

### 1 What does the legal term "service of documents" mean in practical terms? Why are there specific rules regarding the "service of documents"?

In practical terms, "service of documents" means the service in the appropriate manner, of documents used in court proceedings.

The rules set out the framework to be followed to enable the following:

- that documents are served in a manner approved of by the court
- to provide a mechanism in which a party can show that a particular document has or has not been served
- to set out a timetable in which a document can be deemed to have been served (e.g. personal service - deemed to be served the same day unless served after 5pm on a business day or served on a Saturday, Sunday or public holiday, when it will be deemed to have been served on the next business day).

### 2 Which documents need to be served formally?

Documents required to be served formally include claim forms, particulars of claim, defences, replies, application notices, petitions, orders and witness statements/affidavits (where these are for use at trial).

### 3 Who is responsible for serving a document?

The party who has prepared a document is responsible for its service. For example, a claim form should be served by the claimant or duly authorised solicitors. The Supreme Court of Gibraltar will not serve documents.

### 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?

As Gibraltar does not have a domicile register in the way that many Member States do, it is not possible for the requested authority in Gibraltar to obtain an address for the person on whom the documents are to be served. However where documents are to be served on a company and when recipients at the given address refuse to accept service the receiving agency in Gibraltar is able to establish the registered address of the company (if different) and can serve the documents at that address.

#### 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?

As mentioned before, there is no domicile register in Gibraltar. To find the address of a person it is necessary to use agents who can trace individuals or make use of the telephone directory that have some details of addresses. Searches such as telephone records are free. For other searches it is necessary to pay a fee. To find the registered office of a company a search has to be carried out at Companies House, this is not available on the website.

#### 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 it would not be possible to request an address in Gibraltar via Council Regulation (EC) No. 1206/2001.

### 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)?

Documents are normally served in the following ways:

- By personal service
- By registered post
- By fax or any other means of communication
- By any alternative method ordered by a judge

An injunction or other order endorsed with a penal notice should normally be served personally.

### 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.)?

Service can be effected by fax where a party or his legal representative have previously indicated in writing to the party serving that he is willing to accept service by fax. A similar provision applies in the case of service by electronic mail, although the rules also provide that service by electronic mail can only take place where the parties are both acting by legal representative.

### 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)?

Full details of the rules and procedures for service in Gibraltar can be found in [Part 6 of the Civil Procedure Rules](#).

Where requests for service are received from other Member States the normal method of service in Gibraltar is personally by a court bailiff. Where that has not proved possible a judge may authorise another method of service - usually by means of ordinary post to the given address (if this is the usual or last known address of the person to be served).

Otherwise service can be by another delivery method which provides for delivery on the next business day or fax or other means of electronic communication. Where it appears to the court that there is a good reason to authorise service by a method or at a place not normally permitted under the Civil Procedure Rules the court may make an order permitting service by an alternative method or at an alternative place.

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

Under normal postal service or another delivery method which provides for delivery on the next business day, the documents are deemed to be served the second day after the documents were posted, left with, delivered to, or collected by the relevant service provider provided that day is a business day or the next business day after that day. When service is by fax or other electronic method if it is sent on a business day before 16.30 on that day, or in any other

case on the next business day after the day it was sent. Where an alternative method of service is used the court's order will specify the method and the date on which service has deemed to have occurred.

**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 in a particular place (e.g. a post office) is not usually an alternative method of service. If documents have been served by registered post and not delivered the process by which the addressee is informed is set out in section 8 below.

**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?**

Provided a method of service has been approved by a court, the deemed service date applies whether or not the addressee accepts service.

**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 Gibraltar Post Office is to the individual, they receive notification of a letter/parcel to be collected and this will only be delivered to the person on production of identification.

**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?**

Unless the person to whom the notification is sent attends the post office, there is no other way that service can be effected.

**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?**

Yes, after the first issue of the "Notification to Collect" is sent to the addressee a period of twenty-eight days is given for the collection of the documents before sending a second "Notification to Collect". If after another seven days the documents have not been collected, they are sent back as undelivered. The addressee is informed by a notification card, sent to their address.

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

Where the Rules of Court stipulate that there should be proof of service, a certificate of service should be provided. This should state that the document has not been returned undelivered, the method of service used and the date of posting/personal service/fax/leaving at permitted place. A prescribed form is available.

Where a claim form is the document personally served, the claimant must file a certificate of service within 21 days of service of the claim form. Failure to do so will render a claimant unable to obtain judgment in default.

**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?**

Normally, an attempt to re-serve should be made provided that the relevant limitation period is still current.

However, the Supreme Court does have power to dispense with service in exceptional cases. An example of this is where a defendant has been properly and fully notified of a claim but the claimant has failed to effect service within the relevant limitation period by, e.g. serving at a wrong address.

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

As service is carried out by a party to the proceedings or his solicitors, any fees arising from such service are paid by that party. The fees will depend on what type of service is used.

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