



Evidence (Proceedings in Other Jurisdictions) Act 1975

1975 CHAPTER 34

Evidence for civil proceedings

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

Where an application is made to the High Court, the Court of Session or the High Court of Justice in Northern Ireland for an order for evidence to be obtained in the part of the United Kingdom in which it exercises jurisdiction, 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 any other part of the United Kingdom or in a country or territory outside the United Kingdom; 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 High Court, Court of Session or High Court of Justice in Northern Ireland, as the case may be, shall have the powers conferred on it by the following provisions of this Act.

Modifications etc. (not altering text)

C1 S. 1 extended by S.I. 1976/428, art. 2 and Patents Act 1977 (c. 37), s. 92(1)

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

- (1) Subject to the provisions of this section, the High Court, the Court of Session and the High Court of Justice in Northern Ireland shall each have power, on any such application as is mentioned in section 1 above, by order to make such provision for obtaining evidence in the part of the United Kingdom in which it exercises jurisdiction

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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 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.

Modifications etc. (not altering text)

C2 S. 2 extended by S.I. 1976/428, **art. 2** and Patents Act 1977 (c. 37), **s. 92(1)**

C3 S. 2 restricted by Protection of Trading Interests Act 1980 (c. 11, SIF 124:1), **s. 4**

3 Privilege of witnesses.

- (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 the part of the United Kingdom in which the court that made the order exercises jurisdiction; or
 - (b) subject to subsection (2) below, in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.

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- (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; 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.

Modifications etc. (not altering text)

C4 S. 3 extended by S.I. 1976/428, art. 2 and Patents Act 1977 (c. 37) s. 92(1)

4 Extension of powers of High Court etc. in relation to obtaining evidence for proceedings in that court.

[^{F1}The Attendance of Witnesses Act 1854 (which enables the Court of Session to order the issue of a warrant of citation in special form, enforceable throughout the United Kingdom, for the attendance of a witness at a trial) shall] have effect as if references to attendance at a trial included references to attendance before an examiner or commissioner appointed by the court or a judge thereof in any cause or matter in that court, including an examiner or commissioner appointed to take evidence outside the jurisdiction of the court.

Textual Amendments

F1 Words substituted by Supreme Court Act 1981 (c. 54, SIF 37), s. 152(4), Sch. 5

Changes to legislation:

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