

## **FAQ – Rules of Supreme Court (Amendment) Rules 2017**

1. How have the Rules of the Supreme Court (RSC) been amended by the Rules of the Supreme Court (Amendment) Rules 2017 (2017 Rules)?

The 2017 Rules amends the RSC in two categories as follows:

(a) The 2017 Rules adds 7 rules to Order 21 that relate to the automatic discontinuance of dormant legal proceedings in the Supreme Court and Intermediate Court. In addition, these new rules prevent the reinstatement of discontinued proceedings without leave of court. A consequential amendment under Order 5 introduces a new rule 1A which similarly prevents the reinstatement of discontinued proceedings by way of the issuance of new originating process for the same cause of action.

(b) Order 10 rule 1(4) now requires the filing of a memorandum of service in respect of writs of summons. Solicitors will have eight days from the service of the writ to file the memorandum of service.

2. What is the effective date of the 2017 Rules?

The effective date is 27<sup>th</sup> February 2017.

3. What does automatic discontinuance mean?

Under Order 21 rule 5, a case begun by writ will be deemed to have been discontinued if the memorandum of service has not been filed, no appearance has been entered by the defendant and no judgment has been obtained within 6 months of the expiry of the writ.

Under Order 21 rule 6, all cases whether begun by writ, originating summons or otherwise, will be deemed to have been discontinued if no action has been taken within 12 months from the date of the last action on record.

4. What action will be deemed sufficient to keep the case alive?

Under Order 21 rule 5, one of two things must have been done either the filing of the memorandum of service or the obtaining of judgment whether in whole or in part of the claim if a defendant has not entered appearance.

Under Order 21 rule 6, parties must have taken a “step or proceeding” which will appear in the courts records. Contrary to previous discussion with the Supreme Court, only a court event will constitute such “step or proceeding”. For example, the filing of a Summons in Chamber would constitute a “step or proceeding”. Writing a letter to court, unless it is specifically required under the RSC, would not constitute a “step or proceeding”.

5. Do the 2017 Rules have retrospective effect?

The 2017 only has retrospective effect in respect of Order 21. By virtue of Order 21 rule 9, any cases where the last proceeding took place before 1<sup>st</sup> January 2017, will remain active only until 31<sup>st</sup> December 2017. They will be deemed to have been discontinued on 1<sup>st</sup> January 2018 pursuant to Order 21 rule 6. Order 21 rule 5 only applies to unserved writs as of 27<sup>th</sup> February 2017.

6. The last proceeding in my case took place on or after 1<sup>st</sup> January 2017. When does time start to run for automatic discontinuance?  
As it took place in 2017, the time starts to run from the date of the last proceeding.
7. Can the timelines be extended?  
Yes, with leave of court. Parties who are concerned as to their ability to meet the timelines should seek leave to court by way of Summons in Chambers.
8. How do I revive the action if it has been discontinued under Order 21?  
The applying party should apply for reinstatement by way of Summons in Chambers.
9. Do I still need to file a memorandum of service if I served the writ prior to 27<sup>th</sup> February 2017?  
You do not need to file a memorandum of service if the defendant has entered appearance or you have obtained a judgment in respect of the claim. In all other cases, parties are advised to file their memorandum of service within the timeline set under Order 10 Rule 1(4).
10. Do I still need to file an affidavit of service?  
No. The filing of a memorandum of service in accordance with Order 10 rule 1(4) will be sufficient for an application for judgment in default of appearance or defence.