



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1579 of 7th May 2010
LEGISLATION

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EVIDENCE ORDINANCE 2010

An Ordinance to amend and consolidate the law relating to Evidence

J. H. GORDON
ADMINISTRATOR

5th May 2010.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Part 1

Introduction

1. Short title

This Ordinance may be cited as the Evidence Ordinance 2010.

2. Interpretation

In this Ordinance—

“bank” means a bank which is licensed under any Republican law to conduct business as a bank, the operation of which is recognised in the Areas;

“bankers’ books” includes ledgers, diaries, cash-books, account books and other records used in the course of the normal business of the bank, whether they are in writing or are kept on microfilm, on magnetic tape or in any other mechanical or electronic means for the recovery of information;

“business” includes a trade, profession, charity or other activity carried on in a systematic manner for a substantial period of time, whether or not for profit;

“civil proceedings” means any proceedings other than criminal proceedings;

“copy” in relation to a document means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

- “court” means a court of competent jurisdiction and in relation to arbitration or tribunal proceedings is to be construed as a reference to the tribunal;
- “criminal proceeding” means any proceeding instituted before a court against a person to obtain punishment of that person for an offence;
- “document” means anything on which information of any description is recorded;
- “oral evidence” includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;
- “proceedings” means criminal or civil proceedings;
- “public authority” includes the Administration, any public or statutory undertaking, either in the United Kingdom or the Republic, any government department of the United Kingdom or of the Republic and any person holding office under Her Majesty;
- “record” means a record in any form; and
- “statement” means any representation of fact or opinion made by a person by whatever means and includes a representation made orally or in a document.

Part 2

General rules of evidence

3. Application of English law and rules of evidence

- (1) Subject to subsection (3), the common law rules of evidence as in force in England—
 - (a) on 30 January 1997 continue to apply in any civil proceedings; and
 - (b) on 3 April 2005 continue to apply in any criminal proceedings.
- (2) Subject to subsection (3), the statutes specified in the Schedule continue to apply in accordance with that Schedule in proceedings to which they are relevant.
- (3) Subsections (1) and (2) only apply—
 - (a) so far as circumstances permit; or
 - (b) unless this Ordinance or any other Ordinance otherwise provides.

4. Competence and compellability of witnesses

- (1) A witness is competent to give evidence in proceedings, unless the court considers that the witness is incapable of—
 - (a) understanding questions put to that witness;
 - (b) knowing that the witness ought to respond truthfully to those questions; or
 - (c) giving rational answers to those questions.
- (2) A court—
 - (a) may convict a person on the sworn or unsworn evidence of a child without corroboration; and
 - (b) is to remind itself about the danger of a conviction based on the evidence (sworn or unsworn) of a child.
- (3) For the purpose of subsection (1) a witness may be “incapable” as a result of youth, mental incapacity or any other similar cause.
- (4) In criminal proceedings the spouse of an accused person—
 - (a) is a competent but not a compellable prosecution witness against the accused spouse; and
 - (b) is a competent and compellable witness against any other person who is co-accused with the accused spouse.
- (5) Without prejudice to section 1(2) of the Criminal Evidence Act 1898(a), nothing contained in this or any other Ordinance compels a witness to answer any question which might incriminate that witness.

5. Claim against the estate of deceased person

A claim against the estate of a deceased person, whether founded on an allegation of debt or gift, must not be maintained on the uncorroborated testimony of the person making the claim unless circumstances appear or are proven which—

- (a) support the claim; or
- (b) puts the burden of disproving the claim onto the representatives of the deceased.

6. Formal admissions in criminal proceedings

- (1) Any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecutor or the accused.
- (2) An admission made under subsection (1) is conclusive evidence against the party admitting the fact in those proceedings.
- (3) An admission made under subsection (1)—
 - (a) may be made before or during the proceedings;
 - (b) must be made in court, whether it has been made before or during the proceedings; and
 - (c) if made on behalf of an accused—
 - (i) must be made by the advocate (if any) who acts for that person; and
 - (ii) must be approved by the court.
- (4) An admission made under subsection (1) is only effective in relation to an accused who is not fluent in English if—
 - (a) the admission is either—
 - (i) translated into a language in which the accused is conversant; or
 - (ii) explained to the accused in such a language; and
 - (b) the advocate (if any) representing the accused is satisfied that the accused fully understands and agrees with such admission.
- (5) An admission made under subsection (1) for the purposes of proceedings relating to any matter, is to be treated as an admission for the purposes of any subsequent criminal proceedings relating to that matter (including any appeal or retrial).
- (6) An admission under subsection (1) may, with the permission of the court, be withdrawn in the proceedings for the purposes of which it is made or any subsequent criminal proceedings relating to the same matter.

7. Admission by agreement of statements as evidence in criminal proceedings

- (1) In criminal proceedings, a statement made by any person is to be admitted to the same extent and to the same effect as oral evidence from the person making that statement if the conditions specified in subsection (2) are satisfied.
- (2) The conditions specified in this subsection are that—
 - (a) the statement purports to be signed by the person who made it;
 - (b) the statement contains a declaration by that person to the effect that it is true to the best of that person's knowledge and belief;
 - (c) all the parties to the proceedings or their advocates agree to the admission of the statement; and
 - (d) the court approves the admission of the statement.
- (3) A person whose statement is admitted under subsection (1) may be called to give evidence by—
 - (a) the party on whose behalf the statement is tendered;
 - (b) the court, either of its own motion or on the application of any other party to the proceedings.

8. Particulars of immediate complaints

- (1) This section applies to criminal proceedings.
- (2) A court may receive in evidence on behalf of the prosecution the particulars of any complaint or statement relating to the offence made by a complainant if it appears to the court, having regard to the circumstances of the case, that the complaint or statement was made—
 - (a) immediately after the offence was committed; and
 - (b) to either—
 - (i) the first person or persons to whom the complainant spoke after the offence was committed; or
 - (ii) any other person or persons to whom the court considers that it was natural that the complainant would make a complaint or statement regarding the offence.
- (3) In this section, “complainant” means—
 - (a) the person against whom the offence was committed; or
 - (b) the person in charge of any property against which the offence was committed and who was present when the offence was committed.

9. Previous inconsistent statements

- (1) In criminal proceedings a previous statement made by a person is admissible as evidence, whether or not the person admits to making the statement, if—
 - (a) the person gives oral evidence about a material statement of fact in relation to which a previous statement was made by that person; and
 - (b) that statement contradicts the oral evidence.
- (2) A court is not to treat a statement of fact contained in the previous statement as evidence in accordance with subsection (1) unless it appears to the court that the fact is corroborated by other evidence.

10. Proof of validity of an instrument

- (1) Subject to subsection (2), in any proceedings, the validity of an instrument which must be attested may instead be proved in the same manner as if no attesting witnesses were alive.
- (2) Subsection (1) does not apply to a will or other testamentary document.

11. Presumptions as to documents over 20 years old

- (1) A document proven or purporting to be not less than 20 years old, which is produced from proper custody, is presumed, in the absence of circumstances of suspicion, to have been duly signed, sealed, attested, delivered or published according to its purport.
- (2) For the purposes of this section a document is produced from proper custody when it has been in the keeping of a person who might reasonably and naturally be expected to have possession of it, although that person might not necessarily be the most appropriate person to have possession of it.

12. Admission in evidence of documents executed outside of the Areas

- (1) Any document specified in subsections (2) or (3) may be admitted in evidence in any court or any proceedings or under any legislation in force for the time being without proof of the signature, seal or official character of the persons referred to in those subsections.
- (2) A document is specified in this subsection if it is a document which has been executed in the United Kingdom or in any other place in which Her Majesty exercises jurisdiction and which purports to have affixed, impressed or subscribed on it—
 - (a) in the case of a power of attorney, the seal and signature of a notary public or an officer authorised in the United Kingdom to perform the functions of a notary public; or
 - (b) in the case of a document other than a power of attorney, the seal and signature of any justice of the peace, commissioner for oaths, notary public or other officer authorised by law in any part of the United Kingdom to administer an oath or to do any notarial act.

- (3) A document is specified in this subsection if it is a document which has been executed in a place other than the United Kingdom or any other place in which Her Majesty exercises jurisdiction and which purports to have affixed, impressed or subscribed on it the seal and signature of any of the following persons in testimony of any oath, affidavit or act administered, taken, or done by or before that person—
 - (a) a British Ambassador, envoy, minister, charge d'affaires, or any other diplomat in an Embassy or High Commission exercising functions in any foreign country; or
 - (b) a British consul-general, consul, vice-consul, pro-consul, consular agent, acting consul general, acting vice-consul, or acting consular agent exercising functions in any foreign country.

13. Copies of microphotographs or micro images

The contents of a document (whether or not that document continues in existence or not) may be proved in any proceedings by producing—

- (a) an enlarged copy of the document or the relevant part of it, which has been reproduced by microphotography or micro imaging processes or by its transfer to an electronic disk which imprints visual images; and
- (b) a written certificate or such other evidence as the court may order which satisfies the court that the reproduction referred to in paragraph (a) is accurate.

14. Bankers books

- (1) A copy of an entry in the books of a bank is admissible in any proceedings as evidence of that entry and of the matters, business transactions and accounts recorded therein.
- (2) A copy of an entry in the books of a bank is not admissible under this section unless it is proved that—
 - (a) at the time of the entry, the book was one of the usual books of the bank;
 - (b) the entry was made in the normal course of conducting business; and
 - (c) the book is under the protection and supervision of the bank.
- (3) The proof referred to in subsection (2) may be given by the manager or an employee of the bank either orally or by affidavit.
- (4) A copy of an entry in the books of a bank is not admissible as proof under this section unless it is also proved that the copy was compared with the original entry and has been ascertained to be correct.
- (5) The proof referred to in subsection (4) may be given either orally or by affidavit by a person who compared the copy with the original entry.
- (6) Unless a court so orders, a bank or an employee of a bank must not in any legal proceedings to which the bank is not a party be compelled to—
 - (a) produce any book of the bank, the contents of which may be proved under this section; or
 - (b) to appear as a witness in order to prove any matter, business transactions or accounts entered in such book.
- (7) A party to proceedings may apply to the court for an order to allow that party to inspect and take copies of any entries in the books of a bank for the purposes of the proceedings and following an application a court may make such an order.
- (8) An application under subsection (7) may be made by summoning either the bank or the other party to the proceedings.
- (9) Any order made under subsection (7) must be served on the bank no later than 3 working days before the day on which the bank must comply with the order, unless the court orders otherwise.

Part 3

Hearsay evidence

15. Interpretation of Part 3

- (1) In this Part—

“hearsay evidence” means any representation of fact or opinion otherwise than in oral evidence in the proceedings in question which is tendered as evidence of the matter stated; and

“original statement” means the statement of a person who—

 - (a) personally knows of a fact, if the statement refers to a fact; or
 - (b) expresses an expert opinion, if the statement contains an opinion.
- (2) This Part is only to be read as applying to a matter stated if (and only if) the purpose, or one of the purposes, of the person making the statement appears to the court to have been—
 - (i) to cause another person to believe the matter, or
 - (ii) to cause another person to act, or a machine to operate, on the basis that the matter is as stated.

16. Hearsay evidence admissible

- (1) Despite any rule of law to the contrary but subject to this Ordinance, evidence is not to be excluded from any proceedings only on the ground that it is hearsay unless the court orders otherwise.
- (2) The court may refuse to admit a statement as evidence of a matter stated if—
 - (a) the statement was made otherwise than in oral evidence in the proceedings, and
 - (b) the court is satisfied that the case for excluding the statement, taking account of the risk that to admit it would result in unnecessary use of time, substantially outweighs the case for admitting it, taking account of the value of the evidence.
- (3) In deciding whether hearsay evidence should be admitted under this section, the court must have regard to the following factors (and to any others it considers relevant)—
 - (a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;
 - (b) what other evidence has been, or can be, given on the matter or evidence mentioned in paragraph (a);
 - (c) how important the matter or evidence mentioned in paragraph (a) is in the context of the case as a whole;
 - (d) the circumstances in which the statement was made;
 - (e) how reliable the maker of the statement appears to be;
 - (f) how reliable the evidence of the making of the statement appears to be;
 - (g) whether oral evidence of the matter stated can be given and, if not, why it cannot;
 - (h) the amount of difficulty involved in challenging the statement;
 - (i) the extent to which that difficulty would be likely to prejudice the party facing it.
- (4) Nothing in this Part—
 - (a) renders testimony admissible as evidence in proceedings if it would be inadmissible for a reason other than that it is hearsay;
 - (b) prejudices any power of the court to exclude evidence at its discretion, whether by preventing questions from being put or otherwise.

- (5) Sections 18, 19 and 20 do not apply to hearsay evidence which would have been admitted other than under subsection (1) even if that evidence would also have been admissible under that subsection.

17. Adopting the content of written statement

A witness in any proceedings may adopt the content of a previous written statement made by that witness in which case such statement is to be admissible as the evidence-in-chief or part of the evidence-in-chief of that witness.

18. Summoning of witnesses

- (1) If a party to proceedings adduces hearsay evidence but does not summon the person who made the statement containing the hearsay evidence then any other party may, with the permission of the court, summon the person who made the statement and cross-examine that person.
- (2) A party who summons a witness in accordance with subsection (1) must cross-examine that witness before the close of the case of the party who adduced the hearsay evidence.
- (3) In deciding whether or not to give permission to a party to summon a witness under subsection (1) a court is to have regard to whether—
 - (a) it is reasonable in all the circumstances to require the witness to be summoned; and
 - (b) the interests of justice require the witness to be summoned.
- (4) If a witness is summoned under subsection (1), the expenses of that witness are to be paid by the party who provided the hearsay evidence unless the court orders otherwise.

19. Weight to be attached to hearsay evidence

- (1) In determining the weight (if any) to be given to hearsay evidence, the court is to have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
- (2) Regard may be had in particular to the following—
 - (a) whether it would be reasonable and practicable for the party adducing the hearsay evidence to produce the maker of the original statement as a witness;
 - (b) whether the original statement was made contemporaneously with the occurrence or existence of the matter stated;
 - (c) whether the evidence involves multiple hearsay;
 - (d) whether any person involved had any motive to conceal or misrepresent matters;
 - (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
 - (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent a proper evaluation of its weight.
- (3) When determining the weight to be given to hearsay evidence, the court is to have particular regard to whether the party adducing the hearsay evidence could have provided the best possible evidence but did not do so.

20. Witness providing original statement to be competent

Nothing in this Ordinance makes an original statement admissible as evidence if it was made by a person who was not capable of being a competent witness at the time the statement was made.

21. Credibility of witnesses – civil proceedings

- (1) This section applies if in civil proceedings—
 - (a) a statement not made in oral evidence in the proceedings is admitted as evidence of a matter stated; and
 - (b) the maker of the statement does not give oral evidence in connection with the subject matter of the statement.

- (2) In a case where this section applies—
 - (a) evidence which (if the maker of the statement had given oral evidence) would have been admissible as relevant to the maker's credibility as a witness is admissible in the proceedings;
 - (b) evidence tending to prove that the maker made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that the maker made a contradictory statement;
 - (c) evidence may not be given of any matter in relation to which, if the maker had given oral evidence and had denied that matter in cross-examination, evidence could not have been produced by the cross-examining party.
- (3) Nothing in this section prevents a previous statement from being admissible by virtue of section 16 as evidence of the matter stated.

22. Credibility of witnesses – criminal proceedings

- (1) This section applies if in criminal proceedings—
 - (a) a statement not made in oral evidence in the proceedings is admitted as evidence of a matter stated; and
 - (b) the maker of the statement does not give oral evidence in connection with the subject matter of the statement.
- (2) In a case where this section applies—
 - (a) evidence which (if the maker of the statement had given oral evidence) would have been admissible as relevant to the maker's credibility as a witness is admissible in the proceedings;
 - (b) evidence may with the court's permission be given of any matter which (if the maker of the statement had given oral evidence) could have been put to the maker in cross-examination as relevant to the maker's credibility as a witness but of which evidence could not have been adduced by the cross-examining party;
 - (c) evidence tending to prove that the maker made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that the maker made a contradictory statement.
- (3) If as a result of evidence admitted under this section an allegation is made against the maker of a statement, the court may permit a party to lead additional evidence of such description as the court may specify for the purpose of denying or answering that allegation.
- (4) In the case of a statement which is admitted as evidence under section 27 each person who, in order for the statement to be admissible, must have supplied or received the information concerned or created or received the document or part concerned is to be treated as the maker of the statement for the purposes of subsections (1) to (3).
- (5) Nothing in this section prevents a previous statement from being admissible by virtue of section 16 as evidence of the matter stated.

23. Previous statements of witnesses – civil proceedings

- (1) A party who calls or intends to call a witness in civil proceedings may not in those proceedings adduce evidence of a previous statement made by that witness except—
 - (a) with the permission of the court; or
 - (b) for the purpose of rebutting a suggestion that the evidence of that witness has been fabricated.
- (2) Without prejudice to section 18, nothing in this section authorises a party to adduce evidence of a previous inconsistent or contradictory statement other than in accordance with any rule of law as to—
 - (a) how far a witness may be discredited by the party producing that witness;
 - (b) the proof of contradictory statements made by a witness; or
 - (c) cross-examination as to previous statements in writing.

- (3) Nothing in this section—
 - (a) affects the circumstances in which, where a person called as a witness in civil proceedings is cross-examined on a document used by that person to refresh his memory, that document may be adduced as evidence in the proceedings; or
 - (b) prevents a previous statement of a witness from being admissible by virtue of section 16 as evidence of the matters stated.

24. Previous statements of witnesses – criminal proceedings

- (1) Notwithstanding section 9, this section applies where a witness is called to give evidence in criminal proceedings.
- (2) A previous statement by the witness may be admitted as evidence to rebut a suggestion that his oral evidence has been fabricated and that statement is also admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.
- (3) A previous statement made by the witness in a document is admissible as evidence of any matter stated of which oral evidence by that witness would be admissible if—
 - (a) the statement is used by the witness to refresh the memory of the witness while giving evidence;
 - (b) the witness is cross-examined on the statement and as a consequence the statement is received in evidence in the proceedings.
- (4) A previous statement by the witness is admissible as evidence of any matter stated of which oral evidence by that witness would be admissible, if—
 - (a) one of the conditions specified in subsections (5) or (6) is satisfied; and
 - (b) while giving evidence the witness indicates that he made the statement, and that it states the truth.
- (5) The first condition is that the statement identifies or describes a person, object or place.
- (6) The second condition is that the statement was made by the witness when the matters stated were fresh in the witness's memory but the witness does not remember them, and cannot reasonably be expected to remember them, well enough to give oral evidence of them in the proceedings.
- (7) A previous inconsistent statement made by the witness is admissible as evidence of any matter stated of which oral evidence by that witness would be admissible if—
 - (a) proved by virtue of section 3, 4 or 5 of the Criminal Procedure Act 1865; or
 - (b) the witness admits making the statement.

25. Statements included in a document

- (1) The contents of a statement which may be produced as evidence and which is included in a document may be proved by—
 - (a) providing the original document; or
 - (b) if the court is satisfied that there is a good reason for not providing the original document, providing a copy of the original document.
- (2) If the court considers that it is not reasonably practicable to provide the whole of a document to the court in accordance with subsection (1) it may allow a party instead to provide the relevant parts of that document.
- (3) It is immaterial for the purposes of this section whether a copy is a copy of the original or of another copy.
- (4) A document may be provided under this section by any person who possesses it.

26. Public and business documents – civil proceedings

- (1) A document which is shown to be part of the records of a business or public authority may be adduced as evidence in civil proceedings without further proof.

- (2) For the purposes of this section, a document is to be taken to be part of the records of a business or a public authority if there is produced to the court a certificate signed by an officer of the business or authority to which the records belong.
- (3) For the purposes of subsection (2)—
 - (a) a document purporting to be a certificate signed by an officer of a business or public authority is to be treated as having been duly issued by such an officer unless the contrary is proved; and
 - (b) a certificate is to be treated as signed by a person if it purports to bear a facsimile of the signature.
- (4) The absence of an entry in the records of a business or public authority may be proved in proceedings by affidavit of an officer of the business or public authority to which the records belong.
- (5) In this section “officer” includes any person occupying a responsible position in relation to the relevant activities of the business or public authority or in relation to its records.
- (6) The court may, having regard to the circumstances of the case, direct that all or any of this section does not apply in relation to a particular document or record, or a description of documents or records.

27. Public and business documents – criminal proceedings

- (1) In criminal proceedings a statement contained in a document is admissible as evidence of any matter stated if—
 - (a) oral evidence given in the proceedings would be admissible as evidence of that matter;
 - (b) the requirements of subsection (2) are satisfied; and
 - (c) the conditions specified in subsection (5) are satisfied, in a case where subsection (4) requires them to be.
- (2) The requirements of this subsection are that—
 - (a) the document or the part containing the statement was created or received by a person in the course of a business, or as the holder of a paid or unpaid office;
 - (b) the person who supplied the information contained in the statement (the relevant person) had or may reasonably be supposed to have had personal knowledge of the matters dealt with; and
 - (c) each person (if any) through whom the information was supplied from the relevant person to the person mentioned in paragraph (a) received the information in the course of a business, or as the holder of a paid or unpaid office.
- (3) The persons mentioned in paragraphs (a) and (b) of subsection (2) may be the same person.
- (4) If the statement was prepared for the purposes of pending or contemplated criminal proceedings or for a criminal investigation then one of the conditions specified in subsection (5) must be satisfied.
- (5) The conditions specified in this subsection are that—
 - (a) the relevant person is dead;
 - (b) the relevant person is unfit to be a witness because of a physical or mental condition;
 - (c) the relevant person is outside the Areas and it is not reasonably practicable to secure that person’s attendance;
 - (d) the relevant person cannot be found although such steps as it is reasonably practicable to take to find that person have been taken;
 - (e) through fear the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives permission for the statement to be given in evidence; or
 - (f) the relevant person cannot reasonably be expected to have any recollection of the matters dealt with in the statement (having regard to the length of time since the person supplied the information and all other circumstances).

- (6) A statement is not admissible under this section if the court makes a direction to that effect under subsection (7).
- (7) The court may make a direction under this subsection if satisfied that the statement's reliability as evidence for the purpose for which it is tendered is doubtful in view of—
 - (a) its contents;
 - (b) the source of the information contained in it;
 - (c) the way in which or the circumstances in which the information was supplied or received; or
 - (d) the way in which or the circumstances in which the document concerned was created or received.

Part 4

Final Provisions

28. Repeal

The Evidence Ordinance**(b)** is repealed.

29. Commencement

This Ordinance comes into force on 1 June 2010 and applies to all proceedings commenced after that date.

Schedule

(Section 3(2))

1. The statutes specified in this Schedule are—
 - (a) the Witnesses Act 1806(c);
 - (b) the Statutory Declarations Act 1835(d);
 - (c) the Evidence Act 1845(e);
 - (d) the Evidence Act 1851(f);
 - (e) the British Law Ascertainment Act 1859(g);
 - (f) the Criminal Procedure Act 1865(h);
 - (g) the Documentary Evidence Act 1868(i);
 - (h) the Documentary Evidence Act 1882(j);
 - (i) the Criminal Evidence Act 1898; and
 - (j) the Evidence (Colonial Statutes) Act 1907(k).

2. Subject to section 3(3)—
 - (a) the statutes specified in paragraphs 1(a) to (h) and (j) continue to have effect as amended up to the date of coming into force of this Ordinance; and
 - (b) the statute referred to in paragraph 1(i) continues to have effect in the form in which it was originally enacted.

Notes

- (a) 61 & 62 Vict c. 36, United Kingdom.
- (b) Cap 9, Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom) and the Laws (Adaptation and Interpretation) (Consolidation and Extension) Ordinance 1968 (5/68).
- (c) 46 Geo 3 c.37, United Kingdom.
- (d) 5 & 6 Will 4 c.62, United Kingdom.
- (e) 8 & 9 Vict c. 113, United Kingdom.
- (f) 14&15 Vict c. 99, United Kingdom.
- (g) 22 & 23 Vict c. 63, United Kingdom.
- (h) 28 & 29 Vict c. 18, United Kingdom.
- (i) 31 & 32 Vict c. 37, United Kingdom.
- (j) 45 & 46 Vict c. 9, United Kingdom.
- (k) 7 Edw 7 c. 16, United Kingdom.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This explanatory note relates to the Evidence Ordinance 2010 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

Particular points

3. The Ordinance—

- a. consolidates existing Ordinances relating to evidence; and
- b. replicates the effects of the Republican Evidence (Amendment) Law 2004 (32(I) of 2004) and Evidence (Amendment) Law 2009 (14(I) of 2009).

4. Section 3 of the Ordinance provides that so far as circumstances permit, and subject to the Ordinance, the common law rule of evidence in force on 3rd April 2005 (in relation to criminal proceedings) and on 30th January 1997 (in relation to civil proceedings) will apply in the SBAs. 3rd April 2005 was the date immediately before the commencement of the provisions of the Criminal Justice Act 2003 (see c. 44 of 2003 and SI 950/2005) which amended the circumstances in which hearsay evidence could be admitted in criminal proceedings. 30th January 1997 was the date immediately before the commencement of the Civil Evidence Act 1995 (see c. 38 of 1995 and S.I. 3217/1996) which amended the law on admissibility of evidence in civil proceedings. The statutes listed in the Schedule also continue to have effect in the Areas so far as circumstances permit, and subject to the Ordinance.

5. The Republican Evidence (Amendment) Law 2009 removes the restriction on conviction of a person based on the unsworn evidence of young children. Previously such evidence had to be corroborated before an accused could be convicted. Section 4 of the Ordinance replicates this change. However, unlike under the Evidence (Amendment) Law 2009, the Court is to remind itself about the danger of a conviction based on the testimony (sworn or unsworn) of a child.

6. The Ordinance also removes the prohibition on spouses testifying against each other. Spouses may now testify against each other but cannot be compelled to do so. The Ordinance also removes the prohibition on compelling a spouse to give evidence against any other person who is co-accused with the accused spouse. In other words, the only restriction which now exists in relation to a spouse giving evidence is that he or she cannot be compelled to give evidence against the accused spouse.

7. Part 3 of the Ordinance widens the circumstances in which hearsay evidence may be admitted, in both civil and criminal proceedings. In view of the continued application of English common law as provided by section 3 of the Ordinance, the Law Commission for England and Wales report entitled “Evidence in Criminal Proceedings: Hearsay and Related Topics” dated 4 April 1997 provides useful background information on the law relating to hearsay evidence in criminal proceedings in England and Wales. This report can be found at <http://www.lawcom.gov.uk/docs/lc245.pdf>.

8. Hearsay evidence is not to be excluded from proceedings only on the grounds that it is hearsay. Instead, the court may decide to admit such evidence, taking account of the factors listed in section 16 of the Ordinance. However, hearsay evidence is not admissible if the person who made the original statement was not a competent witness (section 20) or if the hearsay evidence is not otherwise admissible (section 16(4)).

9. In criminal cases, hearsay evidence continues to be admissible with the agreement of all parties and the court (section 7).

10. Section 17 permits a witness to adopt a witness statement as evidence-in-chief.

11. The Ordinance also contains safeguards about use of hearsay evidence:

- a. First, if a party to proceedings adduces hearsay evidence, section 18 of the Ordinance permits, with the permission of the court, any other party to summon

the person who made the statement containing the hearsay so that the person can be cross-examined;

- b. second, section 19 of the Ordinance requires the court to have regard to the circumstances which may affect the weight to be attached to hearsay evidence, such as whether the statement containing the hearsay is contemporaneous with the events to which it relates; and
- c. third, if the person making the statement containing the hearsay is not called as a witness then evidence which is relevant to the credibility of the person making the statement is admissible. In criminal cases, evidence may, with the permission of the court, be adduced even though such evidence could not have been put to the witness in cross-examination.

12. Sections 23 and 24 set out circumstances in which previous statements made by a witness giving oral evidence may be put to that person. The rules set out in the Criminal Procedure Act 1865 are also relevant to the admissibility of previous statements.

13. Section 23 deals with circumstances in which a party calling a witness may adduce evidence of a previous statement made by that witness. Section 23(2) preserves the rules dealing with the circumstances in which a party may treat a witness which it as called as a hostile witness. Those rules are set out in sections 3 to 5 of the Criminal Procedure Act 1865, which continues to have effect in the SBAs by virtue of section 3.

14. Section 26 permits records of a public authority or a business to be admitted in evidence in civil proceedings. A “business” is widely defined in the Ordinance to include non-profit making organisations such as charities and clubs. Section 27 permits similar documents to be admitted in criminal proceeding in certain circumstances. However a court may make a direction that a particular business document is not to be admitted.