
STATUTORY INSTRUMENTS

2007 No. 1744

The Court of Protection Rules 2007

PART 14

ADMISSIONS, EVIDENCE AND DEPOSITIONS

Taking evidence outside the jurisdiction

Interpretation

114. In this Section—

- (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⁽¹⁾ of 28 May 2001 on co-operation between the courts of Member States in the taking of evidence in civil and commercial matters.

Where a person to be examined is in another Regulation State

115.—(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

⁽¹⁾ OJ No. L 174/1 27.6.2001.

(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) 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

116.—(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 rule 114.

(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 is a country where no translation is necessary.