

MISCELLANEOUS RULES ABOUT EVIDENCE

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23.1 Scope and interpretation of this Part

Rules 23.2 to 23.6 apply to evidence to which the Children (Admissibility of Hearsay Evidence) Order 1993¹ does not apply.

23.2 Notice of intention to rely on hearsay evidence

- (1) Where a party intends to rely on hearsay evidence at the final hearing and either –
 - (a) that evidence is to be given by a witness giving oral evidence; or
 - (b) that evidence is contained in a witness statement of a person who is not being called to give oral evidence,
that party complies with section 2(1)(a) of the Civil Evidence Act 1995² by serving a witness statement on the other parties in accordance with the court's directions.
- (2) Where paragraph (1)(b) applies, the party intending to rely on the hearsay evidence must, when serving the witness statement –
 - (a) inform the other parties that the witness is not being called to give oral evidence; and
 - (b) give the reason why the witness will not be called.
- (3) In all other cases where a party intends to rely on hearsay evidence at the final hearing, that party complies with section 2(1)(a) of the Civil Evidence Act 1995 by serving a notice on the other parties which –
 - (a) identifies the hearsay evidence;
 - (b) states that the party serving the notice proposes to rely on the hearsay evidence at the final hearing; and
 - (c) gives the reason why the witness will not be called.
- (4) The party proposing to rely on the hearsay evidence must –

¹ S.I. 1993/621.

² 1995 c.38.

- (a) serve the notice no later than the latest date for serving witness statements; and
- (b) if the hearsay evidence is to be in a document, supply a copy to any party who requests it.

23.3 Circumstances in which notice of intention to rely on hearsay evidence is not required

Section 2(1) of the Civil Evidence Act 1995 (duty to give notice of intention to rely on hearsay evidence) does not apply –

- (a) to evidence at hearings other than final hearings;
- (b) to an affidavit^(GL) or witness statement which is to be used at the final hearing but which does not contain hearsay evidence; or
- (c) where the requirement is excluded by a practice direction.

23.4 Power to call witness for cross-examination on hearsay evidence

- (1) Where a party –
 - (a) proposes to rely on hearsay evidence; and
 - (b) does not propose to call the person who made the original statement to give oral evidence, the court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined^(GL) on the contents of the statement.
- (2) An application for permission to cross-examine^(GL) under this rule must be made within 14 days beginning with the date on which a notice of intention to rely on the hearsay evidence was served on the applicant.

(Rules 35.3 and 35.4 contain rules in relation to evidence arising out of mediation of cross-border disputes.)

23.5 Credibility

- (1) Where a party proposes to rely on hearsay evidence, but –
 - (a) does not propose to call the person who made the original statement to give oral evidence; and
 - (b) another party wishes to call evidence to attack the credibility of the person who made the statement,
the party who so wishes must give notice of that intention to the party who proposes to give the hearsay statement in evidence.
- (2) A party must give notice under paragraph (1) within 14 days after the date on which a hearsay notice relating to the hearsay evidence was served on that party.

23.6 Use of plans, photographs and models etc as evidence

- (1) This rule applies to –
 - (a) evidence (such as a plan, photograph or model) which is not –
 - (i) contained in a witness statement, affidavit^(GL) or expert's report;
 - (ii) to be given orally at the final hearing; or
 - (iii) evidence of which prior notice must be given under rule 23.2; and
 - (b) documents which may be received in evidence without further proof under section 9 of the Civil Evidence Act 1995.
- (2) Except as provided below, section 2(1)(a) of the Civil Evidence Act 1995 (notice of proposal to adduce hearsay evidence) does not apply to evidence falling within paragraph (1).

- (3) Such evidence is not receivable at the final hearing unless the party intending to rely on it (in this rule, 'the party') has –
 - (a) served it or, in the case of a model, a photograph of it with an invitation to inspect the original, on the other party in accordance with this rule; or
 - (b) complied with such directions as the court may give for serving the evidence on, or for giving notice under section 2(1)(a) of the Civil Evidence Act 1995 in respect of the evidence to, the other party.
- (4) Where the party intends to use the evidence as evidence of any fact then, except where paragraph (6) applies, the party must serve the evidence not later than the latest date for serving witness statements.
- (5) The party must serve the evidence at least 21 days before the hearing at which the party proposes to rely on it if –
 - (a) there are not to be witness statements; or
 - (b) the party intends to put in the evidence solely in order to disprove an allegation made in a witness statement.
- (6) Where the evidence forms part of expert evidence, the party must serve the evidence when the expert's report is served on the other party.
- (7) Where the evidence is being produced to the court for any reason other than as part of factual or expert evidence, the party must serve the evidence at least 21 days before the hearing at which the party proposes to rely on it.
- (8) Where the court directs a party to give notice that the party intends to put in the evidence, the court may direct that every other party be given an opportunity to inspect it and to agree to its admission without further proof.

23.7 Evidence of finding on question of foreign law

- (1) This rule sets out the procedure which must be followed by a party (in this rule, 'the party') who intends to put in evidence a finding on a question of foreign law by virtue of section 4(2) of the Civil Evidence Act 1972.
- (2) The party must give any other party notice of that intention.
- (3) The party must give the notice –
 - (a) if there are to be witness statements, not later than the latest date for serving them; or
 - (b) otherwise, not less than 21 days before the hearing at which the party proposes to put the finding in evidence.
- (4) The notice must –
 - (a) specify the question on which the finding was made; and
 - (b) enclose a copy of a document where it is reported or recorded.

23.8 Evidence of consent of trustee to act

In proceedings to which Part 9 (financial remedies) applies, a document purporting to contain the written consent of a person to act as trustee and to bear that person's signature verified by some other person is evidence of such consent.

23.9 Note of oral evidence in magistrates' courts

In proceedings in a magistrates' court, the justices' clerk or the court shall keep a note of the substance of the oral evidence given at a directions appointment or at a hearing of any proceedings.