

Țara se află în proces de tranziție către retragerea din UE.

Service of documents: official transmission of legal documents

Scotția

### 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" is commonly understood to refer to the actual receipt of the summons or other document by the Defender/Respondent, so that the Defender/Respondent is notified of the court case or decision and/or summoned, and is aware of the relevant court deadlines. Court rules are intended to ensure that justice for the Defender/Respondent is not prejudiced, and that the Defender/Respondent receives the required papers and notification of impending court dates, all within at least the minimum time period allowed. The Sheriff/Judge will normally require proof of service before adjudicating on a case.

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

In general documents which need to be served formally:

- A letter giving the Defender/Respondent notice that court action will be instigated if he does not respond to that letter.
- initial writ/summary cause summons etc.
- certain documents while the case is progressing through court.
- notification of judgment/decreed.
- charge for payment (step before enforcement action).
- documents in respect of any enforcement procedure.

Certain types of civil procedure require further, specific documents to be served.

More information can be found in Chapter 16 of the [Court of Session Rules](#), Chapter 5 of the [Sheriff Court Ordinary Cause Rules](#), Chapter 5 of the [Summary Cause Rules](#) and Part 6 of the Simple Procedure Rules.

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

- Extra-judicial documents, such as a letter prior to court action, and judicial documents, such as writs or summonses can be served by post (first class recorded delivery). In this case, the document is taken to the Defender's/Respondent's dwellinghouse/place of business by a postal worker, who obtains a signature acknowledging receipt. Postal service of judicial documents may only be instructed by a solicitor, messenger-at-arms or sheriff officer, or in certain cases under the simple procedure by the Sheriff Clerk.
- If these documents are to be served personally, this is done by a messenger-at-arms or a sheriff officer (the nearest Scottish equivalent of the French 'huissier de justice').
- Charges for payment and most other documents in respect of enforcement procedure are served personally, again by a messenger-at-arms or sheriff officer.

### 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 the UK does not have a domicile register in the way that many other Member States do, it is not possible for the requested authority in Scotland 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 Scotland 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 the United Kingdom. To find the address of a person it is necessary to use agents who can trace individuals or make use of a number of websites that have some details of addresses. The following list is not exhaustive but shows some examples of the types of websites that are available. Some, such as a search of telephone records (the first link), are free. For others it is necessary to pay a fee.

Phone records from [British Telecommunications](#).

Address finders at [192, UKRoll](#)

Trace people at [Tracesmart](#)

To find the registered office of a company a search can be made of the website of [Companies House](#). Some searches for companies are available for free but more detailed searches require a fee to be paid.

#### 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 Scotland 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)?

- Postal Service - by first class recorded delivery post.
- Personal Service - by messenger-at-arms or sheriff officer personally, on the Defender/Respondent.
- Personal Service- left with fellow resident/employee at dwellinghouse/place of business.

If after diligent enquiries, messengers-at-arms or sheriff officers consider that reasonable grounds are established for believing that the Defender/Defender resides at the address on the summons, papers may be left with a fellow resident of the dwellinghouse/employee of business.

- Personal Service - in cases other than those where there is an individual Defender/Respondent (ie other legal entity such as registered company). Personal service can be effected by leaving the summons in the hands of an individual in, for example, the place of business in such a way that it is reasonable to expect an actual legal representative of the Defender/Respondent to receive the summons.

e. Personal Service - depositing/affixing

Where messenger-at-arms/sheriff officer has been unable to effect personal service on the Defender/Respondent, he may either

- deposit the summons in dwellinghouse/place of business
- affix the summons to the door of the dwellinghouse/place of business.

f. Where the address is not known - The Sheriff/Judge may grant permission for service by means of:

- publication of an advertisement in a local newspaper circulating in the area of the last-known address of the Defender/Respondent
- displaying on the walls of court a copy of the initial writ/ summons.

g. There are no provisions at present for service of a writ or summons, decree or charge for payment by means of fax or e-mail. However, some other documents which require to be intimated in the course of certain proceedings may be transmitted electronically or in any documentary form.

h. For service of persons outside Scotland see Chapter 16 of the [Court of Session Rules](#), Chapter 5 of the [Sheriff Court Ordinary Cause Rules](#), Chapter 5 of the [Summary Cause Rules](#) and Part 6 of the Simple Procedure Rules.

(For summonses, writs etc coming into Scotland, in cases other than those processed under the EU Regulation on Service, or under the Hague Convention on Service and via the Central Authority, all of the specific rules and procedures in a-g apply. For example, personal service of a summons issued in a country outside Scotland on a Defender/Respondent in Scotland is only legitimate if it accords with Scottish court rules.)

i. In all cases where service is effected other than by the court itself, a certificate of execution of service must be lodged in process, signed by the Pursuer's /Claimant's solicitor, messenger-at-arms or sheriff officer.

**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.)?**

See answer 5 g above.

## **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)?**

Where requests are received from other Member States the normal method of service in Scotland is personally by a Messenger at Arms at the last known address or their place of business. Other methods of delivery are available under Scots law, however they are not used by the Central Authority for the service of documents.

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

As stated above in Scotland the only method for serving documents used by the Central Authority is delivery by a Messenger at Arms.

**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 an alternative method of service in Scotland.

**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 proper method of service has been used then the deemed service date applies whether or not the addressee accepts service. The only exception being those allowed for in Article 8(1) and Annex II of the Regulation in relation to the document being in a language that the address understands.

## **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?**

- For postal service, see above. Postage is by first class recorded delivery. The certificate of execution of service, including the Post Office receipt, is required by the court as proof of service.
- For personal service, messenger-at-arms/sheriff officer will produce a certificate of execution of service, signed by participating officers and describing method of service.
- For certification in outgoing actions outside Scotland, see the relevant sections of court rules, as mentioned previously. Again, for summonses etc coming into Scotland, all the rules in a. and b. apply.

**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?**

The Sheriff/Judge needs to be satisfied that service has been effected correctly and fairly on the Defender/Respondent before adjudication on a case can take place. Service needs to be completed satisfactorily, otherwise the Defender/Respondent would legitimately have recourse to an action to recall any decree awarded on the basis that the action was taken without the option to defend it, or even be notified of it. If however it is apparent that the Defender /Respondent learned about the action because he appeared in it, then his appearance will cure any defect in service.

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

Postal service: First class recorded delivery post at current costs.

If postal service is effected by a messenger-at-arms or sheriff officer, there is an additional fee payable to them, fixed by legislation depending on the circumstances of the case.

**Personal service: Fees charged by messenger-at-arms/sheriff officer are fixed by legislation depending on the circumstances of the case.**

Last update: 30/04/2019

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