



STATUTORY INSTRUMENTS.

**S.I. No. 280 of 2009**

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RULES OF THE SUPERIOR COURTS (SERVICE OF PROCEEDINGS  
(REGULATION (EC) NO. 1393/2007)) 2009

**(Prn. A9/1031)**

S.I. No. 280 of 2009

RULES OF THE SUPERIOR COURTS (SERVICE OF PROCEEDINGS  
(REGULATION (EC) NO. 1393/2007)) 2009

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, and the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), and the Courts (Supplemental Provisions) Act 1961, section 14, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 11th day of June, 2009.

John L. Murray

Richard Johnson

Joseph Finnegan

Elizabeth Dunne

Lyndon McCann

Paul McGarry

Mary Cummins

Noel Rubotham

Maeve Kane

I concur in the making of the following Rules of Court.

Dated this 23rd day of July, 2009.

DERMOT AHERN

Minister for Justice, Equality and Law Reform

*Notice of the making of this Statutory Instrument was published in  
"Iris Oifigiúil" of 28th July, 2009.*

S.I. No. 280 of 2009

RULES OF THE SUPERIOR COURTS (SERVICE OF PROCEEDINGS  
(REGULATION (EC) NO. 1393/2007)) 2009

1. These Rules shall come into operation on the 20th day of August 2009.
2. These Rules shall be construed together with the Rules of the Superior Courts 1986 to 2009 and may be cited as the Rules of the Superior Courts (Service of Proceedings (Regulation (EC) No. 1393/2007)) 2009.
3. The Rules of the Superior Courts are amended:
  - (i) by the substitution, in each of Order 11E, rule 1 and Order 121B, rule 1, for the definition of “A Convention Country” of the following definition:

““A Convention Country” means a country which is party to the Convention, but excludes a country which is a Member State of the European Union in which Regulation No. 1393/2007 (within the meaning of Order 11D, rule 1) is in force.”;
  - (ii) by the substitution for Order 11D of the Order set out in Schedule 1, and
  - (iii) by the substitution for Order 121A of the Order set out in Schedule 2.

## Schedule 1

*“Order 11D*SERVICE OF DOCUMENTS OUTSIDE OF THE JURISDICTION BUT WITHIN THE EU  
(REGULATION NO. 1393/2007)

1. In this Order, unless the context or subject matter otherwise requires:

“a Member State” or “Member States” means a Member State or the Member States of the European Union, with the exception of Denmark;

“receiving agency” means the entities designated by the other Member States of the European Union pursuant to Article 2(2) of Regulation No. 1393/2007;

“Regulation No. 1393/2007” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extra-judicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No. 1348/2000 (O.J. L. 324/79);

“Regulation No. 44/2001” has the same meaning as in Order 11A, rule 9;

“Regulation No. 2201/2003” has the same meaning as in Order 11C, rule 9;

“summons” includes, where the context so admits or requires, any other originating document;

“transmitting agency” means, as regards the State, the Offices of the County Registrar or such other public officers, authorities or other persons as are for the time being designated by the State pursuant to Article 2(1) of Regulation No. 1393/2007.

2. This Order applies to the service of documents pursuant to Article 1 of Regulation No. 1393/2007.

3. (1) Any party to any proceedings to which Regulation No. 1393/2007 applies, who wishes to have a document served pursuant to Regulation No. 1393/2007, (in this Order referred to as the “requesting party”) may lodge with the transmitting agency:

- (i) two copies of each document to be served with an additional copy thereof for each person to be served;
- (ii) a request for service of the document or documents, in the form specified in the Annex to Regulation No. 1393/2007;
- (iii) an undertaking to pay the costs occasioned by the employment of a judicial officer or of a person competent under the law of the Member State(s) addressed or, where the applicant for service has specified

that a particular method of service, as defined at Article 11(2)(b) of Regulation No. 1393/2007, be availed of, the costs occasioned by the use of that method of service.

(2) If any request for service does not comply with the provisions of sub-rule (1), the transmitting agency shall inform the requesting party and specify the objections to the request.

(3) The transmitting agency shall maintain a list of the Member States to which Regulation No. 1393/2007 applies and the languages specified by each Member State for the purposes of Article 4(3) of Regulation No. 1393/2007 and those parts of the relevant Member State to which the relevant language applies. Such list shall be available for inspection during the opening hours of the office of the County Registrar (or, as the case may be, of the office or offices of such other public officers, authorities or other persons as are for the time being designated by the State pursuant to Article 2(1) of Regulation No. 1393/2007) and copies of such information shall be kept for distribution on request.

(4) The transmitting agency shall be responsible for notifying the requesting party of any contact or notice received from the receiving agency pursuant to Article 6(2), 6(3) or 6(4) of Regulation No. 1393/2007 in respect of the requesting party's request for service.

(5) On receipt of the certificate provided for at Article 10 of Regulation No. 1393/2007 from the receiving agency, the transmitting agency shall forthwith transmit the certificate (or a copy thereof) to the requesting party.

4. (1). In addition to the method of service described at rule 3, a party to proceedings may choose to effect service in another Member State by diplomatic or consular agents in accordance with Article 13 of Regulation No. 1393/2007 (save where that Member State has indicated opposition to such method of service, in accordance with Regulation No. 1393/2007), by registered post in accordance with Article 14 of Regulation No. 1393/2007 or by direct service in accordance with Article 15 of Regulation No. 1393/2007.

(2) The transmitting agency shall maintain a list of any communications by any Member State under Article 23(1) of Regulation No. 1393/2007. Such list shall be available for inspection during the opening hours of the office of the County Registrar or, as the case may be, of the office or offices of such other public officers, authorities or other persons as are for the time being designated by the State pursuant to Article 2(1) of Regulation No. 1393/2007.

5. (1) Subject to rule 5(5), judgment shall not be given or entered in default of appearance in the circumstances referred to in Article 19(1) of Regulation No. 1393/2007 in any proceedings to which this Order applies until it is established that:

- (i) the originating document was served by a method prescribed by the internal law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or

- (ii) the originating document was actually delivered to the defendant or to his residence by another method provided for by Regulation No. 1393/2007,

and that in either case the service or delivery was effected in sufficient time to enable the defendant to defend the claim.

(2) Judgment in default of appearance shall only be entered with leave of the Court.

(3) An application for leave to enter judgment in default of appearance shall be made by motion on notice and shall be supported by an affidavit verifying the plaintiff's claim for relief and verifying the steps taken to serve the proceedings and supported by adequate proof thereof.

(4) The affidavit referred to in sub-rule (3) shall also state that in the deponent's belief:

- (i) each claim made by the summons is one which, by virtue of Regulation No. 44/2001 (or, as the case may be, Regulation No. 2201/2003) or any amendment thereto, the Court has power to hear and determine, and
- (ii) no other Court has exclusive jurisdiction within the meaning of Regulation No. 44/2001 or, as the case may be, of Regulation No. 2201/2003, to hear and determine such claim.

(5) The Court may give leave to enter judgment if no certificate of service or delivery has been received by the transmitting agency from the receiving agency in the Member State in which service was requested to be effected, provided that:

- (i) the document was transmitted by one of the methods provided for in Regulation No. 1393/2007;
- (ii) a period of time (of not less than six months), considered adequate by the Court, has elapsed since the date of transmission of the document, and
- (iii) no certificate of any kind has been received from the receiving agency, even though every reasonable effort has been made to obtain it through the competent authorities of the Member State addressed.

(6) The Court may, at any stage, in the event of urgency, make orders for any provisional or protective measures required by the plaintiff.

6. (1) An application to extend time for appealing any judgment obtained in default of appearance shall be made by motion on notice and shall be grounded upon the affidavit of, or on behalf of, the moving party and the Court may, if satisfied that:

- (i) the application was made within a reasonable time after the defendant had knowledge of the judgment; and
- (ii) the defendant, without any fault on his part, did not have knowledge of the originating document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal it; and
- (iii) the defendant has disclosed a prima facie defence to the action on the merits,

extend the time for appealing same, on such terms and conditions as appear just.

(2) No such application to set aside a judgment obtained in default of appearance shall be entertained if not made within a time that the Court shall deem to be reasonable.

(3) No application to extend the time for appealing the judgment shall be entertained in respect of judgments concerning status or capacity of persons.

7. In the case of default of appearance by any defendant to an originating summons, the plaintiff shall:

- (i) in the case of a plenary summons, (other than a personal injuries summons as defined in Order 1A), deliver a statement of claim by filing the same in the Central Office, or
- (ii) in the case of a special summons, file a grounding affidavit in the Central Office, or
- (iii) in the case of a personal injuries summons, a summary summons or any other originating document, file an affidavit in the Central Office verifying the facts relied upon,

and thereupon may apply to the Court for judgment in default of appearance.

8. Subject to the provisions of this Order, Order 13 shall, so far as practicable, apply to applications under this Order for leave to enter judgment.

9. While the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil and commercial matters annexed to Council Decision No. 2005/794/EC of 20 September 2005 (OJ L 300/53 of 17 November 2005) signed at Brussels on 19 October 2005 and approved on behalf of the Community by Council Decision No. 2006/326/EC of 27 April 2006 (OJ L 120/23 of 5 May 2006) is for the time being in force, notwithstanding any other provision of these Rules to the contrary, the provisions of these Rules which relate to Regulation No. 1393/2007 shall apply in relation to the Kingdom of Denmark, to the extent permitted, and subject to any modifications made necessary, by that Agreement, and the provisions of these Rules which relate to the Convention (within the meaning of Order 11E, rule 1) shall not apply.”

Schedule 2

*“Order 121A —*

SERVICE OF FOREIGN PROCESS (EU SAVE THE KINGDOM OF DENMARK —  
REGULATION No. 1393/2007)

1. The Master of the High Court as Central Body for Ireland for the purposes of Regulation No. 1393/2007 (within the meaning of Order 11D, rule 1) shall perform the functions of the Central Body referred to in Article 3 of that Regulation.”

EXPLANATORY NOTE

*(This does not form part of the instrument and does not purport to be a legal interpretation.)*

These Rules amend Order 11D to facilitate the operation of Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extra-judicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No. 1348/2000.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
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