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STATUTORY INSTRUMENTS

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**1981 No. 1687**

**The County Court Rules 1981**

**ORDER 7**

**SERVICE OF DOCUMENTS**

**PART II**

**DEFAULT AND FIXED DATE SUMMONSES**

**Application of Part II**

**9.** Except as otherwise provided, this Part of this Order shall apply to both default and fixed date summonses and “summons” shall be construed accordingly.

**Mode of service**

**10.**—(1) Subject to the provisions of any Act or rule (including the following paragraphs of this rule), service of a summons shall be effected—

- (a) by delivering the summons to the defendant personally; or
- (b) by a bailiff of the court delivering the summons to some person, apparently not less than 16 years old, at the defendant's residence or, if the defendant is the proprietor of a business, at his place of business.

(2) Where the plaintiff or his solicitor gives a certificate for postal service, the summons shall, unless the registrar otherwise directs, be served by an officer of the court sending it by first-class post to the defendant named in the certificate at the address stated in the request for the summons.

(3) Where it appears to the bailiff by whom a summons is to be served that there is a reasonable probability that the summons, if delivered at the address stated in the request for the summons, will come to the defendant's knowledge in sufficient time—

- (a) in the case of a default summons, for the defendant to deliver a defence, admission or counterclaim within the time limited by these rules; or
- (b) in the case of a fixed date summons, for the defendant to appear on the return day,

the summons may, unless the registrar otherwise directs, be served by—

- (i) an officer of the court sending the summons by first-class post to the defendant at that address; or
- (ii) the bailiff inserting the summons, enclosed in an envelope addressed to the defendant, through the letterbox for that address.

(4) Where a summons is served in accordance with paragraph (2) or (3)(i), the date of service shall, unless the contrary is shown, be deemed to be the seventh day after the date on which the summons was sent to the defendant.

(5) Service of a fixed date summons shall be effected not less than 21 days before the return day; but, without prejudice to the power to abridge that period under Order 13, rule 4, service may be

effected at any time before the return day on the plaintiff satisfying the registrar by affidavit that the defendant is about to remove from the address stated in the request for the summons.

(6) Where a summons is served by bailiff in accordance with paragraph (1)(b), the certificate of service made by the bailiff pursuant to rule 6(1) shall set out any statement made by the person who received the summons and any other circumstances from which it may be inferred that the summons has come to the knowledge of the defendant.

(7) Where a summons is served in accordance with paragraph (3), the bailiff shall make, sign and file a certificate of his reasons for supposing that the summons was likely to come to the defendant's knowledge.

(8) Where a summons has been sent by post under paragraph (2) or (3)(i) and has been returned to the court office undelivered, notice of non-service shall be sent pursuant to rule 6(2).

### **Solicitor accepting service**

**11.** Where a defendant's solicitor gives a certificate that he accepts service of the summons on behalf of that defendant and stating an address for service, the summons shall be deemed to have been duly served on that defendant on the date on which the certificate was made.

### **Presumed service of summons**

**12.** Where a summons has not been served in accordance with rule 10 but the defendant delivers to the court office a defence, admission or counterclaim, the summons shall be deemed, unless the contrary is shown, to have been duly served on him on the date on which the defence, admission or counterclaim was so delivered.

### **Partners**

**13.—(1)** Subject to the following paragraphs of this rule, where partners are sued in the name of their firm, service of a summons shall be good service on all the partners, whether any of them is out of England and Wales or not, if the summons is delivered—

- (a) to a partner personally, or
- (b) at the principal place of the partnership business within the district within which the summons is to be served, to any person having, or appearing to have, at the time of service, the control or management of the business there:

Provided that, where the partnership has to the knowledge of the plaintiff been dissolved before the commencement of the action, the summons shall be served upon every person within England and Wales sought to be made liable.

(2) Where the plaintiff or his solicitor gives a certificate for postal service pursuant to rule 10(2), the summons shall, unless the registrar otherwise directs, be served by an officer of the court sending it by first-class post to the firm at the address stated in the request for the summons.

(3) Rule 10(3) shall apply to the service of the summons as if for the reference to the defendant's knowledge there was substituted a reference to the knowledge of one of the persons to whom the summons may be delivered in accordance with paragraph (1) and as if for the references in rule 10(3) (a) and (b) to the defendant there were substituted references to one of the partners.

(4) Rule 10(4) shall apply in relation to service by post under paragraph (2) or (3) as it applies in relation to service under rule 10(2) or (3)(i).

### **Service on body corporate**

14. Service of a summons on a body corporate may, in cases for which provision is not otherwise made by an enactment, be effected by serving it on the mayor, chairman or president of the body or the town clerk, clerk, secretary, treasurer or other similar officer thereof.

### **Recovery of land**

15.—(1) Where, in the case of a summons for the recovery of land which is to be served by bailiff, the court is of opinion that it is impracticable to serve the summons in accordance with any of the foregoing provisions of this Part of this Order, the summons may be served in a manner authorised by this rule.

(2) The summons may be served on any person on the premises who is the husband or wife of the defendant or on any person who has or appears to have the authority of the defendant—

(a) to reside or carry on business in the premises or to manage them on behalf of the defendant or to receive any rents or profits of the premises or to pay any outgoings in respect of the premises; or

(b) to safeguard or deal with the premises or with the furniture or other goods on the premises, and service on any such person shall be effected in the manner required by these rules with respect to a fixed date summons.

(3) Paragraph (2) shall apply to a man and woman who are living with each other in the same household as husband and wife as it applies to the parties to a marriage.

(4) Where the premises are vacant or are occupied only by virtue of the presence of furniture or other goods, the summons may be served by affixing it to some conspicuous part of the premises.

(5) Unless the court otherwise orders, service of a summons in accordance with this rule shall be good service on the defendant, but if a claim for the recovery of money is joined with the claim for recovery of land, the court shall order the summons to be marked “not served” with respect to the money claim unless in special circumstances the court thinks it just to hear and determine both claims.

### **Late knowledge of service**

16. Where a fixed date summons has been served on a defendant in one of the modes mentioned in this Part of this Order but it appears to have come to his knowledge less than 21 days before the return day, the court may, without prejudice to its powers under rule 10(5) or Order 13, rule 4.—

(a) allow the action to proceed whether or not the defendant appears on the return day, or

(b) adjourn the hearing or, as the case may be, the pre-trial review.

### **Error in request**

17.—(1) Subject to the following paragraphs of this rule, a summons which has not been served may be amended on the plaintiff filing an amended request for the issue of the summons.

(2) An amendment may be made under paragraph (1) notwithstanding that it consists of the addition or substitution of a defendant but in that case Order 15, rule 2(3), shall apply to the amendment as it applies to an amendment made under paragraph (1) of that rule.

(3) If the bailiff by whom a summons is to be served ascertains before notice of non-service has been sent that the defendant has removed from the address stated on the summons to a new address within the district of the court, it shall be his duty to serve the summons without amendment and to state the new address in his certificate of service.

(4) Where the defendant's address stated in the request for the issue of the summons was within the district of the court and at the time of the entry of the plaint the defendant was not residing or carrying on business within the district, an amendment of the address shall be allowed only on the plaintiff filing a fresh request for the issue of the summons showing that the court had jurisdiction under Order 4, rule 2, to entertain the action.

### **Doubtful service**

**18.**—(1) If it appears from the certificate of service of a default or fixed date summons that the summons has been delivered to a person under rule 10(1)(b) but it is doubtful whether the court will be satisfied that the summons has come to the defendant's knowledge in sufficient time, the proper officer of the court for the district in which the summons is to be served shall give to the plaintiff notice of doubtful service.

(2) Where such a notice has been given and the defendant does not deliver a defence, admission or counterclaim or, in the case of a fixed date summons, does not appear on the return day, the plaintiff may be required to satisfy the court that the summons has come to the defendant's knowledge in sufficient time.

(3) In this rule “sufficient time” means —

- (a) in the case of a default summons, sufficient time for the defendant to deliver a defence, admission or counterclaim within 14 days after delivery of the summons under rule 10(1)(b), and
- (b) in the case of a fixed date summons, sufficient time for him to attend on the return day.

### **Successive summonses**

**19.**—(1) Where a fixed date summons has not been served on every defendant, successive summonses may from time to time be issued without entering a new plaint, on the plaintiff filing an amendment request on each occasion when a successive summons is to be issued.

(2) Where a fixed date summons has not been served by reason of a defendant having, after entry of the plaint, removed out of the district in which the summons was required to be served, successive summonses may from time to time be issued for service in any district to which he has removed.

(3) A successive summons shall—

- (a) bear the same date and number as the original summons; and
- (b) be a continuance of the original summons; and
- (c) be served in accordance with rule 10.

### **Duration and renewal of summons**

**20.**—(1) The time within which a summons may be served shall, unless extended under paragraph (2), be limited to a period of 12 months beginning with the date of issue of the summons.

(2) The court may extend the period for service of a summons from time to time for such period, not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as the court may specify, if an application for extension is made before that day or such later day (if any) as the court may allow.

### **Notice of service of default summons**

**21.** Where a default summons has been served by a bailiff or other officer of a county court, the proper officer of that court shall send notice of service to the plaintiff.