

# **Orders of the Royal Court**

**III  
2011**

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 24th day of June, 2011 before John Russell Finch, Esquire, Judge of the Royal Court; present:- Alan Cecil Bisson, Esquire, Susan Mowbray, Barbara Jean Bartie, David Osmond Le Conte, Peter Sean Trueman Girard, Terry George Snell, David Percy Langley Hodgetts, L.V.O., Niall David McCathie, Esquires, and Margaret Ann Spaargaren, Jurats.

**No. III Order, 2011**

ENTITLED

**THE EVIDENCE IN CIVIL PROCEEDINGS  
(GUERNSEY AND ALDERNEY) RULES, 2011**

# **The Evidence in Civil Proceedings (Guernsey and Alderney)**

## **Rules, 2011**

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# **The Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011**

**THE ROYAL COURT**, in exercise of the powers conferred upon it by sections 2, 3, 17, 18, 19, 20 and 25(2) of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009<sup>a</sup>, and all other powers enabling it in that behalf, hereby orders: -

## **PART I HEARSAY EVIDENCE**

### **Notice of intention to rely on hearsay evidence.**

1. (1) Where a party intends to rely on hearsay evidence at trial and either -

- (a) that evidence is to be given by a witness giving oral evidence, or
- (b) that evidence is contained in a witness statement of a person who is not being called to give oral evidence,

that party complies with section 2(1)(a) of the Law by serving a witness statement on the other parties in accordance with the court's order.

(2) Where paragraph (1)(b) applies, the party intending to rely on the hearsay evidence must, when he serves the witness statement, also serve written

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<sup>a</sup> Order in Council No. X of 2010.

notice -

- (a) informing the other parties that the witness is not being called to give oral evidence, and
- (b) giving the reason why the witness will not be called.

(3) In all other cases where a party intends to rely on hearsay evidence at trial, that party complies with section 2(1)(a) of the Law by serving a notice on the other parties which -

- (a) identifies the hearsay evidence, and
- (b) states that the party serving the notice proposes to rely on the hearsay evidence, and
- (c) gives the reason why the witness will not be called.

(4) The party proposing to rely on the hearsay evidence must -

- (a) serve the notice no later than 21 days before the trial or, if earlier, the latest date for serving witness statements, and
- (b) if the hearsay evidence is to be in a document, supply a copy to any party who requests him to do so.

**Circumstances in which notice of intention to rely on hearsay evidence is not**

**required.**

2. Section 2(1) of the Law (duty to give notice of intention to rely on hearsay evidence) does not apply -

- (a) to evidence at hearings other than trials,
- (b) to a statement which a party to a probate action wishes to put in evidence and which is alleged to have been made by the person whose estate is the subject of the proceedings,
- (c) to evidence given in connection with the upbringing, maintenance or welfare of a child, or
- (d) where the requirement is excluded by a practice direction.

**Evidence at hearings other than trials.**

3. In any proceedings where, pursuant to rule 2(a), section 2(1) of the Law does not apply, any affidavit or witness statement must indicate -

- (a) which of the statements in it are made from the deponent's or witness's own knowledge and which are matters of information or belief, and
- (b) the source for any matters of information or belief.

**Power to call witnesses for cross-examination on hearsay evidence.**

4. (1) Where a party -
  - (a) proposes to rely on hearsay evidence, and
  - (b) does not propose to call the person who made the original statement to give oral evidence,

the court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined on the contents of the statement.

(2) An application for permission to cross-examine under this rule must be made not more than 14 days, or such longer period as the court may on application permit, after the day on which a notice of intention to rely on the hearsay evidence was served on the applicant.

**Credibility.**

5. (1) Where a party -
  - (a) proposes to rely on hearsay evidence, but
  - (b) does not propose to call the person who made the original statement to give oral evidence, and
  - (c) another party wishes to call evidence to attack the credibility of the person who made the statement,

the party who so wishes must give notice of his intention to the party who proposes

to give the hearsay statement in evidence.

(2) A party must give notice under paragraph (1) not more than 14 days, or such longer period as the court may on application permit, after the day on which a hearsay notice relating to the hearsay evidence was served on him.

**Interpretation of "trial".**

6. In this Part, "trial" does not include any interim or post-trial hearing.

PART II  
EXPERT EVIDENCE

**Application.**

7. (1) Subject to paragraph (2), this Part applies to any civil proceedings for the purpose of which an expert has been instructed to give or prepare evidence.

(2) This Part does not apply to any proceedings to which the Family Proceedings (Guernsey and Alderney) Rules, 2009 apply.

**Duty to restrict expert evidence.**

8. Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

**Experts - overriding duty to the court.**

9. (1) It is the duty of an expert to help the court on the matters within his expertise.

(2) This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

**Court's power to restrict expert evidence.**

10. (1) No party may call an expert or put in evidence an expert's report without the court's permission.

(2) When a party applies for permission under this rule he must identify -

(a) the field in which he wishes to rely on expert evidence, and

(b) where practicable the expert in that field on whose evidence he wishes to rely.

(3) If permission is granted under this rule it shall be in relation only to the expert named or the field identified under paragraph (2).

(4) The court may limit the amount of the expert's fees and expenses that the party who wishes to rely on the expert may recover from any other party.

**General requirement for expert evidence to be given in a written report.**

11. (1) Expert evidence is to be given in a written report unless the court directs otherwise.

(2) Where expert evidence includes evidence, such as a plan,

photograph or model, which does not form part of the expert's written report, the party intending to put it in evidence must give notice of it to the other parties when the expert's report is served on the other parties or, with leave of the court, at any other time.

**Written questions to experts.**

12. (1) A party may put to -

- (a) an expert instructed by another party, or
- (b) a single joint expert appointed under rule 13,

written questions about his report.

(2) Written questions under paragraph (1) -

- (a) may be put once only,
- (b) must be put within 28 days of service of the expert's report, and
- (c) must be for the purpose only of clarification of the report,

unless in any case -

- (i) the court gives permission, or

(ii) the other party agrees.

(3) An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.

(4) Where -

(a) a party has put a written question to an expert instructed by another party in accordance with this rule, and

(b) the expert does not answer that question,

the court may make one or both of the following orders in relation to the party who instructed the expert -

(i) that the party may not rely on the evidence of that expert, or

(ii) that the party may not recover the fees and expenses of that expert from any other party.

**Court's power to direct that evidence is to be given by a single joint expert.**

13. (1) Where two or more parties ("the instructing parties") wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by one expert only.

(2) Where the instructing parties cannot agree who should be the

expert, the court may -

- (a) select the expert from a list prepared or identified by the instructing parties, or
- (b) direct that the expert be selected in such other manner as the court may direct.

(3) Where the court gives a direction under paragraph (1) for a single joint expert to be used, each instructing party may give instructions to the expert.

(4) When an instructing party gives instructions to the expert he must, at the same time, send a copy of the instructions to the other instructing parties.

(5) The court may give directions about -

- (a) the payment of the expert's fees and expenses, and
- (b) any inspection, examination or experiments which the expert wishes to carry out.

(6) The court may, before an expert is instructed -

- (a) limit the amount that can be paid by way of fees and expenses to the expert, and

- (b) direct that the instructing parties pay that amount into court.

(7) Unless the court otherwise directs, the instructing parties are jointly and severally liable for the payment of the expert's fees and expenses.

**Power of court to direct a party to provide information.**

14. Where a party has access to information which is not reasonably available to the other party, the court may direct the party who has access to the information to -

- (a) prepare and file a document recording the information, and
- (b) serve a copy of that document on the other party.

**Contents of report.**

15. (1) An expert's report must comply with the requirements set out in any relevant practice direction.

(2) At the end of an expert's report there must be a statement that -

- (a) the expert understands his duty to the court, and
- (b) he has complied with that duty.

(3) The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.

(4) The instructions referred to in paragraph (3) shall not be privileged against disclosure but the court will not, in relation to those instructions -

- (a) order disclosure of any specific document, or
- (b) permit any questioning in court, other than by the party who instructed the expert,

unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under paragraph (3) to be inaccurate or incomplete.

**Use by one party of expert's report disclosed by another.**

16. Where a party has disclosed an expert's report, any party may use that expert's report as evidence at the trial.

**Discussions between experts.**

17. (1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to -

- (a) identify and discuss the expert issues in the proceedings, and
- (b) where possible, reach agreed opinion on those issues.

(2) The court may specify the issues which the experts must discuss.

(3) The court may direct that the experts must, following a discussion between those experts, prepare a statement for the court showing -

- (a) those issues on which they agree, and
- (b) those issues on which they disagree and a summary of their reasons for disagreeing.

(4) The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

(5) Where experts reach agreement on an issue during their discussions, the agreement shall not bind the parties unless the parties expressly agree to be bound by the agreement.

**Consequence of failure to disclose expert's report.**

**18.** A party who fails to disclose an expert's report may not use the report at the trial or call the expert to give evidence orally unless the court gives permission.

**Expert's right to ask court for directions.**

**19.** (1) An expert may file a written request for directions to assist him in carrying out his function as an expert.

(2) An expert must, unless the court orders otherwise, provide a copy of any proposed request for directions under paragraph (1) -

- (a) to the party instructing him, at least 7 days before he files the request, and

(b) to all other parties, at least 4 days before he files it.

(3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

PART III  
MISCELLANEOUS

**Evidence of finding on question of foreign law.**

20. (1) Where a party intends to put in evidence a finding on a question of foreign law by virtue of section 20(3) of the Law, he must give any other party notice of his intention in accordance with this rule.

(2) Such notice must be given -

(a) if there are to be witness statements, not later than the latest date for serving them, or

(b) otherwise, not less than 21 days before the hearing at which he proposes to put the finding in evidence.

(3) The notice must -

(a) specify the question on which the finding was made, and

(b) enclose a copy of a document where it is reported or recorded.

**Transitional provisions.**

21. (1) The provisions of the Law apply in relation to civil proceedings begun before commencement of the Law unless -

(a) the court otherwise directs, or

(b) the trial or hearing had begun before such commencement.

(2) In this rule, "trial" does not include any interim or post-trial hearing.

**Interpretation.**

22. (1) In these rules, unless the context otherwise requires -

**"civil proceedings"** has the meaning given in the Law,

**"court"** has the meaning given in the Law,

**"expert"** is a reference to an expert who has been instructed in accordance with rule 7,

**"hearsay"** has the meaning given in the Law,

**"the Law"** means the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009, and

"**trial**", in Part I, is to be interpreted in accordance with rule 6.

(2) The Interpretation (Guernsey) Law, 1948<sup>b</sup> applies to the interpretation of these rules.

(3) Any reference in these rules to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Citation.**

**23.** These rules may be cited as the Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011.

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<sup>b</sup> Ordres en Conseil, Vol. XIII, p. 355.