

SCHEDULE 2

PART II

II—EVIDENCE FOR FOREIGN COURTS

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)(b) 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.