

Taking evidence by videoconferencing - Scotland

TABLE OF CONTENTS

- 1 Is it possible for evidence to be taken by videoconference either with the participation of a court in the requesting Member State or directly by a court of that Member State? If yes, what are the relevant national procedures or laws that apply?
- 2 Are there any restrictions on the type of person who can be examined by videoconference – for example, is it only witnesses or can others such as experts or parties also be examined in this way?
- 3 What restrictions, if any, are there on the type of evidence that can be obtained by videoconference?
- 4 Are there any restrictions on where the person should be examined by videoconference – i.e. does it have to be in a court?
- 5 Is it permitted to record videoconference hearings and, if so, is the facility available?
- 6 In what language should the hearing be conducted: (a) where requests are made under Articles 10 to 12; and (b) where there is direct taking of evidence under Article 17?
- 7 If interpreters are required, who is responsible for providing them under both types of hearing and where should they be located?
- 8 What procedure applies to the arrangements for the hearing and to notify the person to be examined about the time and place? How much time should be allowed when arranging the date of the hearing to enable the person to receive sufficient notification?
- 9 What costs apply to the use of videoconferencing and how should they be paid?
- 10 What requirements, if any, are there for ensuring that the person examined directly by the requesting court has been informed that the performance shall take place on a voluntary basis?
- 11 What procedure exists for verifying the identity of the person to be examined?
- 12 What requirements for taking oaths apply and what information is needed from the requesting court when an oath is required during direct taking of evidence under Article 17?
- 13 What arrangements are there for ensuring that there is a contact person at the place of the videoconference with whom the requesting court can liaise and a person who is available on the day of the hearing to operate the videoconferencing facilities and deal with any technical problems?
- 14 What, if any, additional information is required from the requesting court?

1 Is it possible for evidence to be taken by videoconference either with the participation of a court in the requesting Member State or directly by a court of that Member State? If yes, what are the relevant national procedures or laws that apply?

Yes. Provision exists at 38 court locations in Scotland.

Articles 10-12 and 17 apply to all applications received in terms of Regulation 1206/2001. No other local procedures are applied in these cases.

2 Are there any restrictions on the type of person who can be examined by videoconference – for example, is it only witnesses or can others such as experts or parties also be examined in this way?

There are no restrictions on the type of person who can be examined.

3 What restrictions, if any, are there on the type of evidence that can be obtained by videoconference?

There are no statutory restrictions. There may be practical restrictions (for example, reference to physical objects held by the requesting court to which the witness does not have access).

4 Are there any restrictions on where the person should be examined by videoconference – i.e. does it have to be in a court?

Again there are no statutory restrictions. Courtrooms and other rooms have been used in the past. Appropriate accommodation will be determined by the Sheriff and Sheriff Clerk at the court where the application is received.

5 Is it permitted to record videoconference hearings and, if so, is the facility available?

It is possible to record hearings.

In any event, since proceedings could be recorded at either end of a videoconferencing link, it may be more appropriate for the requesting court to record proceedings direct.

6 In what language should the hearing be conducted: (a) where requests are made under Articles 10 to 12; and (b) where there is direct taking of evidence under Article 17?

In both cases, the default language is English.

If the requesting court desires a different language then an interpreter would be required to translate proceedings into English for the benefit of those parties present who do not speak the language of the requesting court.

7 If interpreters are required, who is responsible for providing them under both types of hearing and where should they be located?

In accordance with Article 18 of Regulation 1206/2001 the requested court should make arrangements for the attendance of an interpreter locally.

8 What procedure applies to the arrangements for the hearing and to notify the person to be examined about the time and place? How much time should be allowed when arranging the date of the hearing to enable the person to receive sufficient notification?

Notification to the parties would be made by the local court in terms of Article 11(4) of Regulation 1206/2001. This would normally be done by first class, recorded delivery letter.

In general, the existing rules regarding notification apply – i.e. a minimum of 48 hours notice would be required. In practice, however, a longer period of notice would be given since the hearings are usually fixed a few weeks in advance.

9 What costs apply to the use of videoconferencing and how should they be paid?

Generally any cost to the Scottish Courts and Tribunals Service for the use of videoconferencing facilities is not passed on to other parties.

10 What requirements, if any, are there for ensuring that the person examined directly by the requesting court has been informed that the performance shall take place on a voluntary basis?

Appropriate notice is given by the requesting court in Form A. It would be normal practice to copy that information over to Form F which is subsequently served on the witness. No further requirements are imposed by the local court.

11 What procedure exists for verifying the identity of the person to be examined?

There is no set procedure. The requesting court may stipulate such things as the production of a Passport or Driving Licence and such requirements would be passed on to the witness. Any documentary evidence of identity would be checked on the day in a manner which satisfies the requesting court.

12 What requirements for taking oaths apply and what information is needed from the requesting court when an oath is required during direct taking of evidence under Article 17?

If an oath is required by the requesting court then the local court would need to know what procedures are to be applied by the requesting court (the provision of a holy book, for example, or the form of words to be used).

It may be that the local court would wish, additionally, to administer the Scottish oath but that is a matter which would be at the discretion of the presiding Sheriff.

13 What arrangements are there for ensuring that there is a contact person at the place of the videoconference with whom the requesting court can liaise and a person who is available on the day of the hearing to operate the videoconferencing facilities and deal with any technical problems?

As part of the preparatory work, the local court would obtain details of a contact at the requesting court and pass those details to the Electronic Service Delivery Unit (ESDU) of the Scottish Courts and Tribunals Service.

ESDU would then liaise with the requesting court staff to arrange a time and a place for a test of the equipment. ESDU would also attend on the day to operate the local equipment and deal with any technical problems.

14 What, if any, additional information is required from the requesting court?

Any particular access requirements or information about medical conditions which may affect the choice of location or time of the hearing.

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

Last update: 30/04/2019