

# Civil Procedure Rules

## Part 6 – Service

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Part 6 of the Civil Procedure Rules governs service of documents such as claim forms.

When originally introduced the rules sought to provide a clear and concise code for the service of documents. However problems soon started to appear. Issues arose regarding the service of claim forms meaning that many claims failed because they were not served in time. Different methods of service gave rise to different dates of service. Further problems arose surrounding the meaning of *usual or last known residence* in the context of where to serve documents. A body of case law built up drawing fine lines and technicalities that appeared to not only undermine the ethos and purpose of the CPR but also discredited the civil justice system.

In July 2007, the Ministry of Justice published a consultation paper entitled *Review of Part 6 of the Civil Procedure Rules: Service of Documents*. The new rule followed.

### **Date of commencement**

The rules take effect on 1 October 2008.

### **Division of rules**

Part 6 is now divided into 5 parts

- (a) Scope and interpretation
- (b) Service of the Claim Form within the jurisdiction
- (c) Service of documents other than the Claim Form within the United Kingdom
- (d) Service of the Claim Form and other documents out of the jurisdiction
- (e) Service of documents from foreign courts and tribunals

## **Part I – Scope and interpretation**

### *Part 6 rules about service apply generally*

#### 6.1

*This Part applies to the service of documents, except where –*

*(a) another Part, any other enactment or a practice direction makes different provision; or*

*(b) the court orders otherwise.*

*(Other Parts, for example, Part 54 (Judicial Review) and Part 55 (Possession Claims) contain specific provisions about service.)*

### **Interpretation**

#### 6.2

*In this Part –*

*(a) ‘bank holiday’ means a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where service is to take place;*

*(b) ‘business day’ means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day;*

*(c) ‘claim’ includes petition and any application made before action or to commence proceedings and ‘claim form’, ‘claimant’ and ‘defendant’ are to be construed accordingly; and*

*(d) ‘solicitor’ includes other authorised litigators within the meaning of the Courts and Legal Services Act 1990.*

Rule 6.1 of the CPR is essentially unchanged. It is worth noting that there are now 2 practice directions: Practice Direction 6A deals with matters within the United Kingdom and 6B deals with service out of the jurisdiction.

Under Rule 6.2, Bank Holiday is widely defined to cover Bank Holidays in Scotland and Northern Ireland. These differ from those in England and Wales.

It is important to note the distinction between claim form and other documents because as will be seen later the dates of service differ between the two.

A claim form is defined as the document that, when issued, starts proceedings: *CPR r.7.2(1)*. In the new part 6, only a claim form, a petition or an application made *before* proceedings commence (e.g. a pre-action disclosure application). While particulars of claim should, so far as possible, appear on the claim form (*CPR r. 7.4(1)*), they will not count as a claim form if

served separately and, so, if served separately, will fall under Part III of Part 6 being a document other than a claim form.

## **Part II – Service of the Claim Form in the jurisdiction**

Under the CPR, jurisdiction means *England and Wales: CPR2.3(1)*. It is worth remembering that Scotland and Northern Ireland are part of the United Kingdom but are separate jurisdictions.

This section of the rules only applies to claim forms.

The whole point of service of a claim form is to leave the other side knowing that he or she is now on the receiving end of litigation. It is about putting a person in a position to ascertain the contents of the claim and, at least, reasonably enabling him to be aware of the contents.

The White Book identifies 5 questions to ask in relation to service: Who serves? Who is served? When is it served? Where is it served? How is it served?

### *Methods of service*

#### 6.3

*(1) A claim form may be served by any of the following methods –*

- (a) personal service in accordance with rule 6.5;*
- (b) first class post, document exchange or other service which provides for delivery on the next business day, in accordance with Practice Direction A supplementing this Part;*
- (c) leaving it at a place specified in rule 6.7, 6.8, 6.9 or 6.10;*
- (d) fax or other means of electronic communication in accordance with Practice Direction A supplementing this Part; or*
- (e) any method authorised by the court under rule 6.15.*

*(2) A company may be served –*

- (a) by any method permitted under this Part; or*
- (b) by any of the methods of service set out in the Companies Act 1985 or the Companies Act 2006.*

*(3) A limited liability partnership may be served –*

- (a) by any method permitted under this Part; or*
- (b) by any of the methods of service set out in section 725 of the Companies Act 1985.*

Part 6.3 answers the last question about service – how to serve? The methods of service of the claim form are, generally, restricted to those above. However the court has a power to authorise different methods of service (see below).

The rule now incorporates more explicitly the reference to different postal service providers: *CPR r. 6.3(1)(b)*. This is supplemented by *Practice Direction A*

***Para.3.1 - How service is effected by post, an alternative service provider or DX***

*3.1 Service by post, DX or other service which provides for delivery on the next business day is effected by –*

- (1) placing the document in a post box;*
- (2) leaving the document with or delivering the document to the relevant service provider; or*
- (3) having the document collected by the relevant service provider.*

Fax or other means of electronic communication is also dealt with by the *Practice Direction A*.

*Para 4.1*

*Subject to the provisions of rule 6.23(5) and (6), where a document is to be served by fax or other electronic means –*

- (1) the party who is to be served or the solicitor acting for that party must previously have indicated in writing to the party serving –*
  - (a) that the party to be served or the solicitor is willing to accept service by fax or other electronic means; and*
  - (b) the fax number, e-mail address or other electronic identification to which it must be sent; and*
- (2) the following are to be taken as sufficient written indications for the purposes of paragraph 4.1(1) –*
  - (a) a fax number set out on the writing paper of the solicitor acting for the party to be served;*
  - (b) an e-mail address set out on the writing paper of the solicitor acting for the party to be served but only where it is stated that the e-mail address may be used for service; or*
  - (c) a fax number, e-mail address or electronic identification set out on a statement of case or a response to a claim filed with the court.*

*4.2 Where a party intends to serve a document by electronic means (other than by fax) that party must first ask the party who is to be served whether there are any limitations to the recipient's agreement to accept service by such means (for example,*

*the format in which documents are to be sent and the maximum size of attachments that may be received).*

*4.3 Where a document is served by electronic means, the party serving the document need not in addition send or deliver a hard copy.*

Finally it is worth noting that the statutory methods may be used to serve the claim form. Therefore service can be effected under:

- *Companies Act 1985 s.695* (overseas companies)
- *Companies Act 1985 s.725* (registered office or, for Scottish Companies, to principal office in England and Wales)
- *Companies Act 2006 s.1139* (which replaces the above)
- By *SI 2001/1090* statutory rules about service on an LLP mirror *s.725 of the 1985 Act*. This is now recognised as an alternative in the court rules.

### *Who is to serve the claim form*

#### 6.4

*(1) The court will serve the claim form except where –*

- (a) a rule or practice direction provides that the claimant must serve it;*
- (b) the claimant notifies the court that the claimant wishes to serve it; or*
- (c) the court orders or directs otherwise.*

*(2) Where the court is to serve the claim form, it is for the court to decide which method of service is to be used.*

*(3) Where the court is to serve the claim form, the claimant must, in addition to filing a copy for the court, provide a copy for each defendant to be served.*

*(4) Where the court has sent –*

- (a) a notification of outcome of postal service to the claimant in accordance with rule 6.18; or*
- (b) a notification of non-service by a bailiff in accordance with rule 6.19,*

*the court will not try to serve the claim form again.*

This is the answer to the first question; who serves? Generally the court will do it. This is similar to the previous rules. Under the old rules it was held that where a party (or that party's solicitor) elects to effect service, he must comply with all of the court rules as to service: *Chaudri v Post Office* [2001] WL 542261.

The *Practice Direction A* says the court will normally serve by first class post. The court will also serve notices of funding if, in the case of a claim, they are filed with the Claim Form, or otherwise, if they were filed with the defence or acknowledgement of service: see *para. 8*.

### *Personal service*

6.5

(1) *Where required by another Part, any other enactment, a practice direction or a court order, a claim form must be served personally.*

(2) *In other cases, a claim form may be served personally except –*

*(a) where rule 6.7 applies; or*

*(b) in any proceedings against the Crown.*

*(Part 54 contains provisions about judicial review claims and Part 66 contains provisions about Crown proceedings.)*

(3) *A claim form is served personally on –*

*(a) an individual by leaving it with that individual;*

*(b) a company or other corporation by leaving it with a person holding a senior position within the company or corporation; or*

*(c) a partnership (where partners are being sued in the name of their firm) by leaving it with –*

*(i) a partner; or*

*(ii) a person who, at the time of service, has the control or management of the partnership business at its principal place of business.*

*(Practice Direction A supplementing this Part sets out the meaning of ‘senior position’.)*

The most important aspect of personal service relates to committal proceedings; these must be served personally.

As before, the position is that personal service must occur where a rule, practice direction or the law requires.

In other cases, a claim form may be served personally unless (a) the Defendant is the Crown (that is the effect of the *Crown Proceedings Act 1947 s.18*) or (b) *CPR r. 6.7* applies. That rule provides that where a Defendant has nominated solicitors in the jurisdiction, all documents must be served on the solicitors.

The meaning of senior position is made clear in *Practice Direction A*. This reads:

## **Para 6 - Personal service on a company or other corporation**

*6.1 Personal service on a registered company or corporation in accordance with rule 6.5(3) is effected by leaving a document with a person holding a senior position.*

*6.2 Each of the following persons is a person holding a senior position –*

*(1) in respect of a registered company or corporation, a director, the treasurer, the secretary of the company or corporation, the chief executive, a manager or other officer of the company or corporation; and*

*(2) in respect of a corporation which is not a registered company, in addition to any of the persons set out in sub-paragraph (1), the mayor, the chairman, the president, a town clerk or similar officer of the corporation.*

### ***Where to serve the claim form – general provisions.***

6.6

*(1) The claim form must be served within the jurisdiction except where rule 6.11 applies or as provided by Section IV of this Part.*

*(2) The claimant must include in the claim form an address at which the defendant may be served. That address must include a full postcode, unless the court orders otherwise.*

*(Paragraph 2.4 of the practice direction supplementing Part 16 contains provisions about postcodes.)*

*(3) Paragraph (2) does not apply where an order made by the court under rule 6.15 (service by an alternative method or at an alternative place) specifies the place or method of service of the claim form.*

Little change here. *CPR r.6.11* concerns the service of a claim form by a contractually agreed method. This could include a place outside the jurisdiction.

### ***Service of the claim form on a solicitor***

6.7

*Subject to rule 6.5(1), where –*

*(a) the defendant has given in writing the business address within the jurisdiction of a solicitor as an address at which the defendant may be served with the claim form; or*

*(b) a solicitor acting for the defendant has notified the claimant in writing that the solicitor is instructed by the defendant to accept service of the claim form on behalf of the defendant at a business address within the jurisdiction,*

*the claim form must be served at the business address of that solicitor.*

*(‘Solicitor’ has the extended meaning set out in rule 6.2(d).)*

This rule is expressed in mandatory terms. It is only superseded by a requirement to serve personally on the defendant. The claim form can therefore be transmitted to the solicitor using any of the methods in *CPR r. 6.3*.

Remember that a claim form cannot be served personally if *r. 6.7* applies, unless the law requires that it must be served personally.

Note that solicitor includes any person authorised as a litigator under the *Courts and Legal Services Act 1990*.

### **Service of the claim form where the defendant gives an address at which the defendant may be served**

6.8

*Subject to rules 6.5(1) and 6.7 –*

*(a) the defendant may be served with the claim form at an address within the jurisdiction which the defendant has given for the purpose of being served with the proceedings; or*

*(b) in any claim by a tenant against a landlord, the claim form may be served at an address given by the landlord under section 48 of the Landlord and Tenant Act 1987.*

The Defendant's address must include a full postcode: *PD16 para.2.1*. You can find these at [www.royalmail.com](http://www.royalmail.com).

The reference to s.48 Landlord and Tenant Act 1987 is new. S.48 is the provision that requires a landlord to notify the tenant of the address on which proceedings may be served by the tenant.

### ***Service of the claim form where the defendant does not give an address at which the defendant may be served***

6.9

*(1) This rule applies where –*

*(a) rule 6.5(1) (personal service);*

*(b) rule 6.7 (service of claim form on solicitor); and*

*(c) rule 6.8 (defendant gives address at which the defendant may be served),*

*do not apply and the claimant does not wish to effect personal service under rule 6.5(2).*

(2) Subject to paragraphs (3) to (6), the claim form must be served on the defendant at the place shown in the following table.

<i>Nature of defendant to be served</i>	<i>Place of service</i>
<i>1. Individual</i>	<i>Usual or last known residence.</i>
<i>2. Individual being sued in the name of a business</i>	<i>Usual or last known residence of the individual; or principal or last known place of business.</i>
<i>3. Individual being sued in the business name of a partnership</i>	<i>Usual or last known residence of the individual; or principal or last known place of business of the partnership.</i>
<i>4. Limited liability partnership</i>	<i>Principal office of the partnership; or any place of business of the partnership within the jurisdiction which has a real connection with the claim.</i>
<i>5. Corporation (other than a company) incorporated in England and Wales</i>	<i>Principal office of the corporation; or any place within the jurisdiction where the corporation carries on its activities and which has a real connection with the claim.</i>
<i>6. Company registered in England and Wales</i>	<i>Principal office of the company; or any place of business of the company within the jurisdiction which has a real connection with the claim.</i>
<i>7. Any other company or corporation</i>	<i>Any place within the jurisdiction where the corporation carries on its activities; or any place of business of the company within the jurisdiction.</i>

(3) Where a claimant has reason to believe that the address of the defendant referred to in entries 1, 2 or 3 in the table in paragraph (2) is an address at which the defendant no longer resides or carries on business, the claimant must take reasonable steps to ascertain the address of the defendant's current residence or place of business ('current address').

(4) Where, having taken the reasonable steps required by paragraph (3), the claimant

(a) ascertains the defendant's current address, the claim form must be served at that address; or

(b) is unable to ascertain the defendant's current address, the claimant must consider whether there is –

(i) an alternative place where; or

(ii) an alternative method by which,

service may be effected.

(5) *If, under paragraph (4)(b), there is such a place where or a method by which service may be effected, the claimant must make an application under rule 6.15.*

(6) *Where paragraph (3) applies, the claimant may serve on the defendant's usual or last known address in accordance with the table in paragraph (2) where the claimant*

*(a) cannot ascertain the defendant's current residence or place of business; and*

*(b) cannot ascertain an alternative place or an alternative method under paragraph (4)(b).*

This rule comes into play where (a) there is no requirement for personal service, (b) the defendant has not nominated solicitors, (c) he has not given an address for service and (d) the claimant does not wish to effect personal service.

The major innovation introduced by this rule is the concept of knowledge. Prior to the reform of the rules there were plenty of *obiter* statements from the higher courts decisions that the words *last known* meant actual or constructive knowledge: see *Cranfield v Bridgegrove Ltd and other co-joined appeals* [2003] EWCA Civ 656 esp. [6]-[9] and [102]-[103], *Mersey Docks Property Holdings v Michael Kilgour* [2004] EWHC 1638 (TCC) esp. [63], *Collier v Williams and other co-joined appeals* [2006] EWCA Civ 20 esp. [70]-[71]. The effect was often interpreted as meaning that if a claimant wished to serve on a last known residence, he had to make enquires of the current residence before he did so.

This introduced many problems. When were enquiries necessary? What if the enquiries would have produced no different result? What are you to do when you know that X does not live at an address any more and you have no address for him?

The answers come now in *paras. (3) to (6)*. It is clear that the paragraphs are engaged where the claimant knows X's last known residence but has *reason to believe* he is no longer there.

The claimant is now required to take reasonable steps to ascertain the defendant's current residence or place of business. The question raised is: what is meant by "reason to believe" and "reasonable steps"?

In this writer's opinion they should carry their ordinary meaning; they raise questions of fact and common sense. If the claimant knows X has left, then clearly he has reason to believe X is not there. If X's last known place of business is a shop, say, and it is known to be boarded up, that is reason to believe X is no longer there.

As for reasonable steps, this again is common sense and a question of fact albeit judged objectively. It is unclear whether more significant or more valuable claims require more steps to be taken. However it would almost certainly include searching the *Yellow Pages* or *Phone Book* – both of which are available on line (see e.g. *Kilgour*). If the claimant had access to a private service such as 192.com one might expect him to use it. It might also include looking at *inter partes* correspondence (this is often overlooked).

If the search bears fruit, then the address for service is the current address. Otherwise the claimant must go through 2 extra steps.

He *must* consider whether there is another place or method by which notice of the claim could be brought to the defendant's attention. This might include service at his workplace or by delivering it to a family member's address. If he establishes such a place or method, the claimant must apply for permission for an alternative method or place of service.

If all that fails then the claimant may serve on the last known address. Service will be effective even though the defendant does not know about it. Note: that may mean any default judgement could be set aside.

Remember all this only comes into play if the claimant has reason to believe the defendant is not at the last known place.

### *Service of the claim form in proceedings against the Crown*

#### *6.10 In proceedings against the Crown –*

- (a) service on the Attorney General must be effected on the Treasury Solicitor; and*
- (b) service on a government department must be effected on the solicitor acting for that department.*

*(The practice direction supplementing Part 66 gives the list published under section 17 of the Crown Proceedings Act 1947 of the solicitors acting in civil proceedings (as defined in that Act) for the different government departments on whom service is to be effected, and of their addresses.)*

This is similar to the previous rules with one important difference. The former rule took effect in relation to proceedings by the Crown as well as against it. Now it only applies to proceedings against it.

As noted above, the *Crown Proceedings Act 1947* essentially forbids personal service on the Crown. The Attorney General has drawn up a list of which solicitor acts for which government department (see *White Book 2008 supplement to Part 66* – a list is also available

at [www.tsol.gov.uk](http://www.tsol.gov.uk)). By s.18 it is incumbent on a claimant to institute proceedings against the correct government department.

For some reason, parliament felt that the 1947 Act should apply only to civil proceedings against the Crown. They defined them in s.23 and s.38(2) in such a way that judicial review proceedings are *not* civil proceedings for the purposes of the 1947 Act.

Under the new rules there can be no personal service on the Crown in any proceedings (*CPR* r.6.5 – previously it was only in Civil Proceedings). The effect now is that the statutory scheme has been extended to cover judicial review proceedings. Indeed *PD 54 para. 6.2* has been amended to reflect this:

#### *PD 54 – Service of claim form*

*6.1 Except as required by rules 54.11 or 54.12(2), the Administrative Court will not serve documents and service must be effected by the parties.*

*6.2 Where the defendant or interested party to the claim for judicial review is*

–

*(a) the Asylum and Immigration Tribunal, the address for service of the claim form is the Asylum and Immigration Tribunal, Official Correspondence Unit, PO Box 6987, Leicester, LE1 6ZX or fax number 0116 249 4131;*

*(b) the Crown, service of the claim form must be effected on the solicitor acting for the relevant government department as if the proceedings were civil proceedings as defined in the Crown Proceedings Act 1947.*

*(The practice direction supplementing Part 66 gives the list published under section 17 of the Crown Proceedings Act 1947 of the solicitors acting in civil proceedings (as defined in that Act) for the different government departments on whom service is to be effected, and of their addresses.)*

#### ***Service of the claim form by contractually agreed method***

##### ***6.11***

*(1) Where –*

*(a) a contract contains a term providing that, in the event of a claim being started in relation to the contract, the claim form may be served by a method or at a place specified in the contract; and*

*(b) a claim solely in respect of that contract is started,*

*the claim form may, subject to paragraph (2), be served on the defendant by the method or at the place specified in the contract.*

*(2) Where in accordance with the contract the claim form is to be served out of the jurisdiction, it may be served –*

- (a) if permission to serve it out of the jurisdiction has been granted under rule 6.36; or*
- (b) without permission under rule 6.32 or 6.33.*

This rule is essentially unchanged and derives from a historical rule in the RSC from the time when service was effected personally. The provision I suspect is now little used.

The purpose of *sub-para. (2)* is to maintain the court's control over service out of the jurisdiction. *CPR r.6.32* governs service in Scotland and Northern Ireland, *CPR r.6.33* governs service out of the UK under the 1982 Act.

### ***Service of the claim form relating to a contract on an agent of a principal who is out of the jurisdiction***

#### **6.12**

*(1) The court may, on application, permit a claim form relating to a contract to be served on the defendant's agent where –*

- (a) the defendant is out of the jurisdiction;*
- (b) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and*
- (c) at the time of the application either the agent's authority has not been terminated or the agent is still in business relations with the defendant.*

*(2) An application under this rule –*

- (a) must be supported by evidence setting out –*
  - (i) details of the contract and that it was entered into within the jurisdiction or through an agent who is within the jurisdiction;*
  - (ii) that the principal for whom the agent is acting was, at the time the contract was entered into and is at the time of the application, out of the jurisdiction; and*
  - (iii) why service out of the jurisdiction cannot be effected; and*
- (b) may be made without notice.*

*(3) An order under this rule must state the period within which the defendant must respond to the particulars of claim.*

*(4) Where the court makes an order under this rule –*

- (a) a copy of the application notice and the order must be served with the claim form on the agent; and*
- (b) unless the court orders otherwise, the claimant must send to the defendant a copy of the application notice, the order and the claim form.*

*(5) This rule does not exclude the court's power under rule 6.15 (service by an alternative method or at an alternative place).*

The rule is substantially the same as that which existed previously though has been completely re-written. The rule allows service on a person within the jurisdiction if he is the agent of a defendant out of the jurisdiction.

The necessary application can be *ex-parte*. It is important to note what evidence is required in Part C of the application notice.

### *Service of the claim form on children and protected parties*

#### 6.13

*(1) Where the defendant is a child who is not also a protected party, the claim form must be served on –*

*(a) one of the child's parents or guardians; or*

*(b) if there is no parent or guardian, an adult with whom the child resides or in whose care the child is.*

*(2) Where the defendant is a protected party, the claim form must be served on –*

*(a) one of the following persons with authority in relation to the protected party as –*

*(i) the attorney under a registered enduring power of attorney;*

*(ii) the donee of a lasting power of attorney; or*

*(iii) the deputy appointed by the Court of Protection; or*

*(b) if there is no such person, an adult with whom the protected party resides or in whose care the protected party is.*

*(3) Any reference in this Section to a defendant or a party to be served includes the person to be served with the claim form on behalf of a child or protected party under paragraph (1) or (2).*

*(4) The court may make an order permitting a claim form to be served on a child or protected party, or on a person other than the person specified in paragraph (1) or (2).*

*(5) An application for an order under paragraph (4) may be made without notice.*

*(6) The court may order that, although a claim form has been sent or given to someone other than the person specified in paragraph (1) or (2), it is to be treated as if it had been properly served.*

*(7) This rule does not apply where the court has made an order under rule 21.2(3) allowing a child to conduct proceedings without a litigation friend.*

*(Part 21 contains rules about the appointment of a litigation friend and 'child' and 'protected party' have the same meaning as in rule 21.1.)*

This rule reflects previous procedure and so there is no change.

## *Deemed service*

### 6.14

*A claim form served in accordance with this Part is deemed to be served on the second business day after completion of the relevant step under rule 7.5(1).*

This rule replaces what existed previously. There are now separate rules for the service of claim forms and for the service of other documents. Under these new rules, the service of a claim form is deemed to have taken place on the second business day after taking the step required under *CPR r.7.5*. This applies whatever method of service is required.

The new development is that the date is calculated from the completion of the ‘relevant step’ under *CPR r.7.5*. This change abrogates a number of problems in the former rules which occurred when claim forms were served after they had expired. This new regime does not apply if the claim form is to be served out of the jurisdiction.

It is also worth noting that, in the case of personal service, there is no longer a reference to the time of service. Formerly delivery of documents after 5pm took effect the next business day. Now service takes effect on the second business day after service (*CPR r.6.5*).

### ***CPR r.7.5 provides as follows:***

#### *Service of a claim form*

#### 7.5

*(1) Where the claim form is served within the jurisdiction, the claimant must complete the step required by the following table in relation to the particular method of service chosen, before 12.00 midnight on the calendar day four months after the date of issue of the claim form.*

<b><i>Method of service</i></b>	<b><i>Step required</i></b>
<i>First class post, document exchange or other service which provides for delivery on the next business day</i>	<i>Posting, leaving with, delivering to or collection by the relevant service provider</i>
<i>Delivery of the document to or leaving it at the relevant place</i>	<i>Delivering to or leaving the document at the relevant place</i>
<i>Personal service under rule 6.5</i>	<i>Completing the relevant step required by rule 6.5(3)</i>
<i>Fax</i>	<i>Completing the transmission of the fax</i>
<i>Other electronic method</i>	<i>Sending the e-mail or other electronic transmission</i>

*(2) Where the claim form is to be served out of the jurisdiction, the claim form must be served in accordance with Section IV of Part 6 within 6 months of the date of issue.*

So far as service within the jurisdiction is concerned, the question is now whether the relevant step has been taken.

The rules do not make it clear what happens if the other rules prescribe a particular method of service. Most notably

### ***CPR 55.6 provides - Service of claims against trespassers***

#### *55.6*

*Where, in a possession claim against trespassers, the claim has been issued against 'persons unknown', the claim form, particulars of claim and any witness statements must be served on those persons by –*

*(a)*

*(i) attaching copies of the claim form, particulars of claim and any witness statements to the main door or some other part of the land so that they are clearly visible; and*

*(ii) if practicable, inserting copies of those documents in a sealed transparent envelope addressed to 'the occupiers' through the letter box; or*

*(b) placing stakes in the land in places where they are clearly visible and attaching to each stake copies of the claim form, particulars of claim and any witness statements in a sealed transparent envelope addressed to 'the occupiers'.*

This is not a step listed under *CPR r.7.5* but is clearly the service of a claim form. In this writer's opinion, it is comparable to personal service (see *CPR 6.5*) or leaving it at an address. Therefore, in this writer's opinion, the deemed date of service is the second date after the claim form has been nailed to the door or put on stakes which have then been placed in the ground.

### ***Service of the claim form by an alternative method or at an alternative place***

#### *6.15*

*(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.*

*(2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.*

*(3) An application for an order under this rule –*

- (a) must be supported by evidence; and
  - (b) may be made without notice.
- (4) An order under this rule must specify –
  - (a) the method or place of service;
  - (b) the date on which the claim form is deemed served; and
  - (c) the period for –
    - (i) filing an acknowledgment of service;
    - (ii) filing an admission; or
    - (iii) filing a defence.

This rule deals only with claim forms. A similar rule exists for other documents.

The Court is not restricted to any particular method of service.

Regard should be had to *Insolvency PD* for substituted service in insolvency proceedings.

The application to serve by an alternative method may be made without notice, but must be supported by evidence.

When making an order it is of critical importance that the court considers the overriding objective: *Albon v Naza Motor Trading* [2007] EWHC (Ch) 327. The Court should not make an order under this rule where no difficulty exists with the normal service procedures: *Knauf UK GmBH v British Gypsum* [2001] EWCA Civ 1570; [2002] 1 WLR 907 CA.

One should bear mind that an application under this rule may be necessary where the claimant has reason to believe that the Defendant's address for service is not his usual or last known address: *CPR r.6.9*.

The claimant can now apply retrospectively: *sub-para. (2)* to seek the court's approval of otherwise mis-service. This is new and reverses *Elmes v Hygrade Food Products* [2001] EWCA Civ 121. Note that the question as to whether to authorise service retrospectively is different from whether to authorise it in the first place.

The same can be said of the new rules for service of documents other than claim forms. In *Nangleman v Royal Free Hampstead NHS Trust* [2001] EWCA Civ 127. In that case the court held that it did not have the power to authorise retrospectively an otherwise mis-service. This

is no longer the case. However one would expect the courts to take a strict approach to exercise of this power lest the rules of service become routinely ignored.

The practice direction provides further guidance

***Application for an order for service by an alternative method or at an alternative place***

*9.1 Where an application for an order under rule 6.15 is made before the document is served, the application must be supported by evidence stating –*

- (1) the reason why an order is sought;*
- (2) what alternative method or place is proposed, and*
- (3) why the applicant believes that the document is likely to reach the person to be served by the method or at the place proposed.*

*9.2 Where the application for an order is made after the applicant has taken steps to bring the document to the attention of the person to be served by an alternative method or at an alternative place, the application must be supported by evidence stating –*

- (1) the reason why the order is sought;*
- (2) what alternative method or alternative place was used;*
- (3) when the alternative method or place was used; and*
- (4) why the applicant believes that the document is likely to have reached the person to be served by the alternative method or at the alternative place.*

*9.3 Examples –*

- (1) an application to serve by posting or delivering to an address of a person who knows the other party must be supported by evidence that if posted or delivered to that address, the document is likely to be brought to the attention of the other party;*
- (2) an application to serve by sending a SMS text message or leaving a voicemail message at a particular telephone number saying where the document is must be accompanied by evidence that the person serving the document has taken, or will take, appropriate steps to ensure that the party being served is using that telephone number and is likely to receive the message; and*
- (3) an application to serve by e-mail to a company (where paragraph 4.1 does not apply) must be supported by evidence that the e-mail address to which the document will be sent is one which is likely to come to the attention of a person holding a senior position in that company.*

***Power of court to dispense with service of the claim form***

*6.16*

- (1) The court may dispense with service of a claim form in exceptional circumstances.*

(2) *An application for an order to dispense with service may be made at any time and*

*(a) must be supported by evidence; and*

*(b) may be made without notice.*

The rule is similar to that which existed previously, except now any dispensation must be only made in exception circumstances, rather than just retrospective applications as set out in *Anderton v Clwyd* [2002] EWCA Civ 933.

### *Notice and certificate of service relating to the claim form*

#### 6.17

(1) *Where the court serves a claim form, the court will send to the claimant a notice which will include the date on which the claim form is deemed served under rule 6.14.*

(2) *Where the claimant serves the claim form, the claimant –*

*(a) must file a certificate of service within 21 days of service of the particulars of claim, unless all the defendants to the proceedings have filed acknowledgments of service within that time; and*

*(b) may not obtain judgment in default under Part 12 unless a certificate of service has been filed.*

(3) *The certificate of service must state –*

*(a) where rule 6.7, 6.8, 6.9 or 6.10 applies, the category of address at which the claimant believes the claim form has been served; and*

*(b) the details set out in the following table.*

<i>Method of service</i>	<i>Details to be certified</i>
<i>1. Personal service</i>	<i>Date of personal service.</i>
<i>2. First class post, document exchange or other service which provides for delivery on the next business day</i>	<i>Date of posting, or leaving with, delivering to or collection by the relevant service provider.</i>
<i>3. Delivery of document to or leaving it at a permitted place</i>	<i>Date when the document was delivered to or left at the permitted place.</i>
<i>4. Fax</i>	<i>Date of completion of the transmission.</i>
<i>5. Other electronic method</i>	<i>Date of sending the e-mail or other electronic transmission.</i>
<i>6. Alternative method or place</i>	<i>As required by the cou</i>

This rule is similar to that which went before. However, the time for filing has now been extended to 21 days and there is no need to file a certificate of service if an acknowledgement of service is filed.

The practice direction deals with the contents of a certificate of service:

### **Certificate of service where claimant serves the claim form**

#### **7.1**

*Where, pursuant to rule 6.17(2), the claimant files a certificate of service, the claimant is not required to and should not file –*

*(1) a further copy of the claim form with the certificate of service; and*

*(2) a further copy of –*

*(a) the particulars of claim (where not included in the claim form); or*

*(b) any document attached to the particulars of claim,*

*with the certificate of service where that document has already been filed with the court.*

*(Rule 7.4 requires the claimant to file a copy of the particulars of claim (where served separately from the claim form) within 7 days of service on the defendant.)*

### **Notification of outcome of postal service by the court**

#### **6.18**

*(1) Where –*

*(a) the court serves the claim form by post; and*

*(b) the claim form is returned to the court,*

*the court will send notification to the claimant that the claim form has been returned.*

*(2) The claim form will be deemed to be served unless the address for the defendant on the claim form is not the relevant address for the purpose of rules 6.7 to 6.10.*

### **Notice of non-service by bailiff**

#### **6.19**

*Where –*

*(a) the court bailiff is to serve a claim form; and*

*(b) the bailiff is unable to serve it on the defendant,*

*the court will send notification to the claimant.*

**PART III - SERVICE OF DOCUMENTS OTHER THAN THE CLAIM FORM IN  
THE UNITED KINGDOM**

*Methods of service*

**6.20**

- (1) A document may be served by any of the following methods –
- (a) personal service, in accordance with rule 6.22;
  - (b) first class post, document exchange or other service which provides for delivery on the next business day, in accordance with Practice Direction A supplementing this Part;
  - (c) leaving it at a place specified in rule 6.23;
  - (d) fax or other means of electronic communication in accordance with Practice Direction A supplementing this Part; or
  - (e) any method authorised by the court under rule 6.27.
- (2) A company may be served –
- (a) by any method permitted under this Part; or
  - (b) by any of the methods of service set out in the Companies Act 1985 or the Companies Act 2006.
- (3) A limited liability partnership may be served –
- (a) by any method permitted under this Part; or
  - (b) by any of the methods of service set out in section 725 of the Companies Act 1985.

The methods of service are the same as those for serving a Claim Form.

*Who is to serve*

**6.21**

- (1) A party to proceedings will serve a document which that party has prepared except where
- (a) a rule or practice direction provides that the court will serve the document; or
  - (b) the court orders otherwise.
- (2) The court will serve a document which it has prepared except where –
- (a) a rule or practice direction provides that a party must serve the document;
  - (b) the party on whose behalf the document is to be served notifies the court that the party wishes to serve it; or
  - (c) the court orders otherwise.
- (3) Where the court is to serve a document, it is for the court to decide which method of service is to be used.

*(4) Where the court is to serve a document prepared by a party, that party must provide a copy for the court and for each party to be served.*

No significant change from the old rules; the service of non-claim forms is to be undertaken by the party who prepared the document. So, if the Court prepared the document, the Court will usually serve it. If you have prepared the document, it will usually be your responsibility to serve it.

### ***Personal service***

6.22

*(1) Where required by another Part, any other enactment, a practice direction or a court order, a document must be served personally.*

*(2) In other cases, a document may be served personally except –*

*(a) where the party to be served has given an address for service under rule 6.23(2)(a); or*

*(b) in any proceedings by or against the Crown.*

*(3) A document may be served personally as if the document were a claim form in accordance with rule 6.5(3).*

No change and no significant difference from the rules appertaining to personal service of a claim form.

### ***Address for service***

6.23

*(1) A party to proceedings must give an address at which that party may be served with documents relating to those proceedings. The address must include a full postcode unless the court orders otherwise.*

*(Paragraph 2.4 of the practice direction supplementing Part 16 contains provisions about postcodes.)*

*(2) A party's address for service must be –*

*(a) the business address within the United Kingdom of a solicitor acting for the party to be served; or*

*(b) where there is no solicitor acting for the party to be served, an address within the United Kingdom at which the party resides or carries on business.*

*(3) Where there is no solicitor acting for the party to be served and the party does not have an address within the United Kingdom at which that party resides or carries on business, the party must give an address for service within the United Kingdom.*

*(Part 42 contains provisions about change of solicitor. Rule 42.1 provides that where a party gives the business address of a solicitor as that party's address for service, that solicitor will be considered to be acting for the party until the provisions of Part 42 are complied with.)*

*(4) Any document to be served in proceedings must be sent or transmitted to, or left at, the party's address for service under paragraph (2) or (3) unless it is to be served personally or the court orders otherwise.*

(5) Where, in accordance with Practice Direction A supplementing this Part, a party indicates or is deemed to have indicated that they will accept service by fax, the fax number given by that party must be at the address for service.

(6) Where a party indicates in accordance with Practice Direction A supplementing this Part that they will accept service by electronic means other than fax, the e-mail address or electronic identification given by that party will be deemed to be at the address for service.

(7) In proceedings by or against the Crown, service of any document in the proceedings on the Crown must be effected in the same manner prescribed in rule 6.10 as if the document were a claim form.

(8) This rule does not apply where an order made by the court under rule

6.27 (service by an alternative method or at an alternative place) specifies where a document may be served.

### **Change of address for service**

6.24

Where the address for service of a party changes, that party must give notice in writing of the change as soon as it has taken place to the court and every other party.

### **Service on children and protected parties**

6.25

(1) An application for an order appointing a litigation friend where a child or protected party has no litigation friend must be served in accordance with rule 21.8(1) and (2).

(2) Any other document which would otherwise be served on a child or a protected party must be served on the litigation friend conducting the proceedings on behalf of the child or protected party.

(3) The court may make an order permitting a document to be served on the child or protected party or on some person other than the person specified in rule 21.8 or paragraph (2).

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

(5) The court may order that, although a document has been sent or given to someone other than the person specified in rule 21.8 or paragraph (2), the document is to be treated as if it had been properly served.

(6) This rule does not apply where the court has made an order under rule 21.2(3) allowing a child to conduct proceedings without a litigation friend.

### **Deemed Service**

6.26

A document, other than a claim form, served in accordance with these Rules or any relevant practice direction is deemed to be served on the day shown in the following table –

*Method of service Deemed date of service*

1. First class post (or other service which provides for delivery on the next business day) The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day.

2. *Document exchange* The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day.

3. *Delivering the document to or leaving it at a permitted address* If it is delivered to or left at the permitted address on a business day before 4.30p.m., on that day; or in any other case, on the next business day after that day.

4. *Fax* If the transmission of the fax is completed on a business day before 4.30p.m., on that day; or in any other case, on the next business day after the day on which it was transmitted.

5. *Other electronic method* If the e-mail or other electronic transmission is sent on a business day before 4.30p.m., on that day; or in any other case, on the next business day after the day on which it was sent.

6. *Personal service* If the document is served personally before 4.30p.m. on a business day, on that day; or

in any other case, on the next business day after that day.

(Paragraphs 10.1 to 10.7 of Practice Direction A supplementing this Part contain examples of how the date of deemed service is calculated.)

Unlike the claim form, the deemed date of service of other documents varies according to the method of service. The use of Post or DX leads to a deemed date of service on the second business day after posting or delivery to the service provider – just as is the case with a claim form.

Otherwise, if a document is delivered to the address for service, faxed, e-mailed or served personally, it will be deemed to have been served on the day the act was completed unless it was completed after 4.30 p.m., in which case deemed service will be the following day.

This is a change from the old rules under which 5.00 p.m. was the relevant time.

### *Service by an alternative method or at an alternative place*

6.27

*Rule 6.15 applies to any document in the proceedings as it applies to a claim form and reference to the defendant in that rule is modified accordingly.*

### *Power to dispense with service*

6.28

(1) *The court may dispense with service of any document which is to be served in the proceedings.*

(2) *An application for an order to dispense with service must be supported by evidence and may be made without notice.*

## *Certificate of service*

6.29

*Where a rule, practice direction or court order requires a certificate of service, the certificate must state the details required by the following table –*

*Method of Service Details to be certified*

- 1. Personal service Date and time of personal service.*
- 2. First class post, document exchange or other service which provides for delivery on the next business day Date of posting, or leaving with, delivering to or collection by the relevant service provider.*
- 3. Delivery of document to or leaving it at a permitted place Date and time of when the document was delivered to or left at the permitted place.*
- 4. Fax Date and time of completion of the transmission.*
- 5. Other electronic method Date and time of sending the e-mail or other electronic transmission.*
- 6. Alternative method or place permitted by the court As required by the court.*

Not surprisingly, and as was always the case, a certificate of service of a non-claim form requires, in most circumstances, the inclusion of the time of service. Though this I not so when the method of service is post or DX, it seems to me to be good practice to include in all certificates of service the time at which the action was completed.

The further Parts of CPR Part 6 are not dealt with in this document.