
STATUTORY INSTRUMENTS

2015 No. 548

The Court of Protection (Amendment) Rules 2015

Amendments to the Court of Protection Rules 2007

16. For rule 39 substitute—

“Scope and interpretation

39.—(1) This rule and rules 39A to 39H 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 39A to 39H—

“application form” includes an application notice;

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

“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(2).

(3) In rules 39A to 39H, 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

39A.—(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.

(1) 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.

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

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

39B.—(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 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

39C.—(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 39D (service in accordance with the Service Regulation); or
 - (ii) rule 39E (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

39D.—(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 is annexed to Practice Direction 6B.)

(Rule 39E makes provision for service on a person in a Service Convention country.)

Service through foreign governments, judicial authorities and British Consular authorities

39E.—(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 39D 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

39F.—(1) This rule applies where an application form or other document is to be served under rule 39E(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 39E(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 39G.
- (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

39G.—(1) Except where paragraphs (4) and (5) apply, every copy of the application form or other document filed under rule 39E (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 39E 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 39E 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

39H. Every request for service under rule 39F (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.”.