
STATUTORY INSTRUMENTS

2017 No. 1035

The Court of Protection Rules 2017

PART 6

SERVICE OF DOCUMENTS

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*Service generally***Scope**

6.1.—(1) Subject to paragraph (2), the Rules in this Part apply to—

- (a) the service of documents; and
- (b) the requirements under rule 9.10 for a person to be notified of the issue of an application form,

and references to “serve”, “service”, “notice” and “notify”, and kindred expressions, shall be construed accordingly.

(2) The rules in this Part do not apply where—

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

Who is to serve

6.2.—(1) The general rule is that the following documents are to be served by the court—

- (a) an order or judgment of the court;
- (b) an acknowledgment of service or notification; and
- (c) except where the application is for an order for committal, a notice of hearing.

(2) Any other document is to be served by the party seeking to rely upon it, except where—

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

(3) Where the court is to serve a document—

- (a) it is for the court to decide which of the methods of service specified in rule 6.3 is to be used; and
- (b) if the document is being served on behalf of a party, that party must provide sufficient copies.

Methods of service

6.3.—(1) A document may be served by any of the methods specified in this rule.

(2) Where it is not known whether a solicitor is acting on behalf of a person, the document may be served by—

- (a) delivering it to the person personally;
- (b) delivering it to the person’s home address or last known home address; or
- (c) sending it to that address, or last known address, by first class post (or by an alternative method of service which provides for delivery on the next working day).

(3) Where a solicitor—

(a) is authorised to accept service on behalf of a person; and

(b) has informed the person serving the document in writing that the solicitor is so authorised, the document must be served on the solicitor unless personal service is required by an enactment, rule, practice direction or court order.

(4) Where it appears to the court that there is a good reason to authorise service by a method other than those specified in paragraphs (2) and (3), the court may direct that service is to be effected by that method.

(5) A direction that service is to be effected by an alternative method must specify—

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

(6) A practice direction may set out how documents are to be served by document exchange, electronic communication or other means.

Service of documents on children and protected parties

6.4.—(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) a child; or
- (b) a protected party.

<i>Type of document</i>	<i>Nature of party</i>	<i>Person to be served</i>
Application form	Child	<p>—A person who has parental responsibility for the child within the meaning of the Children Act 1989⁽¹⁾; or</p> <p>—if there is no such person, a person with whom the child resides or in whose care the child is.</p>
Application form	Protected party	<p>—The person who is authorised to conduct the proceedings in the protected party's name or on the protected party's behalf; or</p> <p>—a person who is a duly appointed attorney, donee or deputy of the protected party; or</p> <p>—if there is no such person, a person with whom the protected party lives or in whose care the protected party is.</p>

⁽¹⁾ 1989 c. 41.

<i>Type of document</i>	<i>Nature of party</i>	<i>Person to be served</i>
Application for an order appointing a litigation friend, where a child or protected party has no litigation friend	Child or protected party	—See rule 17.6 (appointment of litigation friend by court order – supplementary).
Any other document	Child or protected party	—The litigation friend or other duly authorised person who is conducting the proceedings on behalf of the child or protected party.

(2) The court may make an order for service on a child or a protected party by permitting the document to be served on some person other than the person specified in the table in paragraph (1) (which may include service on the child or the protected party).

(3) An application for an order under paragraph (2) may be made without notice.

(4) The court may order that, although a document has been served on someone other than the person specified in the table in paragraph (1), the document is to be treated as if it had been properly served.

(5) This rule does not apply in relation to the service of documents on a child in any case where the court has made an order under rule 17.2(4) permitting the child to conduct proceedings without a litigation friend.

Service of documents on P if P becomes a party

6.5.—(1) If P becomes a party to the proceedings, all documents to be served on P must be served on P's litigation friend or as directed by the court on P's behalf.

(2) The court may make an order for service on P by permitting the document to be served on some person other than the person specified in paragraph (1) (which may include service on P).

(3) An application for an order under paragraph (2) may be made without notice.

(4) The court may order that, although a document has been served on someone other than a person specified in paragraph (1), the document is to be treated as if it had been properly served.

(5) This rule does not apply in relation to the service of documents on P in any case where the court has made an order under rule 17.5(1)(b) (power of court to bring to an end the appointment of a litigation friend).

(Rule 7.3 requires P to be notified where a direction has been made under rule 1.2, and of the appointment of a litigation friend, accredited legal representative or representative.)

Substituted service

6.6. Where it appears to the court that it is impracticable for any reason to serve a document in accordance with any of the methods provided under rule 6.3, the court may make an order for substituted service of the document by taking such steps as the court may direct to bring it to the notice of the person to be served.

Deemed service

6.7.—(1) A document which is served in accordance with these Rules or any relevant practice direction shall be deemed to be served on the day shown in the following table.

<i>Method of service</i>	<i>Deemed day of service</i>
First class post (or other service for next-day delivery)	The second day after it was posted.
Document exchange	The second day after it was left at the document exchange.
Delivering the document to a permitted address	The day after it was delivered to that address.
Fax	If it is transmitted on a business day before 4 p.m., on that day; or in any other case, on the business day after the day on which it is transmitted.
Other electronic means	The second day after the day on which it is transmitted.

- (2) If a document is served personally—
- (a) after 5 p.m. on a business day; or
 - (b) at any time on a Saturday, Sunday or a Bank Holiday,
- it will be treated as being served on the next business day.

Certificate of service

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

<i>Method of service</i>	<i>Details to be certified</i>
First class post (or any other service for next-day delivery)	Date of posting.
Personal service	Date of personal service.
Document exchange	Date when the document was left at the document exchange.
Delivery of the document to a permitted address	Date when the document was delivered to that address.
Fax	Date of transmission.
Other electronic means	Date of transmission and the means used.
Alternative method permitted by the court	As required by the court.

- (2) The certificate must be filed within 7 days after service of the document to which it relates.

Certificate of non-service

6.9.—(1) Where an applicant or other person is unable to serve any document under these Rules or as directed by the court, that person must file a certificate of non-service stating the reasons why service has not been effected.

- (2) The certificate of non-service must be filed within 7 days of the latest date on which service should have been effected.

Power of court to dispense with service

- 6.10.**—(1) The court may dispense with any requirement to serve a document.
 (2) An application for an order to dispense with service may be made without notice.

*Service out of the jurisdiction***Scope and interpretation**

- 6.11.**—(1) This rule and rules 6.12 to 6.19 make provision about—
 (a) service of application forms and other documents out of the jurisdiction; and
 (b) the procedure for service.
 (2) In this rule and rules 6.12 to 6.19—
 “application form” includes an application notice;
 “Commonwealth State” means a State listed in Schedule 3 to the British Nationality Act 1981(2);
 “jurisdiction” means, unless the context otherwise requires, England and Wales and any part of the territorial waters of the United Kingdom adjoining England and Wales;
 “Member State” means a Member State of the European Union;
 “the Service 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 Convention country” means a country, not being a Member State, which is a party to the Service Convention; and
 “the Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extra-judicial documents in civil and commercial matters (service of documents) and repealing Council Regulation (EC) No. 1348/2000(3).
 (3) In rules 6.12 to 6.19, a reference to service by a party includes service by a person who is not a party where service by such a person is required under these Rules.

Service of application form and other documents out of the jurisdiction

- 6.12.**—(1) Subject to paragraph (2), 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) An application form may not be served out of the jurisdiction unless the court has power to determine the application to which it relates under the Act.

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

- 6.13.**—(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) 1981 c.61. There are relevant amendments in: S.I. 1983/882; S.I. 1983/1699; the Brunei and Maldives Act 1985 (c.3); section 1, Schedule; S.I. 1989/1331; S.I. 1998/3161; S.I. 1990/1502; S.I. 1994/1634; S.I. 2010/246.

(3) OJ L 324, 10.12.2007, p. 79.

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

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

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 Service 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

6.14.—(1) This rule contains general provisions about the method of service of an application form 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 this Part.

Where service is to be effected out of the United Kingdom

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

- (a) provided for by—
 - (i) rule 6.15 (service in accordance with the Service Regulation); or
 - (ii) rule 6.16 (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

6.15.—(1) This rule applies where an application form or other document is to be served on a person out of the United Kingdom in accordance with the Service Regulation.

(2) The person wishing to serve 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 person wishing to serve files the documents referred to in paragraph (2), the court officer must—

- (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) In addition to the documents referred to in paragraph (2), the person wishing to serve may, if of the view that this would assist in ensuring effective service, file a photograph of the person to be served.

(The Service Regulation can be found at the web address given in Practice Direction 6B.)

(Rule 6.16 makes provision for service on a person in a Service Convention country.)

Service through foreign governments, judicial authorities and British Consular authorities

6.16.—(1) Where an application form or other document is to be served on a person in a Service Convention country, it may be served—

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

(2) Where an application form or other document is to be served on a person in a country which is not a Service Convention country, it may be served, if the law of that country so permits, through—

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

(3) Where an application form or other document is to be served in—

- (a) any Commonwealth State which is not a Service Convention country;
- (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 person wishing to serve, or that person's agent, must effect service direct unless Practice Direction 6B provides otherwise.

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

(Rule 6.15 makes provision for service on a party in a Member State 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

6.17.—(1) This rule applies where an application form or other document is to be served under rule 6.16(1) or (2).

(2) Where this rule applies, the person wishing to serve must file—

- (a) a request for service of the application form or other document, by specifying one or more of the methods in rule 6.16(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 6.18.

(3) When the person wishing to serve files the documents specified in paragraph (2), the court officer must—

- (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 shall send documents forwarded under this rule—
 - (a) where the application form or other document is being served through the authority designated under the Service 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 Service 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

6.18.—(1) Except where paragraphs (4) and (5) apply, every copy of the application form or other document filed under rule 6.16 (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 6.16 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 6.16 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

6.19. Every request for service under rule 6.17 (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.