

PRACTICE DIRECTION 14B – DEPOSITIONS

This practice direction supplements Part 14 of the Court of Protection Rules 2017

Depositions to be taken in England and Wales

1. A party may apply for an order for a person to be examined on oath before—
 - (a) a judge;
 - (b) an examiner of the court; or
 - (c) such other person as the court may appoint.¹
2. The party who obtains an order for the examination of a deponent before an examiner of the court must—
 - (a) apply to the court for the allocation of an examiner;
 - (b) when allocated, provide the examiner with copies of all documents in the proceedings necessary to inform the examiner of the issues; and
 - (c) pay the deponent a sum to cover his or her travelling expenses to and from the examination and compensation for his or her loss of time.
3. In ensuring that the deponent's evidence is recorded in full, the court or the examiner may permit it to be recorded in full on audiotape or videotape, but the deposition must always be recorded in writing by the examiner or by a competent shorthand writer or stenographer.
4. If the deposition is not recorded word for word, it must contain, as nearly as may be, the statement of the deponent. The examiner may record word for word any particular questions or answers which appear to the examiner to have special importance.
5. If a deponent objects to answering any question or where any objection is taken to any question, the examiner must—
 - (a) record in the deposition or a document attached to it—
 - (i) the question,
 - (ii) the nature of and grounds for the objection, and
 - (iii) any answer given; and
 - (b) give his or her opinion as to the validity of the objection and must record it in the deposition or a document attached to it.
6. Documents and exhibits must—
 - (a) have an identifying number or letter marked on them by the examiner; and
 - (b) be preserved by the party or the party's legal representative who obtained the order for the examination, or as the court or the examiner may direct.
7. The examiner may put any question to the deponent as to—

¹ Rule 14.15

- (a) the meaning of any of the deponent's answers; or
- (b) any matter arising in the course of the examination.

8. Where a deponent—

- (a) fails to attend the examination; or
- (b) refuses to—
 - (i) be sworn, or
 - (ii) answer any lawful question, or
 - (iii) produce any document,

the examiner will sign a certificate of such failure or refusal and may include in the certificate any comment as to the conduct of the deponent or of any person attending the examination.

9. The party who obtained the order for the examination must file the certificate with the court and may apply for an order that the deponent attend for examination or such other order as he or she considers appropriate.² The application must be made by filing a COP9 application notice, and may be made without notice.

10. The court will make such order on the application as it thinks fit including an order for the deponent to pay any costs resulting from the deponent's failure or refusal.

11. A deponent who wilfully refuses to obey an order made against him or her under Part 14 may be proceeded against for contempt of court.

12. A deposition must—

- (a) be signed by the examiner;
- (b) have any amendments to it initialled by the examiner and the deponent; and
- (c) be endorsed by the examiner with:
 - (i) a statement of the time occupied by the examination; and
 - (ii) a record of any refusal by the deponent to sign the deposition and of the deponent's reasons for not doing so; and
- (d) be sent by the examiner to the court where the proceedings are taking place for filing on the court file.

13. Rule 14.17 deals with the fees and expenses of the examiner.

² Rule 14.19

Travelling expenses and compensation for loss of time

14. When a deponent is served with an order for examination the deponent must be offered a sum to cover his or her travelling expenses to and from the examination and compensation for his or her loss of time.³

15. The sum referred to in paragraph 14 is to be based on the sums payable to witnesses attending the Crown Court.⁴

Depositions to be taken abroad for use as evidence in proceedings before courts in England and Wales (where the Taking of Evidence Regulation does not apply)

16. Where a party wishes to take a deposition from a person outside the jurisdiction, the court may order the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.⁵

17. An application for an order referred to in paragraph 16 should be made by filing a COP9 application notice in accordance with Part 10. The documents which a party applying for an order for the issue of a letter of request must file with his application notice are set out in rule 14.23.

18. In addition, the party applying for the order must file a draft order.

19. The application will be dealt with by the Senior Judge or the Senior Judge's nominee who will, if appropriate, sign the letter of request.

20. If parties are in doubt as to whether a translation under rule 14.23(7) is required, they should seek guidance from the court office.

21. A special examiner appointed under rule 14.23(4) may be the British Consul or the Consul-General or his or her deputy in the country where the evidence is to be taken—

(a) if there is in respect of that country a Civil Procedure Convention providing for the taking of evidence in that country for the assistance of proceedings in the High Court or other court in this country; or

(b) with the consent of the Secretary of State.

22. The provisions of paragraphs 1 to 12 above apply to the depositions referred to in paragraphs 16 to 22.

Taking of evidence between EU Member States

Taking of Evidence Regulation

23. Where evidence is to be taken—

³ Rule 14.15(6)

⁴ These sums are fixed pursuant to the Prosecution of Offenders Act 1985 and the Costs in Criminal Cases (General) Regulations 1986.

⁵ Rule 14.23

- (a) from a person in another Member State of the European Union for use as evidence in proceedings before courts in England and Wales; or
- (b) from a person in England and Wales for use as evidence in proceedings before a court in another Member State,

Council Regulation (EC) No 1206/2001 of 28 May 2001 on co-operation between the courts of the Member States in the taking of evidence in civil or commercial matters ('the Taking of Evidence Regulation') applies.

24. The website link to the Taking of Evidence Regulation is annexed to this Practice Direction as Annex B.

25. The Taking of Evidence Regulation does not apply to Denmark. In relation to Denmark, therefore, rule 14.23 will continue to apply.

(Article 21(1) of the Taking of Evidence Regulation provides that the Regulation prevails over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States and in particular the Hague Convention of 1 March 1954 on Civil Procedure and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.)

Meaning of 'designated court'

26. In accordance with the Taking of Evidence Regulation, each Regulation State has prepared a list of courts competent to take evidence in accordance with the Regulation indicating the territorial and, where appropriate, special jurisdiction of those courts.

27. Where rule 14.22 refers to a 'designated court' in relation to another Regulation State, the reference is to the court, referred to in the list of competent courts of that State, which is appropriate to the application in hand.

Evidence to be taken in another Regulation State for use in England and Wales

28. Where a person wishes to take a deposition from a person in another Regulation State, the court where the proceedings are taking place may order the issue of a request as is prescribed as Form A in the Taking of Evidence Regulation.

29. An application to the court for an order under rule 14.22 should be made by filing a COP9 application notice in accordance with Part 10.

30. Rule 14.22 provides that the party applying for the order must file a draft form of request in the prescribed form. Where completion of the form requires attachments or documents to accompany the form, these must also be filed.

31. If the court grants an order under rule 14.22, it will send the form of request directly to the designated court.

32. Where the taking of evidence requires the use of an expert, the designated court may require a deposit in advance towards the costs of that expert. Subject to any final order in relation to costs, the party who obtained the order is responsible for the payment of any such deposit which should be deposited with the court for onward transmission. Under the

provisions of the Taking of Evidence Regulation, the designated court is not required to execute the request until such payment is received.

33. Article 17 permits the court where proceedings are taking place to take evidence directly from a deponent in another Regulation State if the conditions of the article are satisfied. Direct taking of evidence can only take place if evidence is given voluntarily without the need for coercive measures. Rule 14.22 provides for the court to make an order for the submission of a request to take evidence directly. The form of request is Form I annexed to the Taking of Evidence Regulation and rule 14.22 makes provision for a draft of this form to be filed by the party seeking the order.

An application for an order under rule 14.22 should be by filing a COP9 application notice in accordance with Part 10.

ANNEX A

Draft letter of request (where the Taking of Evidence Regulation does not apply)

To the Competent Judicial Authority of _____ in _____ the
of _____

I [*name*] Senior Judge of the Court of Protection of England and Wales respectfully request the assistance of your court with regard to the following matters.

1. An application is now pending in the Court of Protection in England and Wales entitled as follows [*set out full title and case number*] in which [*name*] of [*address*] is the applicant and [*name*] of [*address*] is the respondent.

2. The names and addresses of the representatives or agents of [*set out names and addresses of representatives of the parties*].

3. The application by the applicant is for—

(a) [*set out the nature of the application*]

(b) [*the order sought, and*]

(c) [*a summary of the facts.*]

4. It is necessary for the purposes of justice and for the due determination of the matter in dispute between the parties that you cause the following witnesses, who are resident within your jurisdiction, to be examined. The names and addresses of the witnesses are as follows: [*set out names and addresses of witnesses*]

5 The witnesses should be examined on oath or if that is not possible within your laws or is impossible of performance by reason of the internal practice and procedure of your court or by reason of practical difficulties, they should be examined in accordance with whatever procedure your laws provide for in these matters.

6 Either

The witness should be examined in accordance with the list of questions annexed hereto.

Or

The witness should be examined regarding [*set out full details of evidence sought*].

N.B. Where the witness is required to produce documents, these should be clearly identified.

7. I would ask that you cause me, or the agents of the parties (if appointed), to be informed of the date and place where the examination is to take place.

8. Finally, I request that you will cause the evidence of the said witness to be reduced into writing and all documents produced on such examinations to be duly marked for identification and that you will further be pleased to authenticate such examinations by the seal of your court or in such other way as is in accordance with your procedure and return the written evidence and documents produced to me addressed as follows—

The Senior Judge,
Court of Protection,
First Avenue House,
42—49 High Holborn,
London WC1V 6NP
(DX 160013 Kingsway)

ANNEX B

Council Regulation (EC) NO 1206/2001

This regulation can be found on the EU legislation website at <http://eur-lex.europa.eu>.