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STATUTORY INSTRUMENTS

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**2010 No. 2955**

**The Family Procedure Rules 2010**

**PART 6**

**SERVICE**

**CHAPTER 4**

**SERVICE OUT OF THE JURISDICTION**

**Scope and interpretation**

**6.40.**—(1) This Chapter contains rules about—

- (a) service of application forms and other documents out of the jurisdiction; and
- (b) the procedure for service.

(“Jurisdiction” is defined in rule 2.3.)

(2) In this Chapter—

“application form” includes an application notice;

“Commonwealth State” means a State listed in Schedule 3 to the British Nationality Act 1981<sup>(1)</sup>; 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.

**Permission to serve not required**

**6.41.** Any document to be served for the purposes of these rules may be served out of the jurisdiction without the permission of the court.

**Period for acknowledging service or responding to application where application is served out of the jurisdiction**

**6.42.**—(1) This rule applies where, under these rules, a party is required to file—

- (a) an acknowledgment of service; or
- (b) an answer to an application,

and sets out the time period for doing so where the application is served out of the jurisdiction.

(2) Where the applicant serves an application on a respondent in—

- (a) Scotland or Northern Ireland; or
- (b) a Member State or Hague Convention country within Europe,

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<sup>(1)</sup> 1981 c.61.

the period for filing an acknowledgment of service or an answer to an application is 21 days after service of the application.

(3) Where the applicant serves an application on a respondent in a Hague Convention country outside Europe, the period for filing an acknowledgment of service or an answer to an application is 31 days after service of the application.

(4) Where the applicant serves an application on a respondent in a country not referred to in paragraphs (2) and (3), the period for filing an acknowledgment of service or an answer to an application is set out in Practice Direction 6B.

### **Method of service – general provisions**

**6.43.**—(1) This rule contains general provisions about the method of service of an application for a matrimonial or civil partnership order, or other document, on a party out of the jurisdiction.

*Where service is to be effected on a party in Scotland or Northern Ireland*

(2) Where a party serves an application form or other document on a party in Scotland or Northern Ireland, it must be served by a method permitted by Chapter 2 (and references to “jurisdiction” in that Chapter are modified accordingly) or Chapter 3 of this Part and rule 6.26(5) applies.

*Where service is to be effected on a respondent out of the United Kingdom*

(3) Where the applicant wishes to serve an application form, or other document, on a respondent out of the United Kingdom, it may be served by any method—

(a) provided for by—

(i) rule 6.44 (service in accordance with the Service Regulation);

(ii) rule 6.45 (service through foreign governments, judicial authorities and British Consular authorities); or

(b) permitted by the law of the country in which it is to be served.

(4) Nothing in paragraph (3) or in any court order authorises or requires any person to do anything which is contrary to the law of the country where the application form, or other document, is to be served.

### **Service in accordance with the Service Regulation**

**6.44.**—(1) This rule applies where the applicant wishes to serve the application form, or other document, in accordance with the Service Regulation.

(2) The applicant must file—

(a) the application form or other document;

(b) any translation; and

(c) any other documents required by the Service Regulation.

(3) When the applicant files the documents referred to in paragraph (2), the court officer will—

(a) seal<sup>(GL)</sup>, 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 Practice Direction 6B.)

(Article 20(1) of the Service Regulation provides that the Regulation prevails over other provisions contained in any other agreement or arrangement concluded by Member States.)

### **Service through foreign governments, judicial authorities and British Consular authorities**

**6.45.**—(1) Where the applicant wishes to serve an application form, or other document, on a respondent in any country which is a party to the Hague Convention, it 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 the applicant wishes to serve an application form, or other document, on a respondent in any country which is not a party to the Hague Convention, it 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) Where the applicant wishes to serve an application form, or other document, in—

- (a) any Commonwealth State which is not a party to the Hague Convention;
- (b) the Isle of Man or the Channel Islands; or
- (c) any British Overseas Territory,

the methods of service permitted by paragraphs (1)(b) and (2) are not available and the applicant or the applicant's agent must effect service on a respondent in accordance with rule 6.43 unless Practice Direction 6B provides otherwise.

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

(A list of British overseas territories is reproduced in Practice Direction 6B.)

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

**6.46.**—(1) This rule applies where the applicant wishes to serve an application form, or other document, under rule 6.45(1) or (2).

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

- (a) a request for service of the application form, or other document, by specifying one or more of the methods in rule 6.45(1) or (2);
- (b) a copy of the application form or other document;
- (c) any other documents or copies of documents required by Practice Direction 6B; and
- (d) any translation required under rule 6.47.

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

- (a) seal<sup>(GL)</sup>, or otherwise authenticate with the stamp of the court, the copy of the application form or other document; 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, or other document, 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 form or other document to be served.

(5) An official certificate which—

- (a) states that the method requested under paragraph (2)(a) has been performed and the date of such performance;
  - (b) states, where more than one method is requested under paragraph (2)(a), which method was used; and
  - (c) is made by—
    - (i) a British Consular authority in the country where the method requested under paragraph (2)(a) was performed;
    - (ii) the government or judicial authorities in that country; or
    - (iii) the authority designated in respect of that country under the Hague Convention,is evidence of the facts stated in the certificate.
- (6) A document purporting to be an official certificate under paragraph (5) is to be treated as such a certificate, unless it is proved not to be.

### **Translation of application form or other document**

**6.47.**—(1) Except where paragraphs (4) and (5) apply, every copy of the application form, or other document, filed under rule 6.45 (service through foreign governments, judicial authorities and British Consular authorities) must be accompanied by a translation of the application form or other document.

- (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 application form or other document 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 that person's name, address and qualifications for making the translation.
- (4) The applicant is not required to file a translation of the application form, or other document, filed under rule 6.45 where it is to be served in a country of which English is an official language.
- (5) The applicant is not required to file a translation of the application form or other document filed under rule 6.45 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.

(This rule does not apply to service in accordance with the Service Regulation which contains its own provisions about the translation of documents.)

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

**6.48.** Every request for service filed under rule 6.46 (procedure where service is to be 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.

