



Civil Evidence (Family Mediation) (Scotland) Act 1995

1995 CHAPTER 6

2 Exceptions to general rule of inadmissibility.

(1) Nothing in section 1 of this Act shall prevent the admissibility as evidence in civil proceedings—

- (a) of information as to any contract entered into during family mediation or of the fact that no contract was entered into during such mediation;
- (b) where any contract entered into as a result of family mediation is challenged in those civil proceedings, of information as to what occurred during family mediation which relates to the subject matter of that challenge;
- (c) of information as to what occurred during family mediation if every participant (other than the mediator) in that mediation agrees that the information should be admitted as evidence; or
- (d) of information as to what occurred during family mediation if those civil proceedings are proceedings—

- (i) (whether under any enactment or otherwise) relating to a child's care or protection to which a local authority or a voluntary organisation is a party;

- ^{F1}(ii)

- ^{F1}(iia)

- (iii) for [^{F2}the making of an adoption order (as defined in [^{F3}section 28(1)] of the Adoption and Children (Scotland) Act 2007 (asp 4)];

- ^{F4}(iiia) under Part 5 or, as the case may be, any of Parts 8 to 16 of the Children's Hearings (Scotland) Act 2011 (asp 1) before, or relating to, a children's hearing, before a sheriff or before a justice of the peace;

- (iiib) on any appeal arising from such proceedings as are mentioned in subparagraph (iiia);]

- ^{F5}(iv)

- (v) against one of the participants, or the mediator, in a family mediation in respect of damage to property, or personal injury, alleged to have

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been caused by that participant or, as the case may be, mediator during family mediation; or

(vi) arising from the family mediation and to which the mediator is a party.

(2) For the purposes of this section—

(a) an individual, spouse, former spouse, party to a purported marriage, or cohabitant referred to in section 1(2) of this Act; and

(b) insofar as the family mediation includes any of the matters mentioned in section 1(2)(a) of this Act, a child who—

(i) is the subject of such a family mediation; and

(ii) at the time the family mediation took place was capable of understanding the nature and significance of the matters to which the information which is sought to be admitted as evidence relates,

shall be regarded as a participant in the family mediation.

(3) Notwithstanding anything in the ^{M1}Age of Legal Capacity (Scotland) Act 1991, any child who is regarded as a participant in family mediation by virtue of subsection (2) above shall have legal capacity to agree that information should be admitted as evidence.

(4) The Secretary of State may prescribe other persons or classes of person who shall be regarded for the purposes of this section as participants in a family mediation.

Textual Amendments

- F1** S. 2(1)(d)(ii)(ia) repealed (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 2**
- F2** Words in s. 2(1)(d)(iii) substituted (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(1), 121, **Sch. 2 para. 8**; S.S.I. 2009/267, **art. 2** (with arts. 3-21)
- F3** Words in s. 2(1)(d)(iii) substituted (27.1.2010) by [The Adoption and Children \(Scotland\) Act 2007 \(Modification of Enactments\) Order 2010 \(S.S.I. 2010/21\)](#), arts. 1, 2, **Sch. para. 4**
- F4** S. 2(1)(d)(iiia)(iiib) inserted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 8**
- F5** S. 2(1)(d)(iv) repealed (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(2), 121, **Sch. 3**; S.S.I. 2009/267, **art. 2** (with arts. 3-21)

Modifications etc. (not altering text)

- C1** S. 2(1)(d)(iii) modified (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 5, **Sch. 4**
- C2** S. 2(1)(d)(iii) modified (21.12.2018) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2018 \(S.I. 2018/1412\)](#), reg. 1(2), **Sch. 4 para. 18**

Marginal Citations

- M1** 1991 c. 50.

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