STATUTORY INSTRUMENTS

1978 No. 1891

EVIDENCE

The Evidence (Proceedings in Other Jurisdictions) (Falkland Islands and Dependencies) Order 1978

Made - - - 20*th December* 1978

Coming into Operation 10*th January* 1979

At the Court at Buckingham Palace, the 20th day of December 1978

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 10(3) of the Evidence (Proceedings in Other Jurisdictions) Act 1975(**a**) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1.—(1) This Order may be cited as the Evidence (Proceedings in Other Jurisdictions) (Falkland Islands and Dependencies) Order 1978.

(2) This Order shall come into operation on 10th January 1979.

2. The Interpretation Act 1889(**b**) shall apply, with the necessary adaptations for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament.

3. Sections 1 to 3 and 5 to 10 of, and Schedules 1 and 2 to, the Evidence (Proceedings in Other Jurisdictions) Act 1975, with the exceptions, adaptations and modifications specified in the Schedule hereto, shall extend to the Falkland Islands and its Dependencies.

N. E. Leigh,
Clerk of the Privy Council.

(**a**) 1975 c. 34.

(**b**) 1889 c. 63.

SCHEDULE TO THE ORDER *Article 3*

PROVISIONS OF THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT 1975 AS EXTENDED TO THE FALKLAND ISLANDS AND DEPENDENCIES.

Evidence for civil proceedings

1. Where an application is made to the Supreme Court for an order for evidence to be obtained in the Colony, and the court is satisfied—

Application to Supreme Court for assistance in obtaining evidence for civil proceedings in other court.

(*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 the Colony; 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 Supreme Court shall have the powers conferred on it by the following provisions of this Act.

Power of Supreme Court to give effect to application for assistance.

2.—(1) Subject to the provisions of this section, the Supreme 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 the Colony 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) 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 person;

(*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 on 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 specifi in the order as being documents appearing to the court making t order to be, or to be likely to be, in his possession, custody or pow

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

Privilege of witnesses.

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

(*a*) in civil proceedings in the Colony; or

(*b*) subject to subsection (2) below, in civil proceedings in the countr or territory in which the requesting court exercises jurisdiction.

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

(*a*) supported by a statement contained in the request (whether it is s 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 a aforesaid he may (subject to the other provisions of this section) be require to give the evidence to which the claim relates but that evidence shall not b transmitted to the requesting court if that court, on the matter being referre to it, upholds the claim.

(3) Without prejudice to subsection (1) above, a person shall not be com pelled by virtue of an order under section 2 above to give any evidence if his doin so would be prejudicial to the security of the United Kingdom, the Colony o any other territory for which the United Kingdom is responsible under interna tional law; and a certificate signed by or on behalf of the Governor to the effec that it would be so prejudicial for that person to do so shall be conclusiv evidence of that fact.

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

Evidence for criminal proceedings

Power of Supreme 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*) paragraph (*a*) of section 1 above shall apply only to a court or tribunal exercising jurisdiction in a country or territory outside the Colony;

(*b*) paragraph (*b*) of that section 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.

Evidence for international proceedings

Power of Supreme Court to assist in obtaining evidence for international proceedings.

6.—(1) The Governor may by order direct that, subject to such exceptions, adaptations or modifications as may be specified in the order, the provisions of sections 1 to 3 above shall have effect in relation to international proceedings of any description specified in the order.

(2) An order under this section may direct that section 1(4) of the Perjury Act 1911(**a**) shall have effect in relation to international proceedings to which the order applies as it has effect in relation to a judicial proceeding in a tribunal of a foreign state.

(3) In this section "international proceedings" means proceedings before the International Court of Justice or any other court, tribunal, commission, body or authority (whether consisting of one or more persons) which, in pursuance of any international agreement or any resolution of the General Assembly of the United Nations, exercises any jurisdiction or performs any functions of a judicial nature or by way of arbitration, conciliation or inquiry or is appointed (whether permanently or temporarily) for the purpose of exercising any jurisdiction or performing any such functions.

Supplementary

Rules of court.

7.— The power to make rules of court under section 69 of the Administration of Justice Ordinance **(b)** shall include power to make rules of court—

(*a*) as to the manner in which any such application as is mentioned in section 1 above is to be made;

(*b*) subject to the provisions of this Act, as to the circumstances in which an order can be made under section 2 above; and

(*c*) as to the manner in which any such reference as is mentioned in section 3(2) above is to be made;

and any such rules may include such incidental, supplementary and consequential provision as may be considered necessary or expedient.

Consequential amendment and repeals.

8.—(1) The enactment mentioned in Schedule 1 to this Act shall have effect subject to the amendment there specified, being an amendment consequential on the provisions of this Act.

(2) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(3) Nothing in this section shall affect—

(*a*) any application to any court or judge which is pending at the commencement of this Act;

(*b*) any certificate given for the purposes of any such application;

(*c*) any power to make an order on such an application; or

(*d*) the operation or enforcement of any order made on such an application.

(**a**) 1911 c. 6.
(**b**) Laws of the Falkland Islands, Revised Ed., 1950, Cap. 3.

(4) Subsection (3) above is without prejudice to section 38(2) of the Inte pretation Act 1889(a) (effect of repeals).

Interpretation.

9.—(1) In this Act—

"civil proceedings", in relation to the requesting court, means proceedin in any civil or commercial matter;

"the Colony" means the Colony of the Falkland Islands and includes i Dependencies;

"requesting court" has the meaning given in section 1 above;

"property" includes any land, chattel or other corporeal property of ar description;

"request" includes any commission, order or other process issued by c or on behalf of the requesting court;

"Supreme Court" means the Supreme Court of the Colony.

(3) Any power conferred by this Act to make an order includes power t revoke or vary any such order by a subsequent order.

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

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

Commence-ment.

10.—(2) The provisions of this Act shall come into force on such date a the Governor may by order appoint.

SCHEDULES

Section 8(1)

SCHEDULE 1 TO THE ACT

CONSEQUENTIAL AMENDMENT

The Perjury Act 1911

In the Perjury Act 1911 after section 1 there shall be inserted—

"False unsworn statement under Evidence (Proceedings in Other Jurisdictions) Act 1975.

1A. If any person, in giving any testimon (either orally or in writing) otherwise than o oath, where required to do so by an order unde section 2 of the Evidence (Proceedings in Othe Jurisdictions) Act 1975, makes a statement—

(*a*) which he knows to be false in a materia particular, or

(*b*) which is false in a material particula and which he does not believe to b true,

he shall be guilty of an offence and shall be liabl on conviction on indictment to imprisonmen for a term not exceeding two years or a fine o both."

(a) 1889 c. 63.

SCHEDULE 2 TO THE ACT

Section 8(2)

REPEALS

Chapter	Short title	Extent
19 & 20 Vict. c.113.	The Foreign Tribunals Evidence Act 1856.	The whole Act.
22 Vict. c.20.	The Evidence by Commission Act 1859.	The whole Act.
33 & 34 Vict. c.52.	The Extradition Act 1870.	Section 24.
48 & 49 Vict. c.74.	The Evidence by Commission Act 1885.	The whole Act.
53 & 54 Vict. c.37.	The Foreign Jurisdiction Act 1890.	In Schedule 1 the entries relating to the Foreign Tribunals Evidence Act 1856, the Evidence by Commission Act 1859 and the Evidence by Commission Act 1885.
1963 c.27.	The Oaths and Evidence (Overseas Authorities and Countries) Act 1963.	Section 4.
1966 c.41.	The Arbitration (International Investment Disputes) Act 1966.	In section 3(1), paragraph (*b*) together with the word "and" immediately preceding that paragraph. In section 7(*e*), subsection (2) of the section 3 there set out.

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

This Order extends the provisions of the Evidence (Proceedings in Other Jurisdictions) Act 1975, which sets out a comprehensive code for the taking of evidence by courts on behalf of other courts, to the Falkland Islands and its Dependencies, with exceptions, adaptations and modifications.

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