

SCHEDULE 2

PART II

II—EVIDENCE FOR FOREIGN COURTS

Interpretation

34.16 In this Part “the 1975 Act” means the Evidence (Proceedings in Other Jurisdictions) Act 1975(1).

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;
 - (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—

(1) 1975 c. 34.

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- (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)(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.

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(2) 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.

(2) 1977 c. 37.

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