



Jersey

TAKING OF EVIDENCE RULES 2019

Official Consolidated Version

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THE SUPERIOR NUMBER OF THE ROYAL COURT makes these Rules under Article 13 of the [Royal Court \(Jersey\) Law 1948](#) and Article 11(b) of the [Service of Process and Taking of Evidence \(Jersey\) Law 1960](#) –

Commencement [[see endnotes](#)]

1 Interpretation

In these Rules –

“application” means an application made as a result of a request issued by or on behalf of a requesting court for an Article 4 order;

“Article 4 order” means an order of the Court under Article 4 of the Law of 1960 for obtaining evidence in Jersey;

“civil procedure convention” means any convention which applies or has been extended to Jersey providing for the taking of the evidence of any person in Jersey for the assistance of a requesting court;

“Court” means the Royal Court, and includes the Greffier;

“Greffier” means the Judicial Greffier;

“Law of 1960” means the [Service of Process and Taking of Evidence \(Jersey\) Law 1960](#);

“lodged” means lodged with the Greffier;

“request” includes any commission, order or other process issued by or on behalf of the requesting court; and

“requesting court” is a reference to a requesting court within the meaning of Article 3(a) of the Law of 1960.

2 Application for an order

(1) An application must be –

- (a) made to the Court; and
- (b) supported by affidavit.

(2) The application must be accompanied by the request as a result of which the application is made and, where appropriate, a translation of the request into English.

(3) The application may be made without notice.

3 Application by Attorney General in certain cases

- (1) Where a request is received in accordance with a civil procedure convention, and no person is named in the document as the person who will make the necessary application on behalf of a party to the matter pending or contemplated before the requesting court, the Attorney General may make an application for an Article 4 order and take such other steps as may be necessary to give effect to the request.
- (2) For the purposes of Rule 6(3) the party who obtained the order means, in the case of an application made by the Attorney General under this Rule, the person from whom the request was received.

4 Person to take and manner of taking examination

- (1) An Article 4 order may direct that the examination of a witness be taken before –
 - (a) the Viscount; or
 - (b) such other qualified person as the Court sees fit.
- (2) Subject to any directions contained in the order –
 - (a) the examination must be conducted in the same way as if the witness were giving evidence at a trial save that the witness is permitted to have a legal adviser present when giving evidence;
 - (b) the examiner may conduct the examination in private if he or she considers it appropriate to do so; and
 - (c) the examiner must ensure that all the evidence given by the witness is recorded.
- (3) The order may also direct any person to attend before the examiner and to be sworn for the purpose of the examination or, as the case may be, to answer any lawful question or produce any document at the examination.

5 Enforcing attendance of witness

- (1) If a person served with an order directing the person to attend before an examiner –
 - (a) fails without reasonable excuse 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,the party requiring the deposition may summons the person to appear before the Inferior Number of the Royal Court.
- (2) If the Inferior Number finds the person in breach of the order, it may –
 - (a) make such order in relation to the person as it thinks fit, including a finding of contempt of court; and
 - (b) may order the person to pay any costs resulting from his or her failure or refusal to comply with the order.

6 Fees and expenses of examiner

- (1) The Viscount and, if the Court so orders, any other examiner appointed by the Court may charge a fee for the examination and recover expenses incurred in the recording of the evidence.

- (2) He or she need not release the deposition unless the fee and his or her expenses have been paid.
- (3) The examiner's fees and expenses must be paid by the party who obtained the order for examination.
- (4) The Greffier may order the party who obtained the order for examination to lodge a specified sum in respect of the examiner's fees and, where the Greffier does so, the examiner will not be asked to act until the sum has been lodged.
- (5) If the fees and expenses due to an examiner are not paid within a reasonable time, he or she may report that fact to the Greffier.
- (6) An order under this Rule does not affect any decision as to the party who is ultimately to bear the costs of the examination.

7 Dealing with the deposition

- (1) Unless an Article 4 order otherwise directs, the examiner before whom the examination of a witness was taken must lodge the deposition of that witness, and the Greffier shall –
 - (a) give a certificate under the seal of the Royal Court for use out of the jurisdiction identifying the following documents annexed to the certificate –
 - (i) the request,
 - (ii) the order of the Court for examination, and
 - (iii) the deposition taken in accordance with the order; and
 - (b) send the certificate with the annexed documents to the appropriate person for transmission to the requesting court.
- (2) The appropriate person in paragraph (1)(b) is the person specified in practice directions or the person to whom the Court orders that the certificate should be sent.

8 Claim to privilege

- (1) The provisions of this Rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in Article 5(1)(b) of the Law of 1960 is not supported or conceded as mentioned in paragraph (2) of that Article.
- (2) The examiner may, if he or she thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so, the Court may do so, on the application, without notice being served on any other party, of the person who obtained the order under Part 2 of the Law of 1960.
- (3) If such evidence is taken –
 - (a) it must be contained in a document separate from the remainder of the deposition of the witness;
 - (b) the examiner shall send to the Greffier with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;
 - (c) on receipt of the statement the Greffier shall, notwithstanding anything in Rule 7, retain the document containing the part of the witness' evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in Rule 7;

- (d) if the claim is rejected by the foreign court or tribunal, the Greffier shall send to that court or tribunal the document containing that part of the witness' evidence to which the claim relates, but if the claim is upheld the Greffier shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under Part 2 of the Law of 1960 of the court or tribunal's determination.

9 Citation and commencement

These Rules may be cited as the Taking of Evidence Rules 2019 and come into force on 28th October 2019.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Taking of Evidence Rules 2019	R&O.92/2019	28 October 2019	

◦Projets available at statesassembly.gov.je

Table of Endnote References

There are currently no endnote references