

SCHEDULE 1

PART II

III SPECIAL PROVISIONS ABOUT SERVICE OUT OF THE JURISDICTION

Scope of this Section

6.17 This Section contains rules about—

- (a) service out of the jurisdiction;
- (b) how to obtain the permission of the court to serve out of the jurisdiction; and
- (c) the procedure for serving out of the jurisdiction.

(Rule 2.3 defines “jurisdiction”)

Definitions

6.18 For the purposes of this Part—

- (a) “the 1982 Act” means the Civil Jurisdiction and Judgments Act 1982⁽¹⁾;
- (b) “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⁾;
- (c) “Contracting State” has the meaning given by section 1(3) of the 1982 Act;
- (d) “Convention territory” means the territory or territories of any Contracting State to which the Brussels or Lugano Conventions (as defined in section 1(1) of the 1982 Act) apply;
- (e) “Civil Procedure Convention” means the Brussels and Lugano Conventions and any other Convention entered into by the United Kingdom regarding service outside the jurisdiction;
- (f) “United Kingdom Overseas Territory” means those territories as set out in the relevant practice direction.
- (g) “domicile” is to be determined in accordance with sections 41 to 46 of the 1982 Act;
- (h) “claim form” includes petition and application notice; and
- (i) “claim” includes petition and application.

(Rule 6.30 provides that where an application notice is to be served out of the jurisdiction under this Part, rules 6.21(4), 6.22 and 6.23 do not apply)

Service out of the jurisdiction where the permission of the court is not required

6.19.—(1) A claim form may be served on a defendant out of the jurisdiction where each claim included in the claim form made against the defendant to be served is a claim which the court has power to determine under the 1982 Act and—

- (a) no proceedings between the parties concerning the same claim are pending in the courts of any part of the United Kingdom or any other Convention territory; and
- (b) (i) the defendant is domiciled in the United Kingdom or in any Convention territory;

(1) 1982 c. 27, as amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12).

(2) Cmnd. 3986.

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- (ii) Article 16 of Schedule 1, 3C or 4 to the 1982 Act refers to the proceedings; or
- (iii) the defendant is a party to an agreement conferring jurisdiction to which Article 17 of Schedule 1, 3C or 4 to the 1982 Act refers.

(2) A claim form may be served on a defendant out of the jurisdiction where each claim included in the claim form made against the defendant to be served is a claim which, under any other enactment, the court has power to determine, although—

- (a) the person against whom the claim is made is not within the jurisdiction; or
- (b) the facts giving rise to the claim did not occur within the jurisdiction.

(3) Where a claim form is to be served out of the jurisdiction under this rule, it must contain a statement of the grounds on which the claimant is entitled to serve it out of the jurisdiction.

Service out of the jurisdiction where the permission of the court is required

6.20 In any proceedings to which rule 6.19 does not apply, a claim form may be served out of the jurisdiction with the permission of the court if—

General grounds

- (1) a claim is made for a remedy against a person domiciled within the jurisdiction;
- (2) a claim is made for an injunction^(g1) ordering the defendant to do or refrain from doing an act within the jurisdiction;
- (3) a claim is made against someone on whom the claim form has been or will be served and—
 - (a) there is between the claimant and that person a real issue which it is reasonable for the court to try; and
 - (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim;

Claims for interim remedies

- (4) a claim is made for an interim remedy under section 25(1) of the 1982 Act⁽³⁾;

Claims in relation to contracts

- (5) a claim is made in respect of a contract where the contract—
 - (a) was made within the jurisdiction;
 - (b) was made by or through an agent trading or residing within the jurisdiction;
 - (c) is governed by English law; or
 - (d) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract;
- (6) a claim is made in respect of a breach of contract committed within the jurisdiction;
- (7) a claim is made for a declaration that no contract exists where, if the contract was found to exist, it would comply with the conditions set out in paragraph (5);

(3) 1982 c. 27. Section 25 has been amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), Schedule 2, paragraph 12, and extended by S.I. 1997/302.

Claims in tort

- (8) a claim is made in tort where—
- (a) damage was sustained within the jurisdiction; or
 - (b) the damage sustained resulted from an act committed within the jurisdiction;

Enforcement

- (9) a claim is made to enforce any judgment or arbitral award;

Claims about property within the jurisdiction

- (10) the whole subject matter of a claim relates to property located within the jurisdiction;

Claims about trusts etc.

(11) a claim is made for any remedy which might be obtained in proceedings to execute the trusts of a written instrument where—

- (a) the trusts ought to be executed according to English law; and
- (b) the person on whom the claim form is to be served is a trustee of the trusts;

(12) a claim is made for any remedy which might be obtained in proceedings for the administration of the estate of a person who died domiciled within the jurisdiction;

(13) a claim is made in probate proceedings which includes a claim for the rectification of a will;

(14) a claim is made for a remedy against the defendant as constructive trustee where the defendant's alleged liability arises out of acts committed within the jurisdiction;

(15) a claim is made for restitution where the defendant's alleged liability arises out of acts committed within the jurisdiction;

(Probate proceedings are defined in the Contentious Probate Proceedings practice direction supplementing Part 49)

Claims by the Inland Revenue

(16) a claim is made by the Commissioners of the Inland Revenue relating to duties or taxes against a defendant not domiciled in Scotland or Northern Ireland;

Claim for costs order in favour of or against third parties

(17) a claim is made by a party to proceedings for an order that the court exercise its power under section 51 of the Supreme Court Act 1981(4) to make a costs order in favour of or against a person who is not a party to those proceedings;

(Rule 48.2 sets out the procedure where the court is considering whether to exercise its discretion to make a costs order in favour of or against a non-party)

Claims under various enactments

- (18) a claim made under an enactment specified in the relevant practice direction.

(4) 1981 c. 54. Section 51 was substituted by section 4 of the Courts and Legal Services Act 1990 (c. 41), and is amended prospectively by section 31 of the Access to Justice Act 1999 (c. 22).

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Application for permission to serve claim form out of jurisdiction

6.21.—(1) An application for permission under rule 6.20 must be supported by written evidence stating—

- (a) the grounds on which the application is made and the paragraph or paragraphs of rule 6.20 relied on;
- (b) that the claimant believes that his claim has a reasonable prospect of success; and
- (c) the defendant’s address or, if not known, in what place or country the defendant is, or is likely, to be found.

(2) Where the application is made in respect of a claim referred to in rule 6.20(3), the written evidence must also state the grounds on which the witness believes that there is between the claimant and the person on whom the claim form has been, or will be served, a real issue which it is reasonable for the court to try.

(3) Where—

- (a) the application is for permission to serve a claim form in Scotland or Northern Ireland; and
- (b) it appears to the court that the claimant may also be entitled to a remedy there, the court, in deciding whether to give permission, shall—
 - (i) compare the cost and convenience of proceeding there or in the jurisdiction; and
 - (ii) (where relevant) have regard 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 giving 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;
- (b) file or serve an admission; and
- (c) file a defence.

(Part 11 sets out the procedure by which a defendant may dispute the court’s jurisdiction)

Period for acknowledging service or admitting the claim where the claim form is served out of the jurisdiction under rule 6.19

6.22.—(1) This rule sets out the period for filing an acknowledgment of service or filing or serving an admission where a claim form has been served out of the jurisdiction under rule 6.19.

(Part 10 contains rules about the acknowledgment of service and Part 14 contains rules about admissions)

(2) If the claim form is to be served under rule 6.19(1) 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 6.19(1) 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 6.19(1) in a country not referred to in paragraphs (2) or (3); or

(b) rule 6.19(2),
the period is set out in the relevant practice direction.

Period for filing a defence where the claim form is served out of the jurisdiction under rule 6.19

6.23.—(1) This rule sets out the period for filing a defence where a claim form has been served out of the jurisdiction under rule 6.19.

(Part 15 contains rules about the defence)

(2) If the claim form is to be served under rule 6.19(1) 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, 35 days after service of the particulars of claim.

(3) If the claim form is to be served under rule 6.19(1) 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, 45 days after service of the particulars of claim.

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

- (a) rule 6.19(1) in a country not referred to in paragraphs (2) or (3); or
- (b) rule 6.19(2),

the period is set out in the relevant practice direction.

Method of service—general provisions

6.24.—(1) Where a claim 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;
- (b) provided for by—
 - (i) rule 6.25 (service through foreign governments, judicial authorities and British Consular authorities); or
 - (ii) rule 6.26 (service on a State); or
- (c) permitted by a Civil Procedure Convention.

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

Service through foreign governments, judicial authorities and British Consular authorities

6.25.—(1) Where 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 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.

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(2) Where—

- (a) paragraph (4) (service in Scotland etc., other than under the Hague Convention) does not apply; and
- (b) a claim form is to be served on a defendant in any country which is a party to a Civil Procedure Convention (other than the Hague Convention) providing for service in that country,

the claim form may be served, 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 (subject to any provisions of the applicable convention about the nationality of persons who may be served by such a method).

(3) Where—

- (a) paragraph (4) (service in Scotland etc., other than under the Hague Convention) does not apply; and
- (b) a claim form is to be served on a defendant in any country with respect to which there is no Civil Procedure Convention providing for service in that country,

the claim form may be served, if the law of that country so permits—

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

(4) Except where a claim form is to be served in accordance with paragraph (1) (service under the Hague Convention), the methods of service permitted by this rule are not available where the claim form is to be served in—

- (a) Scotland, Northern Ireland, the Isle of Man or the Channel Islands;
- (b) any Commonwealth State;
- (c) any United Kingdom Overseas Territory; or
- (d) the Republic of Ireland.

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

6.26.—(1) This rule applies where the claimant wishes to serve the claim form through—

- (a) the judicial authorities of the country where the claim 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 claimant must file—

- (a) a request for service of the claim form by the method in paragraph (1) that he has chosen;
- (b) a copy of the claim form;
- (c) any translation required under rule 6.28; and
- (d) any other documents, copies of documents or translations required by the relevant practice direction.

(3) When the claimant files the documents specified in paragraph (2), the court officer will—

- (a) seal ^(gl) the copy of the claim form; and
- (b) forward the documents to the Senior Master.

- (4) The Senior Master will send documents forwarded under this rule—
 - (a) where the claim 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 claim 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 which—
 - (a) states that the claim 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 claim form was served; and
 - (c) is made by—
 - (i) a British Consular authority in the country where the claim 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,shall be evidence of the facts stated in the certificate.
- (6) A document purporting to be an official certificate under paragraph (5) shall be treated as such a certificate, unless it is proved not to be.

Service of claim form on State where court permits service out of the jurisdiction

- 6.27.**—(1) This rule applies where a claimant wishes to serve the claim form on a State.
- (2) The claimant must file in the Central Office of the Royal Courts of Justice—
 - (a) a request for service to be arranged by the Foreign and Commonwealth Office;
 - (b) a copy of the claim form; and
 - (c) any translation required under rule 6.28.
 - (3) The Senior Master will send documents filed under this rule to the Foreign and Commonwealth Office with a request that it arranges for the claim form to be served.
 - (4) An official certificate by the Foreign and Commonwealth Office stating that a claim form has been duly served on a specified date in accordance with a request made under this rule shall be evidence of that fact.
 - (5) A document purporting to be such a certificate shall be treated as such a certificate, unless it is proved not to be.
 - (6) Where—
 - (a) section 12(6) of the State Immunity Act 1978⁽⁵⁾ applies; and
 - (b) the State has agreed to a method of service other than through the Foreign and Commonwealth Office,

the claim may be served either by the method agreed or in accordance with this rule.

(Section 12(6) of the State Immunity Act 1978 provides that section 12(1) of that Act, which prescribes a method for serving documents on a State, does not prevent the service of a claim form or other document in a manner to which the State has agreed)

- (7) In this rule “State” has the meaning given by section 14 of the State Immunity Act 1978.

(5) 1978 c. 33.

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Translation of claim form

6.28.—(1) Except where paragraph (4) or (5) applies, every copy of the claim form filed under rule 6.26 (service through judicial authorities, foreign governments etc.) or 6.27 (service on State) must be accompanied by a translation of the claim form.

(2) The translation must be—

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

(3) Every translation filed under this rule must be accompanied by a statement by the person making it that it is a correct translation, and the statement must include—

- (a) the name of the person making the translation;
- (b) his address; and
- (c) his qualifications for making a translation.

(4) The claimant is not required to file a translation of a claim form filed under rule 6.26 (service through judicial authorities, foreign governments etc.) where the claim form is to be served—

- (a) in a country of which English is an official language; or
- (b) on a British subject,

unless a Civil Procedure Convention expressly requires a translation.

(5) The claimant is not required to file a translation of a claim form filed under rule 6.27 (service on State) where English is an official language of the State where the claim form is to be served.

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

6.29 Every request for service filed under rule 6.26 (service through judicial authorities, foreign governments etc.) or rule 6.27 (service on State) 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.

Service of documents other than the claim form

6.30.—(1) Where an application notice is to be served out of the jurisdiction under this Section of this Part—

- (a) rules 6.21(4), 6.22 and 6.23 do not apply; and
- (b) where the person on whom the application notice has been served is not a party to proceedings in the jurisdiction in which the application is made, that person may make an application to the court under rule 11(1) as if he were a defendant and rule 11(2) does not apply.

(Rule 6.21(4) provides that an order giving 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, (b) file or serve an admission, and (c) file a defence)

(Rule 6.22 provides rules for the period for acknowledging service or admitting the claim where the claim form is served out of the jurisdiction under rule 6.19)

(Rule 6.23 provides rules for the period for filing a defence where the claim form is served out of the jurisdiction under rule 6.19)

(The practice direction supplementing this Section of this Part provides that where an application notice is to be served out of the jurisdiction in accordance with this Section of this Part, the court must have regard to the country in which the application notice is to be served in setting the date for the hearing of the application and giving any direction about service of the respondent's evidence)

(Rule 11(1) provides that a defendant may make an application to the court to dispute the court's jurisdiction to try the claim or argue that the court should not exercise its jurisdiction. Rule 11(2) provides that a defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10)

(2) Unless paragraph (3) applies, where the permission of the court is required for a claim form to be served out of the jurisdiction the permission of the court must also be obtained for service out of the jurisdiction of any other document to be served in the proceedings.

(3) Where—

- (a) the court gives permission for a claim form to be served out of the jurisdiction; and
- (b) the claim form states that particulars of claim are to follow, the permission of the court is not required to serve the particulars of claim out of the jurisdiction.

Proof of service

6.31 Where—

- (a) a hearing is fixed when the claim is issued;
- (b) the claim form is served on a defendant out of the jurisdiction; and
- (c) that defendant does not appear at the hearing,

the claimant may take no further steps against that defendant until the claimant files written evidence showing that the claim form has been duly served.