

Avalent>Kohtumenetlused>Tsiivilasjad>Dokumentide kättetoimetamine: õigusdokumentide ametlik edastamine

Tsiiviilõiguse valdkonnas jätkuvad ELi õiguse kohaselt need pooleliolevaid menetlused, mis on algatatud enne üleminekuperioodi lõppu. Vastastikusel kokkuleppel Ühendkuningriigiga hoiab e-õiguskeskkonna portaal Ühendkuningriigiga seotud asjakohast teavet oma portaalis kuni 2022. aasta lõpuni.

Service of documents: official transmission of legal documents**Põhja-lirimaa****1 What does the legal term "service of documents" mean in practical terms? Why are there specific rules regarding the "service of documents"?**

This is a general term for the steps that are required to bring court-related documents to the attention of interested parties.

The main purpose of the rules is to ensure that interested parties are made aware that court proceedings have commenced and are kept informed of developments. Specific time limits are imposed by the rules of court to ensure that there is sufficient opportunity to consider and, if necessary, respond to court-related documents. The time limits also help to maintain the momentum of the litigation process, by ensuring that certain steps are taken within a particular period. The court will usually require proof of service before adjudicating on a case.

2 Which documents need to be served formally?

Generally speaking, any documents relating to the proceedings, will need to be served, such as:

- the document initiating the proceedings (e.g. a writ of summons, originating summons or motion, petition, civil bill);
- certain documents while the case is progressing through court (e.g. a memorandum of appearance, a defence, a certificate of readiness); or
- notification of judgment/decrees.

In certain civil proceedings, specific documents must be served (for example, in road traffic cases, a notice should be served on the defendant's insurer).

3 Who is responsible for serving a document?

Ordinarily, the parties are responsible for effecting service, but they have a range of methods at their disposal and some of those methods will involve other people (for example process servers (see below), solicitors, postal staff).

4 Address inquiries**4.1 Under 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 extrajudicial documents in civil or commercial matters, does the requested authority in this Member State on its own initiative, try and establish the whereabouts of the addressee of the documents to be served if the addressee no longer resides at the address known to the requesting authority?**

No such practice currently exists.

When serving individuals, the Northern Ireland Courts and Tribunals Service conduct service via a third party 'summons server' who attempts service at the address provided by the requesting authority. If service is refused on the basis that the addressee has moved, the documents will generally be returned unless a forwarding address is given by the new residents or when alternative addresses becomes known to the summons server during enquiries, service may be attempted again and the certificate of service will reflect same.

4.2 Do foreign judicial authorities and/or parties to judicial proceedings have access to registers or services in this Member State enabling the establishment of the person's current address? If yes, which registers or services exist and what procedure must be followed? What fee, if any, should be paid?

No such practice currently exists.

4.3 How do the authorities in this Member State deal with a request sent under the Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters aimed at discovering a person's current address?

No such practice currently exists, when facilitating a request for the taking of evidence, an address for service is required.

5 How is the document normally served in practice? Are there alternative methods which may be used (other than substituted service referred to in point 7 below)?

The rules of court set out the general rules relating to service. However, other statutory provisions may establish specific rules for particular cases (for example, in relation to service on a body corporate).

Ordinarily, a High Court writ of summons may be served:

- by sending a copy by ordinary pre-paid first class post to the defendant's usual or last known address;
- personally, where the server must satisfy himself as to the identity of the person to be served and should then hand the document to him and explain what it is;
- by inserting a copy in the letter box at that address (the copy must be in a sealed envelope addressed to the defendant);
- on a solicitor who returns the original endorsed with a statement that he accepts service on behalf of the defendant;
- in accordance with a contractual term (this may specify who is to be served and where/how service is to be effected);
- if the action is for possession of land, by delivering a copy to the defendant's wife/husband, relative or employee (if apparently over the age of 16) at the defendant's residence or place of business. If the Court is satisfied that no person appears to be in possession of the land and that service cannot otherwise be effected on the defendant, it may authorise service to be effected by fixing a copy of the writ to a conspicuous part of the land;
- if the defendant is a minor, on his parent, guardian or the person with whom he lives;
- if the defendant is a patient, on a person authorised under the mental health legislation or the person with whom he lives;
- on the Crown by ordinary post to, or by leaving it with, an employee or agent of the Crown Solicitor;
- on a company by recorded delivery to its registered office.
- Any other High Court document that is not required to be served personally may be left at, or posted to, the address of the person to be served;
- be served by fax and following letter, if both parties are represented by solicitors;
- be served by document exchange (DX).

In the County Court, except as otherwise directed, a civil bill may be served:

- by a process server. (Process servers are appointed for each Administrative Court Division and he will endorse particulars of service on the original civil bill and return it as soon as possible to the plaintiff's solicitor);
- by a solicitor or member of his staff (over 16 years of age) by ordinary first class post;
- by inserting a copy in the letter box at the address (the copy must be in a sealed envelope addressed to the defendant);
- on a solicitor, if he is authorised to accept service and signs a statement to that effect on the original.

Any other document that is not required to be served personally may:

- be delivered or posted to a solicitor, if the party is acting by a solicitor;
- be served by fax and following letter, if both parties are represented by solicitors; or
- be served by DX.

A writ or civil bill for service outside Northern Ireland cannot be issued without the leave of the court, unless the court has jurisdiction under:

- the Civil Jurisdiction and Judgments Act 1982;
- Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters or Regulation (EU) No. 1215/2012 on jurisdiction and recognition and enforcement of judgments in civil and commercial matters (recast): or
- some other statutory provision.

A number of other requirements must be met (for example, there must be no proceedings on the same cause of action pending in another relevant jurisdiction).

6 Is electronic service of documents (service of judicial or extrajudicial documents through remote means of electronic communication, such as e-mail, internet based secured application, fax, sms etc.) permitted in civil proceedings? If so, for which types of proceedings is this method foreseen? Are there restrictions with regard to the availability/access of this method of service of documents depending on who the addressee is (legal professional, legal person, company or other business actor, etc.)?

Electronic service is not permitted in civil proceedings in Northern Ireland.

7 'Substituted' service

7.1 Does the law of this Member State allow for other methods of service in cases where it has not been possible to serve the documents to the addressee (e.g. notification to the home address, to the bailiff office, by postal service, or by poster advertising)?

If the rules require a document to be served personally (for example an enforcement or committal civil bill under Article 107 of the Judgments Enforcement (Northern Ireland) Order 1981), an ex parte application can be made asking the court to allow an alternative method of service. For example, the court may order substituted service:

- by post;
- by advertisement;
- on a friend;
- on a relative;
- on an insurance company.

If a defendant is outside Northern Ireland, the court may order substituted service if it is satisfied that he left for the purpose of avoiding litigation.

7.2 If other methods are applied, when are the documents deemed to have been served?

If another method of service is used, a Court Order will state that method and compliance with it will indicate when the documents have been served.

7.3 If another method of service is the deposit of the documents in a particular place (e.g. at a post office) how is the addressee informed of that deposit?

Deposit of documents is not a normal method of service in Northern Ireland.

7.4 If the addressee refuses to accept service of the documents, what are the consequences? Are the documents regarded as effectively served if the refusal wasn't legitimate?

If the addressee refuses service (e.g. denying identity), the summons server is entitled to serve the papers on another person as long as that person is known to them and is over 16 years (e.g. addressee's spouse). Where there is no other person to serve, a certificate of 'non-service' is drawn. If proof of identity cannot be obtained, the documents would not be considered served (even if the refusal was not legitimate).

8 Postal service from abroad (Article 14 of the Service Regulation)

8.1 If the postal service delivers a document sent from abroad to an addressee in this Member State in a situation where acknowledgment of receipt is required (Article 14 of the Service Regulation), does the postal service deliver the document only to the addressee himself/herself or may it, in accordance with national rules of postal delivery, deliver the document also to another person at the same address?

Registered delivery by the Royal Mail (the UK postal service) is to the address rather than the individual. Therefore it is possible that someone other than the addressee will receive the documents if they live at the same address.

8.2 Under the rules of postal delivery in this Member State how can the service of documents from abroad, under Article 14 of the Service Regulation No. 1393/2007, be effected if neither the addressee nor any other person authorised to receive the delivery (if possible under national rules of postal delivery – see above) has been reached at the address of delivery?

If nobody at the requested address is available to sign for the documents they are returned to the postal office local to the address. If they are not collected within the deadlines (see below) they are returned to the sender.

8.3 Does the post office allow a specific period of time for collection of the documents before sending the documents back as undelivered? If yes, how is the addressee informed that there is mail for him to collect at the post office?

Where delivery has not been possible at the address a card is left with notification of the attempted delivery. This card tells the addressee from where the documents can be collected and the time limit within which he/she should collect them. For registered post originating within the UK the documents should be collected within 1 week. For international registered post the deadline is three weeks.

9 Is there any written proof that the document has been served?

In the High Court, service may require to be proved by affidavit stating:

- who effected service;
- who was served (reference may be made to a photograph of the recipient or the fact that he confirmed his identity);
- where and how service was effected;
- the day and date of service.

The server should write the service details on the original document.

An affidavit of service by post or by insertion in a letter box must state that it is believed that the document will come to the defendant's knowledge and that it has not been returned undelivered.

In urgent cases service can be proved by oral testimony.

In the County Court:

- a process server will attend, produce his record book, which contains details of service and swear an oath that the endorsements of service are correct;
- service by a solicitor is proved by certificate of posting on the face of the civil bill;

In both the High and County Courts:

- a document served by first class post is deemed to be served after the seventh business day (although evidence may be called to show that it arrived earlier);
- a FAX sent after 4.00 pm on a business day is deemed to be served the next day;
- a document served by DX is deemed to be served the second business day after it is left in the DX box.

10 What happens if something goes wrong and the addressee does not receive the document or the service is effected in violation of the law (e.g. the document is served on a third person)? Can the service of the document nevertheless be valid (e.g. can violations of the law be remedied) or must a new effort to serve the document be made?

If a solicitor is not authorised to accept service on the defendant's behalf, all proceedings will be set aside. Otherwise, the judge may declare the service effected sufficient if there is evidence that the defendant actually received the document or there is a technical defect in service. Defective or non-service is also waived if the defendant enters an unconditional appearance.

11 Do I have to pay for service of a document, and if so, how much?

Service by post incurs first-class postal costs. For personal service the fees charged by process servers are fixed by statute. The current fee for personal service of a civil bill and writ are £12 and £45 respectively.

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