

## **PART 2 : ADMINISTRATION**

### **CHAPTER 1: DIVISIONS OF THE COURT**

#### **2.1 Civil Division**

There shall be a single Civil Division in place of the Chancery Division, Common Law Division and Family Law Division of the court.

### **CHAPTER 2: JUDGES AND OFFICERS OF THE COURT**

#### **2.2 Exercise of functions of the court (2.4)**

(1) Where these Rules provide for the court to perform any act, that act may be performed by any judge.

(2) Paragraph (1) does not apply where any rule, or any other statutory provision, provides otherwise.

(3) Wherever a judicial officer has jurisdiction in any matter, he may refer the matter to a Deemster instead of dealing with it himself, and the Deemster may either dispose of the matter or refer it back to the judicial officer.

#### **2.3 Court officers (2.5, 3.2)**

(1) Where these Rules require or permit the court to perform an act of a formal or administrative character, that act may be performed by a court officer.

(2) A requirement that a court officer or a costs officer carry out any act at the request of a party is subject to the payment of any prescribed fee for the carrying out of that act.

(3) Where a step is to be taken by a court officer —

- (a) the officer may consult a judge before taking that step;
- (b) the step may be taken by a judge instead of the officer.

### **CHAPTER 3: GENERAL POWERS OF THE COURT**

#### **2.4 Court's power to make order of its own initiative (3.3)**

(1) Except where a rule or some other statutory provision provides otherwise, the court may exercise its powers on an application or on its own initiative.

(2) Where the court proposes to make an order on its own initiative —

- (a) it may give any person likely to be affected by the order an opportunity to make representations; and
- (b) where it does so it shall specify the time by and the manner in which the representations shall be made.

(3) Where the court proposes —

- (a) to make an order on its own initiative; and
- (b) to hold a hearing to decide whether to make the order,

it shall, if practicable, and unless each such party consents to shorter notice, give each party likely to be affected by the order at least 7 days' notice of the hearing.

(4) The court may make an order on its own initiative, without hearing the parties or giving them an opportunity to make representations.

(5) Where the court has made an order under paragraph (4) —

- (a) a party affected by the order may apply to have it set aside, varied or stayed; and

- (b) the order shall contain a statement of the right to make such an application.
- (6) An application under paragraph (5)(a) shall be made —
  - (a) within such period as may be specified by the court; or
  - (b) if the court does not specify a period, not more than 7 days after the date on which the order was served on the party making the application.
- (7) If the court on its own initiative strikes out a statement of case or dismisses an application (including an application for permission to appeal) and it considers that the claim or application is totally without merit —
  - (a) the court's order shall record that fact; and
  - (b) the court shall at the same time consider whether it is appropriate to make a civil restraint order.

## **2.5 Court's power to rectify error of procedure (3.10, RHC 54)**

- (1) Where there has been an error of procedure such as a failure to comply with a rule or practice direction —
  - (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
  - (b) the court may make an order to remedy the error.
- (2) The court shall not allow an application to set aside any such step for an error of procedure —
  - (a) unless it is made within reasonable time; or
  - (b) if the applicant has taken a step after knowledge of the error.
- (3) The application notice shall specify the error of procedure to which the application relates.

## **CHAPTER 4: FORMS AND PRACTICE DIRECTIONS**

### **2.6 Use of prescribed forms**

- (1) The prescribed forms shall be used in the cases to which they apply.
- (2) A form may be varied by the court or a party if the variation is required by the circumstances of a particular case.
- (3) A form shall not be varied so as to leave out any information or guidance which the form gives to the recipient.
- (4) Where these Rules require a form to be sent by the court or by a party for another party to use, it shall be sent without any variation except such as is required by the circumstances of the particular case.

### **2.7 Publication of forms**

- (1) Reasonable stocks of printed copies of all prescribed forms shall be kept at the court office, and such copies shall be supplied by the court office to any person applying for them, at such reasonable charge as the Chief Registrar may determine.
- (2) Electronic copies of all prescribed forms, in such format as the Chief Registrar may determine, shall be published on the court website.

### **2.8 Publication of practice directions**

- (1) A complete set of all current practice directions, suitably indexed, shall be maintained at the court office, and may be inspected by any person free of charge at any time when the court office is open.

(2) A printed copy of any current practice direction shall be supplied by the court office to any person applying for it, at such reasonable charge as the Chief Registrar may determine.

(3) Electronic copies of all current practice directions, in such format as the Chief Registrar may determine, shall be published on the court website.

## **CHAPTER 5: TIME**

### **2.9 Vacations (RHC 46, 47.4 & 5, 2.18)**

(1) The following vacations shall be observed in the court and the court office:

<i>Vacation</i>	<i>First day</i>	<i>Last day</i>
Long Vacation	24th July	31st August
Christmas Vacation	23rd December	3rd January
Easter Vacation	Good Friday	Thursday in Easter week

(2) The time of the Long Vacation shall not be reckoned in the computation of the time for filing, serving or amending any statement of case, unless directed by the court.

### **2.10 Time (2.8)**

(1) This rule shows how to calculate any period of time for doing any act which is specified by —

- (a) these Rules;
- (b) a practice direction; or
- (c) a judgment or order of the court.

(2) A period of time expressed as a number of days shall be computed as clear days.

(3) In this rule ‘clear days’ means that in computing the number of days, the following days are not included —

- (a) the day on which the period begins;
  - (b) if the end of the period is defined by reference to an event, the day on which that event occurs.
- (4) Where the specified period —
- (a) is 5 days or less; and
  - (b) includes —
    - (i) a Saturday or Sunday; or
    - (ii) a bank holiday, Christmas Day or Good Friday,

that day does not count.

(5) Where the specified period —

- (a) is more than 5 days, and
- (b) includes any day falling within a holiday period referred to in the following table,

that day does not count.

<i>Holiday period</i>	<i>First day</i>	<i>Last day</i>
Christmas	23rd December	3rd January
Easter	Good Friday	Tuesday in Easter week

(6) When the period specified —

- (a) by these Rules, or
- (b) by any judgment or court order,

for doing any act at the court office ends on a day on which the court office is closed, that act shall be in time if done on the next day on which the court office is open.

#### **2.11 Time of filing**

(1) A document delivered at the public counter of the court office during the hours when the court office is open shall be treated as filed at the time when it is delivered.

(2) A document delivered to the court office by post —

(a) on a day when the court office is open, shall be treated as filed at 12.00 noon on that day;

(b) on any other day, shall be treated as filed at 9.00 am on the next day on which the court office is open.

(3) Subject to rule 4.2(2), a document delivered to the court office otherwise than as mentioned in paragraph (1) or (2) shall be treated as filed at 9.00 am on the next day on which the court office is open.

#### **2.12 Expression of dates and times (2.9)**

(1) Where the court gives a judgment, order or direction which imposes a time limit for doing any act, the last date for compliance shall, wherever practicable —

(a) be expressed as a calendar date; and

(b) include the time of day by which the act shall be done.

(2) Where the date by which an act must be done is inserted in any document, the date shall, wherever practicable, be expressed as a calendar date.

#### **2.13 Meaning of ‘month’ in judgments etc. (2.10)**

Where ‘month’ occurs in any judgment, order, direction or other document, it means a calendar month.

#### **2.14 Time limits may be varied by parties (2.11)**

Unless these Rules provide otherwise or the court orders otherwise, the time specified by a rule or by the court for a person to do any act may be varied by the written agreement of the parties.

## **CHAPTER 6: COURT DOCUMENTS**

#### **2.15 Court documents to be sealed (2.6)**

(1) The court office shall seal the following documents on issue —

(a) the claim form; and

(b) any other document which a rule requires it to seal.

(2) The court office may place the court’s seal on the document —

(a) by hand; or

(b) by printing a facsimile of the seal on the document, whether electronically or otherwise.

(3) A document purporting to bear the court’s seal shall be admissible in evidence without further proof.

#### **2.16 Form of documents (RHC 49, PD5)**

(1) Every document prepared by a party for filing or use in the court must —

(a) unless the nature of the document renders it impracticable, be on A4 paper of durable quality, having a blank margin not less than 25mm all round;

- (b) be fully legible;
- (c) be produced by one or more of the following methods —
  - (i) printing (including laser or inkjet printing);
  - (ii) typewriting (not a carbon copy);
  - (iii) handwriting (in the small claims procedure only);
- (d) where possible be bound securely in a manner which will not hamper filing; otherwise each page must be endorsed with the case number;
- (e) have the pages numbered consecutively;
- (f) be divided into numbered paragraphs; and
- (g) have all numbers, including dates, expressed as figures.

(2) Every such document must bear the title of the proceedings as follows:

- (a) a heading —

*In the High Court of Justice of the Isle of Man*  
*Civil Division*  
*Chancery Procedure* (or as the case may be);

- (b) in the case of proceedings under a statutory provision, or where required by another rule, a description of the claim —  
*Application under Partition Act 1931* (or as the case may be);
- (c) the parties to the proceedings (described in accordance with Part 3 or another rule).

(3) To the extent that a document produced by a photographic or similar process contains a facsimile of any printed, typewritten or handwritten matter, it shall, if it gives a positive and permanent representation free from blemishes, be treated for the purposes of paragraph (1) as if it were printed, typewritten or handwritten, as the case may be.

### **2.17 Signature of documents (5.3, PD5)**

(1) Statements of case and other documents drafted by an advocate must bear his signature, and if they are drafted by an advocate as a member or employee of a firm they must be signed in the name of the firm.

(2) Where any of these Rules or a practice direction requires a document to be signed, that requirement shall be satisfied if the signature is printed by computer or other mechanical means.

(3) Where a signature is printed by computer or other mechanical means on any document, the name of the person whose signature is printed must also be printed so that the person may be identified.

### **2.18 Filing and sending documents electronically (5.5)**

Schedule 2.1 makes provision for documents to be filed or sent to the court by fax or other electronic means.

### **2.19 Record of filing of documents (PD5)**

(1) The date on which a document is filed in the court office shall be recorded on the document by either a seal or a receipt stamp.

(2) The following particulars of every document filed in the court office shall be entered on the court file or on a computer kept in the court office for the purpose —

- (a) the title of the proceedings in which the document is filed;
- (b) a description of the document; and
- (c) the date of filing.

## **2.20 Register of claims (5.4)**

(1) A register of all claims which have been issued out of the court office, suitably indexed, shall be maintained at the court office, and may be inspected by any person on payment of the prescribed fee at any time when the court office is open.

(2) A copy of the register may be published on the court website.

## **2.21 Supply of documents from court records (5.4B-4D, PD5)**

(1) A party to proceedings may, unless the court orders otherwise, obtain from the records of the court a copy of any of the following documents—

- (a) a certificate of suitability of a litigation friend;
- (b) a legal aid certificate;
- (c) a claim form or other statement of case together with any documents filed with or attached to or intended by the claimant to be served with such claim form;
- (d) an acknowledgment of service together with any documents filed with or attached to or intended by the party acknowledging service to be served with such acknowledgement of service;
- (e) a certificate of service, other than a certificate of service of an application notice or order in relation to an application of a kind mentioned in sub-paragraph (g)(i) or (ii);
- (f) a notice of non-service;
- (g) an application notice, other than in relation to —
  - (i) an application by an advocate for an order declaring that he has ceased to be the advocate acting for a party; or
  - (ii) an application for an order that the identity of a party or witness should not be disclosed;
- (h) any written evidence filed in relation to an application, other than one mentioned in sub-paragraph (g)(i) or (ii);
- (i) a judgment or order given or made in public (whether made at a hearing or without a hearing);
- (j) a statement of costs;
- (k) a list of documents;
- (l) a notice of payment into court;
- (m) a notice of discontinuance; or
- (n) a notice of appeal.

(2) A party to proceedings may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party or communication between the court and a party or another person.

(3) Any other person may —

- (a) unless the court orders otherwise, obtain from the records of the court a copy of —
  - (i) a claim form, but not any documents filed with or attached to or intended by the claimant to be served with such claim form, subject to paragraph (4) and to any order of the court under paragraph (5);
  - (ii) a judgment or order given or made in public (whether made at a hearing or without a hearing), subject to paragraph (4); and

- (b) if the court gives permission, obtain from the records of the court a copy of any other document filed by a party, or communication between the court and a party or another person.
- (4) A person may obtain a copy of a claim form or a judgment or order under paragraph (3)(a) only if —
  - (a) where there is one defendant, the defendant has filed an acknowledgment of service or a defence;
  - (b) where there is more than one defendant, either —
    - (i) all the defendants have filed an acknowledgment of service or a defence;
    - (ii) at least one defendant has filed an acknowledgment of service or a defence, and the court gives permission;
  - (c) the claim has been listed for a hearing; or
  - (d) judgment has been entered in the claim.
- (5) The court may, on the application of a party or of any person identified in the claim form —
  - (a) restrict the persons or classes of persons who may obtain a copy of the claim form;
  - (b) order that persons or classes of persons may only obtain a copy of the claim form if it is edited in accordance with the directions of the court; or
  - (c) make such other order as it thinks fit.
- (6) A person wishing to obtain a copy of a document under paragraph (1), (2) or (3) must pay any prescribed fee and —
  - (a) if the court's permission is required, apply for permission; or
  - (b) if permission is not required, file a written request for the document.
- (7) An application for permission to obtain a copy of a document, or for an order under paragraph (5), may be made without notice, but the court may direct notice to be given to any person who would be affected by its decision.
- (8) Paragraphs (1) to (7) do not apply in relation to any proceedings in respect of which a rule or practice direction makes different provision.
- (9) The powers of the court under this rule may be exercised by the Chief Registrar, subject to —
  - (a) any general directions given by the First Deemster, or
  - (b) any directions given by the court in the particular case.
- (10) This rule —
  - (a) does not apply to any document filed before commencement; and
  - (b) has effect subject to —
    - (i) section 14 (secrecy) of the Legal Aid Act 1986, and
    - (ii) section 4 (access to public records) of the Public Records Act 1999.

## **CHAPTER 7: SERVICE OF DOCUMENTS: GENERAL**

### **2.22 Rules about service apply generally (6.1)**

- (1) The rules in this Chapter apply to the service of documents, except where —
  - (a) any other statutory provision or a rule in another Chapter makes a different provision; or
  - (b) the court orders otherwise.

(2) In the case of service of a claim form, rules 2.23 to 2.34 are subject to Chapter 8.

(3) Except where rule 2.26(2) applies, where a document is to be served on a member of Her Majesty's Forces, it must be served in accordance with any directions given by a Minister of the Crown in the United Kingdom and for the time being in force with respect to service on such members of documents in proceedings in a civil court in England and Wales (with any necessary modifications); and the following provisions of this Part have effect subject to any such directions.

### **2.23 Methods of service — general (6.2)**

(1) A document may be served by any of the following methods —

- (a) personal service, in accordance with rule 2.26;
- (b) by post; or
- (c) leaving the document at a place specified in rule 2.27.

(2) A company may be served by any method permitted under this Part as an alternative to the methods of service set out in —

- (a) section 335 or 335A of the Companies Act 1931 (service by leaving a document at or posting it to an authorised place);
- (b) section 318 of that Act (service on overseas companies); and
- (c) section 83 of the Companies Act 2006 (service at registered office or office of registered agent).

(3) A limited liability company may be served by any method permitted under this Part as an alternative to the methods of service set out in section 25 of the Limited Liability Companies Act 1996 (service by leaving a document at or posting it to an authorised place).

### **2.24 Who is to serve (6.3)**

(1) A document prepared by a party must be served by that party, except where —

- (a) a rule provides that the court shall serve the document in question; or
- (b) the court orders otherwise.

(2) Where the court orders that a document prepared by a party be served by the court, that party must —

- (a) file a copy for the court, with an additional copy for each party to be served, and
- (b) pay any prescribed fee.

(3) Where the court makes an order on the application of a party, that party must serve the order, except where the court orders that it shall be served by the court.

(4) Where the court makes an order on its own initiative, the court shall serve the order, except where the court orders that it shall be served by a party named in the order.

(5) Where a party applies for a hearing, the court shall give notice of the time and place of the hearing to that party, who shall notify every other person to be notified, except where the court orders that a person shall be notified by the court.

(6) Where the court fixes a hearing date on its own initiative, the court shall give notice of the time and place of the hearing to every person to be notified, except where the court orders that a person shall be notified by a party named in the order.

(7) Where the court is to serve a document, it is for the court to decide which of the methods of service specified in rule 2.23 is to be used.

(8) Where the court is to serve a document personally, it shall cause it to be served by a coroner.

## **2.25 Advocate authorised to accept service**

Where —

- (a) an advocate is authorised to accept service on behalf of a party; and
- (b) that party or the advocate has notified the party serving the document in writing that the advocate is so authorised,

a document must be served on the advocate, unless personal service is required by a court order.

## **2.26 Personal service (6.4)**

(1) A document to be served may be served personally, except as provided in rule 2.25.

(2) A document is served personally on an individual by leaving it with that individual.

(3) A document is served personally on a company or other corporation by leaving it with a person holding a senior position in the corporation.

(4) A document is served personally on a partnership where partners are being sued in the name of their firm by leaving it with —

- (a) a partner; or
- (b) a person who, at the time of service, has the control or management of the partnership business at its principal place of business.

## **2.27 Address for service (6.5)**

(1) Except as provided by rules 2.41 to 2.50 (service out of the jurisdiction), a document must be served within the jurisdiction.

(2) A party must give an address for service within the jurisdiction. The address must include a full postcode, unless the court orders otherwise.

(3) Where a party —

- (a) does not give the business address of an advocate as his address for service; and
- (b) resides or carries on business within the jurisdiction,

he must give his residence or place of business as his address for service.

(4) Any document to be served —

- (a) by post;
- (b) by leaving it at the place of service; or
- (c) by fax or by other means of electronic communication,

must be sent or transmitted to, or left at, the address for service given by the party to be served.

(5) Where rule 2.25 applies, the party's address for service is the business address of his advocate.

(6) Where —

- (a) no advocate is acting for the party to be served; and
- (b) the party has not given an address for service,

the document must be sent or transmitted to, or left at, the place shown in the following table.

<i>Nature of party to be served</i>	<i>Place of service</i>
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<i>Nature of party to be served</i>	<i>Place of service</i>
Individual	Usual or last known residence.
Proprietor of a business	Usual or last known residence; or Place of business or last known place of business.
Individual who is suing or being sued in the name of a firm	Usual or last known residence; or Principal or last known place of business of the firm.
Corporation incorporated in the Island other than a company	Principal office of the corporation
Company incorporated in the Island	Registered office of the company
Company to which Part XI (overseas companies) of the Companies Act 1931 applies	An address notified under section 313(1)(c) of that Act or, if there is no such address, any place of business within the jurisdiction
Any other corporation	Any place within the jurisdiction where the corporation carries on its activities; or Any place of business of the company within the jurisdiction.

(7) This rule does not apply where an order made by the court under rule 2.30 (service by an alternative method) specifies where the document in question may be served.

## **2.28 Service of documents on minors and patients (6.6)**

(1) The following table shows the person on whom a document must be served if it is a document which would otherwise be served on a minor or a patient —

<i>Type of document</i>	<i>Nature of party</i>	<i>Person to be served</i>
Claim form	Minor who is not also a patient	One of the minor's parents or guardians; or If there is no parent or guardian, the person with whom the minor resides or in whose care the minor is.

<i>Type of document</i>	<i>Nature of party</i>	<i>Person to be served</i>
Claim form	Patient	The person authorised under Part 7 of the Mental Health Act 1998 to conduct the proceedings in the name of the patient or on his behalf; or If there is no person so authorised, any of the following: (a) the receiver (if any) for the patient appointed under the said Part 7; (b) the donee of an enduring power of attorney created by the patient and registered under section 6 of the Powers of Attorney Act 1987; (c) the person with whom the patient resides or in whose care the patient is.
Application for an order appointing a litigation friend, where a minor or patient has no litigation friend	Minor or patient	See rule 3.20.
Any other document	Minor or patient	The litigation friend who is conducting proceedings on behalf of the minor or patient.

(2) The court may make an order permitting a document to be served on the minor or patient, or on some person other than the person specified in the table in this rule.

(3) An application for an order under paragraph (2) may be made without notice.

(4) The court may order that, although a document has been served on someone other than the person specified in the table, the document is to be treated as if it had been properly served.

(5) This rule does not apply where the court has made an order under rule 3.13 allowing a minor to conduct proceedings without a litigation friend.

## **2.29 Deemed date of service (6.7)**

(1) If a document is served —

(a) after 5 p.m. on a business day; or

(b) at any time on Christmas Day, Good Friday or a Saturday, Sunday or bank holiday,

it shall be treated as being served on the next business day.

(2) In this rule ‘business day’ means any day except Christmas Day, Good Friday, Saturday, Sunday or a bank holiday.

### **2.30 Service by an alternative method (6.8, PD6.9.1)**

(1) Where it appears to the court that there is a good reason to authorise service by a method not permitted by these Rules, the court may make an order permitting service by an alternative method.

- (2) An application for an order permitting service by an alternative method —
- (a) must be supported by evidence stating —
    - (i) the reason why an order for an alternative method of service is sought, and
    - (ii) what steps have been taken to serve by other permitted means;
  - (b) must specify the alternative method proposed and the grounds for proposing it; and
  - (c) may be made without notice.
- (3) An order permitting service by an alternative method must specify —
- (a) the method of service; and
  - (b) the date when the document will be deemed to be served.

### **2.31 Power of court to dispense with service (6.9)**

- (1) The court may dispense with service of a document.
- (2) An application for an order to dispense with service may be made without notice.

### **2.32 Certificate of service (6.10)**

(1) Where a rule or court order requires a certificate of service, the certificate must state the details set out in the following table:

<i>Method of service</i>	<i>Details to be certified</i>
Post	Date of posting
Personal	Date of service and on whom served (and how identified)
Delivery of document to or leaving it at a permitted place	Date when the document was delivered to or left at the permitted place
Fax	Date and time of transmission
Other electronic means	Date of transmission and the means used
Alternative method permitted by the court	As required by the court

(2) Where the document to be served was in a sealed envelope, the certificate under paragraph (1) must state, or a separate certificate must be provided stating, —

- (a) that the person by whom the certificate is given placed the document in the envelope and sealed it, and
- (b) how the envelope was addressed;

and references to a certificate of service are to a certificate of service complying with this paragraph, or to a certificate under paragraph (1) and a separate certificate complying with this paragraph, as the case may be.

### **2.33 Notification of outcome of postal service by the court (6.11)**

Where —

- (a) a document to be served by the court is served by post; and

(b) the document is returned to the court, the court must send notification to the party who requested service stating that the document has been returned.

**2.34 Notice of non-service by coroner (6.11A)**

Where a coroner is to serve a document and is unable to serve it, he must forthwith send notification to the party who requested service, stating the reason why service cannot be effected.

**2.35 Change of address for service (PD6.7)**

(1) A party or his advocate who changes his address for service must give notice in writing of the change to the court and every other party as soon as it has taken place.

(2) Unless notice has been given in accordance with paragraph (1), a document served at the former address for service shall be deemed to be served on the party or his advocate, as the case may be.

**CHAPTER 8: SERVICE OF CLAIM FORM**

**2.36 Service of claim form on advocate**

Where the defendant is represented by an advocate and the conditions in rule 2.25 are fulfilled, the claim form must be served by leaving it at the business address of the defendant’s advocate.

**2.37 Coroner to serve claim form (RHC 4)**

(1) The claimant may, and where rule 2.36 or rule 2.41 does not apply must, cause the claim form to be served by a coroner on the defendant in accordance with the following provisions of this rule.

(2) Where rule 2.36 applies, the coroner shall serve the claim form by leaving it at the business address of the defendant’s advocate.

(3) Where rule 2.36 does not apply, the coroner shall serve the claim form either —

- (a) personally; or
- (b) by leaving it for the defendant with some person apparently over the age of 16 at the address for service; or
- (c) by a method permitted under the following table —

<i>Description or situation of defendant</i>	<i>Permitted method of service</i>
Company incorporated under the Companies Act 1931 or the Companies Act 2006	Leaving a copy at the registered office of the company
Company to which Part XI (overseas companies) of the Companies Act 1931 applies	Leaving a copy at an address notified under section 313(1)(c) of that Act or, if there is no such address, at any place of business within the jurisdiction
Living or serving on board a vessel (not being a vessel belonging to the Royal Navy)	Delivering a copy to the person on board who is apparently in charge at the time
Detained in an institution (within the meaning of the Custody Act 1995)	Delivering a copy at the institution to the officer in charge or apparently in charge of the institution

<i>Description or situation of defendant</i>	<i>Permitted method of service</i>
Keeping his residence or place of business closed	Affixing a copy of the claim form to the door or inserting a copy of the claim form in the letter-box

- (4) A claim form must be served by the coroner —
- (a) within 7 days of the receipt of the documents, or
  - (b) within such longer period as the claimant may consent to (but before the expiry of the time permitted under rule 4.3(2) or 4.4).
- (5) The claim form must include the defendant's address for service in accordance with rule 2.27.
- (6) This rule is subject to rule 2.28 (service on minors and patients).
- (7) This rule does not apply where —
- (a) an order under rule 2.30 permits service by an alternative method; or
  - (b) the claim form is to be served out of the jurisdiction.

### **2.38 Notice of service of claim form (6.14)**

- (1) Where a claim form is served by a coroner, the coroner must send the claimant a notice, which shall include —
- (a) the method by which the claim form was served, and
  - (b) the date when the claim form was served (or is deemed to have been served under rule 2.29);

and the claimant must file the notice.

- (2) Where a coroner cannot effect service he must, at the same time as he gives notification under rule 2.34, return all the documents to the claimant at the claimant's address for service.

### **2.39 Service of claim form by contractually agreed method (6.15)**

- (1) Where —
- (a) a contract contains a term providing that, in the event of a claim being issued in relation to the contract, the claim form may be served by a method specified in the contract; and
  - (b) a claim form containing only a claim in respect of that contract is issued,
- the claim form shall, subject to paragraph (2), be deemed to be served on the defendant if it is served by a method specified in the contract.

- (2) Where the claim form is served out of the jurisdiction in accordance with the contract, it shall not be deemed to be served on the defendant unless permission to serve it out of the jurisdiction has been granted under rule 2.41.

### **2.40 Service of certain application notices**

Where an application is made in accordance with Chapter 2 of Part 7 in a case where no claim has been started, a copy of the application notice must be served in accordance with this Chapter; and references to a claim form in rules 2.36 to 2.39 include references to such a copy.

## **CHAPTER 9: SERVICE OUT OF THE JURISDICTION**

### **2.41 Service out of the jurisdiction (6.20)**

- (1) A claim form may be served out of the jurisdiction with the permission of the court if —

- (a) a claim is made for a remedy against a person domiciled or ordinarily resident within the jurisdiction;
- (b) a claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction;
- (c) a claim is made against someone on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and —
  - (i) there is between the claimant and that person a real issue which it is reasonable for the court to try; and
  - (ii) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim;
- (d) a claim is made for an interim remedy under section 56B of the High Court Act 1991;
- (e) a claim is an additional claim and the person to be served is a necessary or proper party to the claim or additional claim;
- (f) a claim is made in respect of a contract where the contract —
  - (i) was made within the jurisdiction;
  - (ii) was made by or through an agent trading or residing within the jurisdiction;
  - (iii) is governed by Manx law; or
  - (iv) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract;
- (g) a claim is made in respect of a breach of contract committed within the jurisdiction;
- (h) a claim is made for a declaration that no contract exists where, if the contract were found to exist, it would comply with any of the conditions set out in paragraph (f);
- (i) a claim is made in tort and —
  - (i) damage was sustained within the jurisdiction; or
  - (ii) the damage sustained resulted from an act committed within the jurisdiction.
- (j) a claim is made to enforce a judgment or arbitral award;
- (k) the whole subject matter of a claim relates to property located within the jurisdiction;
- (l) a claim is made for any remedy which might be obtained in proceedings relating to the trusts of a written instrument where —
  - (i) the trusts ought to be executed according to Manx law; and
  - (ii) the person on whom the claim form is to be served is a trustee of the trusts or interested in the claim;
- (m) a claim is made for any remedy which might be obtained in proceedings for the administration of the estate of a person who died domiciled within the jurisdiction;
- (n) a claim is made in probate proceedings which includes a claim for the rectification of a will;
- (o) a claim is made for a remedy against the defendant as constructive trustee where the defendant's alleged liability arises out of acts committed within the jurisdiction;

- (p) a claim is made for restitution where the defendant's alleged liability arises out of acts committed within the jurisdiction;
- (q) a claim is made by the Treasury relating to duties, taxes or bona vacantia;
- (r) a claim is made by a party to proceedings for an order that the court exercise its power under section 53 of the High Court Act 1991 to make a costs order in favour of or against a person who is not a party to those proceedings;
- (s) a claim is in the nature of salvage and any part of the services took place within the jurisdiction;
- (t) a claim is made under one of the following statutory provisions —
  - (i) the Nuclear Installations Act 1965 (an Act of Parliament),
  - (ii) the Social Security Contributions and Benefits Act 1992 (an Act of Parliament),
  - (iii) the Proceeds of Crime Act 2008,
  - (iv) the Inheritance (Provision for Family and Dependents) Act 1982,
  - (v) Schedule 2 to the Immigration Act 1971 (an Act of Parliament),
  - (vi) the Pensions Act 1995 (an Act of Parliament);
- (u) it is shown to the satisfaction of the court that there are special grounds to warrant service of the claim form out of the jurisdiction.
- (2) This rule is subject to Part 3 of Schedule 1 (admiralty) to the High Court Act 1991.

**2.42 Application for permission to serve claim form out of jurisdiction (6.21)**

(1) An application for permission under rule 2.41 must be supported by written evidence stating —

- (a) the grounds on which the application is made and the paragraph or paragraphs of rule 2.41 relied on;
- (b) that the claimant believes that his claim has a reasonable prospect of success (except in the case of a claim falling within rule 2.41(1)(l)); and
- (c) the defendant's address or, if not known, in what place, territory or country the defendant is, or is likely, to be found.

(2) Where the application is made in respect of a claim referred to in rule 2.41(1)(c), the written evidence must also state the grounds on which the witness believes that there is between the claimant and the person on whom the claim form has been, or will be served, a real issue which it is reasonable for the court to try.

(3) The court shall not give permission unless it is satisfied that the Island is the proper place in which to bring the claim.

(4) An order giving permission to serve a claim form out of the jurisdiction must specify the periods within which the defendant may —

- (a) file an acknowledgment of service;
- (b) file or serve an admission; and
- (c) file a defence.

(5) When particulars of claim are served out of the jurisdiction any statement as to the period for responding to the claim contained in any of the forms required by rule 4.7 to accompany the particulars of claim must specify the period specified by the order permitting service out of the jurisdiction.

### **2.43 Method of service — general provisions (6.24)**

(1) Where a claim form is to be served out of the jurisdiction, it may be served by any method —

- (a) permitted by the law of the country in which it is to be served, or
- (b) provided for by rule 2.45 or rule 2.46.

(2) Nothing in this rule or in any court order shall authorise or require any person to do anything in the country where the claim form is to be served which is against the law of that country.

### **2.44 Method of service out of the jurisdiction (6.25)**

(1) Where a claim form is to be served on a defendant in any country which is a party to the Hague Convention, the claim form may be served —

- (a) through the authority designated under the Hague Convention in respect of that country; or
- (b) if the law of that country permits —
  - (i) through the judicial authorities of that country, or
  - (ii) through a British Consular authority in that country.

(2) Where a claim form is to be served on a defendant in —

- (a) any part of the United Kingdom or the Channel Islands;
- (b) any Commonwealth State (except one mentioned in paragraph (3)(a)) ; or
- (c) any United Kingdom Overseas Territory,

the defendant must be served direct by the claimant or his agent.

(3) Where a claim form is to be served on a defendant in —

- (a) a Commonwealth State where the judicial authorities have required service to be in accordance with this paragraph,
- (b) any other country outside the Island,

the claim form may be served, if the law of that country so permits —

- (i) through the government of that country, where that government is willing to serve it; or
- (ii) through a British Consular authority in that country.

(4) In this rule and rule 2.45 —

‘the Hague Convention’ means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on 15th November 1965;

‘United Kingdom Overseas Territory’ means any of the following —

- (a) Anguilla;
- (b) Bermuda;
- (c) British Antarctic Territory;
- (d) British Indian Ocean Territory;
- (e) British Virgin Islands;
- (f) Cayman Islands;
- (g) Falkland Islands;
- (h) Gibraltar;
- (i) Montserrat;
- (j) Pitcairn, Henderson, Ducie and Oeno;

- (k) St. Helena and Dependencies;
- (l) South Georgia and the South Sandwich Islands;
- (m) Sovereign Base Areas of Akrotiri and Dhekelia; and
- (n) Turks and Caicos Islands.

**2.45 Procedure for service through judicial authority etc. (6.26)**

- (1) This rule applies where the claimant wishes to serve the claim form through —
- (a) the judicial authorities of the country where the claim form is to be served;
  - (b) a British Consular authority in that country;
  - (c) the authority designated under the Hague Convention in respect of that country; or
  - (d) the government of that country.
- (2) Where this rule applies, the claimant must file —
- (a) a request for service of the claim form by the method in paragraph (1) that he has chosen;
  - (b) a copy of the claim form;
  - (c) any translation required under rule 2.47; and
  - (d) any other documents, copies of documents or translations required by these Rules.
- (3) When the claimant files the documents specified in paragraph (2), a court officer shall —
- (a) seal the copy of the claim form; and
  - (b) forward the documents to a judge.
- (4) The judge shall cause documents forwarded under this rule to be sent to the Foreign and Commonwealth Office with a request that it arrange for the claim to be served —
- (a) by the method indicated in the request for service filed under paragraph (2), or
  - (b) where that request indicates alternative methods, by the most convenient method.
- (5) An official certificate which —
- (a) states that the claim form has been served in accordance with this rule either personally, or in accordance with the law of the country in which service was effected;
  - (b) specifies the date on which the claim form was served; and
  - (c) is made by —
    - (i) a British Consular authority in the country where the claim form was served; or
    - (ii) the government or judicial authorities in that country; or
    - (iii) any other authority designated in respect of that country under the Hague Convention,
- shall be evidence of the facts stated in the certificate.

(6) A document purporting to be an official certificate under paragraph (5) shall be treated as such a certificate, unless it is proved not to be.

**2.46 Service of claim form out of jurisdiction on State (6.27)**

- (1) This rule applies where a claimant wishes to serve the claim form on a State.

- (2) The claimant must file —
  - (a) a request for service to be arranged by the Foreign and Commonwealth Office;
  - (b) a copy of the claim form; and
  - (c) any translation required under rule 2.47.
- (3) The judge shall send documents filed under this rule to the Foreign and Commonwealth Office with a request that it arrange for the claim form to be served.
- (4) An official certificate by the Foreign and Commonwealth Office stating that a claim form has been duly served on a specified date in accordance with a request made under this rule shall be evidence of that fact.
- (5) A document purporting to be such a certificate shall be treated as such a certificate, unless it is proved not to be.
- (6) Where —
  - (a) section 12(6) of the State Immunity Act 1978 (an Act of Parliament) applies; and
  - (b) the State has agreed to a method of service other than through the Foreign and Commonwealth Office,

the claim form may be served either by the method agreed or in accordance with this rule.

(7) In this rule ‘State’ has the meaning given by section 14 of the State Immunity Act 1978 (an Act of Parliament).

#### **2.47 Translation of claim form (6.28)**

(1) Except where paragraph (4) or (5) applies, every copy of the claim form filed under rule 2.45 (service through judicial authorities etc.) or 2.46 (service on State) must be accompanied by a translation of the claim form.

- (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 claim form 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 —
  - (a) the name of the person making the translation;
  - (b) his address; and
  - (c) his qualifications for making a translation.
- (4) The claimant is not required to file a translation of a claim form filed under rule 2.45 where the claim form is to be served —
  - (a) in a country of which English is an official language; or
  - (b) on a British subject.

(5) The claimant is not required to file a translation of a claim form filed under rule 2.46 (service on State) where English is an official language of the State where the claim form is to be served.

(6) Where a translation of a claim form is required under this rule, the claimant must also file a translation of all the forms which will accompany the claim form.

#### **2.48 Undertaking to be responsible for expenses of FCO etc. (6.29)**

Every request for service filed under rule 2.45 or 2.46 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.

**2.49 Service of documents other than the claim form (6.30, PD 6B)**

(1) Rules 2.41 to 2.48 apply with any necessary modifications to service out of the jurisdiction of an application notice or order.

(2) Where an application notice is to be served out of the jurisdiction —

- (a) rule 2.42(4) does not apply;
- (b) the court shall have regard to the country in which the application notice is to be served in setting the date for the hearing of the application and giving any direction about service of the respondent's evidence; and
- (c) where the person on whom the application notice has been served is not a party to proceedings in the jurisdiction in which the application is made, that person may make an application to the court under rule 4.16(1) as if he were a defendant, and rule 4.16(2) does not apply.

(3) Subject to paragraph (4), where the court gives permission for a claim form to be served out of the jurisdiction on any party then, unless the court otherwise directs, the permission of the court need not be obtained for service out of the jurisdiction of any other document to be served on that party in the proceedings.

(4) Paragraph (3) does not apply where the party in question has given an address for service within the jurisdiction.

**2.50 Proof of service out of the jurisdiction (6.31)**

Where —

- (a) a hearing is fixed when the claim is issued;
- (b) the claim form is served on a defendant out of the jurisdiction; and
- (c) that defendant does not appear at the hearing,

the claimant may take no further steps against that defendant until the claimant files written evidence showing that the claim form has been duly served.

## **CHAPTER 10: SERVICE OF DOCUMENTS FROM FOREIGN COURTS OR TRIBUNALS**

**2.51 Scope and interpretation (6.48, 6.49)**

(1) This Chapter applies to the service in the Island of any document in connection with civil or commercial proceedings in a convention country.

(2) In this Chapter —

'convention country' means a country outside the British Islands which is party to the Hague Convention;

'the document' means the document to be served (and, where appropriate, the translation of it provided under rule 2.52(1)(d));

'the Hague Convention' means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on 15th November 1965.

**2.52 Request for service (6.50)**

(1) The First Deemster shall refer to the Chief Registrar a document to which this Chapter applies upon receipt of—

- (a) a written request for service from a consular or other authority of that country;
  - (b) a translation of that request into English;
  - (c) 2 copies of the document to be served; and
  - (d) unless the person who requested service certifies that the person to be served understands the language of the document, 2 copies of a translation of it into English.
- (2) The Chief Registrar shall forward the documents specified in paragraph (1)(c) and (d) to a coroner with a direction to serve the document in accordance with the request for service.

**2.53 After service (6.52)**

- (1) The coroner must make a return in writing to the Chief Registrar including —
  - (a) either a certificate of service or a statement why the document could not be served; and
  - (b) a statement of the fee and costs incurred in serving or attempting to serve the document,

accompanied by one copy (or both copies, if the document has not been served) of the documents specified in rule 2.52(1)(c) and (d).

- (2) The Chief Registrar shall send to the person who requested service —
  - (a) a certificate, sealed with the court's seal, stating—
    - (i) when and how the document was served or the reason why it has not been served; and
    - (ii) the costs of serving or attempting to serve the document; and
  - (b) a copy of the document.

**CHAPTER 11: CIVIL RESTRAINT ORDERS**

**2.54 Civil restraint orders: general (PD 3C)**

- (1) In this Chapter —
  - ‘limited civil restraint order’ means an order against a person restraining him from making any further applications in current proceedings;
  - ‘extended civil restraint order’ means an order against a person restraining him from issuing certain claims or making certain applications in specified courts;
  - ‘general civil restraint order’ means an order against a person restraining him from issuing any claim or making any application in specified courts.

(2) This Chapter applies where the court is considering whether to make a civil restraint order against a party who has issued claims or made applications which are totally without merit.

- (3) The other party or parties to the proceedings may apply for any civil restraint order.
- (4) An application under paragraph (3) must specify —
  - (a) which type of civil restraint order is sought, and
  - (b) the grounds on which the order is sought.

**2.55 Limited civil restraint orders**

(1) A limited civil restraint order may be made by a judge where a party has made 2 or more applications which are totally without merit.

(2) Where the court makes a limited civil restraint order, the party against whom the order is made —

- (a) shall be restrained from making any further applications in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order;
- (b) may apply for amendment or discharge of the order provided he has first obtained the permission of a judge identified in the order; and
- (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.

(3) Where a party who is subject to a limited civil restraint order makes a further application in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order, the application shall automatically be dismissed —

- (a) without a judge having to make any further order; and
- (b) without the need for the other party to respond to it.

(4) Where a party who is subject to a limited civil restraint order repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss the application shall be final and there shall be no right of appeal, unless the judge on dismissing the application grants permission to appeal.

(5) A party who is subject to a limited civil restraint order may not make an application for permission under paragraph (2)(a) or (b) without first serving notice of the application on the other party in accordance with paragraph (6).

(6) A notice under paragraph (5) must —

- (a) set out the nature and grounds of the application; and
- (b) provide the other party with at least 7 days within which to respond.

(7) An application for permission under paragraph (2)(a) or (b) —

- (a) must be made in writing;
- (b) must include the other party's written response, if any, to the notice served under paragraph (5); and
- (c) shall be determined without a hearing.

(8) An order under paragraph (4) may only be made by a Deemster.

(9) Where a party makes an application for permission under paragraph (2)(a) or (b) and permission is refused, any application for permission to appeal —

- (a) must be made in writing; and
- (b) shall be determined without a hearing.

(10) A limited civil restraint order —

- (a) is limited to the particular proceedings in which it is made;
- (b) shall remain in effect for the duration of the proceedings in which it is made, unless the court otherwise orders; and
- (c) shall identify the judge or judges to whom an application for permission under paragraph (2)(a) or (b) or (9) should be made.

## **2.56 Extended civil restraint orders**

(1) An extended civil restraint order may be made by a Deemster or the Judge of Appeal where a party has persistently issued claims or made applications which are totally without merit.

(2) Unless the court otherwise orders, where the court makes an extended civil restraint order, the party against whom the order is made —

- (a) shall be restrained from issuing claims or making applications in any court concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order;
- (b) may apply for amendment or discharge of the order provided he has first obtained the permission of a judge identified in the order; and
- (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.

(3) Where a party who is subject to an extended civil restraint order issues a claim or makes an application in a court identified in the order concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order, the claim or application shall automatically be struck out or dismissed —

- (a) without the judge having to make any further order; and
- (b) without the need for the other party to respond to it.

(4) Where a party who is subject to an extended civil restraint order repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss the application shall be final and there shall be no right of appeal, unless the judge on dismissing the application grants permission to appeal.

(5) A party who is subject to an extended civil restraint order may not make an application for permission under paragraph (2)(a) or (b) without first serving notice of the application on the other party in accordance with paragraph (6).

- (6) A notice under paragraph (5) must —
  - (a) set out the nature and grounds of the application; and
  - (b) provide the other party with at least 7 days within which to respond.

(7) An application for permission under paragraph (2)(a) or (b) —

- (a) must be made in writing;
- (b) must include the other party's written response, if any, to the notice served under paragraph (5); and
- (c) shall be determined without a hearing.

(8) An order under paragraph (4) may only be made by a Deemster or the Judge of Appeal.

(9) Where a party makes an application for permission under paragraph (2)(a) or (b) and permission is refused, any application for permission to appeal —

- (a) must be made in writing; and
- (b) shall be determined without a hearing.

(10) An extended civil restraint order —

- (a) shall be made for a specified period not exceeding 2 years;
- (b) must identify the courts in which the party against whom the order is made is restrained from issuing claims or making applications; and
- (c) must identify the judge or judges to whom an application for permission under paragraph (2)(a) or (b) or (9) should be made.

(11) The court may extend the duration of an extended civil restraint order, if it considers it appropriate to do so, but it must not be extended for a period greater than 2 years on any given occasion.

(12) If a judicial officer considers that it would be appropriate to make an extended civil restraint order, he must transfer the proceedings to a Deemster.

## **2.57 General civil restraint orders**

(1) A general civil restraint order may be made by a Deemster where the party against whom the order is made persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate.

(2) Unless the court otherwise orders, where the court makes a general civil restraint order, the party against whom the order is made —

- (a) shall be restrained from issuing any claim or making any application in any court without first obtaining the permission of a judge identified in the order;
- (b) may apply for amendment or discharge of the order provided he has first obtained the permission of a judge identified in the order; and
- (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.

(3) Where a party who is subject to a general civil restraint order issues a claim or makes an application in a court identified in the order without first obtaining the permission of a judge identified in the order, the claim or application shall automatically be struck out or dismissed —

- (a) without the judge having to make any further order; and
- (b) without the need for the other party to respond to it.

(4) Where a party who is subject to a general civil restraint order repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss that application shall be final and there shall be no right of appeal, unless the judge on dismissing the application grants permission to appeal.

(5) A party who is subject to a general civil restraint order may not make an application for permission under paragraph (2)(a) or (b) without first serving notice of the application on the other party in accordance with paragraph (6).

(6) A notice under paragraph (5) must —

- (a) set out the nature and grounds of the application; and
- (b) provide the other party with at least 7 days within which to respond.

(7) An application for permission under paragraph (2)(a) or (b) —

- (a) must be made in writing;
- (b) must include the other party's written response, if any, to the notice served under paragraph (5); and
- (c) shall be determined without a hearing.

(8) An order under paragraph (4) may only be made by a Deemster.

(9) Where a party makes an application for permission under paragraph (2)(a) or (b) and permission is refused, any application for permission to appeal —

- (a) must be made in writing; and
- (b) shall be determined without a hearing.

(10) A general civil restraint order —

- (a) shall be made for a specified period not exceeding 2 years;

- (b) must identify the courts in which the party against whom the order is made is restrained from issuing claims or making applications; and
- (c) must identify the judge or judges to whom an application for permission under paragraph (2)(a) or (b) or (9) should be made.

(11) The court may extend the duration of a general civil restraint order, if it considers it appropriate to do so, but it must not be extended for a period greater than 2 years on any given occasion.

(12) If a judicial officer considers that it would be appropriate to make a general civil restraint order, he must transfer the proceedings to a Deemster.

## **CHAPTER 12: SANCTIONS**

### **2.58 Sanctions have effect unless defaulting party obtains relief (3.8)**

(1) Where a party has failed to comply with a rule, practice direction or court order, any sanction for failure to comply imposed by the rule, practice direction or court order has effect unless the party in default applies for and obtains relief from the sanction.

(2) Where a rule, practice direction or court order —

- (a) requires a party to do something within a specified time, and
- (b) specifies the consequence of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

### **2.59 Relief from sanctions (3.9)**

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court shall consider all the circumstances including —

- (a) the interests of the administration of justice;
- (b) whether the application for relief has been made promptly;
- (c) whether the failure to comply was intentional;
- (d) whether there is a good explanation for the failure;
- (e) the extent to which the party in default has complied with other rules, practice directions and court orders;
- (f) whether the failure to comply was caused by the party or his advocate;
- (g) whether the trial date or the likely trial date can still be met if relief is granted;
- (h) the effect which the failure to comply had on each party; and
- (i) the effect which the granting of relief would have on each party.

(2) An application for relief shall be supported by evidence.

### **2.60 Sanction for non-payment of fee on filing document (3.7, 3.7A)**

(1) This rule applies where a party files any document, on the filing of which a prescribed fee is payable, without paying the prescribed fee, except where arrangements between the Chief Registrar and the party or the advocate acting for the party are in force for the payment of prescribed fees on credit.

(2) The court shall serve a notice on the party —

- (a) requiring payment of the prescribed fee, and
- (b) specifying the date by which it must be paid (which may not be less than 14 days after the date of the notice);

and until the fee is paid the court shall treat the document in question as not having been filed.

- (3) If the party does not pay the fee by the date specified in the notice —
  - (a) the party's claim, defence, additional claim or application to which the document relates shall automatically be struck out without further order of the court; and
  - (b) the party shall be liable for the costs which any other party has incurred unless the court orders otherwise.

#### **2.61 Sanctions for dishonouring cheque (3.7B)**

(1) This rule applies where any fee is paid by cheque and that cheque is subsequently dishonoured.

- (2) The court shall serve a notice on the paying party —
  - (a) notifying him of the dishonour,
  - (b) requiring payment of the prescribed fee, and
  - (c) specifying the date by which it must be paid;

and until the fee is paid the court shall take no action on the matter in respect of which it ought to have been paid.

- (3) If the fee is not paid by the date specified in the notice —
  - (a) where the fee is payable by the claimant or applicant, the claim or application shall automatically be struck out without further order of the court;
  - (b) where the fee is payable by the defendant or respondent, the defence or response shall automatically be struck out without further order of the court,

and the paying party shall be liable for the costs which any other party has incurred unless the court orders otherwise.

- (4) If —
  - (a) the paying party applies to have the claim, application, defence or response reinstated; and
  - (b) the court grants relief,

the relief shall be conditional on that party paying the fee within the period specified in paragraph (5).

- (5) The period referred to in paragraph (4) is —
  - (a) if the order granting relief is made at a hearing at which the paying party is present or represented, 2 days from the date of the order;
  - (b) in any other case, 7 days from the date of service of the order on the paying party.
- (6) In this rule 'claimant' includes a person who makes an additional claim.

## **CHAPTER 13: STRIKING OUT OF DORMANT CLAIMS**

#### **2.62 Striking out of dormant claims**

- (1) Subject to paragraph (2), this rule applies to any claim if —
  - (a) no final judgment or order has been given or made;
  - (b) one year has elapsed since any document has been filed;
  - (c) where an order under paragraph (5) has been made, the period specified in the order has expired or the event so specified has happened; and
  - (d) in the case of a claim a party to which was a minor when the claim was started, one year has elapsed since he reached the age of 18.
- (2) This rule does not apply to —

- (a) a claim to which a minor or a patient is a party;
- (b) a claim for personal injuries where there is no issue on liability but the proceedings have been adjourned by court order to determine the prognosis;
- (c) where the court is dealing with the continuing administration of an estate or a trust or a receivership;
- (d) applications relating to funds in court.

(3) Subject to any order under paragraph (5), a court officer may give notice to every party to a claim to which this rule applies stating that, unless an application is made to the court for such an order before the expiration of such period as is specified in the notice ('the notice period'), the claim will be struck out.

(4) The notice period must not be less than 28 days beginning with the issue of the notice.

(5) The court may at any time, on application by any party or on its own initiative, order that a claim shall not be struck out under this rule until the expiration of such period, or the happening of such event, as is specified in the order.

(6) Subject to any order under paragraph (5) —

- (a) where an application for such an order is made within the notice period, on the dismissal or withdrawal of the application,
- (b) otherwise, on the expiration of the notice period,

the claim shall automatically be struck out.

SCHEDULE 2.1 — ELECTRONIC COMMUNICATION AND FILING OF DOCUMENTS  
(PD5, 5B)

Rule 2.18

1. *Filing by fax*

(1) Subject to sub-paragraphs (8) and (9), a party may file a document by sending it by facsimile ('fax').

(2) Where a party files a document by fax, he must not send a hard copy in addition.

(3) A document filed shall not be treated as filed until it is delivered by the court's fax machine, whatever time it is shown to have been transmitted from the party's machine.

(4) The time of delivery of the faxed document shall be recorded on it in accordance with rule 2.19.

(5) It remains the responsibility of the party to ensure that the document is delivered to the court in time.

(6) If a fax is delivered after 4.00 pm it shall be treated as filed at 9.00 am on the next day the court office is open.

(7) If a fax relates to a hearing, the date and time of the hearing must be prominently displayed.

(8) Fax may not be used to send letters or documents of a routine or non-urgent nature.

(9) Fax may not be used, except in an unavoidable emergency, to deliver —

(a) a document which attracts a fee;

(b) a payment into court notice;

(c) a document relating to a hearing less than 2 hours ahead;

(d) trial bundles or skeleton arguments.

(10) Where sub-paragraph (9)(a) or (b) applies, the fax must give an explanation for the emergency and include an undertaking that the fee or money has been dispatched that day by post or will be paid at the court office counter the following business day.

(11) Sub-paragraph (9)(a) does not apply where arrangements between the Chief Registrar and the applicant or the advocate acting for the applicant, as the case may be, are in force for the payment of prescribed fees on credit.

2. *Communications and documents which may be sent by e-mail*

(1) Subject to sub-paragraph (2), a party may send a specified document to the court by e-mail complying with the requirements of paragraph 3.

(2) Subject to sub-paragraph (3) —

(a) a party must not use e-mail to take any step in a claim for which a fee is payable; and

(b) where —

(i) a fee is payable on the filing of a particular document; and

(ii) a party purports to file that document by e-mail,

the court shall treat the document as not having been filed.

(3) Sub-paragraph (2) does not apply where arrangements between the Chief Registrar and the applicant or the advocate acting for the applicant, as the case may be, are in force for the payment of prescribed fees on credit.

3. *Technical specifications of e-mail*

(1) The e-mail message must contain the name, telephone number and e-mail address of the sender.

(2) Correspondence and documents may be sent as either text in the body of the e-mail, or as attachments, except as mentioned in sub-paragraph (3).

(3) Documents required to be in a prescribed form must be sent in that form as attachments.

(4) Attachments must be sent in a format supported by the software used by the court as listed on the court website.

(5) Where an attachment is sent to the court otherwise than in accordance with sub-paragraph (4), the court shall treat the document as not having been received.

(6) The length of attachments and total size of e-mail must not exceed the maximum indicated on the court website.

(7) Where proceedings have been commenced, the subject line of the e-mail must contain the following information —

- (a) the case number;
- (b) the parties' names (abbreviated if necessary); and
- (c) the date and time of any hearing to which the e-mail relates.

4. *Provisions relating to the filing of documents electronically*

(1) Where a party files a document electronically, he must not send a hard copy of that document to the court except in accordance with paragraph 5.

(2) A document is not filed until the transmission is received by the court, whatever time it is shown to have been sent.

(3) The time of receipt of a transmission shall be recorded electronically on the transmission as it is received.

(4) If a transmission is received after 4.00 pm —

- (a) the transmission shall be treated as received; and
- (b) any document attached to the transmission shall be treated as filed,

at 9.00 am on the next day the court office is open.

(5) A party sending an e-mail in accordance with paragraph 2 is responsible for ensuring that the transmission or any document attached to it is filed within any relevant time limits.

(6) The court may reply by e-mail where —

- (a) the response is to a message transmitted electronically; and
- (b) the sender has provided an e-mail address.

(7) A document which is required by a rule to be filed is not filed if it is sent to the judge by e-mail.

5. *Statement of truth in documents filed electronically*

Where a party wishes to file electronically a document containing a statement of truth, that party must retain the document containing the original signature and file with the court a version of the document satisfying one of the following requirements —

- (a) the name of the person who has signed the statement of truth is typed underneath the statement;
- (b) the person who has signed the statement of truth has applied a facsimile of his signature to the statement in the document by mechanical means; or

- (c) the document that is filed is a scanned version of the document containing the original signature to the statement of truth.

6. *Arrangements for electronic communication by court*

(1) The Chief Registrar may make arrangements with a party or advocate whereby documents may be sent electronically by the court to that party or advocate

- (2) The Chief Registrar shall publish on the court website —
  - (a) descriptions of the documents which may be sent electronically under such arrangements;
  - (b) the format or formats in which such documents may be sent;
  - (c) any other technical specifications relating to the transmission; and
  - (d) the information to be supplied by a party or advocate wishing to enter into such arrangements.

(3) Any reference in these rules to the return, supply, sending or service of a document by the court or the court office includes a reference to the sending of that document in accordance with such arrangements.

7. *Interpretation of paragraphs 2 to 6*

In paragraphs 2 to 6 —

- (a) filing or sending a document ‘electronically’ means filing or sending it in accordance with paragraph 2 or arrangements under paragraph 6, as the case may be; and
- (b) ‘specified form’, in relation to a document, means an electronic form of the document which is available for completion on the court website;
- (c) ‘specified document’ means a document listed on the court website as a document that may be sent to or filed in the court by e-mail;
- (d) ‘transmission’ means an e-mail sent by a party to the court at the appropriate e-mail address specified on the court website, or by the court to a party or advocate in accordance with arrangements under paragraph 6, as the case may be.