the whole subject—matter of the proceedings is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
- (h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction;
- (i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, situate within the jurisdiction;
- (j) the claim is brought to execute the trusts of a written instrument being trusts that ought to be executed according to English law and of which the person to be served with the claim form is a trustee, or for any remedy which might be obtained in any such action;
- (k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any remedy which might be obtained in any such action;
- (l) the claim is brought in a probate action;

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- (m) the claim is brought to enforce any judgment or arbitral award;
 - (n) the claim is brought against a defendant not domiciled in Scotland or Northern Ireland in respect of a claim by the Commissioners of Inland Revenue for or in relation to any of the duties or taxes which have been, or are for the time being, placed under their care and management;
 - (o) the claim is brought under the Nuclear Installations Act 1965⁽¹⁾ or in respect of contributions under the Social Security Contributions and Benefits Act 1992⁽²⁾;
 - (p) the claim is made for a sum to which the Directive of the Council of the European Communities dated 15th March 1976 No. 76/308/EEC applies, and service is to be effected in a country which is a member State of the European Economic Community;
 - (q) the claim is made under the Drug Trafficking Offences Act 1994⁽³⁾;
 - (r) the claim is made under the Financial Services Act 1986⁽⁴⁾ or the Banking Act 1987⁽⁵⁾;
 - (s) the claim is made under Part VI of the Criminal Justice Act 1988⁽⁶⁾;
 - (t) the claim is brought for money had and received or for an account or other remedy against the defendant as constructive trustee, and the defendant's alleged liability arises out of acts committed, whether by him or otherwise, within the jurisdiction;
 - (u) the claim is made under the Immigration (Carriers' Liability) Act 1987⁽⁷⁾.
- (2) A claim form may be served out of the jurisdiction on a defendant without the permission of the Court provided that each claim against that defendant is either—
- (a) a claim which by virtue of the Civil Jurisdiction and Judgments Act 1982⁽⁸⁾ the Court has power to hear and determine, made in proceedings to which the following conditions apply—
 - (i) no proceedings between the parties concerning the same cause of action are pending in the courts of any other part of the United Kingdom or of any other Convention territory; and
 - (ii) either the defendant is domiciled in any part of the United Kingdom or in any other Convention territory, or the proceedings begun by the claim form are proceedings to which Article 16 of Schedule 1, 3C or 4 refers, or the defendant is a party to an agreement conferring jurisdiction to which Article 17 of Schedule 1, 3C or 4 to that Act applies; or
 - (b) a claim which by virtue of any other enactment the High Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction.
- (4) For the purposes of this rule, and of r.9 of this Order, domicile is to be determined in accordance with the provisions of sections 41 to 46 of the Civil Jurisdiction and Judgments Act 1982 and “Convention territory” means the territory or territories of any Contracting State, as defined by s.1 (3) of that Act, to which, as defined in s.1 (1) of that Act, the Brussels or the Lugano Convention apply.

(1) 1965. c.57.

(2) 1992 c. 4.

(3) 1994 c. 37.

(4) 1986 c. 60.

(5) 1987 c. 22.

(6) 1988 c. 33.

(7) 1987 c. 24.

(8) 1982 c. 27; Schedule 1 was substituted by S.I. 1989/1346; Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991(c. 12), section 1(3), schedule 1; Schedule 4 was amended by S.I. 1993/603. Sections 41 to 46 were amended by the Civil Jurisdiction and Judgments Act 1991, section 3, schedule 2, paragraphs 16 to 21.

The period for filing an acknowledgment of service or filing or serving an admission where the claim form is served under rule 1(2)

Rule1A.—(1) This rule sets out the period for filing an acknowledgment of service under CPR Part 10 or filing or serving an admission under CPR Part 14 where a claim form has been served out of the jurisdiction under rule 1(2).

(2) If the claim form is to be served under rule 1(2)(a) in Scotland, Northern Ireland or in the European territory of another contracting state the period is—

- (a) where the defendant is served with a claim form which states that particulars of claim are to follow, 21 days after the service of the particulars of claim; and
- (b) in any other case, 21 days after service of the claim form.

(3) If the claim form is to be served under rule 1(2)(a) in any other territory of a Contracting State the period is—

- (a) where the defendant is served with a claim form which states that particulars of claim are to follow, 31 days after the service of the particulars of claim; and
- (b) in any other case, 31 days after service of the claim form.

(4) If the claim form is to be served under—

- (a) rule 1(2)(a) in a country not referred to in paragraphs (2) or (3); or
- (b) rule 1(2)(b),

the period is set out in the relevant practice direction.

The period for filing a defence where the claim form is served under rule 1(2)

Rule1B.—(1) This rule sets out the period for filing a defence under CPR Part 15 where a claim form has been served out of the jurisdiction under rule 1(2).

(2) If the claim form is to be served under rule 1(2)(a) in Scotland, Northern Ireland or in the European territory of another contracting state the period is—

- (a) 21 days after service of the particulars of claim; or
- (b) if the defendant files an acknowledgment of service under CPR Part 8, 35 days after service of the particulars of claim.

(3) If the claim form is to be served under rule 1(2)(a) in any other territory of a Contracting State the period is—

- (a) 31 days after service of the particulars of claim; or
- (b) if the defendant files an acknowledgment of service under CPR Part 8, 45 days after service of the particulars of claim.

(4) If the claim form is to be served under—

- (a) rule 1(2)(a) in a country not referred to in paragraphs (2) or (3); or
- (b) rule 1(2)(b),

the period is set out in the relevant practice direction.

Application for, and grant of, permission to serve claim form out of jurisdiction

Rule 4.—(1) An application for the grant of permission under rule 1 (1) must be supported by written evidence stating—

- (a) the grounds on which the application is made;
- (b) that in the belief of the witness the claimant has a good cause of action;

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- (c) in what place or country the defendant is, or probably may be found; and
- (d) where the application is made under rule 1 (1)(c), the grounds for the belief of the witness that there is between the claimant and the person on whom a claim form has been served a real issue which the claimant may reasonably ask the Court to try.

(2) No such permission shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

(3) Where the application is for the grant of permission under rule 1 to serve a claim form in Scotland or Northern Ireland, if it appears to the Court that there may be a concurrent remedy there, the Court, in deciding whether to grant permission shall have regard to the comparative cost and convenience of proceeding there or in England, and (where that is relevant) to the powers and jurisdiction of the sheriff court in Scotland or the county courts or courts of summary jurisdiction in Northern Ireland.

(4) An order granting under rule 1 permission to serve a claim form, out of the jurisdiction must specify the periods within which the defendant may—

- (a) file an acknowledgment of service in accordance with CPR Part 10;
- (b) file or serve an admission in accordance with CPR Part 14; and
- (c) file a defence in accordance with CPR Part 15.

Service of claim form abroad: general

Rule 5.—(1) Subject to paragraphs (2) to (8) of this rule—

- (a) a claim form must be served personally on each defendant by the claimant or his agent;
- (b) where a defendant's solicitor indorses on the claim form a statement that he accepts service of the claim form on behalf of that defendant, the claim form shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made;
- (c) where a claim form is not duly served on a defendant but he acknowledges service of it, the claim form shall be deemed, unless the contrary is shown, to have been duly served on him and to have been so served on the date on which he acknowledges service;
- (d) CPR rule 6.8 (service by an alternative method) shall apply in relation to the claim form.

(2) Nothing in this rule or in any order or direction of the court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.

(3) A claim form which is to be served out of the jurisdiction—

- (a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected; and
- (b) need not be served by the claimant or his agent if it is served by a method provided for by rule 6 or rule 7.

(5) An official certificate stating that a claim form as regards which rule 6 has been complied with has been served on a person personally or in accordance with the law of the country in which service was effected, on a specified date, being a certificate—

- (a) by a British consular authority in that country;
- (b) by the government or judicial authorities of that country; or
- (c) by any other authority designated in respect of that country under the Hague Convention,

shall be evidence of the facts so stated.

(6) An official certificate by the Secretary of State stating that a claim form has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact.

(7) A document purporting to be such a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.

(8) In this rule and rule 6 “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.

Service of claim form abroad through foreign governments, judicial authorities and British consuls

Rule 6.—(1) Save where a claim form is to be served pursuant to paragraph (2A) this rule does not apply to service in—

- (a) Scotland, Northern Ireland, the Isle of Man or the Channel Islands;
- (b) any independent Commonwealth country;
- (c) any associated state;
- (d) any colony;
- (e) the Republic of Ireland.

(2) Where in accordance with these rules a claim form is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention (other than the Hague Convention) providing for service in that country of process of the High Court, the claim form may be served—

- (a) through the judicial authorities of that country; or
- (b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).

(2A) Where in accordance with these rules, a claim form is to be served on a defendant in any country which is a party to the Hague Convention, the claim form may be served—

- (a) through the authority designated under the 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.

(3) Where in accordance with these rules a claim form is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the High Court, the claim form may be served—

- (a) through the government of that country, where that government is willing to effect service; or
- (b) through a British consular authority in that country, except where service through such an authority is contrary to the law of that country.

(4) A person who wishes to serve a claim form by a method specified in paragraph (2), (2A) or (3) must file in the Central Office of the Supreme Court a request for service of the claim form by that method, together with a copy of the claim form and an additional copy thereof for each person to be served.

(5) Every copy of a claim form filed under paragraph (4) must be accompanied by a translation of the claim form in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected:

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Provided that this paragraph shall not apply in relation to a copy of a claim form which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a British consular authority on a British subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

(6) Every translation lodged under paragraph (5) must be certified by the person making it to be a correct translation, and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(7) Documents duly filed under paragraph (4) shall be sent by the Senior Master to the Parliamentary Under-Secretary of State to the Foreign Office with a request that he arrange the claim form to be served by the method indicated in the request lodged under paragraph (4) or, where alternative methods are so indicated, by such one of those methods as is most convenient.

Service of claim form in certain actions under certain Acts

Rule 7.—(1) Subject to paragraph (4) where a person to whom permission has been granted under rule 1 to serve a claim form on a State, as defined in section 14 of the State Immunity Act 1978⁽⁹⁾, wishes to have the claim form served on that State, he must file in the Central Office—

- (a) a request for service to be arranged by the Secretary of State; and
- (b) a copy of the claim form; and
- (c) except where the official language of the State is, or the official languages of the State include, English, a translation of the claim form in the official language or one of the official languages of that State.

(2) Rule 6 (6) shall apply in relation to a translation filed under paragraph (1) of this rule as it applies in relation to a translation filed under paragraph (5) of that rule.

(3) Documents duly filed under this Rule shall be sent by the Senior Master to the Secretary of State with a request that the Secretary of State arrange for the claim form to be served.

(4) Where section 12 (6) of the State Immunity Act 1978 applies and the State has agreed to a method of service other than that provided by the preceding paragraphs, the claim form may be served either by the method agreed or in accordance with the preceding paragraphs of this rule.

Undertaking to pay expenses of service by Secretary of State

Rule 8 Every request lodged under rule 6 (4) or rule 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Secretary of State in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Finance Officer of the office of the Secretary of State and to produce a receipt for the payment to the proper officer of the High Court.

Applications for an interim remedy under section 25 (1) of the Civil Jurisdiction and Judgments Act 1982

Rule 8A.—(1) A claim form for an interim remedy under section 25 (1) of the Civil Jurisdiction and Judgments Act 1982⁽¹⁰⁾ (as extended by Order in Council made under section 25 (3)) may be served out of the jurisdiction with the permission of the Court.

(2) An application for the grant of permission under paragraph (1) must be supported by written evidence stating—

⁽⁹⁾ 1978 c. 33.

⁽¹⁰⁾ 1982 c. 27. Section 25 was amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 3, schedule 2, paragraph 12.

- (a) the grounds on which the application is made;
- (b) that in the belief of the witness the claimant has a good claim to an interim remedy;
- (c) in what place or country the defendant is, or probably may be, found.

(3) The following provisions of this Order shall apply, with the necessary modifications, where service is to be effected under this rule as they apply where service is effected under rule 1—

Rule 1A (period for acknowledging service or filing or serving admission)

Rule 1B (period for filing defence);

Rule 4 (2), (3) and (4) (grant of permission);

Rule 5 (service of claim form abroad: general);

Rule 6 (service of claim form abroad through foreign governments, etc.); and

Rule 8 (undertaking to pay expenses of service).

Service of petition and order etc.

Rule 9.—(1) Rule 1 of this Order shall apply to the service out of the jurisdiction of a petition as it applies to service of a claim form.

(4) Any application notice issued or order made in any proceedings may be served out of the jurisdiction with the permission of the Court but permission shall not be required for such service in any proceedings in which the claim form may by these rules or under any Act be served out of the jurisdiction without permission.

(5) Rule 4 (1), (2) and (3) shall, so far as applicable, apply in relation to an application for the grant of permission under this rule as they apply in relation to an application for the grant of permission under rule 1.

(7) Rules 5, 6 and 8 shall apply in relation to any document for the service of which out of the jurisdiction permission has been granted under this rule as they apply in relation to a claim form.

Order to apply to county court

Rule 10 This order applies to proceedings in any county court in addition to proceedings in the High Court.