

SCHEDULE 1

The Rules of the Supreme Court (Northern Ireland) 1980 PROVISIONS AS TO FOREIGN PROCEEDINGS

ORDER 70

OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.

Interpretation and exercise of jurisdiction

1.—(1) In this Order “the Act of 1975” means the Evidence (Proceedings in Other Jurisdictions) Act 1975(1);

“The Crown Solicitor” means the Crown Solicitor for Northern Ireland;

“The Master” means the Master (Queen's Bench and Appeals);

“The Secretary of State” means Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs.

(2) The power of the High Court to make an Order under section 2 of the Act of 1975 may be exercised by the Master.

[E.r. 1]

Application for order

2.—(1) Subject to paragraph (3) and rule 3, an application for an order under the Act of 1975 must be made ex parte and must be supported by affidavit.

(2) There shall be exhibited to the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation thereof in that language.

(3) Where on an application under section 1 of the Act of 1975 as applied by section 92 of the Patents Act 1977(2) an order is made for the examination of witnesses, the Court may allow an officer of the European Patent Office to attend the examination and examine the witnesses or request the Court or the examiner before whom the examination takes place to put specified questions to them.

[E.r. 2]

Application by Crown Solicitor in certain cases

3. Where a request—

(a) is received by the Secretary of State and sent by him to the Master with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in Northern Ireland or any party to the matter pending or contemplated before the foreign court or tribunal, or

(b) is received by the Master in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in Northern Ireland for the assistance of a court or tribunal in the foreign country. and no person is named in the document as the person who will make the necessary application on behalf of such party;

(1) 1975 c. 34

(2) 1977 c. 37

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the Master shall send the document to the Crown Solicitor and the Crown Solicitor may, with the consent of the Treasury, make an application for an order under the Act of 1975, and, take such other steps as may be necessary, to give effect to the request.

[E.r. 3]

Person to take and manner of taking examination

4. Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before such other qualified person as to the Court seems fit.

[E.r. 4]

Dealing with deposition

5. Unless any order made in pursuance of this Order for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Master and the Master shall—

- (a) give a certificate sealed with the seal of the Supreme Court for use out of the jurisdiction identifying the documents annexed thereto, that is to say, the request, the order of the Court for examination and the deposition taken in pursuance of the order; and
- (b) send the certificate with the documents annexed thereto to the Secretary of State, or, where the request was sent to the Master by some other person in accordance with a Civil Procedure Convention, to that other person, for transmission to that court or tribunal.

[E.r. 5]

Claim to privilege

6.—(1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in section 3(1)(b) of the Act of 1975 is not supported or conceded as mentioned in sub-section (2) of that section.

(2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so the Court may do so, on the ex parte application of the person who obtained the order under section 2.

(3) If such evidence is taken—

- (a) it must be contained in a document separate from the remainder of the deposition of the witness;
- (b) the examiner shall send to the Master with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;
- (c) on receipt of the statement the Master shall, notwithstanding anything in rule 5, retain the document containing the part of the witness's evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 5;
- (d) if the claim is rejected by the foreign court or tribunal, the Master shall send to that court or tribunal the document containing that part of the witness's evidence to which the claim relates, but if the claim is upheld he shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under section 2 of the court or tribunal's determination.

[E.r. 6]

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