

## Taking evidence by videoconferencing - England and Wales

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#### **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?**

It is possible for evidence to be taken by videoconference in the courts of England and Wales either with the participation of a court in another Member State or directly by a court of that Member State. The procedures for obtaining evidence are found in [Part 32](#) of the Civil Procedure Rules. Rule 32.3 states that a court may allow a witness to give evidence through a video link or by other means. Further information can be found in [Practice Direction 32, Annex 3](#).

#### **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 of the kind suggested on the type of person who can be examined when requests are made under either Articles 10 to 12 or 17. Provided that the request falls properly within the scope of Regulation 1206/2001 and is compatible with the law of England and Wales any relevant person can be examined.

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

Provided that the request for evidence complies with the law of England and Wales and it is practicable to obtain the evidence via videoconference there are no restrictions on the type of evidence that can be obtained.

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

When a request is made under Articles 10 to 12 it is usual, but not compulsory, for the examination to take place in a court. A videoconference for a request made under Article 17 can be held anywhere although the court with facilities nearest to the witnesses will be suggested to the requesting Member State's court.

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

At present there is no facility to record videoconference hearings in England and Wales. If a recording is required the parties to the claim must arrange for a recording to be made either at the point at which the evidence is given or the point at which it is viewed.

#### **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?**

a) Where requests are made under Articles 10 to 12 the hearing should be conducted in English or, if the hearing is being conducted in Welsh, then in Welsh.

b) There is no language requirement for hearings where there is direct taking of evidence although the requesting Member State must provide interpretation for witnesses who do not understand the language in which the hearing is to be conducted.

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

Where a request is made under Articles 10 to 12 and the witness requires an interpreter to understand English the interpreter will be provided by the court authorities in England and Wales. If the witness does not require interpretation but the requesting court cannot understand English it is the responsibility of that court to provide for its own interpretation. The location of an interpreter in such circumstances is not subject to any restrictions although for practical reasons it would probably be easier for the interpreter to be at the requesting court.

The requesting court is responsible for providing interpretation for requests made under Article 17. Again there are no restrictions on where the interpreter should 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?**

Where a request is made under Articles 10 to 12 all arrangements will be made by the requested court. Under Article 17, where the Central Body for England and Wales has authorised direct taking of evidence it shall notify the requesting court of the nearest court with videoconferencing facilities to the person to be examined. It is then the responsibility of the requesting court to liaise direct with the court suggested to make the necessary arrangements. The Central Body will notify the court with videoconferencing facilities that it should expect contact from the requesting court.

The requesting court should ascertain when the videoconferencing facilities are available and then liaise with the person to be examined to find a mutually available time. It is sensible to allow at least a month to make the necessary arrangements.

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

Costs will vary depending on a number of circumstances including the place of the videoconference (i.e. whether it is a court or another premises); the time of the hearing (i.e. if it is out of normal court hours staff will be required to stay longer); whether any special procedures are required; and whether any costs arise through the use of the equipment. The requested court will inform the requesting court of the costs. Payment should be made in UK Pounds either by cash, bankers draft or electronically where such facilities are available.

#### **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?**

Where a request for direct taking of evidence under Article 17 is granted by the Central Body for England and Wales the order which is given will stipulate that the requesting court must inform the person being examined that his/her attendance at a hearing is voluntary and that he/she is entitled to leave the hearing at any point in the proceedings. The requesting court is asked to send a copy of this order to the person being examined when arrangements for the videoconference are being made.

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

Where a person is examined by a court in England and Wales with the participation of a requesting court under Articles 10 to 12 that person will be required to take an oath or make an affirmation as part of which he/she must confirm his/her identity. Where a

requesting court takes evidence directly under Article 17 it will be for that court to use whatever means it considers necessary to verify the identity of the person being 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?**

Where a request is made under Articles 10 to 12 the oath or affirmation will be made under the normal procedures for courts in England and Wales. Where a request is made under Article 17 the requesting court should notify the requested court of the requirements for any oath so that appropriate books are provided.

**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?**

Where a request is made under Articles 10 to 12 the requested court will make the necessary arrangements. Where the Central Body for England and Wales authorises a request under Article 17 it will inform the court with videoconferencing facilities to expect contact from the requesting court and that it should cooperate with the requesting court to ensure there is someone available to operate the videoconferencing facilities and deal with any technical problems at the time of the hearing.

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

Where requests are made under Article 17 the requesting court should notify the requested court if the person being examined has any special requirements – e.g. wheelchair access or a loop system where a hearing aid is used.

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