

## SCHEDULE 1

### RSC ORDER 70

#### OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.

##### **Interpretation and exercise of jurisdiction**

**Rule 1.**—(1) In this Order “the Act of 1975” means the Evidence (Proceedings in Other Jurisdictions) Act 1975(1) and expressions used in this Order which are used in that Act shall have the same meaning as in that Act.

(2) The power of the High Court to make an order under section 2 of the Act of 1975 may be exercised by a master of the Queen’s Bench Division.

##### **Application for order**

**Rule 2.**—(1) Subject to paragraph (3) and rule 3 an application for an order under the Act of 1975 must be made without notice being served on any other party and must be supported by witness statement or affidavit.

(2) There shall be exhibited to the witness statement or 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.

##### **Application by Treasury Solicitor in certain cases**

**Rule 3.** Where a request

- (a) is received by the Secretary of State and sent by him to the Senior 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 England of any party to the matter pending or contemplated before the foreign court or tribunal; or
- (b) is received by the Senior Master in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in England or Wales 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,

the Senior Master shall send the document to the Treasury Solicitor and the Treasury 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.

##### **Person to take and manner of taking examination**

**Rule 4.**—(1) 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 an examiner of the Court or before such other qualified person as to the Court seems fit.

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(1) 1975 c. 34.

(2) 1977 c. 37.

*Status: This is the original version (as it was originally made).*

(2) Subject to rule 6 and to any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in manner provided by CPR rules 34.9 and 34.10 and an order may be made under CPR rule 34.14, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.

### **Dealing with deposition**

**Rule 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 Senior Master, and the Senior 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 Senior Master by some other person in accordance with a Civil Procedure Convention to that other person, for transmission to the court or tribunal out of the jurisdiction requesting the examination.

### **Claim to privilege**

**Rule 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 subsection (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 application without notice being served on any other party 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 Senior 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 Senior Master shall, notwithstanding anything in rule 5, retain the document containing the part of the witness' 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 Senior Master shall send to that court or tribunal the document containing that part of the witness' 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.