

**DRAFT EVIDENCE (CRIMINAL PROCEEDINGS IN  
OTHER JURISDICTIONS) (JERSEY) LAW, 198 .**

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by the Legislation Committee.**

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**STATES OF JERSEY**

**STATES GREFFE**

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### Explanatory Note

The purpose of this draft Law is to improve arrangements for the Royal Court to assist in obtaining evidence required for the purpose of criminal proceedings instituted in other jurisdictions. At present this assistance is provided under the Evidence (Proceedings in Other Jurisdictions) (Jersey) Order, 1983, an Order in Council which extends to Jersey, with suitable modifications, adaptations and exceptions, parts of the Evidence (Proceedings in Other Jurisdictions) Act 1975 (c.34) of the United Kingdom.

*Article 1* of the draft Law contains definitions. *Article 2* enables the Royal Court to receive applications from an overseas court for assistance in the obtaining of evidence for the purposes of criminal proceedings which have already been instituted before the requesting Court. *Article 3* describes the steps which the Royal Court may take to give assistance to the overseas court. This involves examination of witnesses, either orally or in writing, and the production of documents to the Court and applies to non-political issues.

*Article 4* provides that witnesses are not to be compelled, for the purposes of this Law, to give any evidence which they would not have to give in criminal proceedings in Jersey or in the place where the requesting court functions; but contested evidence may be taken on a provisional basis. A person may refuse to give evidence if to do so would prejudice security. Under *Article 5* orders of the Royal Court for the obtaining of evidence are not binding on the Crown, or the States, or members of the States, nor on officers or servants of the Crown or the States.

*Article 6* enables proceedings begun under the Order in Council of 1983 to be continued under that Order. *Article 7* gives the draft Law its short title and provides for it to come into force on a day to be appointed by Act of the States. It is intended that the Order in Council of 1983 will be revoked simultaneously with the commencement of the draft Law.

**EVIDENCE (CRIMINAL PROCEEDINGS IN OTHER JURISDICTIONS) (JERSEY) LAW, 198 .**

**A LAW** to make new provision for enabling the Royal Court to assist in obtaining evidence required for the purpose of criminal proceedings instituted in other jurisdictions, sanctioned by Order of Her Majesty in Council of the

day of \_\_\_\_\_, 198 .

*(Registered on the \_\_\_\_\_ day of \_\_\_\_\_, 198 .)*

**STATES OF JERSEY.**

The day of \_\_\_\_\_ 198 .

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

**ARTICLE 1.**

**Interpretation.**

In this Law -

“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;

“requesting court” has the meaning given in Article 2 of this Law; and

*Evidence (Criminal Proceedings in Other Jurisdictions) (Jersey) Law, 198.*

“Royal Court” means the Inferior Number of the Royal Court.

**ARTICLE 2.**

**Application to Royal Court for assistance in obtaining evidence for criminal proceedings in overseas court.**

Where an application is made to the Royal Court for an order for evidence to be obtained in the Island 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 the Island; and
- (b) that the evidence to which the application relates is to be obtained for the purposes of criminal proceedings which have been instituted before the requesting court,

the Royal Court shall have the powers conferred on it by the provisions of this Law.

**ARTICLE 3.**

**Power of Royal Court to give effect to application for assistance.**

(1) Subject to the provisions of this Article, the Royal Court shall have power, on any such application as is mentioned in Article 2 of this Law, by order to make such provisions for obtaining evidence in the Island 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.

*Evidence (Criminal Proceedings in Other Jurisdictions) (Jersey) Law, 198.*

(2) Without prejudice to the generality of paragraph (1) of this Article but subject to the provisions of this Article, an order under this Article may, in particular, make provision -

(a) for the examination of witnesses, either orally or in writing;

(b) for production of documents.

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

(4) An order under this Article 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 Royal Court 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 Article, is required to attend at any place shall be entitled to the like payment for expenses and loss of time as on attendance as a witness in civil proceedings before the Royal Court.

(6) No order under this Article shall make provision otherwise than for the examination of witnesses, either orally or in writing, or for the production of documents.

**ARTICLE 4.**

**Privilege of witnesses.**

(1) A person shall not be compelled by virtue of an order under Article 3 of this Law to give any evidence which he could not

*Evidence (Criminal Proceedings in Other Jurisdictions) (Jersey) Law, 198.*

- (a) in criminal proceedings in the Island; or
- (b) subject to paragraph (2) of this Article, in criminal proceedings in the country or territory in which the requesting court exercises jurisdiction.

(2) Sub-paragraph (b) of paragraph (1) of this Article 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 Article) 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 paragraph (1) of this Article, a person shall not be compelled by virtue of an order under Article 3 of this Law to give any evidence if his doing so would be prejudicial to the security of the British Islands or any of them; and a certificate signed by or on behalf of the Lieutenant Governor 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 Article references to giving evidence include references to answering any question and to producing any document and the reference in paragraph (2) of this Article to the transmission of evidence given by a person shall be construed accordingly.

*Evidence (Criminal Proceedings in Other Jurisdictions) (Jersey) Law, 198.*

**ARTICLE 5.**

**Orders not binding on the Crown or the States.**

Nothing in this Law shall be construed as enabling the Royal 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, or on the States, or on any person in his capacity as a member of the States, or as an officer or servant of the States.

**ARTICLE 6.**

**Continuance of pending proceedings.**

Any proceedings instituted before the commencement of this Law under the Evidence (Proceedings in Other Jurisdictions) (Jersey) Order, 1983<sup>1</sup> for an order for evidence to be obtained in the Island may be continued as if this Law had not been passed.

**ARTICLE 7.**

**Citation and commencement.**

(1) This Law may be cited as the Evidence (Criminal Proceedings in Other Jurisdictions) (Jersey) Law, 198.

(2) This Law shall come into force on such day as the States may by Act appoint.