



Jersey

EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) (JERSEY) ORDER 1983

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APPENDIX



Jersey

EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) (JERSEY) ORDER 1983

Jersey Order in Council 25/1983

EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) (JERSEY) ORDER 1983

(Registered on the 23rd day of December, 1983)

At the Court of Saint James.

18th November, 1983.

PRESENT

The Counsellors of State in Council.

WHEREAS HER MAJESTY, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 3rd day of November 1983, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

Now, therefore, Her Majesty Queen Elizabeth The Queen Mother and His Royal Highness The Prince Charles, Prince of Wales, being authorised thereto by the said Letters Patent, and in pursuance of section 10(3) of the Evidence (Proceedings in Other Jurisdictions) Act 1975 and section 8(8) of the Protection of Trading Interests Act 1980 by and with the advice of Her Majesty's Privy Council, do on Her Majesty's behalf order, and it is hereby ordered, as follows: -

1. This Order may be cited as the Evidence (Proceedings in Other Jurisdictions) (Jersey) Order 1983 and shall come into operation on 18th December 1983.

2. In this Order, “Jersey” means the Bailiwick of Jersey and the territorial waters adjacent thereto.

3.-(1) Subject to paragraph (2) below, sections 1, 2, 3, 5, 9 and 10 of the Evidence (Proceedings in Other Jurisdictions) Act 1975 shall extend to Jersey with the exceptions, adaptations and modifications specified in the Schedule to this Order.

(2) Sections 1, 2 and 3 shall not extend to Jersey except for the purposes of section 5 (and accordingly shall have effect in Jersey only for the purposes of criminal proceedings).

4. The Protection of Trading Interests Act 1980 (Jersey) Order 1983 shall be amended by the substitution, for paragraph 5(2) of the Schedule, of the following provision: -

“(2) In section 4, after the words “Evidence (Proceedings in Other Jurisdictions) Act 1975” there shall be inserted the words “or under Article 3 of the Service of Process and Taking of Evidence (Jersey) Law, 1960”.

N.E. LEIGH,

Clerk of the Privy Council.

*SCHEDULE***(Article 3)****Exceptions, adaptations and modifications to provisions of the Evidence (Proceedings in other Jurisdictions) Act 1975 as extended to Jersey**

1. In section 1 (as applied by section 5) –
 - (a) for the words “the High Court, the Court of Session or the High Court of Justice in Northern Ireland” there shall be substituted the words “the Royal Court”;
 - (b) for the words “in the part of the United Kingdom in which it exercises jurisdiction” there shall be substituted the words “in Jersey”;
 - (c) for the words “any part of the United Kingdom or in a country or territory outside the United Kingdom” there shall be substituted the words “a country or territory outside Jersey; and
 - (d) for the words “the High Court, Court of Session or High Court of Justice in Northern Ireland, as the case may be, “there shall be substituted the words “the Court”.
2. In section (2(1) (as applied by section 5), for the words from “the High Court, the Court of Session” to “exercises jurisdiction” there shall be substituted the words “the Royal Court shall have power, on any such application as is mentioned in section 1 above, by order to make such provisions for obtaining evidence in Jersey”.
3. In section 3 (as applied by section 5) –
 - (a) in subsection (1)(a), for the words “the part of the United Kingdom in which the court that made the order exercises jurisdiction” there shall be substituted the word “Jersey”; and
 - (b) in subsection (3), after the words “the United Kingdom” there shall be inserted the words “or of Jersey”.
4. In section 5 –
 - (a) subsection (1)(a) shall be omitted; and
 - (b) in subsection (1)(b), for the words “that section” there shall be substituted the words “section 1 above”.
5. Section 9(2) and (3) shall be omitted.
6. Section 10(2) and (3) shall be omitted.

EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT 1975**Chapter 34****ARRANGEMENT OF SECTIONS****Evidence for civil proceedings**

Section

1. Application to United Kingdom court for assistance in obtaining evidence for civil proceedings in other court
2. Power of United Kingdom court to give effect to application for assistance
3. Privilege of witnesses
4. * * * * *

Evidence for criminal proceedings

5. Power of United Kingdom court to assist in obtaining evidence for criminal proceedings in overseas court * *
* * *
6. * * * * *

Supplementary

7. * * * * *
8. * * * * *
9. Interpretation
10. Short title

ELIZABETH II**1975 CHAPTER 34**

AN ACT to make new provision for enabling the High Court, the Court of Session and the High Court of Justice in Northern Ireland to assist in obtaining evidence required for the purposes of proceedings in other jurisdictions; to extend the powers of those courts to issue process effective throughout the United Kingdom for securing the attendance of witnesses; and for purposes connected with those matters.

(22nd May 1975)

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same, as follows: -

EVIDENCE FOR CIVIL PROCEEDINGS

Application to United Kingdom court for assistance in obtaining evidence for civil proceedings in other court

1. Where an application is made to [the Royal Court] for an order for evidence to be obtained [in Jersey] and the court is satisfied –

- (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal ("the requesting court") exercising jurisdiction in [a country or territory outside Jersey]; and
- (b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated,

[the Court] shall have the powers conferred on it by the following provisions of this Act.

Power of United Kingdom court to give effect to application for assistance

2.-(1) Subject to the provisions of this section, [the Royal Court shall have power, on any such application as is mentioned in section 1 above, by order to make such provision for obtaining evidence in Jersey] as may appear to the Court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the court may consider appropriate for that purpose.

² Deletions and words in square brackets indicate adaptations and modifications made by the Evidence (Proceedings in Other Jurisdictions) (Jersey) Order, 1983.

(2) Without prejudice to the generality of subsection (1) above but subject to the provisions of this section, an order under this section may, in particular, make provision –

- (a) for the examination of witnesses, either orally or in writing;
- (b) for the production of documents;
- (c) for the inspection, photographing, preservation, custody or detention of any property;
- (d) for the taking of samples of any property and the carrying out of any experiments on or with any property;
- (e) for the medical examination of any persons;
- (f) without prejudice to paragraph (e) above, for the taking and testing of samples of blood from any person.

(3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the court making the order (whether or not proceedings of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than an oath where this is asked for by the requesting court.

(4) An order under this section shall not require a person –

- (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power; or
- (b) to produce any documents other than particular documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in his possession, custody or power.

(5) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance as a witness in civil proceedings before the court making the order.

Privilege of witnesses

3.-(1) A person shall not be compelled by virtue of an order under section 2 above to give any evidence which he could not be compelled to give –

- (a) in civil proceedings in [Jersey]; or
- (b) subject to subsection (2) below, in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.

(2) Subsection (1)(b) above shall not apply unless the claim of the person in question to be exempt from giving the evidence is either –

- (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or
- (b) conceded by the applicant for the order;

and where such a claim made by any person is not supported or conceded as aforesaid he may (subject to the other provisions of this section) be required to give the evidence to which the claim relates but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

(3) Without prejudice to subsection (1) above, a person shall not be compelled by virtue of an order under section 2 above to give any evidence if his doing so would be prejudicial to the security of the United Kingdom [or of Jersey]; and a certificate signed by or on behalf of the Secretary of State to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(4) In this section references to giving evidence include references to answering any question and to producing any document and the reference in subsection (2) above to the transmission of evidence given by a person shall be construed accordingly.

4. * * * * *

EVIDENCE FOR CRIMINAL PROCEEDINGS

Power of United Kingdom court to assist in obtaining evidence for criminal proceedings in overseas court

5.-(1) The provisions of sections 1 to 3 above shall have effect in relation to the obtaining of evidence for the purposes of criminal proceedings as they have effect in relation to the obtaining of evidence for the purposes of civil proceedings except that –

- (a) * * * * *
- (b) paragraph (b) of [section 1 above] shall apply only to proceedings which have been instituted; and
- (c) no order under section 2 above shall make provision otherwise than for the examination of witnesses, either orally or in writing, or for the production of documents.

(2) In its application by virtue of subsection (1) above, section 3(1)(a) and (b) above shall have effect as if for the words “civil proceedings” there were substituted the words “criminal proceedings”.

(3) Nothing in this section applies in the case of criminal proceedings of a political character.

6. * * * * *

SUPPLEMENTARY

7. * * * * *

8. * * * * *

Interpretation

9.-(1) In this Act –

“civil proceedings”, in relation to the requesting court, means proceedings in any civil or commercial matter;

“requesting court” has the meaning given in section 1 above;

“property” includes any land, chattel or other corporeal property of any description;

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

(2) * * * * *

(3) * * * * *

(4) Nothing in this Act shall be construed as enabling any court to make an order that is binding on the Crown or on any person in his capacity as an officer or servant of the Crown.

(5) Except so far as the context otherwise requires, any reference in this Act to any enactment is a reference to that enactment as amended or extended by or under any other enactment.

Short title, commencement and extent

10.-(1) This Act may be cited as the Evidence (Proceedings in Other Jurisdictions) Act 1975.

(2) * * * * *

(3) * * * * *