

## **PART 4 : START OF PROCEEDINGS**

### **CHAPTER 1: THE CLAIM FORM**

#### **4.1 How to start proceedings (7.2, 7.3, RHC 2.1, 3)**

(1) Proceedings are started when the court office issues a claim form at the request of the claimant.

(2) A claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings.

(3) The court office shall issue a claim form on the claimant filing —

(a) 2 copies of the claim form, and

(b) one additional copy of the claim form for each defendant, together with the prescribed fee (except where arrangements between the Chief Registrar and the claimant or his advocate are in force for the payment of prescribed fees on credit).

(4) On the filing of the matters specified in paragraph (3) the court office shall —

(a) record the claim and allocate a serial number to it,

(b) enter the date of filing on each copy of the claim form in accordance with rule 2.19(1);

(c) enter the number of the claim on, and seal, each copy of the claim form,

(d) retain one copy of the claim form and enter on it the date on which the claim form was received in the court office, and

(e) return the other copies of the claim form to the claimant at his address for service.

(5) The claim form must be headed with the title of the proceedings in accordance with rule 6.3.

(6) Any statutory requirement that proceedings in the court be started by petition or motion shall be construed as a requirement that they be started by the issue of a claim form or application notice in accordance with these Rules.

(7) Except where the claim is allocated to the small claims procedure, the court office shall include a directions questionnaire with the copies of the claim form returned to the claimant.

[Subs (7) added by SD 686/09]

#### **4.2 Date of issue of proceedings (7.2, PD 7)**

(1) A claim form is issued on the date of filing entered on the form by the court office under rule 2.19(1).

(2) Where the claim form was delivered to the court office on a date earlier than the date on which it was issued by the court, the claim is brought on that earlier date for the purposes of the Limitation Act 1984 and any other relevant statutory provision.

#### **4.3 Service of claim form (7.5)**

(1) After a claim form has been issued, it must be served on the defendant.

(2) Subject to paragraph (3) and rule 4.4, a claim form must be served within 4 months after the date of issue.

(3) Where the claim form is to be served out of the jurisdiction, it must be served within 6 months after the date of issue.

(4) The claim form must be accompanied by —

(a) a form of notes for the guidance of a defendant,

- (b) any documents required by any other rule to accompany the claim form, and
- (c) if particulars of claim are included in or accompany the claim form, any documents required by any other rule to accompany the particulars of claim.

#### **4.4 Extension of time for serving claim form (7.6)**

(1) The claimant may apply for an order extending the period within which the claim form may be served.

(2) Subject to paragraph (3), an application to extend the time for service must be made —

- (a) within the period for serving the claim form specified by rule 4.3; or
- (b) where an order has been made under this rule, within the period for service specified by that order.

(3) If the claimant applies for an order to extend the time for service of the claim form after the end of the period specified in rule 4.3 or by an order under this rule, the court may make such an order only if —

- (a) the coroner has been unable to serve the claim form; or
- (b) where the claimant is permitted to serve the claim form himself, he has taken all reasonable steps to serve the claim form but has been unable to do so; and
- (c) in either case, the claimant has acted promptly in making the application.

(4) An application for an order extending the time for service —

- (a) must be supported by evidence of —
  - (i) all the circumstances relied on,
  - (ii) the date of issue of the claim,
  - (iii) the expiry date of any extension under this rule, and
  - (iv) a full explanation as to why the claim has not been served; and
- (b) may be made without notice.

#### **4.5 Application by defendant for service of claim form (7.7)**

(1) Where a claim form has been issued against a defendant, but has not yet been served on him, the defendant may serve a notice on the claimant requiring him to serve the claim form or discontinue the claim within a period specified in the notice.

(2) The period specified in a notice served under paragraph (1) must be at least 14 days after service of the notice.

(3) If the claimant fails to comply with the notice, the court may, on the application of the defendant —

- (a) dismiss the claim; or
- (b) make any other order it thinks just.

#### **4.6 Particulars of claim (7.4)**

(1) Particulars of claim must —

- (a) be contained in or served with the claim form; or
- (b) be served on the defendant by the claimant —
  - (i) within 14 days after service of the claim form, and
  - (ii) in any event no later than the latest time for serving a claim form.

(2) Where particulars of claim are not contained in the claim form, the claimant must file a copy of the particulars together with a certificate of service within 7 days of service on the defendant.

(3) This rule does not apply where the claim is allocated to the chancery procedure.

#### **4.7 Forms to be served with particulars of claim (7.8)**

(1) When particulars of claim are served on a defendant, whether they are contained in the claim form, served with it or served subsequently, they must be accompanied by an acknowledgement of service in duplicate.

(2) Except where the claim is allocated to the chancery procedure, the acknowledgement of service in duplicate must include —

- (a) a form for defending the claim;
- (b) a form for admitting the claim; and
- (c) a form for acknowledging service.

### **CHAPTER 2: RESPONDING TO PARTICULARS OF CLAIM — GENERAL**

#### **4.8 Where claim form does not include particulars of claim (9.1)**

(1) Subject to paragraph (2), where the defendant receives a claim form which does not contain particulars of claim, he need not respond to the claim until the particulars of claim have been served on him.

(2) This rule does not apply where the claim is allocated to the chancery procedure.

#### **4.9 Defence, admission or acknowledgment of service (9.2)**

When particulars of claim are served on a defendant, the defendant may —

- (a) file and serve an admission in accordance with Part 6;
- (b) file and serve a defence in accordance with Part 6,
- (c) do both, if he admits only part of the claim, or
- (d) file an acknowledgment of service in accordance with Chapter 3.

### **CHAPTER 3: ACKNOWLEDGMENT OF SERVICE**

#### **4.10 Acknowledgment of service (10.1, 10.5, 8.3, PD 10)**

(1) Subject to paragraph (2), a defendant may file an acknowledgment of service if —

- (a) he is unable to file a defence within the period specified in rule 6.26; or
- (b) he wishes to dispute the court's jurisdiction.

(2) Where the claim is allocated to the chancery procedure, the defendant must file an acknowledgment of service.

(3) Where 2 or more defendants to a claim acknowledge service of a claim through the same advocate at the same time, only one acknowledgment of service need be used.

(4) A minor or patient may acknowledge service only by his litigation friend or his litigation friend's advocate, unless the court otherwise orders.

#### **4.11 Form and content of acknowledgment of service (10.1, 10.5, 8.3, PD 10)**

(1) An acknowledgment of service must —

- (a) be completed and filed in duplicate,
- (b) include the defendant's address for service (in accordance with rule 2.27), and
- (c) where the claim is allocated to the chancery procedure, state —
  - (i) whether the defendant contests the claim; and

(ii) if the defendant seeks a different remedy from that set out in the claim form, what that remedy is.

(2) The defendant's name must be set out in full on the acknowledgment of service.

(3) Where the defendant's name has been incorrectly set out in the claim form, it must be correctly set out on the acknowledgment of service followed by the words 'described as' and the incorrect name.

(4) Subject to paragraphs (5) and (6), an acknowledgment of service must be signed by the defendant or his advocate.

(5) Where the defendant is a body corporate, a person holding a senior position in the body may sign the acknowledgment of service on the defendant's behalf, but must state the position he holds.

(6) Where the defendant is a partnership, the acknowledgment of service may be signed by —

(a) any of the partners, or

(b) a person having the control or management of the partnership business.

#### **4.12 Period for filing acknowledgment of service (10.3)**

(1) Subject to paragraph (2), the period for filing an acknowledgment of service is —

(a) where the defendant is served with a claim form which does not contain particulars of claim, 14 days after service of the particulars of claim; and

(b) in any other case, 14 days after service of the claim form.

(2) Where the claim is allocated to the chancery procedure, the period for filing an acknowledgement of service is 14 days after service of the claim form.

(3) This rule is subject to —

(a) rule 2.42(4) (claim form served out of the jurisdiction), and

(b) any other rule, or an order under another rule, specifying a different period for filing an acknowledgement of service.

#### **4.13 Action on filing of acknowledgment of service (RHC 2.10)**

On receipt of an acknowledgment of service, the court office shall —

(a) enter the date of receipt on each copy of the acknowledgment of service, and

(b) retain one copy and forthwith return the other to the claimant at his address for service.

#### **4.14 Consequence of not filing acknowledgment of service (10.2, 8.4)**

(1) Subject to paragraph (2), if a defendant —

(a) fails to file an acknowledgment of service within the period specified in rule 4.12(1) or such other period as is required by, or by an order under, another rule; and

(b) does not within that period file a defence in accordance with Chapter 5 of Part 6 or serve or file an admission in accordance with Chapter 4 of that Part,

the claimant may obtain default judgment if Chapter 2 of Part 10 allows it.

(2) Where the claim is allocated to the chancery procedure, if a defendant fails to file an acknowledgment of service within the period specified in rule 4.12(2), the defendant may attend the hearing of the claim but may not take part in the hearing unless the court gives permission.

#### **4.15 Amendment etc. of acknowledgment of service (PD 10)**

(1) An acknowledgment of service may be amended or withdrawn only with the permission of the court.

(2) An application for permission under paragraph (1) must be supported by evidence.

### **CHAPTER 4: *DISPUTING THE COURT'S JURISDICTION***

#### **4.16 Procedure for disputing the court's jurisdiction (11)**

(1) A defendant who wishes —

(a) to dispute the court's jurisdiction to try the claim; or

(b) to argue that the court should not exercise its jurisdiction,

may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.

(2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Chapter 3.

(3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the court's jurisdiction.

(4) An application under this rule must —

(a) be made within 14 days after filing an acknowledgment of service; and

(b) be supported by evidence.

(5) If the defendant —

(a) files an acknowledgment of service; and

(b) does not make such an application within the period specified in paragraph (4),

he is to be treated as having accepted that the court has jurisdiction to try the claim.

(6) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including —

(a) setting aside the claim form;

(b) setting aside service of the claim form;

(c) discharging any order made before the claim was commenced or before the claim form was served; and

(d) staying the proceedings.

(7) If on an application under this rule the court does not make a declaration —

(a) the acknowledgment of service shall cease to have effect;

(b) the defendant may file a further acknowledgment of service within 14 days or such other period as the court may direct; and

(c) the court shall give directions as to —

(i) the filing of evidence, where the claim is allocated to the chancery procedure, or

(ii) the filing and service of the defence, in any other case,

in the event that a further acknowledgment of service is filed.

(8) If the defendant files a further acknowledgment of service in accordance with paragraph (7)(b) he shall be treated as having accepted that the court has jurisdiction to try the claim.

(9) If a defendant makes an application under this rule, he must file and serve his written evidence in support with the application notice, but he need not before the hearing of the application file —

- (a) any written evidence, where the claim is allocated to the chancery procedure,  
or
- (b) a defence, in any other case.