



STATUTORY INSTRUMENTS.

S.I. No. 302 of 2013

CIRCUIT COURT RULES (TAKING OF EVIDENCE FOR EU COURTS)
2013

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We, the Circuit Court Rules Committee, constituted pursuant to the provisions of section 69 of the Courts of Justice Act 1936, by virtue of the powers conferred on us by section 66 of the Courts of Justice Act 1924 and section 70 of the Courts of Justice Act 1936, (as applied by section 48 of the Courts (Supplemental Provisions) Act 1961) and section 27 of the Courts (Supplemental Provisions) Act 1961 and the European Communities (Rules of Court) Regulations 1972 (S.I. No. 320 of 1972), and of all other powers enabling us in this behalf, do hereby, with the concurrence of the Minister for Justice and Equality, make the annexed Rules of Court.

Dated this 13th day of May 2013.

(Signed): Raymond Groarke
(Chairman of the Circuit Court Rules Committee)

Alison Lindsay
Tony Hunt
Dervla Browne
Gerard J. Doherty
Fiona Duffy
Noel Rubotham
Patricia Casey

I concur in the making of the above Rules of Court.

Dated this 26th day of July 2013.

Signed: ALAN SHATTER,
Minister for Justice and Equality.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 6th August, 2013.*

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1. (1) These Rules, which shall come into operation on the 26th day of August 2013, may be cited as the Circuit Court Rules (Taking of Evidence for EU Courts) 2013.

(2) These Rules shall be construed together with the Circuit Court Rules.

(3) The Circuit Court Rules as amended by these Rules may be cited as the Circuit Court Rules 2001 to 2013.

2. The Circuit Court Rules are amended by the insertion immediately following Order 23 of the following:

“Order 23A

Taking of Evidence for EU Courts

1. In this Order, unless the context otherwise requires:

“County Registrar” means, in accordance with the Regulations—

- (a) the county registrar for the county or county borough in which the witness from whom evidence is to be taken resides, or carries on any profession, trade, business or other occupation;
- (b) in the circumstances specified in regulation 3(3) of the Regulations, such county registrar as may be designated by the Chief Executive of the Courts Service or by such member of staff of the Courts Service as he or she may authorise in that behalf;

the “Regulation” means Council Regulation (EC) No 1206/2001 of 28 May 2001 on the cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters;

the “Regulations” means the European Communities (Evidence in Civil or Commercial Matters) Regulations 2013 (S.I. No. 126 of 2013);

“request” means a request made by a requesting court pursuant to Article 1.1(a) of the Regulation;

“requesting court” has the same meaning as in the Regulation.

2. Where a request is received from a requesting court, the County Registrar shall transmit to the requesting court an acknowledgement of receipt in Form B in the Annex to the Regulation and in accordance with Article 7 of the Regulation, which receipt shall note any non-compliance with any requirement of Article 5 or Article 6 of the Regulation.

3. The County Registrar shall, within the time specified in Article 8 of the Regulation, request the requesting court in Form C in the Annex to the Regulation and in accordance with Article 8 of the Regulation to provide any information missing from the request and, in a case in which Article 18.3 of the Regulation applies, shall request the requesting court to provide any deposit or advance required.

4. For the purpose of determining whether any deposit or advance ought to be sought in accordance with Article 18.3 of the Regulation, the County Registrar may request any expert whose evidence is sought to provide an estimate of the cost likely to be incurred in the preparation and giving of such evidence or may make such other inquiries as to likely costs or expenses as the County Registrar considers appropriate. The amount fixed by way of deposit or advance for the purposes of Article 18.3 of the Regulation shall be in the discretion of the County Registrar and the County Registrar may fix and request the payment of any further deposit or advance in connection with the same request from time to time.

5. Where the execution of the request falls to be refused on one of the grounds set out in Article 14.2 of the Regulation, the County Registrar shall, within the time specified in Article 14.4 of the Regulation, so notify the requesting court in Form H in the Annex to the Regulation and in accordance with Article 14.4 of the Regulation.

6. For the purpose of executing any request, the County Registrar may, if he or she is satisfied that the request is not a request referred to in Article 14.2 of the Regulation, and without any application in that regard by or on behalf of the requesting court (other than in any written form(s) submitted by the requesting court in accordance with the Regulation):

- (a) subject to rule 7, make any order for the attendance before him or her of any person or persons (hereafter in this Order referred to as a “witness”) at a place (including a place outside the County) and time specified in such order for the purpose of the examination of such witness upon oath in accordance with the practice of the Court before the County Registrar, and may issue a witness summons addressed to any witness for the purpose of securing his or her attendance;
- (b) communicate or correspond with any witness and any requesting court in such form as the County Registrar shall see fit for the purpose of fixing the time and place referred to in paragraph (a);
- (c) make any order, where relevant, for the production by any person or persons at a place (including a place outside the County) and time specified in such order before the County Registrar, or before some other officer of the Court or other person nominated by the County Registrar for that purpose, of any document or object referred to in the order;

- (d) make any order authorising the direct transmission of the evidence given by any witness on the taking of the evidence of such witness to the requesting court by videoconference, teleconference or other means specified in such order, and may make such arrangements as seem appropriate to facilitate such transmission;
- (e) make any order authorising the participation in the taking of the evidence of the parties to the proceedings pending before the requesting court and/or the legal representatives of such parties and/or any representatives of the requesting court identified in any such order, on such terms as shall seem appropriate;
- (f) where the parties to the proceedings pending before the requesting court and/or their legal representatives will not be present at the taking of the evidence, request the requesting court to provide copies of any pleadings or other relevant documents submitted to it in connection with the proceedings so as to inform the person regulating the taking of the evidence of the questions or matters at issue between the parties;
- (g) adjourn the taking of the evidence from time to time and/or from place to place as shall seem appropriate;
- (h) make any order as seems appropriate in relation to the preparation of a record (within the meaning of Order 67A) of the evidence given by any witness in any such examination, and may make such arrangements as seem appropriate to facilitate the preparation of such a record;
- (i) require the requesting court to reimburse the fees paid to any expert(s) or interpreter(s) and/or any costs occasioned by the application of Article 10(3) and/or 10(4) of the Regulation, and/or
- (j) from time to time submit completed to the requesting court such forms in the Annex to the Regulation as are appropriate to the circumstances of the request.

7. Where the requesting court calls for the request to be executed in accordance with a special procedure under Article 10(3) of the Regulation, and the County Registrar is required to comply with that request by virtue of Article 10(3) of the Regulation, the County Registrar may include in any order for the attendance before him or her of any witness any special directions authorising the examination of such witness in accordance with such procedure.

8. (1) Any order of the County Registrar made or witness summons issued under this rule shall be in writing and shall be served upon any and every witness to whom such order relates not later than seven days before the time fixed for the taking of the evidence in the manner prescribed by section 7 of the Courts Act 1964, provided that the County Registrar may direct that any order be served upon any witness to whom such order relates

personally or by some other means directed by the County Registrar in substitution for, or in addition to, such service.

(2) On the service of any order made or witness summons issued in accordance with this Order, there shall be given or offered to each expert witness served such sum out of any deposit or advance as the County Registrar specifies by way of advance against the cost (if any) or expenses likely to be incurred by the witness in preparing his evidence, attending and giving evidence.

9. (1) Save where otherwise provided in any special directions, and where the parties or their legal representatives are present at the taking of the evidence, the witness shall be examined by the party on whose application the request for the evidence of the witness concerned was issued, cross-examined by the other party or parties, and re-examined by the party on whose application the request for the evidence of the witness concerned was issued.

(2) The County Registrar may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination, but the County Registrar shall not have power to decide upon the materiality or relevance of any question.

10. (1) Where any witness at a taking of evidence claims a right not to give any evidence or, being sworn, claims a right not to answer any question or to be prohibited from giving any evidence or answering any question, the procedure in this rule shall apply.

(2) Where the witness claims that he or she has a right under the law of the requesting state not to give any evidence or, being sworn, claims a right not to answer any question or to be prohibited from giving any evidence or answering any question, the County Registrar may request the requesting court to confirm the existence of the right claimed under its law and/or direct that the claim be recorded in the record of the taking of the evidence.

(3) The County Registrar may seek the direction of the Court on any issue arising on the taking of the evidence and the Court may, for that purpose, direct that any person or persons be put on notice by the County Registrar of any hearing before the Court.

11. Unless otherwise provided in any order of the County Registrar, the County Registrar shall, on the completion of the taking of the evidence, invite the witness to authenticate any record of the taking of the evidence in such manner as the County Registrar shall direct and the County Registrar shall authenticate such record and forward the record to the requesting court together with the confirmation in Form H in the Annex to the Regulation and in accordance with Article 16 of the Regulation.

12. Where any person, having been duly ordered or summoned to attend, fails to attend for the purpose of the taking of evidence or for the purpose of producing any document or having attended refuses without lawful

excuse to be sworn or to make an affirmation or refuses without lawful excuse to produce any document or does any act or fails to do any act which if done in a competent court for the purpose of the Regulation would be deemed to be contempt of court the County Registrar shall:

- (a) certify the circumstances to the Court;
- (b) cause the request to be listed before the Judge at any venue on the Circuit where the County Registrar is executing such request;

and the Court, if satisfied that:

- (i) such person has been duly ordered or summoned to attend,
- (ii) where relevant, that the person's refusal to be sworn, to make an affirmation or to produce any document was without lawful excuse,
- (iii) where relevant, the person's act or failure if done in a competent court for the purpose of the Regulation would be deemed to be contempt of court,

may attach him for contempt, and deal with him in the manner provided in Order 24, rules 6 and 7."

EXPLANATORY NOTE

(This does not form part of the Instrument and does not purport to be a legal interpretation.)

These Rules amend the Circuit Court Rules by the insertion of a new Order 23A to regulate the procedure for the taking of evidence by County Registrars pursuant to the European Communities (Evidence in Civil or Commercial Matters) Regulations 2013 (S.I. No. 126 of 2013).

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