
STATUTORY INSTRUMENTS

2017 No. 1035

The Court of Protection Rules 2017

PART 14

ADMISSIONS, EVIDENCE AND DEPOSITIONS

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Admissions

Making an admission

14.1.—(1) Without prejudice to the ability to make an admission in any other way, a party may admit the truth of the whole or part of another party’s case by giving notice in writing.

(2) The court may allow a party to amend or withdraw an admission.

Evidence

Power of court to control evidence

14.2. The court may—

- (a) control the evidence by giving directions as to—
 - (i) the issues on which it requires evidence;
 - (ii) the nature of the evidence which it requires to decide those issues; and
 - (iii) the way in which the evidence is to be placed before the court;
- (b) use its power under this rule to exclude evidence that would otherwise be admissible;
- (c) allow or limit cross-examination;
- (d) admit such evidence, whether written or oral, as it thinks fit; and
- (e) admit, accept and act upon such information, whether oral or written, from P, any protected party or any person who lacks competence to give evidence, as the court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule.

Evidence of witnesses – general rule

14.3.—(1) The general rule is that any fact which needs to be proved by evidence of a witness is to be proved—

- (a) where there is a final hearing, by the witness’s oral evidence; or
- (b) at any other hearing, or if there is no hearing, by the witness’s evidence in writing.

(2) Where a witness is called to give oral evidence under paragraph (1)(a), the witness statement of that witness shall stand as his or her evidence in chief unless the court directs otherwise.

- (3) A witness giving oral evidence at the final hearing may, if the court permits—
 - (a) amplify his or her witness statement; and
 - (b) give evidence in relation to new matters which have arisen since the witness statement was made.
- (4) The court may so permit only if it considers that there is good reason not to confine the evidence of the witness to the contents of the witness statement.
- (5) This rule is subject to—
 - (a) any provision to the contrary in these Rules or elsewhere; or
 - (b) any order or direction of the court.

Written evidence – general rule

- 14.4.** A party may not rely on written evidence unless—
- (a) it has been filed in accordance with these Rules or a practice direction;
 - (b) it is expressly permitted by these Rules or a practice direction; or
 - (c) the court gives permission.

Evidence by video link or other means

14.5. The court may allow a witness to give evidence through a video link or by other communication technology.

Service of witness statements for use at final hearing

14.6.—(1) A witness statement is a written statement by a person which contains the evidence which that person would be allowed to give orally.

(2) The court will give directions about the service of any witness statement upon which a party intends to rely at the final hearing.

(3) The court may give directions as to the order in which witness statements are to be served.

(Rules 5.2 and 14.7 require witness statements to be verified by a statement of truth.)

Form of witness statement

14.7. A witness statement must contain a statement of truth and comply with the requirements set out in the relevant practice direction.

Witness summaries

14.8.—(1) A party who wishes to file a witness statement for use at the final hearing, but is unable to do so, may apply without notice to be permitted to file a witness summary instead.

(2) A witness summary is a summary of—

- (a) the evidence, if known, which would otherwise be included in a witness statement; or
- (b) if the evidence is not known, the matters about which the party filing the witness summary proposes to question the witness.

(3) Unless the court directs otherwise, a witness summary must include the name and address of the intended witness.

(4) Unless the court directs otherwise, a witness summary must be filed within the period in which a witness statement would have had to be filed.

(5) Where a party files a witness summary, so far as practicable, rules 14.3(3)(a) (amplifying witness statements) and 14.6 (service of witness statements for use at final hearing) shall apply to the summary.

Affidavit evidence

14.9. Evidence must be given by affidavit instead of or in addition to a witness statement if this is required by the court, a provision contained in any rule, a practice direction or any other enactment.

Form of affidavit

14.10. An affidavit must comply with the requirements set out in the relevant practice direction.

Affidavit made outside the jurisdiction

14.11. A person may make an affidavit outside the jurisdiction in accordance with—

- (a) this Part; or
- (b) the law of the place where that person makes the affidavit.

Notarial acts and instruments

14.12. A notarial act or instrument may, without further proof, be received in evidence as duly authenticated in accordance with the requirements of law unless the contrary is proved.

Summoning of witnesses

14.13.—(1) The court may allow or direct any party to issue a witness summons requiring the person named in it to attend before the court and give oral evidence or produce any document to the court.

(2) An application by a party for the issue of a witness summons may be made by filing an application notice which includes—

- (a) the name and address of the applicant and the applicant’s solicitor, if any;
- (b) the name, address and occupation of the proposed witness;
- (c) particulars of any document which the proposed witness is to be required to produce; and
- (d) the grounds on which the application is made.

(3) 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, and the requirements of paragraph (6) have been complied with.

(4) 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.

(5) Unless the court directs otherwise, a witness summons is to be served by the person making the application.

(6) At the time of service the witness must be offered or paid—

- (a) a sum reasonably sufficient to cover the witness’s 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.

(7) The court may order that the witness is to be paid such general costs as it considers appropriate.

Power of court to direct a party to provide information

14.14.—(1) Where a party has access to information which is not reasonably available to the other party, the court may direct that party to prepare and file a document recording that information.

(2) The court shall give directions about serving a copy of that document on the other parties.

Depositions

Evidence by deposition

14.15.—(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 circuit judge or a district judge, whether or not nominated as a judge of the court;
- (b) an examiner of the court; or
- (c) such other person as the court appoints.

(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 will 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 the deponent’s 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 file a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

Conduct of examination

14.16.—(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 final hearing.

(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 must ensure that the evidence given by the witness is recorded in full.

(4) 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.

(5) The court shall give directions as to the service of a copy of the deposition on the other parties.

Fees and expenses of examiners of the court

14.17.—(1) An examiner of the court may charge a fee for the examination and need not send the deposition to the court until the fee is paid, unless the court directs otherwise.

(2) The examiner's fees and expenses must be paid by the party who obtained the order for examination.

(3) If the fees and expenses due to an examiner are not paid within a reasonable time, the examiner may report that fact to the court.

(4) 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 shall not be asked to act until the sum has been deposited.

(5) An order under this rule does not affect any decision as to the person who is ultimately to bear the costs of the examination.

Examiners of the court

14.18.—(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 3 years.

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

(4) In addition to persons appointed in accordance with this rule, examiners appointed under rule 34.15 of the Civil Procedure Rules 1998 may act as examiners in the court.

Enforcing attendance of a witness

14.19.—(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 that person's 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 sought or made under this rule to pay any costs resulting from that person's failure or refusal.

Use of deposition at a hearing

14.20.—(1) A deposition ordered under rule 14.15, 14.22 or 14.23 may be put in evidence at a hearing unless the court orders otherwise.

(2) A party intending to put a deposition in evidence at a hearing must file notice of intention to do so on the court and serve the notice on every other party.

(3) Unless the court directs otherwise, that party must file the notice at least 14 days before the day fixed for the hearing.

(4) The court may require a deponent to attend the hearing and give evidence orally.

Taking evidence outside the jurisdiction

Interpretation

14.21. In this rule and rules 14.22 and 14.23—

- (a) “Regulation State” has the same meaning as “Member State” in the Taking of Evidence Regulation, that is, all Member States except Denmark; and
- (b) “the Taking of Evidence Regulation” means Council Regulation (EC) No. 1206/2001 of 28 May 2001 on co-operation between the courts of Member States in the taking of evidence in civil and commercial matters⁽¹⁾.

Where a person to be examined is in another Regulation State

14.22.—(1) This rule applies where a party wishes to take a deposition from a person who is—

- (a) outside the jurisdiction; and
- (b) in a Regulation State.

(2) The court may order the issue of the 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 the 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 procedure 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—

- (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 requested court’s expenses.

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

14.23.—(1) This rule applies where a party wishes to take a deposition from a person who is—

(1) O.J. No. L 174/1, 27.6.2001.

- (a) out of the jurisdiction; and
 - (b) not in a Regulation State within the meaning of rule 14.21.
- (2) The court may order the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.
- (3) 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.
- (4) If the government of a country permits a person appointed by the court to examine a person in that country, the 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 in accordance with any procedure permitted in the country in which the examination is to take place.
- (6) If the 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; and
 - (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.

Section 49 reports

Reports under section 49 of the Act

- 14.24.**—(1) This rule applies where the court requires a report to be made to it under section 49 of the Act.
- (2) It is the duty of the person who is required to make the report to help the court on the matters within that person's expertise.
- (3) Unless the court directs otherwise, the person making the report must—
- (a) contact or seek to interview such persons as the person making the report thinks appropriate or as the court directs;
 - (b) to the extent that it is practicable and appropriate to do so, ascertain what P's wishes and feelings are, and the beliefs and values that would be likely to influence P if P had the capacity to make a decision in relation to the matters to which the application relates;
 - (c) describe P's circumstances; and
 - (d) address such other matters as are required in a practice direction or as the court may direct.
- (4) The court will send a copy of the report to the parties and to such persons as the court may direct.
- (5) Subject to paragraphs (6) and (7), the person who is required to make the report may examine and take copies of any documents in the court records.

(6) The court may direct that the right to inspect documents under this rule does not apply in relation to such documents, or descriptions of documents, as the court may specify.

(7) The court may direct that any information is to be provided to the maker of the report on an edited basis.

Written questions to person making a report under section 49

14.25.—(1) Where a report is made under section 49 the court may, on the application of any party, permit written questions relevant to the issues before the court to be put to the person by whom the report was made.

(2) The questions sought to be put to the maker of the report shall be submitted to the court, and the court may put them to the maker of the report with such amendments (if any) as it thinks fit and the maker of the report shall give replies in writing to the questions so put.

(3) The court shall send a copy of the replies given by the maker of the report under this rule to the parties and to such other persons as the court may direct.