

## CHAPTER 16

### SERVICE, INTIMATION AND DILIGENCE

#### PART I

##### SERVICE AND INTIMATION

###### Methods and manner of service

**16.1.**-(1) Subject to any other provision in these Rules or any other enactment, service of a document required under these Rules on a person shall be executed-

- (a) in the case of an individual-
  - (i) personally, by tendering the document and any citation or notice, as the case may be, to that individual;
  - (ii) by leaving the document and any citation or notice, as the case may be, in the hands of a person, or failing which, depositing it, in a dwelling place where the person executing service, after due enquiry, has reasonable grounds for believing that that individual resides but is not available;
  - (iii) by leaving the document and any citation or notice, as the case may be, in the hands of a person at, or depositing it in, a place of business where the person executing service, after due enquiry, has reasonable grounds for believing that that individual carries on business; or
  - (iv) by posting the document and any citation or notice, as the case may be, to the known dwelling place of that individual;
- (b) in the case of any other person-
  - (i) by leaving the document and any citation or notice, as the case may be, in the hands of an individual at, or depositing it in, the registered office, other official address or a place of business, of that other person, in such a way that it is likely to come to the attention of that other person; or
  - (ii) by posting the document and any citation or notice, as the case may be, to the registered office, other official address or a place of business, of that other person.

(2) Service of a principal writ on a person whose known residence is the same as that of the party on whose behalf service is to be executed shall be executed personally.

(3) Subject to paragraph (4), where service has been executed, the party on whose behalf service has been executed shall attach to the document served and lodge in process-

- (a) a certificate of service as required by these Rules;
- (b) a copy of any notice or advertisement ordered to be published; and
- (c) a copy of any interlocutor ordering service of that document.

(4) In relation to a petition or note, where service has been executed by a petitioner or noter, he shall attach the documents required by paragraph (3)(a) and (b) to a copy of the petition or note, as the case may be, marked "Execution Copy" and certified a true copy.

## **Service furth of United Kingdom**

**16.2.**-(1) Subject to any other enactment, this rule applies to service of a document on a person on whom service is to be executed in a country furth of the United Kingdom.

(2) Service under this rule may be executed by any of the following methods of service, if, and in a manner, permitted under a convention providing for service in that country or by the laws of that country:-

- (a) by post to the known residence, registered office or place of business, as the case may be, of the person on whom service is to be executed;
- (b) through the central, or other appropriate, authority of that country, at the request of the Scottish Ministers;
- (c) through a British consular office in that country, at the request of the Secretary of State for Foreign and Commonwealth Affairs;
- (d) by an *huissier*, other judicial officer or competent official of that country, at the request of a messenger-at-arms, a party or his agent; or
- (e) personally by the party executing service or his authorised agent tendering the document and the citation (if any) to the person on whom service is to be executed.

(3) Where service is to be executed through a central, or other appropriate, authority at the request of the Scottish Ministers, the party executing service shall-

- (a) send a copy of the document, with a request for service by the method indicated in the request, to the Scottish Ministers; and
- (b) lodge in process a certificate signed by the authority which executed service stating that it has been, and the manner in which it was, served.

(3A) Where service is to be executed through a British consular officer at the request of the Secretary of State for Foreign and Commonwealth Affairs, the party executing service shall-

- (a) send a copy of the document, with a request for service by the method indicated in the request, to the Secretary of State for Foreign and Commonwealth Affairs; and
- (b) lodge in process a certificate signed by the authority which executed service stating that it has been, and the manner in which it was, served.

(4) Where service is to be executed by an *huissier* other judicial officer or competent official at the request of a messenger-at-arms-

- (a) the messenger-at-arms shall send a copy of the document with a request for service by the method indicated in the request to the official in the country in which service is to be executed; and
- (b) the party on whose behalf service has been executed shall lodge in process a certificate of the official who executed service stating that it has been, and the manner in which it was, served.

(5) Where service has been executed personally by the party executing service or his authorised agent-

- (a) the execution of service shall be witnessed by one witness who shall sign the certificate of service (which shall state his name, occupation and address); and

(b) the person who executed service shall complete a certificate of service in Form 16.2.

(6) Where service is executed by a method mentioned in paragraph (2)(a) or (e), the party executing service shall lodge in process a certificate by a person qualified in the law of the country, or a duly accredited representative of the country, in which service was executed stating that the method of service used is permitted by the law of that country.

### **Service under the EC Service Regulation**

**16.2A.**-(1) In this rule –

“competent receiving agency” and “Member State” have the same meaning as in the EC Service Regulation; and

“EC Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13th November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing EC Service Regulation (EC) No. 1348/2000, as amended from time to time (a).

(2) This rule applies to service of a document under the EC Service Regulation on a person on whom service is to be executed in a Member State other than the United Kingdom.

(3) Where a document is being served by a competent receiving authority under Article 7 of the EC Service Regulation, rule 16.6(1) (translations of documents) shall not apply.

(4) Where a document has been served by a competent receiving authority under Article 7 of the EC Service Regulation, the party executing service shall lodge the certificate of service mentioned in Article 10 of the EC Service Regulation.

### **Service by messenger-at-arms**

**16.3.**-(1) Service by a method mentioned in rule 16.1(1)(a)(i), (ii) or (iii), or (b)(i), shall be executed by a messenger-at-arms who shall-

- (a) explain the purpose of service to any person on whom he executes service;
- (b) complete a citation or notice, as the case may be, and a certificate of service in Form 16.3; and
- (c) send the certificate of service to the pursuer.

(2) Such service shall be witnessed by one witness who shall sign the certificate of service (which shall state his name, occupation and address).

(3) Where service is executed by a method mentioned in rule 16.1(1)(a)(ii) or (iii), or (b)(i), the document and the citation or notice of intimation, as the case may be, shall be placed in an envelope (bearing the notice specified in rule 16.4(2)) and sealed by the messenger-at-arms.

(4) Subject to paragraph (4A), a messenger-at-arms shall, when he executes service of a document, have in his possession-

- (a) in the case of service of a copy of a principal writ, the principal writ or a copy of it certified as correct by the agent for the party whose writ it is, and
- (b) where an interlocutor has been pronounced allowing service of the document, a certified copy of that interlocutor, which he shall show, if required, to the person on whom he executes service.

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(a) O.J. No. L 324, 10.12.2007, p. 79.

(4) Subject to paragraph (4A), a messenger-at-arms shall, when he executes service of a document, have in his possession-

- (a) in the case of service of a copy of a principal writ, the principal writ or a copy of it certified as correct by the agent for the party whose writ it is, and
- (b) where an interlocutor has been pronounced allowing service of the document, a certified copy of that interlocutor, which he shall show, if required, to the person on whom he executes service.

(4A) Where the firm which employs the messenger-at-arms has in its possession –

- (a) the principal writ or a certified copy of it, it shall be competent for the messenger-at-arms to execute service of the document without having that writ or certified copy in his possession, in which case he shall, if required to do so by the person on whom service is executed and within a reasonable time of being so required, show the principal writ or certified copy to the person;
- (b) a certified copy of the interlocutor, it shall be competent for the messenger-at-arms to execute service of the document if he has in his possession a facsimile copy of the certified copy interlocutor which he shall show, if required, to the person on whom he executes service.

(5) The certificate of service required under paragraph (1) shall include the full name and designation of any person in whose hands any document and the citation or notice, as the case may be, were left.

(6) In the application of this rule to service in England and Wales, reference to a messengers-at-arms shall be construed as a reference to a person entitled to serve Senior Courts writs; and in the application of this rule to service in Northern Ireland, reference to a messenger-at-arms shall be construed as a reference to a person entitled to serve Court of Judicature writs.

### **Service by post**

**16.4.**-(1) This rule applies to service of a document by post but is subject to rule 61.2(3) and (4) (order as respects intimation of petition for appointment of judicial factor, but is subject to rule 61.2(3) and (4) (order as respects intimation of petition for appointment of judicial factor).

(2) Service by post shall be executed by-

- (a) a messenger-at-arms, or
- (b) an agent,

posting a copy of the document to be served with any citation or notice, as the case may be, by registered post or first class recorded delivery service addressed to the person on whom service is to be executed and having on the face of the envelope a notice in the following terms:- "This envelope contains a citation to, or intimation from, the Court of Session. If delivery of the letter cannot be made it must be returned immediately to the Deputy Principal Clerk of Session, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ."

(3) Where English is not an official language of the country in which service is to be executed, a translation in an official language of that country of the notice required under paragraph (2) shall appear on the face of the envelope.

(4) The person executing service of a document shall complete-

(a) a citation or notice, as the case may be; and

(b) a certificate of service in Form 16.4.

(5) Where a document is served by a registered post service, a receipt of posting by the operator of that service shall be attached to the certificate of service.

(6) The date of execution of service shall be deemed to be the day after the date of posting.

(7) Subject to rule 16.11 (no objection to regularity of service or intimation), the execution of service by post shall be valid unless the person on whom service was sought to have been made proves that the envelope and its contents were not tendered or left at his address.

### **Service where address of person is not known**

**16.5.**-(1) Where the residence of the person to be served with a document is not known and cannot reasonably be ascertained or service on that person cannot be executed under rule 16.1 (methods and manner of service) or 16.2 (service furth of United Kingdom), the party who wishes to execute service may apply by motion-

(a) for an order for service by the publication of an advertisement in a specified newspaper circulating in the area of the last known residence of that person or elsewhere; or

(b) on special cause shown, for an order to dispense with service; and

(c) stating the last known residence of that person and what steps have been taken to ascertain his present whereabouts.

(2) On enrolling such a motion, a copy of the document to be served shall be lodged with the Deputy Principal Clerk who shall retain it for a period of three years and from whom it may be uplifted by the person for whom it is intended.

(3) Where an interlocutor has been pronounced ordering publication of an advertisement under this rule-

(a) the advertisement shall be in Form 16.5; and

(b) publication of the advertisement shall have effect as if service of the document had been executed on the date of publication.

(4) Where an interlocutor has been pronounced dispensing with service under this rule-

(a) service of the document shall be deemed to have been executed on the date of the interlocutor; and

(b) the period of notice shall be dispensed with.

(5) A motion under paragraph (1) made before calling shall be heard in chambers.

(6) Where publication of an advertisement has been made under this rule, there shall be lodged in process-

(a) a copy of the newspaper containing the advertisement; or

(b) a certificate of publication by the publisher stating the date of publication and the text of the advertisement.

### **Translations of documents served or advertised abroad**

**16.6.**-(1) Subject to rule 16.2A where English is not an official language of the country in which a document is to be served, the document shall be accompanied by a translation in an official language of that country.

(2) An advertisement authorised under rule 16.5 (service where address of person is not known) to be published in a newspaper in a country in which English is not an official language of that country shall be in an official language of that country

(3) With any certificate of service, or advertisement under rule 16.5, in a language other than English there shall be lodged a translation in English.

(4) A translation under this rule shall be certified as correct by the translator; and the certificate shall include his full name, address and qualifications.

### **Intimation of documents**

**16.7.**-(1) Subject to rule 16.8 (intimation on a warrant to intimate), rule 16.9 (written intimation) and any other provision in these Rules, where intimation of a document is to be given under these Rules to any person, the intimation shall be given-

(a) personally, by tendering the document and the notice of intimation (if any) to that person;  
or

(b) by registered post or the first class recorded delivery service-

(i) in the case of an individual, addressed to the known, or last known, dwelling place or a place of business of that individual; or

(ii) in the case of any other person, addressed to the registered office, other official address or a place of business of that person.

(2) Where intimation has been given in accordance with paragraph (1), the party on whose behalf intimation has been given shall attach to the principal writ or lodge in process, as the case may be-

(a) certificate of intimation in Form 16.7;

(b) a copy of any notice of intimation which was intimated; and

(c) a copy of any interlocutor ordering the intimation.

### **Intimation on a warrant to intimate**

**16.8.**-(1) Where intimation of a document is to be given to a person for whom a warrant to intimate has been obtained, the intimation shall be made in the same manner as service of a document; and the following rules shall, with the necessary modifications, apply to that intimation as they apply to service of a document:- rule 16.1 (methods and manner of service),

rule 16.2 (service furth of United Kingdom),

rule 16.2A (service under the EC Service Regulation),

rule 16.3 (service by messenger-at-arms),

rule 16.4 (service by post),

rule 16.5 (service where address of person is not known),

rule 16.6 (translations of documents served or advertised abroad).

(2) Where intimation has been given in accordance with paragraph (1), the party on whose behalf intimation has been given shall attach a copy of any notice of intimation to the certificate of intimation.

### **Written intimation**

**16.9.** Where a provision in these Rules requires written intimation to be given to a person, that intimation may be made by first class post or other means of delivery to that person.

### **Acceptance of service or intimation and dispensing with period of notice**

**16.10.**-(1) An agent may accept service or intimation of a document on behalf of the person on whom service is to be executed or to whom intimation is to be given and may dispense with any period of notice.

(2) A person on whom service of a document is executed or to whom intimation of a document is given may dispense with any period of notice as respects him in relation to that document.

(3) Where a period of notice is dispensed with under paragraph (1) or (2), it shall be deemed to expire on the day on which the party on whose behalf service is executed or intimation is given receives written intimation that the period of notice has been dispensed with.

### **No objection to regularity of service or intimation**

**16.11.**-(1) A person who enters the process of a cause shall not be entitled to state any objection to the regularity of the execution of service or intimation of a document on him; and his appearance shall be deemed to remedy any defect in such service or intimation.

(2) Nothing in paragraph (1) shall preclude a person from pleading that the court has no jurisdiction.

## **PART II**

### **DILIGENCE**

#### **Execution of diligence**

**16.12.**-(1) This rule applies to-

- (a) the execution of any diligence on a warrant, act or decree of the court other than-
  - (i) an arrestment to which rule 16.13 (arrestment of ships and arrestment in *rem* of cargo on board ship) applies; or
  - (ii) an arrestment to which rule 16.14(1) (arrestment in *rem* of cargo landed or transhipped) applies; and
- (b) diligence in execution of a writ registered for execution in the Books of Council and Session.

(2) Subject to the following paragraphs of this rule, the execution of any diligence by virtue of these Rules on a person shall be executed by a messenger-at-arms in the same manner as service of a document is permitted under rule 16.1(1)(a)(i), (ii) or (iii) or (b)(i) (methods and manner of service); and, where appropriate, the following provisions of Part I (service and intimation) shall, with the necessary modifications, apply to the execution of diligence as they apply to service of a document:-

rule 16.3(1) to (4) (service by messenger-at-arms),  
rule 16.4(2)(a), (3), (6) and (7) (service by post).

- (3) In the application under this rule, by virtue of paragraph (2), of
  - (a) sub-paragraph (b) of paragraph (1) of rule 16.3 (completion of citation or notice and certificate of service) for the reference to Form 16.3 in that sub-paragraph there shall be substituted a reference to the appropriate form of certificate of execution in rule 16.15 (forms for diligence); and
  - (b) sub-paragraph (b) of paragraph (4) of rule 16.4 (completion of citation or notice and certificate of service), for the reference to Form 16.4 in that sub-paragraph, there shall be substituted a reference to the appropriate form of certificate of execution in rule 16.15.
- (4) The execution of such diligence on-
  - (a) an individual who is resident furth of Scotland,
  - (b) a person who has no registered office, other official address or a place of business in Scotland,
  - (c) a person whose residence is not known and cannot reasonably be ascertained, or
  - (d) a person on whom service cannot be executed in a manner permitted under paragraph (2), shall be executed edictally by a messenger-at-arms leaving or depositing the appropriate schedule mentioned in rule 16.15 at the office of the Extractor.

(5) Where the execution of diligence is made edictally under paragraph (4), a copy of the schedule left at the office of the Extractor shall be sent by a messenger-at-arms by registered post or the first class recorded delivery service to the place furth of Scotland where the person on whom diligence is executed edictally resides, has his registered office, official address or place of business, as the case may be, or such last known place.

- (6) A messenger-at-arms executing diligence shall have in his possession-
  - (a) in the case of diligence on a warrant in a principal writ, the principal writ or a copy of it certified as correct by the agent for the party whose writ it is,
  - (b) in the case of diligence on a warrant in an interlocutor, a certified copy of that interlocutor, or
  - (c) in the case of diligence on an extract of an act or a decree, or a document registered in the Books of Council and Session, the extract, which he shall show, if required, to any person on whom he executes diligence.

(7) The party on whose behalf diligence has been executed in a cause depending before the court shall attach the certificate of execution to the document containing the warrant for diligence.

#### **Arrestment of ships and arrestment in rem of cargo on board ship**

**16.13.**-(1) An arrestment of a ship in *rem* or on the dependence, or an arrestment in *rem* of cargo on board ship, may be executed on any day by a messenger-at-arms who shall affix the schedule of arrestment-

- (a) to the mainmast of the ship;
- (b) to the single mast of the ship; or
- (c) where there is no mast, to some prominent part of the ship.

(2) In the execution of an arrestment of a ship on the dependence, the messenger-at-arms shall, in addition to complying with paragraph (1), mark the initials "ER" above the place where the schedule of arrestment is fixed

(3) On executing an arrestment under paragraph (1), the messenger-at-arms shall deliver a copy of the schedule of arrestment and a copy of the certificate of execution of it to the master of the ship, or other person on board in charge of the ship or cargo, as the case may be, as representing the owners or demise charterers of, or parties interested in, the ship or the owners of the cargo, as the case may be.

(4) Where the schedule of arrestment and the copy of the certificate of execution of it cannot be delivered as required under paragraph (3)-

(a) the certificate of execution shall state that fact; and

(b) either-

(i) the arrestment shall be executed by serving it on the harbour master of the port where the ship lies; or

(ii) where there is no harbour master, or the ship is not in a harbour, the pursuer shall enrol a motion for such further order as to intimation and advertisement, if any, as may be necessary.

(5) A copy of the schedule of arrestment and a copy of the certificate of execution of it shall be delivered by the messenger-at-arms to the harbour master, if any, of any port where the ship lies.

(6) In this rule, "ship" has the meaning assigned in section 48(f) of the Administration of Justice Act 1956 (a).

### **Arrestment of cargo**

**16.14.**-(1) An arrestment of cargo on board a ship shall be executed by a messenger-at-arms who shall serve the schedule of arrestment on—

(a) the master of the ship;

(b) any other person in charge of the ship or cargo; or

(c) other proper arrestee

(2) Where the schedule of arrestment cannot be executed in accordance with paragraph (1), the arrestment may be executed as provided for in rule 16.13(4) and (5).

(3) A person who has an interest in a ship or cargo which is the subject of an arrestment under this rule may apply by motion for a warrant authorising the movement of the ship or cargo and rule 13.11 shall apply to such a motion.

### **Forms for diligence**

**16.15.**-(1) In the execution of diligence, the following forms shall be used:-

(a) in the case of-

(i) an arrestment to found jurisdiction (other than the arrestment of a ship), a schedule in Form 16.15-A and a certificate of execution in Form 16.15-H;

(ii) an arrestment of a ship to found jurisdiction, a schedule in Form 16.15-AA and a certificate of execution in Form 16.15-HH;

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(a) 1956 (c.46).

- (b) subject to sub-paragraph (e), in the case of an arrestment on the dependence, a schedule in Form 16.15-B and a certificate of execution in Form 16.15-H;
- (c) in the case of an arrestment in *rem* of a ship, cargo or other maritime *res* to enforce a maritime hypothec or lien, a schedule in Form 16.15-C and a certificate of execution in Form 16.15-I;
- (d) in the case of an arrestment in *rem* of a ship to enforce a non-pecuniary claim, a schedule in Form 16.15-D and a certificate of execution in Form 16.15-I;
- (e) in the case of an arrestment on the dependence of-
  - (i) a cargo on board a ship, a schedule in Form 16.15-B;
  - (ii) a ship, a schedule in Form 16.15-BB,
 and a certificate of execution in Form 16.15-J;
- (f) subject to paragraph (g), in the case of an arrestment in execution, a certificate of execution in form 16.15-H;
- (g) in the case of an earnings arrestment, or a current maintenance arrestment, within the meaning of Part III of the Debtors (Scotland) Act 1987<sup>(a)</sup> a schedule in Form 30 (in respect of an earnings arrestment), or Form 34 (in respect of a current maintenance arrestment), and a certificate of execution in Form 60, in the Schedule to the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988<sup>(b)</sup>;
- (h) [omitted by SSI 2009 No. 104 (effective 22<sup>nd</sup> April 2009).]
- (i) in the case of the execution of a charge for payment of money, a charge in Form 16.15-G and a certificate of execution in Form 16.15-K
- (j) in the case of an attachment, a schedule in form 3, and a report of attachment in form 8, in Appendix 1 of Schedule 1 to the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002; and
- (k) in the case of an interim attachment, a schedule in Form 2a, and a report of attachment in Form 2b, in Appendix 1 of Schedule 1 to the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002<sup>(c)</sup>.

(2) Where two or more of the arrestments mentioned in paragraph (1)(a), (b), (c) and (d) are to be executed, they may be combined in one schedule of arrestment.

### **Form of Service of copy decree**

**16.16** The copy final decree served under section 73C(2) of the Debtors (Scotland) Act 1987<sup>(d)</sup> shall be in Form 16.16.

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(a) 1987 c.18.

(b) S.I. 1988/2013

(c) S.S.I. 2002/560 as last amended by S.S.I. 2007/466.

(d) 1987 c.18. Section 73C was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007, section 206.