

# Evidence Act

## Principal Act

<b>Act. No. 1948-10</b>	<i>Commencement</i>	12.4.1948
	<i>Assent</i>	12.4.1948

With which is consolidated

Relevant current  
provisions

Acts. 1972-06 ss.12(4), (24)	ss.5-6
1977-02	ss.8-14

Amending  
enactments

Relevant current  
provisions

Commencement  
date

Act. 1970-24	–
1978-31	s.12(3)
1983-12	ss.2(1), 7(1)

## English sources

Evidence (Colonial Statutes) Act 1907 (7 Edw.7 c. 16)

Evidence Act 1938 (1 & 2 Geo.6 c.28)

Evidence (Proceedings in Other Jurisdictions) Act 1975 (1975 c.34)

**ARRANGEMENT OF SECTIONS**

## Section

1. Short title.

**PART I.**  
**GENERAL LAW.**

2. Interpretation and savings.
3. Proof of instrument where attestation is necessary.
4. Presumptions as to documents twenty years old.
5. Rebuttal of presumption as to legitimacy and illegitimacy.
6. Presumption as to survival.
7. Proof of statutes of United Kingdom and Commonwealth countries.

**PART II.**  
**EVIDENCE FOR PROCEEDINGS IN OTHER**  
**JURISDICTIONS.**

8. Interpretation.
9. Application to court for assistance in obtaining evidence for civil proceedings in another court.
10. Power of court to give assistance.
11. Privilege of witnesses.
12. Power of court to assist in obtaining evidence for criminal proceedings.
13. Power of court to assist in obtaining evidence for international proceedings.
14. Rules of court.

AN ACT TO AMEND THE LAW OF EVIDENCE, TO FACILITATE THE ADMISSION IN EVIDENCE OF STATUTES PASSED BY THE LEGISLATURES OF THE UNITED KINGDOM AND COMMONWEALTH COUNTRIES AND ENABLE THE SUPREME COURT TO ASSIST IN OBTAINING EVIDENCE FOR PROCEEDINGS IN OTHER JURISDICTIONS.

**Short title.**

1. This Act may be cited as the Evidence Act.

**PART I.**  
**GENERAL LAW.**

**Interpretation and savings.**

- 2.(1) In this Act, unless the context otherwise requires, –

“document” includes books, maps, plans, drawings and photographs;

“Government printer” means, as respects the United Kingdom or any Commonwealth country, the printer purporting to be the printer authorized to print the Acts, Acts or Statutes of the legislature of the United Kingdom or of any part of the Commonwealth;

“proceedings” includes arbitrations and references, and “court” shall be construed accordingly;

“statement” includes any representation of fact, whether made in words or otherwise.

- (2) Nothing in this Act shall–

- (a) prejudice the admissibility of any evidence which would apart from the provisions of this Act be admissible, or
- (b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Act had not been passed.

**Proof of instrument where attestation is necessary.**

3. Subject as hereinafter provided, in any proceedings, whether civil or criminal, an instrument as to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive:

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

**Presumptions as to documents twenty years old.**

4. In any proceedings, whether civil or criminal, there shall, in the case of a document proved or purporting to be not less than twenty years old, be made any presumption which immediately before the commencement of this Act would have been made in the case of a document of like character proved or purporting to be not less than thirty years old.

**Rebuttal of presumption as to legitimacy and illegitimacy.**

5. Any presumption of law as to the legitimacy or illegitimacy of any person may, in any civil proceedings, be rebutted by evidence which shows that it is more probable than not that that person is illegitimate or legitimate, as the case may be, and it shall not be necessary to prove that fact beyond reasonable doubt in order to rebut the presumption.

**Presumption as to survival.**

6. For the purposes of sections 51 and 52 of the Administration of Estates Act and section 14(2) of the Legitimacy Act, an illegitimate child shall be presumed not to have been survived by his father unless the contrary is shown.

**Proof of statutes of United Kingdom and Commonwealth countries.**

7.(1) Copies of Acts, Acts and statutes passed (whether before or after the coming into operation of this Act) by the legislature of the United Kingdom or of any Commonwealth country and of orders, regulations and other instruments issued or made (whether before or after the coming into operation of this Act) under the authority of any such Act, Act or statute, if purporting to be printed by the Government printer, shall be received in evidence by all courts of justice in Gibraltar without any proof being given that the copies were so printed.

(2) A person who prints any copy or pretended copy of any such Act, Act, statute, order, regulation or instrument which falsely purports to have been printed by the Government printer, or tenders in evidence any such copy or pretended copy which falsely purports to have been so printed, knowing that it was not so printed, is guilty of an offence and is liable, on summary conviction, to imprisonment for twelve months.

**PART II.**

**EVIDENCE FOR PROCEEDINGS IN OTHER JURISDICTIONS**

**Interpretation.**

8.(1) In this Part unless the context otherwise requires,–

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

“court” means the Supreme Court of Gibraltar;

“requesting court” has the meaning given in section 9;

“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.

(2) Nothing in this Act shall be construed as enabling the court to make an order that is binding on the Crown whether in its right of the Government of Gibraltar or otherwise or on any person in his capacity as an officer or servant of the Crown.

**Application to court for assistance in obtaining evidence for civil proceedings in the other court.**

9. Where an application is made to the court for an order for evidence to be obtained in Gibraltar 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 Gibraltar; 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 court shall have the powers conferred on it by the following provisions of this Act.

**Power of court to give assistance.**

10. (1) Subject to the provisions of this section, the court shall have power, on any such application as is mentioned in section 9 by order to make such provision for obtaining evidence in Gibraltar 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) 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), 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 (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 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.

**Privilege of witnesses.**

11.(1) A person shall not be compelled, by virtue of an order under section 10, to give any evidence which he could not be compelled to give—

- (a) in civil proceedings in Gibraltar; or
- (b) subject to subsection (2), in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.

(2) Subsection (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 so supported or conceded, 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), a person shall not be compelled by virtue of an order under section 10 to give any evidence if his doing so would be pre judicial to the security of the United Kingdom, Gibraltar, or any other territory for which the United Kingdom is responsible under international law; and a certificate signed by the Deputy Governor to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence in 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) to the transmission of evidence given by a person shall be construed accordingly.

#### **Power of court to assist in obtaining evidence for criminal proceedings.**

12.(1) The provisions of sections 9 to 11 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) section 9(b) shall apply only to proceedings which have been instituted; and
- (b) no order under section 10 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), section 11(1) (a) and (b) 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.

#### **Power of court to assist in obtaining evidence for international proceedings.**

13.(1) If the Governor has signified by notice in the Gazette that Her Majesty has, by Order in Council, directed that, subject to such exceptions, adaptations or modifications as may be specified in the order, the provisions of sections 1 to 3 of the United Kingdom’s Evidence(Proceedings in Other Jurisdictions) Act, 1975, shall have effect in relation to

international proceedings of any description specified in the order, then the provisions of sections 9 to 11 of this Act shall have effect in relation to international proceedings of the description specified in the order.

(2) If an Order in Council has directed that section 1(4) of the Perjury Act 1911 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, then the provisions of section 203(4) of the Criminal Offences Act shall have similar effect.

(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.

**Rules of court.**

14. The power to make rules of court under section 38 of the Supreme Court Act shall include power to make rules of court—

- (a) as to the manner in which any such application as is mentioned in section 9 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 10; and
- (c) as to the manner in which any such reference as is mentioned in section 11(2) is to be made,

and any such rules may include such incidental, supplementary and consequential provision as the Chief Justice may consider necessary or expedient.



## Evidence

1948-10

Previous number		New number	Remark
Act 1948-10	1	1	
	2	2	
	3		Repealed
	4		Repealed
	5	3	
	6	4	
	7		Transferred to Supreme Court Act as s.38
Act. 1972-02	8	7	
	12(4)	5	
Act. 1977-02	24	6	
	1		Omitted
	2	8	
	3	9	
	4	10	
	5	11	
	6	12	
	7	13	
	8	14	
	9		Omitted
	Sch. 1		Omitted
	Sch. 2		Omitted
	Sch. 3		Omitted