

## SCHEDULE TO THE ORDER

Article 3

### PROVISIONS OF THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT 1975 AS EXTENDED TO THE SOVEREIGN BASE AREAS

#### *Evidence for civil proceedings*

#### **Application to Judge's Court for assistance in obtaining evidence for civil proceedings in other court**

1. Where an application is made to the Judge's Court for an order for evidence to be obtained in the Sovereign Base Areas, 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 Sovereign Base Areas; 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 Judge's Court shall have the powers conferred on it by the following provisions of this Act.

#### **Power of Judge's Court to give effect to application for assistance**

2.—(1) Subject to the provisions of this section, the Judge's 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 Sovereign Base Areas 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

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(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 the Sovereign Base Areas; 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, the Sovereign Base Areas, or any other territory for which the United Kingdom is responsible under international law; and a certificate signed by or on behalf of the Administrator 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.

### *Evidence for criminal proceedings*

#### **Power of Judge's 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 Sovereign Base Areas;
- (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 Judge's Court to assist in obtaining evidence for international proceedings**

6.—(1) The Administrator 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 sections 110 to 112 inclusive of the Criminal Code<sup>(1)</sup> 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 subsection (2) of section 102 of the Civil Procedure Ordinance<sup>(2)</sup>, section 176 of the Criminal Procedure Ordinance<sup>(3)</sup>, and section 63 of the Courts Ordinance<sup>(4)</sup>, shall include powers 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 the authority making the rules may consider necessary or expedient.

#### **Consequential amendments and repeals**

8.—(2) The enactments mentioned in Schedule 2 to this Act are hereby repealed as respects the Sovereign Base Areas to the extent specified in the third column of that Schedule.

(3) Nothing in this section shall affect—

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

(1) Cap. 154 (Laws of Cyprus), Rev. 1959.

(2) Cap. 6 (Laws of Cyprus), Rev. 1959, Ordinances No. 18 of 1966, No. 9 of 1970.

(3) Cap. 155 (Laws of Cyprus), Rev. 1959, Ordinances No. 4 of 1960, No. 19 of 1963, No. 1 of 1966, No. 2 of 1972, No. 2 of 1973, No. 10 of 1975, No. 4 of 1978.

(4) Ordinances No. 3 of 1960, No. 7 of 1961, No. 19 of 1962, No. 5 of 1963, No. 3 of 1965, No. 9 of 1977.

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

### **Interpretation**

**9.—(1)** In this Act—

“Administrator”, in relation to the Sovereign Base Areas, means the Administrator of the Sovereign Base Areas and includes any person or persons administering the Government of the Sovereign Base Areas;

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

“Judge's Court” means the Judge's Court of the Sovereign Base Areas of Akrotiri and Dhekelia;

“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;

“Sovereign Base Areas” means the Sovereign Base Areas of Akrotiri and Dhekelia.

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

(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.

### **Commencement**

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