



Jersey

# **SERVICE OF PROCESS AND TAKING OF EVIDENCE (JERSEY) LAW 1960**

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## SERVICE OF PROCESS AND TAKING OF EVIDENCE (JERSEY) LAW 1960

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Jersey

## SERVICE OF PROCESS AND TAKING OF EVIDENCE (JERSEY) LAW 1960

**A LAW** to regulate the service within Jersey of process of courts outside Jersey, and vice versa, and to provide for taking evidence in proceedings pending or in contemplation before courts outside Jersey<sup>1</sup>

Commencement [[see endnotes](#)]

**WHEREAS**, on the twenty-seventh day of June, 1562, Her late Majesty Queen Elizabeth I granted, by Letters Patent under the Great Seal, a Charter to the Bailiff and Jurats and other natives and inhabitants of the Island of Jersey, the said Charter containing a confirmation of all and singular the laws and customs duly and lawfully used in the Island, and also granting and confirming to the Bailiff and Jurats and all other magistrates, officers of Justice, and any other persons appointed there in any office or duty, full, absolute and complete authority touching all sorts of pleas, processes, law suits, actions, disputes and cases of any kind whatsoever arising in the Island, as well real, personal and mixed, as criminal and capital, and there and not elsewhere to plead, proceed with, prosecute and defend all these things and in the same matters either to proceed or supersede, to examine, hear, end, acquit, condemn, decide and put their sentences into execution according to the laws and customs of the Island theretofore used and approved;

Whereas the said Charter contains a clause which, translated from the original Latin, reads as follows –

“Moreover we desire and for us our heirs and successors by these presents we grant to the aforesaid Bailiff and Jurats and other natives and inhabitants within the Island and other maritime places before mentioned that none of them for the future should be cited apprehended or drawn into any lawsuit by any writs or process issued from any of our Courts or other Courts within our kingdom of England or any of them or in any other way be compelled to appear or reply without the Island and maritime places aforesaid before any Judges Courts Magistrates or officers of Justice of ours or of others concerning or touching any thing suit matter or cause whatsoever arising within the aforesaid Island but that the said Islanders and any one of them notwithstanding citations apprehensions writs and processes of the kind mentioned may and might lawfully and with

impunity in the Island and aforesaid places reside remain be at rest and there await justice without any corporal punishment or pecuniary fine ransom or loss on that account to be incurred or suffered and without any offence or cause of contempt or contumacy as far as concerns our heirs and successors on them or on any one or more of them on that account to be inflicted imposed or otherwise adjudged. Except only such cases as by the laws and customs of the Island and aforesaid places may be reserved to our royal cognisance and examination or by our royal right or privilege ought to be reserved.”;

Whereas it is desirable to make provision for the service in the Island of process of courts outside the Island, without prejudice to the privileges and immunities conferred by the said Charter, and for the service outside the Island of process of Jersey Courts;

Whereas it is desirable to make provision for the taking of evidence in relation to civil and commercial matters pending before courts and tribunals outside the Island;

And Whereas it is desirable to make provision for the implementation of agreements entered into between Her Majesty and the Governments of foreign countries in connexion with the matters aforesaid;

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

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## **PART 1**

### **SERVICE OF PROCESS**

#### **1 Service within Jersey of process of courts outside Jersey**

- (1) For the avoidance of doubt, it is hereby declared that it is not unlawful for any person to serve on any other person within Jersey any process or citation in any civil or commercial matter summoning or citing that other person to appear before a court or tribunal of any country outside Jersey, whether within or without Her Majesty’s dominions.
- (2) Rules of Court may be made for regulating the service in Jersey of any process or citation in any civil or commercial matter pending before a court or tribunal of a foreign country –
  - (a) upon a letter of request from such court or tribunal transmitted by the Secretary of State with an intimation that it is desirable that effect be given to the same; and
  - (b) for giving effect to any agreement between Her Majesty and the government of that foreign country in the matter of the service of any such process or citation as aforesaid.
- (3) Nothing in this Article shall be deemed to import the recognition of jurisdiction in a court or tribunal outside Jersey in any thing, suit, cause or

matter whatsoever in which that court or tribunal is not now recognized by the law of Jersey as having jurisdiction.

## **2 Service outside Jersey of process of Jersey courts**

Any process in any civil or commercial matter summoning or citing a person outside Jersey to appear before a court of Jersey may be served on that person in such cases and in such manner as may be prescribed by Rules of Court.

## **PART 2**

### **TAKING OF EVIDENCE IN RELATION TO CIVIL AND COMMERCIAL MATTERS PENDING OR IN CONTEMPLATION BEFORE COURTS AND TRIBUNALS OUTSIDE JERSEY<sup>2</sup>**

## **3 Application to Royal Court for assistance in obtaining evidence for civil proceedings in a court or tribunal outside Jersey<sup>3</sup>**

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

## **4 Power of Royal Court to give effect to application for assistance<sup>4</sup>**

- (1) Subject to the provisions of this Article, the Royal Court shall have power, on any such application as is mentioned in Article 3, 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) Without prejudice to the generality of paragraph (1) 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 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 sub-paragraph (e), for the taking and testing of samples of blood from any person.
- (3) An order made under this Article 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 purpose of civil proceedings in the Royal Court (whether or not proceedings of the same description as those to which the application for the order relates); but this paragraph 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 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 or her 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 or her possession, custody or power.

## **5 Privilege of witnesses<sup>5</sup>**

- (1) A person shall not be compelled by virtue of an order under Article 4 to give any evidence which he or she could not be compelled to give –
- (a) in civil proceedings in Jersey; or
  - (b) subject to paragraph (2), in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.
- (2) Paragraph (1)(b) 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 he or she 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), a person shall not be compelled by virtue of an order under Article 4 to give any evidence if his or her 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 the 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) to the transmission of evidence given by a person shall be construed accordingly.

## **6 Power of Royal Court to assist in obtaining evidence for international proceedings<sup>6</sup>**

- (1) The provisions of this Part of this Law other than this Article shall apply to the Court of Justice of the European Union.<sup>7</sup>
- (2) The States may by Regulations direct that, subject to such exceptions, adaptations or modifications as may be specified in the Regulations the provisions of this Part shall have effect in relation to international proceedings of any description specified in the Regulations.
- (3) In this Article “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.

## **7 Interpretation of Part 2<sup>8</sup>**

In this Part –

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

“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; and

“requesting court” has the meaning given in Article 3.

## **8 Examination of witnesses to be taken upon oath**

Every person authorized to take the examination of witnesses by any order made in pursuance of this Part of this Law may take all such examinations upon the oath of the witness, and, for that purpose, shall have power to administer an oath.

## **9 Expenses of witnesses**

Every person whose attendance is required in pursuance of any order made under this Part shall be entitled to the like payment as upon attendance as a witness in civil proceedings before the Royal Court.

**10 False unsworn statement<sup>9</sup>**

If any person, in giving any testimony (either orally or in writing) otherwise than on oath, where required to do so by an order under Article 4 of this Law, makes a statement –

- (a) which he or she knows to be false in a material particular; or
- (b) which is false in a material particular and which he or she does not believe to be true,

he or she shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 years or a fine or both.

**PART 3****GENERAL****11 Rules of Court**

The power to make Rules of Court under the [Royal Court \(Jersey\) Law 1948](#), shall include a power to make Rules of Court –

- (a) for any purpose for which Rules of Court may be made under Part 1; and
- (b) for the purposes of giving effect to Part 2 and regulating the procedure thereunder.

**12 Citation**

This Law may be cited as the Service of Process and Taking of Evidence (Jersey) Law 1960.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Service of Process and Taking of Evidence (Jersey) Law 1960	<a href="#">L.12/1960</a>	9 July 1960
Solemn Affirmations (Jersey) Law 1963	<a href="#">L.15/1963</a>	23 August 1963
Service of Process and Taking of Evidence (Amendment) (Jersey) Law 1985	<a href="#">L.12/1985</a>	12 April 1985
European Union Legislation (Implementation) (Jersey) Law 2014	<a href="#">L.28/2014</a>	31 October 2014

### Table of Renumbered Provisions

Original	Current
PART I	PART 1
PART II	PART 2
4A	5
4B	6
4C	7
5(1)	8
(2)	repealed by <a href="#">L.15/1963</a>
6	9
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PART III	PART 3
8	11
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### Table of Endnote References

<sup>1</sup> Long title	amended by L.12/1985
<sup>2</sup> Part 2 heading	amended by L.12/1985
<sup>3</sup> Article 3	substituted by L.12/1985
<sup>4</sup> Article 4	substituted by L.12/1985
<sup>5</sup> Article 5	inserted by L.12/1985
<sup>6</sup> Article 6	inserted by L.12/1985
<sup>7</sup> Article 6(1)	amended by L.28/2014
<sup>8</sup> Article 7	inserted by L.12/1985
<sup>9</sup> Article 10	substituted by L.12/1985