
STATUTORY INSTRUMENTS

2017 No. 1035

The Court of Protection Rules 2017

PART 14

ADMISSIONS, EVIDENCE AND DEPOSITIONS

Evidence

Power of court to control evidence

14.2. The court may—

- (a) control the evidence by giving directions as to—
 - (i) the issues on which it requires evidence;
 - (ii) the nature of the evidence which it requires to decide those issues; and
 - (iii) the way in which the evidence is to be placed before the court;
- (b) use its power under this rule to exclude evidence that would otherwise be admissible;
- (c) allow or limit cross-examination;
- (d) admit such evidence, whether written or oral, as it thinks fit; and
- (e) admit, accept and act upon such information, whether oral or written, from P, any protected party or any person who lacks competence to give evidence, as the court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule.

Evidence of witnesses – general rule

14.3.—(1) The general rule is that any fact which needs to be proved by evidence of a witness is to be proved—

- (a) where there is a final hearing, by the witness's oral evidence; or
- (b) at any other hearing, or if there is no hearing, by the witness's evidence in writing.

(2) Where a witness is called to give oral evidence under paragraph (1)(a), the witness statement of that witness shall stand as his or her evidence in chief unless the court directs otherwise.

(3) A witness giving oral evidence at the final hearing may, if the court permits—

- (a) amplify his or her witness statement; and
- (b) give evidence in relation to new matters which have arisen since the witness statement was made.

(4) The court may so permit only if it considers that there is good reason not to confine the evidence of the witness to the contents of the witness statement.

(5) This rule is subject to—

- (a) any provision to the contrary in these Rules or elsewhere; or

- (b) any order or direction of the court.

Written evidence – general rule

14.4. A party may not rely on written evidence unless—

- (a) it has been filed in accordance with these Rules or a practice direction;
- (b) it is expressly permitted by these Rules or a practice direction; or
- (c) the court gives permission.

Evidence by video link or other means

14.5. The court may allow a witness to give evidence through a video link or by other communication technology.

Service of witness statements for use at final hearing

14.6.—(1) A witness statement is a written statement by a person which contains the evidence which that person would be allowed to give orally.

(2) The court will give directions about the service of any witness statement upon which a party intends to rely at the final hearing.

(3) The court may give directions as to the order in which witness statements are to be served.

(Rules 5.2 and 14.7 require witness statements to be verified by a statement of truth.)

Form of witness statement

14.7. A witness statement must contain a statement of truth and comply with the requirements set out in the relevant practice direction.

Witness summaries

14.8.—(1) A party who wishes to file a witness statement for use at the final hearing, but is unable to do so, may apply without notice to be permitted to file a witness summary instead.

(2) A witness summary is a summary of—

- (a) the evidence, if known, which would otherwise be included in a witness statement; or
- (b) if the evidence is not known, the matters about which the party filing the witness summary proposes to question the witness.

(3) Unless the court directs otherwise, a witness summary must include the name and address of the intended witness.

(4) Unless the court directs otherwise, a witness summary must be filed within the period in which a witness statement would have had to be filed.

(5) Where a party files a witness summary, so far as practicable, rules 14.3(3)(a) (amplifying witness statements) and 14.6 (service of witness statements for use at final hearing) shall apply to the summary.

Affidavit evidence

14.9. Evidence must be given by affidavit instead of or in addition to a witness statement if this is required by the court, a provision contained in any rule, a practice direction or any other enactment.

Form of affidavit

14.10. An affidavit must comply with the requirements set out in the relevant practice direction.

Affidavit made outside the jurisdiction

14.11. A person may make an affidavit outside the jurisdiction in accordance with—

- (a) this Part; or
- (b) the law of the place where that person makes the affidavit.

Notarial acts and instruments

14.12. A notarial act or instrument may, without further proof, be received in evidence as duly authenticated in accordance with the requirements of law unless the contrary is proved.

Summoning of witnesses

14.13.—(1) The court may allow or direct any party to issue a witness summons requiring the person named in it to attend before the court and give oral evidence or produce any document to the court.

(2) An application by a party for the issue of a witness summons may be made by filing an application notice which includes—

- (a) the name and address of the applicant and the applicant's solicitor, if any;
- (b) the name, address and occupation of the proposed witness;
- (c) particulars of any document which the proposed witness is to be required to produce; and
- (d) the grounds on which the application is made.

(3) 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, and the requirements of paragraph (6) have been complied with.

(4) 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.

(5) Unless the court directs otherwise, a witness summons is to be served by the person making the application.

(6) At the time of service the witness must be offered or paid—

- (a) a sum reasonably sufficient to cover the witness's 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.

(7) The court may order that the witness is to be paid such general costs as it considers appropriate.

Power of court to direct a party to provide information

14.14.—(1) Where a party has access to information which is not reasonably available to the other party, the court may direct that party to prepare and file a document recording that information.

(2) The court shall give directions about serving a copy of that document on the other parties.