
STATUTORY INSTRUMENTS

1998 No. 3132

The Civil Procedure Rules 1998

PART 34

[^{F1}WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS]

Textual Amendments

- F1** Pt. 34 heading substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **12(a)**

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Status: Point in time view as at 01/10/2007.

*Changes to legislation: There are currently no known outstanding effects for the
The Civil Procedure Rules 1998, PART 34. (See end of Document for details)*

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[^{F4}I WITNESSES AND DEPOSITIONS]

Textual Amendments

F4 Pt. 34 Section 1 heading inserted (2.12.2002) by virtue of [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **12(c)**

[^{F5}**Scope of this Section**

34.1.—(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 produce a document; and
 - (b) for a party to obtain evidence before a hearing to be used at the hearing.
- (2) In this Section, reference to a hearing includes a reference to the trial.]

Textual Amendments

F5 Rule 34.1 substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **12(c)**

Witness summonses

34.2.—(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 practice 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.

Commencement Information

I1 [Rule 34.2](#) in force at 26.4.1999, see [Signature](#)

Issue of a witness summons

- 34.3.**—(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—
 - (a) have a summons issued less than 7 days before the date of the trial;
 - (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 trial; or
 - (c) have a summons issued for a witness to attend court to give evidence or to produce documents at any hearing except the trial.
 - (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^(GL) or vary a witness summons issued under this rule.

Commencement Information

I2 [Rule 34.3](#) in force at 26.4.1999, see [Signature](#)

Witness summons in aid of inferior court or of tribunal

- 34.4.**—(1) The court may issue a witness summons in aid of an inferior court or of a tribunal.
- (2) The court which issued the witness summons under this rule may set it aside.
 - (3) In this rule, “inferior court or tribunal” means any court or tribunal that does not have power to issue a witness summons in relation to proceedings before it.

Commencement Information

I3 [Rule 34.4](#) in force at 26.4.1999, see [Signature](#)

Time for serving a witness summons

- 34.5.**—(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—

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- (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.

Commencement Information

I4 [Rule 34.5](#) in force at 26.4.1999, see [Signature](#)

Who is to serve a witness summons

34.6.—(1) A witness summons is to be served by the court unless the party on whose behalf it is issued indicates in writing, when he asks the court to issue the summons, that he wishes to serve it himself.

(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 34.7.

Commencement Information

I5 [Rule 34.6](#) in force at 26.4.1999, see [Signature](#)

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

34.7 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.

Commencement Information

I6 [Rule 34.7](#) in force at 26.4.1999, see [Signature](#)

Evidence by deposition

34.8.—(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;
- (b) an examiner of the court; or
- (c) such other person as the court appoints.

(Rule 34.15 makes provision for the appointment of examiners of the court)

(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 serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

(Part 32 contains the general rules about witness statements and witness summaries)

Commencement Information

I7 [Rule 34.8](#) in force at 26.4.1999, see [Signature](#)

Conduct of examination

34.9.—(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 trial.

(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 may conduct the examination in private if he considers it 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 party who obtained the order must send each of the other parties a copy of the deposition which he receives from the examiner.

Commencement Information

I8 [Rule 34.9](#) in force at 26.4.1999, see [Signature](#)

Enforcing attendance of witness

34.10.—(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.

Status: Point in time view as at 01/10/2007.

*Changes to legislation: There are currently no known outstanding effects for the
The Civil Procedure Rules 1998, PART 34. (See end of Document for details)*

Commencement Information

I9 [Rule 34.10](#) in force at 26.4.1999, see [Signature](#)

Use of deposition at a hearing

34.11.—(1) A deposition ordered under rule 34.8 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 serve notice of his intention to do so on every other party.

(3) He must serve 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.

(5) Where a deposition is given in evidence at trial, it shall be treated as if it were a witness statement for the purposes of rule 32.13 (availability of witness statements for inspection).

Commencement Information

I10 [Rule 34.11](#) in force at 26.4.1999, see [Signature](#)

Restrictions on subsequent use of deposition taken for the purpose of any hearing except the trial

34.12.—(1) Where the court orders a party to be examined about his or any other assets for the purpose of any hearing except the trial, the deposition may be used only for the purpose of the proceedings in which the order was made.

(2) However, it may be used for some other purpose—

(a) by the party who was examined;

(b) if the party who was examined agrees; or

(c) if the court gives permission.

Commencement Information

I11 [Rule 34.12](#) in force at 26.4.1999, see [Signature](#)

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

34.13.—^[F6](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 III of this Part.

(1A) 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.]

(2) 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.

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

(4) If the government of [^{F7}a] country ^{F8}... 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.

(5) 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.

(6) 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, except where paragraph (7) applies, a translation of them—
 - (i) a draft letter of request;
 - (ii) a statement of the issues relevant to the proceedings;
 - (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.

(7) 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.

Textual Amendments

F6 Rule 34.13(1)(1A) substituted for rule 34.13(1) (1.1.2004) by [The Civil Procedure \(Amendment No. 4\) Rules 2003 \(S.I. 2003/2113\)](#), rules 1(a), 7

F7 Word in rule 34.13(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **11(a)(i)**

F8 Words in rule 34.13(4) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **11(a)(ii)**

Commencement Information

I12 Rule 34.13 in force at 26.4.1999, see [Signature](#)

[^{F9}Letter of request – Proceeds of Crime Act 2002

34.13A.—(1) This rule applies where a party to existing or contemplated proceedings in—

- (a) the High Court; or
- (b) a magistrates' court,

under Part 5 of the Proceeds of Crime Act 2002 (civil recovery of the proceeds etc. of unlawful conduct) wishes to take a deposition from a person who is out of the jurisdiction.

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

(3) Paragraphs (4) to (7) of rule 34.13 shall apply irrespective of where the proposed deponent is, and rule 34.23 shall not apply in cases where the proposed deponent is in a Regulation State within the meaning of Section III of this Part.]

Status: Point in time view as at 01/10/2007.

*Changes to legislation: There are currently no known outstanding effects for the
The Civil Procedure Rules 1998, PART 34. (See end of Document for details)*

Textual Amendments

- F9** Rule 34.13A inserted (1.2.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(a), **6**

Fees and expenses of examiner [^{F10} of the court]

34.14.—[^{F11}(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.

Textual Amendments

- F10** Words in [rule 34.14](#) heading inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **11(b)(i)**
- F11** Rule 34.14(1) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **11(b)(ii)**

Commencement Information

- I13** [Rule 34.14](#) in force at 26.4.1999, see [Signature](#)

Examiners of the court

34.15.—(1) The Lord Chancellor shall appoint persons to be examiners of the court.

(2) The persons appointed shall be barristers or solicitor-advocates who have been practising for a period of not less than three years.

(3) The Lord Chancellor may revoke an appointment at any time.

Commencement Information

- I14** [Rule 34.15](#) in force at 26.4.1999, see [Signature](#)

[^{F12} II—EVIDENCE FOR FOREIGN COURTS

Textual Amendments

- F12** [Pt. 34 Section 2](#) inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rule 1(b), [Sch. 2 Pt. 2](#)

[^{F13}Scope and interpretation

34.16.—(1) This Section applies to an application for an order under the 1975 Act for evidence to be obtained, other than an application made as a result of a request by a court in [^{F14}another Regulation State].

(2) In this Section—

- (a) “the 1975 Act” means the Evidence (Proceedings in Other Jurisdictions) Act 1975; and
- (b) “Regulation State” has the same meaning as in Section III of this Part.]

Textual Amendments

F13 Rule 34.16 substituted (1.1.2004) by The Civil Procedure (Amendment No. 4) Rules 2003 (S.I. 2003/2113), rules 1(a), **8**

F14 Words in rule 34.16(1) substituted (1.6.2004) by The Civil Procedure (Amendment) Rules 2004 (S.I. 2004/1306), rules 1(a), **6**

Application for order

34.17 An application for an order under the 1975 Act for evidence to be obtained—

- (a) must be—
 - (i) made to the High Court;
 - (ii) supported by written evidence; and
 - (iii) accompanied by the request as a result of which the application is made, and where appropriate, a translation of the request into English; and
- (b) may be made without notice.

Examination

34.18.—(1) The court may order an examination to be taken before—

- (a) any fit and proper person nominated by the person applying for the order;
 - (b) an examiner of the court; or
 - (c) any other person whom the court considers suitable.
- (2) Unless the court orders otherwise—
- (a) the examination will be taken as provided by rule 34.9; and
 - (b) rule 34.10 applies.
- (3) The court may make an order under rule 34.14 for payment of the fees and expenses of the examination.

Dealing with deposition

34.19.—(1) The examiner must send the deposition of the witness to the Senior Master unless the court orders otherwise.

(2) The Senior Master will—

- (a) give a certificate sealed with the seal of the Supreme Court for use out of the jurisdiction identifying the following documents—
 - (i) the request;

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- (ii) the order of the court for examination; and
- (iii) the deposition of the witness; and
- (b) send the certificate and the documents referred to in paragraph (a) to—
 - (i) the Secretary of State; or
 - (ii) where the request was sent to the Senior Master by another person in accordance with a Civil Procedure Convention, to that other person,
 for transmission to the court or tribunal requesting the examination.

Claim to privilege

34.20.—(1) This rule applies where—

- (a) a witness claims to be exempt from giving evidence on the ground specified in section 3(1) of the 1975 Act; and
 - (b) that claim is not supported or conceded as referred to in section 3(2) of that Act.
- (2) The examiner may require the witness to give the evidence which he claims to be exempt from giving.
- (3) Where the examiner does not require the witness to give that evidence, the court may order the witness to do so.
- (4) An application for an order under paragraph (3) may be made by the person who obtained the order under section 2 of the 1975 Act.
- (5) Where such evidence is taken—
- (a) it must be contained in a document separate from the remainder of the deposition;
 - (b) the examiner will send to the Senior Master—
 - (i) the deposition; and
 - (ii) a signed statement setting out the claim to be exempt and the ground on which it was made.
- (6) On receipt of the statement referred to in paragraph (5)(b)(ii), the Senior Master will—
- (a) retain the document containing the part of the witness's evidence to which the claim to be exempt relates; and
 - (b) send the statement and a request to determine that claim to the foreign court or tribunal together with the documents referred to in rule 34.17.
- (7) The Senior Master will—
- (a) if the claim to be exempt is rejected by the foreign court or tribunal, send the document referred to in paragraph (5)(a) to that court or tribunal;
 - (b) if the claim is upheld, send the document to the witness; and
 - (c) in either case, notify the witness and person who obtained the order under section 2 of the foreign court or tribunal's decision.

Order under 1975 Act as applied by Patents Act 1977

34.21 Where an order is made for the examination of witnesses under section 1 of the 1975 Act as applied by section 92 of the Patents Act 1977 the court may permit an officer of the European Patent Office to—

- (a) attend the examination and examine the witnesses; or

- (b) request the court or the examiner before whom the examination takes place to put specified questions to them.]

[^{F15} III TAKING OF EVIDENCE—MEMBER STATES OF THE EUROPEAN UNION

Textual Amendments

F15 Pt. 34 Section 3 inserted (1.1.2004) by The Civil Procedure (Amendment No. 4) Rules 2003 (S.I. 2003/2113), rule 1(a), Sch. 1 Pt. 2

Interpretation

34.22 In this Section—

- (a) “designated court” has the meaning given in the relevant practice direction;
- (b) “Regulation State” has the same meaning as “Member State” in the Taking of Evidence Regulation, that is all Member States except Denmark;
- (c) “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.

(The Taking of Evidence Regulation is annexed to the relevant practice direction)

Where a person to be examined is in another Regulation State

34.23.—(1) [^{F16}Subject to rule 34.13A, this] rule applies where a party wishes to take a deposition from a person [^{F17}who is in another 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) except where paragraph (4) applies, 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—

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Changes to legislation: There are currently no known outstanding effects for the
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- (a) a draft Form I as set out in the annex to the Taking of Evidence Regulation (request for direct taking of evidence);
- (b) except where paragraph (4) applies, a translation of the form; and
- (c) an undertaking to be responsible for the court's expenses.

Textual Amendments

- F16** Words in rule 34.23(1) substituted (1.2.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(a), 7
- F17** Words in rule 34.23(1) substituted (1.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(a), 7

Evidence for courts of other Regulation States

34.24.—(1) This rule applies where a court in another Regulation State (“the requesting court”) issues a request for evidence to be taken from a person who is in the jurisdiction.

- (2) An application for an order for evidence to be taken—
 - (a) must be made to a designated court;
 - (b) must be accompanied by—
 - (i) the form of request for the taking of evidence as a result of which the application is made; and
 - (ii) where appropriate, a translation of the form of request; and
 - (c) may be made without notice.
- (3) Rule 34.18(1) and (2) apply.
- (4) The examiner must send—
 - (a) the deposition to the court for transmission to the requesting court; and
 - (b) a copy of the deposition to the person who obtained the order for evidence to be taken.]

Status:

Point in time view as at 01/10/2007.

Changes to legislation:

There are currently no known outstanding effects for the The Civil Procedure Rules 1998, PART 34.