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STATUTORY INSTRUMENTS

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**2007 No. 1744**

**The Court of Protection Rules 2007**

**PART 15**

**EXPERTS**

**References to expert**

**119.** A reference to an expert in this Part—

- (a) is to an expert who has been instructed to give or prepare evidence for the purpose of court proceedings; but
- (b) does not include any person instructed to make a report under section 49 of the Act.

**Restriction on filing an expert's report**

**120.**—(1) No person may file expert evidence unless the court or a practice direction permits, or if it is filed with the permission form or application form and is evidence—

- (a) that P is a person who lacks capacity to make a decision or decisions in relation to the matter or matters to which the application relates;
- (b) as to P's best interests; or
- (c) that is required by any rule or practice direction to be filed with the permission form or application form.

(2) An applicant may only rely upon any expert evidence so filed in support of the permission form or application form to the extent and for the purposes that the court allows.

(Rule 64(a) requires the applicant to file any evidence upon which he wishes to rely with the application form and rule 54 requires certain documents to be filed with the application for permission form.)

**Duty to restrict expert evidence**

**121.** Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

**Experts – overriding duty to the court**

**122.** It is the duty of the expert to help the court on the matters within his expertise.

**Court's power to restrict expert evidence**

**123.**—(1) Subject to rule 120, no party may file or adduce expert evidence unless the court or a practice direction permits.

- (2) When a party applies for a direction under this rule he must—

- (a) identify the field in respect of which he wishes to rely upon expert evidence;
  - (b) where practicable, identify the expert in that field upon whose evidence he wishes to rely;
  - (c) provide any other material information about the expert; and
  - (d) provide a draft letter of instruction to the expert.
- (3) Where a direction is given under this rule, the court shall specify the field or fields in respect of which the expert evidence is to be provided.
- (4) The court may specify the person who is to provide the evidence referred to in paragraph (3).
- (5) Where a direction is given under this rule for a party to call an expert or put in evidence an expert's report, the court shall give directions for the service of the report on the parties and on such other persons as the court may direct.
- (6) The court may limit the amount of the expert's fees and expenses that the party who wishes to rely upon the expert may recover from any other party.

#### **General requirement for expert evidence to be given in a written report**

**124.** Expert evidence is to be given in a written report unless the court directs otherwise.

#### **Written questions to experts**

- 125.**—(1) A party may put written questions to—
- (a) an expert instructed by another party; or
  - (b) a single joint expert appointed under rule 130,
- about a report prepared by such person.
- (2) Written questions under paragraph (1)—
- (a) may be put once only;
  - (b) must be put within 28 days beginning with the date on which the expert's report was served; and
  - (c) must be for the purpose only of clarification of the report.
- (3) Paragraph (2) does not apply in any case where—
- (a) the court permits it to be done on a further occasion;
  - (b) the other party or parties agree; or
  - (c) any practice direction provides otherwise.
- (4) An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.
- (5) Paragraph (6) applies where—
- (a) a party has put a written question to an expert instructed by another party in accordance with this rule; and
  - (b) the expert does not answer that question.
- (6) The court may make one or both of the following orders in relation to the party who instructed the expert—
- (a) that the party may not rely upon the evidence of that expert; or
  - (b) that the party may not recover the fees and expenses of that expert, or part of them, from any other party.

(7) Unless the court otherwise directs, and subject to any final costs order that may be made, the instructing party is responsible for the payment of the expert's fees and expenses, including the expert's costs of answering questions put by any other party.

### **Contents of expert's report**

- 126.**—(1) The court may give directions as to the matters to be covered in an expert's report.
- (2) An expert's report must comply with the requirements set out in the relevant practice direction.
- (3) At the end of an expert's report there must be a statement that—
- (a) the expert understands his duty to the court; and
  - (b) he has complied with that duty.
- (4) The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.
- (5) The instructions to the expert shall not be privileged against disclosure.

### **Use by one party of expert's report disclosed by another**

**127.** Where a party has disclosed an expert's report, any party may use that expert's report as evidence at any hearing in the proceedings.

### **Discussions between experts**

- 128.**—(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to—
- (a) identify and discuss the expert issues in the proceedings; and
  - (b) where possible, reach an agreed opinion on those issues.
- (2) The court may specify the issues which the experts must discuss.
- (3) The court may direct that following a discussion between the experts they must prepare a statement for the court showing—
- (a) those issues on which they agree; and
  - (b) those issues on which they disagree and a summary of their reasons for disagreeing.
- (4) Unless the court otherwise directs, the content of the discussions between experts may be referred to at any hearing or at any stage in the proceedings.

### **Expert's right to ask court for directions**

- 129.**—(1) An expert may file a written request for directions to assist him in carrying out his function as an expert.
- (2) An expert must, unless the court directs otherwise, provide a copy of any proposed request for directions under paragraph (1)—
- (a) to the party instructing him, at least 7 days before he files the request; and
  - (b) to all other parties, at least 4 days before he files it.
- (3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

### **Court's power to direct that evidence is to be given by a single joint expert**

**130.**—(1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by one expert only.

- (2) The parties wishing to submit the expert evidence are called 'the instructing parties'.
- (3) Where the instructing parties cannot agree who should be the expert, the court may—
  - (a) select the expert from a list prepared or identified by the instructing parties; or
  - (b) direct the manner by which the expert is to be selected.

### **Instructions to a single joint expert**

**131.**—(1) Where the court gives a direction under rule 130 for a single joint expert to be used, each party may give instructions to the expert.

(2) Unless the court otherwise directs, when an instructing party gives instructions to the expert he must, at the same time, send a copy of the instructions to the other instructing parties.

- (3) The court may give directions about—
  - (a) the payment of the expert's fees and expenses; and
  - (b) any inspection, examination or experiments which the expert wishes to carry out.

(4) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expenses to the expert.

(5) Unless the court otherwise directs, and subject to any final costs order that may be made, the instructing parties are jointly and severally liable for the payment of the expert's fees and expenses.