

## Chapter 19

### Service of process

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# Chapter 19

## Service of process

### Introduction

1 This chapter provides guidance to the commanding officer (CO) and those advising him on procedures when the CO is served with any process (see paragraph 2 below) in relation to maintenance proceedings against a Service person<sup>1</sup> under his command; see also [Chapter 3](#) (Jurisdiction and time limits). The maintenance may be for the spouse or civil partner of the person against whom the order is made, a child of that person or of the spouse or civil partner, or any other child treated as a child of the family. The maintenance proceedings may be for a maintenance order, variation of an order already made, revocation of a maintenance order, or the revival of an old maintenance order where circumstances have changed. A maintenance order for the purposes of the regulations means an order made or registered in or confirmed by a court<sup>2</sup> in the UK.

2. Service of process means the actions required by the court to bring documents used in court proceedings to a party's attention. This can be difficult when a Service person is serving overseas or lives in Service single accommodation. Service authorities<sup>3</sup> are not generally responsible for the service of court documentation<sup>4</sup> on Service personnel who, in their private affairs, are party to legal proceedings in the civil courts in the UK or abroad. However, regulations<sup>5</sup> made under section 355 of the Armed Forces Act 2006 (the Act) provide for such documentation in relation to maintenance proceedings to be served on the CO instead of directly on the Service person. The CO cannot delegate any of his functions in relation to service of process. These regulations do not apply to relevant civilians.

### Court jurisdiction

3. Service of maintenance proceedings issued in the Magistrates Court or other equivalent court is not effective outside the UK. If the proceedings have been issued in the County Court or High Court or other equivalent court, this restriction does not apply and they can be served anywhere in the world. In case of doubt, staff legal advice should be sought.

### Service of maintenance proceedings

4. If a CO receives such court documentation (unless paragraph 6 applies), he must as soon as reasonably practicable hand the documentation to the Service person who is party to the proceedings and inform him that he is to report to the CO the conclusion of the court proceedings.

5. Service on the CO (or on the Service person) will be regarded as having taken place on the day shown in the table below, subject to the exceptions in paragraph 6:

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<sup>1</sup> See section 367(1) and (2)(a), (b), (c) or (e) of the Act for the definition of a person subject to Service law.

<sup>2</sup> The statutory provisions which apply are: The Maintenance Orders (Facilities for Enforcement) Act 1920 or registered in such a court under Part 1 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 or Part 1 of the Civil Jurisdiction and Judgements Act 1982 or Council Regulation (EEC) No 44/2001.

<sup>3</sup> See single Service guidance (QRRN Chapter 58, especially Articles J.5808 and J.5809; Army QR 6.180 and AGAI 65; RAF J1804) for guidance on service of any civil proceedings except maintenance.

<sup>4</sup> Court documentation which includes summons, writs, judgements, applications and directions.

<sup>5</sup> The Armed Forces (Service of Process in Maintenance Proceedings) Regulations 2009/1093.

<b>Method of service</b>	<b>Day of service</b>
First class post (or alternative service which provides for delivery on the next working day).	The second day after it was posted
Delivering the document to or leaving it at a permitted address	The day after it was delivered to or left at the permitted address
Facsimile (Fax)	If it is transmitted on a business day before 4pm, on that day; in any other case, on the business day after the day on which it is transmitted
Other electronic method	The second day after the day on which it is transmitted

## **Circumstances where service has no effect**

6. Where any court documentation is served on the CO, service is not effective if within 21 days of the date on which the process is served, the CO certifies to the court that the Service person is:

- a. On active service. For these purposes, active service is defined as: an action or operation against an enemy; an operation outside the British Islands for the protection of life or property; the military occupation of a foreign country or territory;
- b. Under orders for active service and it would not be reasonably practicable for the Service person to comply with the requirement of the process; or
- c. Absent without leave.

7. It is for the CO to decide whether it would be reasonably practicable for the Service person to comply with the requirement of the process when he is under orders for active service or on active service, for example, the Service person's ability to attend a hearing, or produce documentation or information requested. Where a Service person is under orders for active service (whether on pre-deployment training or about to deploy) and in the CO's view it would not be reasonably practicable for him to attend the hearing, the CO may determine that service has no effect. If in doubt, the CO should seek staff legal advice. In such circumstances, the CO should complete the Certificate of non-effective service at [Annex A](#) and return it along with the process to the court, as soon as reasonably practicable.

8. The Service person should be informed as soon as reasonably practicable of the action taken by the CO and be provided with a copy of the certificate. Additionally the Service person is to be informed of the requirement to report to the CO the conclusion of the court proceedings. A copy of the certificate is to be retained until the CO has been notified that the proceedings have been concluded. This is in case of any legal challenge.

## **Transitional guidance**

9. Generally, service of process, on a Service person or that person's CO, before implementation of the Act (ie before 31 October 2009) will be deemed to have been effected under the Act<sup>6</sup>. Under the Act<sup>7</sup>, with respect to cases in which service of process is to be of no effect, reference to service of process includes service on a Service person's CO before

<sup>6</sup> Section 355 of the Act.

<sup>7</sup> Section 355(2)(b) of the Act.

commencement. Transitional arrangements apply in some areas; staff legal advice should be sought where an action or event occurs immediately before or after implementation, or spans the period immediately before and after implementation.