
STATUTORY INSTRUMENTS

2005 No. 2795

The Family Procedure (Adoption) Rules 2005

PART 16

WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS

SECTION 1

WITNESSES AND DEPOSITIONS

Scope of this Section

140.—(1) This Section of this Part provides—

- (a) for the circumstances in which a person may be required to attend court to give evidence or to produce a document; and
- (b) for a party to obtain evidence before a hearing to be used at the hearing.

(2) This Section, except for rule 149(2) to (4), does not apply to proceedings in a magistrates' court.

(Section 97 of the Magistrates' Courts Act 1980⁽¹⁾ sets out the procedure for obtaining a witness summons in proceedings in a magistrates' court.)

Witness summonses

141.—(1) A witness summons is a document issued by the court requiring a witness to—

- (a) attend court to give evidence; or
- (b) produce documents to the court.

(2) A witness summons must be in the relevant form.

(3) There must be a separate witness summons for each witness.

(4) A witness summons may require a witness to produce documents to the court either—

- (a) on the date fixed for a hearing; or
- (b) on such date as the court may direct.

(5) The only documents that a summons under this rule can require a person to produce before a hearing are documents which that person could be required to produce at the hearing.

Issue of a witness summons

142.—(1) A witness summons is issued on the date entered on the summons by the court.

(2) A party must obtain permission from the court where he wishes to—

(1) 1980 c. 43.

- (a) have a summons issued less than 7 days before the date of the final hearing;
 - (b) have a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the final hearing; or
 - (c) have a summons issued for a witness to attend court to give evidence or to produce documents at any hearing except the final hearing.
- (3) A witness summons must be issued by—
- (a) the court where the case is proceeding; or
 - (b) the court where the hearing in question will be held.
- (4) The court may set aside or vary a witness summons issued under this rule.

Time for serving a witness summons

143.—(1) The general rule is that a witness summons is binding if it is served at least 7 days before the date on which the witness is required to attend before the court or tribunal.

(2) The court may direct that a witness summons shall be binding although it will be served less than 7 days before the date on which the witness is required to attend before the court or tribunal.

- (3) A witness summons which is—
- (a) served in accordance with this rule; and
 - (b) requires the witness to attend court to give evidence,

is binding until the conclusion of the hearing at which the attendance of the witness is required.

Who is to serve a witness summons

144.—(1) Unless the court directs otherwise, a witness summons is to be served by the court.

(2) Where the court is to serve the witness summons, the party on whose behalf it is issued must deposit, in the court office, the money to be paid or offered to the witness under rule 145.

Right of witness to travelling expenses and compensation for loss of time

145. At the time of service of a witness summons the witness must be offered or paid—

- (a) a sum reasonably sufficient to cover his expenses in travelling to and from the court; and
- (b) such sum by way of compensation for loss of time as may be specified in the relevant practice direction.

Evidence by deposition

146.—(1) A party may apply for an order for a person to be examined before the hearing takes place.

(2) A person from whom evidence is to be obtained following an order under this rule is referred to as a “deponent” and the evidence is referred to as a “deposition”.

- (3) An order under this rule shall be for a deponent to be examined on oath before—
- (a) a judge or district judge, including a district judge of the principal registry of the Family Division;
 - (b) an examiner of the court; or
 - (c) such other person as the court appoints.

(4) The order may require the production of any document which the court considers is necessary for the purposes of the examination.

- (5) The order must state the date, time and place of the examination.
- (6) At the time of service of the order the deponent must be offered or paid—
 - (a) a sum reasonably sufficient to cover his expenses in travelling to and from the place of examination; and
 - (b) such sum by way of compensation for loss of time as may be specified in the relevant practice direction.
- (7) Where the court makes an order for a deposition to be taken, it may also order the party who obtained the order to file a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

(Part 15 contains the general rules about witness statements and witness summaries.)

Conduct of examination

147.—(1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a final hearing.

(2) If all the parties are present, the examiner may conduct the examination of a person not named in the order for examination if all the parties and the person to be examined consent.

(3) The examiner will conduct the examination in private unless he considers it is not appropriate to do so.

(4) The examiner must ensure that the evidence given by the witness is recorded in full.

(5) The examiner must send a copy of the deposition—

- (a) to the person who obtained the order for the examination of the witness; and
- (b) to the court where the case is proceeding.

(6) The court will make directions as to the service of a copy of the deposition on the other parties.

Enforcing attendance of witness

148.—(1) If a person served with an order to attend before an examiner—

- (a) fails to attend; or
- (b) refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document at the examination,

a certificate of his failure or refusal, signed by the examiner, must be filed by the party requiring the deposition.

(2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring that person to attend or to be sworn or to answer any question or produce any document, as the case may be.

(3) An application for an order under this rule may be made without notice.

(4) The court may order the person against whom an order is made under this rule to pay any costs resulting from his failure or refusal.

Use of deposition at a hearing

149.—(1) A deposition ordered under rule 146 may be given in evidence at a hearing unless the court orders otherwise.

(2) A party intending to put in evidence a deposition at a hearing must file notice of his intention to do so on the court and the court will make directions about serving the notice on every other party.

(3) He must file the notice at least 21 days before the day fixed for the hearing.

- (4) The court may require a deponent to attend the hearing and give evidence orally.

Where a person to be examined is out of the jurisdiction – letter of request

150.—(1) This rule applies where a party wishes to take a deposition from a person who is—

- (a) out of the jurisdiction; and
- (b) not in a Regulation State within the meaning of Section 2 of this Part.

(2) The High Court may order the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.

(3) A letter of request is a request to a judicial authority to take the evidence of that person, or arrange for it to be taken.

(4) The High Court may make an order under this rule in relation to county court proceedings.

(5) If the government of a country allows a person appointed by the High Court to examine a person in that country, the High Court may make an order appointing a special examiner for that purpose.

(6) A person may be examined under this rule on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.

(7) If the High Court makes an order for the issue of a letter of request, the party who sought the order must file—

- (a) the following documents and, subject to paragraph (8), a translation of them,—
 - (i) a draft letter of request;
 - (ii) a statement of the issues relevant to the proceedings; and
 - (iii) a list of questions or the subject matter of questions to be put to the person to be examined; and
- (b) an undertaking to be responsible for the Secretary of State’s expenses.

(8) There is no need to file a translation if—

- (a) English is one of the official languages of the country where the examination is to take place; or
- (b) a practice direction has specified that country as a country where no translation is necessary.

Fees and expenses of examiner of the court

151.—(1) An examiner of the court may charge a fee for the examination.

(2) He need not send the deposition to the court unless the fee is paid.

(3) The examiner’s fees and expenses must be paid by the party who obtained the order for examination.

(4) If the fees and expenses due to an examiner are not paid within a reasonable time, he may report that fact to the court.

(5) The court may order the party who obtained the order for examination to deposit in the court office a specified sum in respect of the examiner’s fees and, where it does so, the examiner will not be asked to act until the sum has been deposited.

(6) An order under this rule does not affect any decision as to the party who is ultimately to bear the costs of the examination.

SECTION 2

TAKING OF EVIDENCE – MEMBER STATES OF THE EUROPEAN UNION

Interpretation

152. In this Section—

“designated court” has the meaning given in the relevant practice direction;

“Regulation State” has the same meaning as “Member State” in the Taking of Evidence Regulation, that is all Member States except Denmark;

“the Taking of Evidence Regulation” means Council Regulation (EC) No. 1206/2001 of 28 May 2001 on co-operation between the courts of the Member States in the taking of evidence in civil and commercial matters.

Where a person to be examined is in another Regulation State

153.—(1) This rule applies where a party wishes to take a deposition from a person who is in another Regulation State—

- (a) outside the jurisdiction; and
- (b) in a Regulation State.

(2) The court may order the issue of a request to a designated court (“the requested court”) in the Regulation State in which the proposed deponent is.

(3) If the court makes an order for the issue of a request, the party who sought the order must file—

- (a) a draft Form A as set out in the annex to the Taking of Evidence Regulation (request for the taking of evidence);
- (b) subject to paragraph (4), a translation of the form;
- (c) an undertaking to be responsible for costs sought by the requested court in relation to—
 - (i) fees paid to experts and interpreters; and
 - (ii) where requested by that party, the use of special procedures or communications technology; and
- (d) an undertaking to be responsible for the court’s expenses.

(4) There is no need to file a translation if—

- (a) English is one of the official languages of the Regulation State where the examination is to take place; or
- (b) the Regulation State has indicated, in accordance with the Taking of Evidence Regulation, that English is a language which it will accept.

(5) Where article 17 of the Taking of Evidence Regulation (direct taking of evidence by the requested court) allows evidence to be taken directly in another Regulation State, the court may make an order for the submission of a request in accordance with that article.

(6) If the court makes an order for the submission of a request under paragraph (5), the party who sought the order must file—

- (a) a draft Form I as set out in the annex to the Taking of Evidence Regulation (request for direct taking of evidence);
- (b) subject to paragraph (4), a translation of the form; and
- (c) an undertaking to be responsible for the court’s expenses.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
