



Law Reform (Miscellaneous Provisions) (Scotland) Act 1968

1968 CHAPTER 70

PART III

AMENDMENT OF THE LAW OF EVIDENCE IN CIVIL PROCEEDINGS

Restriction of rule of law requiring corroboration

9 Rule requiring corroboration not to apply in certain actions of damages

- (1) This section applies to any action of damages where the damages claimed consist of, or include, damages or solatium in respect of personal injuries (including any disease, and any impairment of physical or mental condition) sustained by the pursuer or any other person.
- (2) Subject to subsection (4) of this section, any rule of law whereby in any proceedings evidence tending to establish any fact, unless it is corroborated by other evidence, is not to be taken as sufficient proof of that fact shall cease to have effect in relation to any action to which this section applies, and accordingly, subject as aforesaid, in any such action the court shall be entitled, if they are satisfied that any fact has been established by evidence which has been given in that action, to find that fact proved by that evidence, notwithstanding that the evidence is not corroborated.
- (3) In relation to an action tried by jury, the reference in subsection (2) of this section to the court shall be construed as a reference to the jury.
- (4) This section shall not—
 - (a) affect the operation of any enactment passed or made before the commencement of this Act, or
 - (b) apply for the purposes of any appeal or other proceedings arising out of any proceedings in which the proof or trial has taken place, or the evidence has otherwise been given, before such commencement.

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- (5) The references in this section to the giving of evidence are references to the giving of evidence in any manner, whether orally or by the production of documents or otherwise.

Convictions, etc., as evidence in civil proceedings

10 Convictions as evidence in civil proceedings

- (1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in the United Kingdom or by a court-martial there or elsewhere shall (subject to subsection (3) of this section) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings ; but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.
- (2) In any civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by or before any court in the United Kingdom or by a court-martial there or elsewhere—
- (a) he shall be taken to have committed that offence unless the contrary is proved, and
 - (b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts which constituted that offence, the contents of any document which is admissible as evidence of the conviction, and the contents of the complaint, information, indictment or charge-sheet on which the person in question was convicted, shall be admissible in evidence for that purpose.
- (3) Nothing in this section shall affect the operation of section 12 of this Act or any other enactment whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.
- (4) Where in any civil proceedings the contents of any document are admissible in evidence by virtue of subsection (2) of this section, a copy of that document, or of the material part thereof, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document, shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.
- (5) Nothing in any of the following enactments, that is to say—
- (a) section 12 of the Criminal Justice Act 1948 (under which a conviction leading to probation or discharge is to be disregarded except as therein mentioned);
 - (b) section 9 of the Criminal Justice (Scotland) Act 1949 (which makes similar provision in respect of convictions on indictment in Scotland);
 - (c) section 8 of the Probation Act (Northern Ireland) 1950 (which corresponds to the said section 12) or any corresponding enactment of the Parliament of Northern Ireland for the time being in force,
- shall affect the operation of this section; and for the purposes of this section any order made by a court of summary jurisdiction under section 1 or section 2 of the said Act of 1949 shall be treated as a conviction.

- (6) In this section " court-martial" means a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or a disciplinary court constituted under section 50 of the said Act of 1957, and in relation to a court-martial "conviction", as regards a court-martial constituted under either of the said Acts of 1955, means a finding of guilty which is, or falls to be treated as, a finding of the court duly confirmed and, as regards a court-martial or disciplinary court constituted under the said Act of 1957, means a finding of guilty which is, or falls to be treated as, the finding of the court, and " convicted " shall be construed accordingly.

11 Findings of adultery and paternity as evidence in civil proceedings

- (1) In any civil proceedings—
- (a) the fact that a person has been found guilty of adultery in any matrimonial proceedings, and
 - (b) the fact that a person has been found to be the father of a child in affiliation proceedings in any court in the United Kingdom,
- shall (subject to subsection (3) of this section) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those civil proceedings, that he committed the adultery to which the finding relates or, as the case may be, is (or was) the father of that child, whether or not he offered any defence to the allegation of adultery or paternity and whether or not he is a party to the civil proceedings; but no finding other than a subsisting one shall be admissible in evidence by virtue of this section.
- (2) In any civil proceedings in which by virtue of this section a person is proved to have been found guilty of adultery as mentioned in subsection (1)(a) of this section or to have been found to be the father of a child as mentioned in subsection (1)(b) of this section—
- (a) he shall be taken to have committed the adultery to which the finding relates or, as the case may be, to be (or have been) the father of that child, unless the contrary is proved ; and
 - (b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the finding was based, the contents of any document which was before the court, or which contains any pronouncement of the court, in the matrimonial or affiliation proceedings in question shall be admissible in evidence for that purpose.
- (3) Nothing in this section shall affect the operation of any enactment whereby a finding of fact in any matrimonial or affiliation proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.
- (4) Nothing in this section shall entitle the Court of Session to pronounce a decree of divorce without administering the oath of calumny to the pursuer and receiving evidence from him; and in section 4(2) of the Divorce (Scotland) Act 1938, after the words " the decree of separation " there shall be inserted the words " (if granted on the ground of cruelty) ", and the words " adultery or " shall be omitted.
- (5) Subsection (4) of section 10 of this Act shall apply for the purposes of this section as if the reference therein to subsection (2) were a reference to subsection (2) of this section.
- (6) In this section—
- (a) " matrimonial proceedings" means any consistorial action, any matrimonial cause in the High Court or a county court in England and Wales or in the

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High Court in Northern Ireland, or any appeal arising out of any such action or cause, and

- (b) "affiliation proceedings" means, in relation to Scotland, any action of affiliation and aliment.

12 Conclusiveness of convictions for purposes of defamation actions

- (1) In an action for defamation in which the question whether a person did or did not commit a criminal offence is relevant to an issue arising in the action, proof that, at the time when that issue falls to be determined, that person stands convicted of that offence shall be conclusive evidence that he committed that offence; and his conviction thereof shall be admissible in evidence accordingly.
- (2) In any such action as aforesaid in which by virtue of this section a person is proved to have been convicted of an offence, the contents of any document which is admissible as evidence of the conviction, and the contents of the complaint, information, indictment or charge-sheet on which that person was convicted, shall, without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts which constituted that offence, be admissible in evidence for the purpose of identifying those facts.
- (3) For the purposes of this section a person shall be taken to stand convicted of an offence if but only if there subsists against him a conviction of that offence by or before a court in the United Kingdom or by a court-martial there or elsewhere.
- (4) Subsections (4) to (6) of section 10 of this Act shall apply for the purposes of this section as they apply for the purposes of that section, but as if in the said subsection (4) the reference to subsection (2) were a reference to subsection (2) of this section.
- (5) The foregoing provisions of this section shall apply for the purposes of any action begun after the coming into operation of this section, whenever the cause of action arose, but shall not apply for the purposes of any action begun before such commencement or any appeal or other proceedings arising out of any such action.

Statements produced by computers as evidence in civil proceedings

13 Admissibility of statements produced by computers

- (1) In any civil proceedings a statement contained in a document produced by a computer shall, subject to the provisions of section 15 of this Act, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in subsection (2) of this section are satisfied in relation to the statement and computer in question.
- (2) The said conditions are—
 - (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by any person ;
 - (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;

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- (c) that throughout the material part of that period, the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents ; and
 - (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.
- (3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in subsection (2) (a) of this section was regularly performed by computers, whether—
 - (a) by a combination of computers operating over that period; or
 - (b) by different computers operating in succession over that period; or
 - (c) by different combinations of computers operating in succession over that period ; or
 - (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,all the computers used for that purpose during that period shall be treated for the purposes of this Part of this Act as constituting a single computer; and references in this Part of this Act to a computer shall be construed accordingly.
- (4) In any civil proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say—
 - (a) identifying the document containing the statement and describing the manner in which it was produced ;
 - (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
 - (c) dealing with any of the matters to which the conditions mentioned in subsection (2) of this section relate,and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall, subject to the provisions of section 15 of this Act, be sufficient evidence of any matter stated in the certificate; and—
 - (i) for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it;
 - (ii) any such certificate as aforesaid shall be lodged within such time as may be prescribed, not being later than the expiry of the time prescribed for the furnishing of information under section 15(3) of this Act;
 - (iii) any person lodging such a certificate as aforesaid shall, within the time prescribed under paragraph (ii) of this subsection, send a copy thereof to every other party to the proceedings.
- (5) For the purposes of this Part of this Act—
 - (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
 - (b) where, in the course of any activities carried on by any person, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those

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activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities ;

- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

- (6) Subject to subsection (3) of this section, in this Part of this Act " computer " means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

14 Provisions supplementary to s. 13

- (1) Where in any civil proceedings a statement contained in a document is proposed to be given in evidence by virtue of section 13 of this Act it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, purporting to be certified or otherwise authenticated by a person responsible for the making of the copy or in such other manner as the court may approve; and any such copy shall be taken to be a true copy unless the contrary is shown.
- (2) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 13 of this Act regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular—
 - (a) to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with in that information, and
 - (b) to the question whether or not any person concerned with—
 - (i) the supply of information to that computer, or
 - (ii) the operation of that computer, or
 - (iii) the operation of any equipment by means of which the document containing the statement was produced by that computer,
 had any incentive to conceal or misrepresent the facts.

15 Procedure for purposes of s. 13

- (1) Subject to subsections (6) to (8) of this section, a statement shall not be admissible in evidence in civil proceedings by virtue of section 13 of this Act unless the procedure laid down by or under this section has been complied with.
- (2) A party to any civil proceedings who wishes to rely on any such statement as is mentioned in the said section 13 shall, within such time as may be prescribed, send to every other party to the proceedings a copy of the statement together with a notice in writing—
 - (a) intimating that the party intends to rely on the statement ;
 - (b) stating that the statement is contained in a document produced by a computer ;
 - (c) directing the attention of the other party to the provisions of subsection (3) of this section enabling a counter-notice to be given.

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- (3) Any party who receives such a notice as is mentioned in subsection (2) of this section may, within such time as may be prescribed, by counter-notice in writing addressed to the party who served the notice, require him, within such further time as may be prescribed, to furnish him in writing with all or any of the following information—
- (a) any such information as might be the subject of a certificate under the said section 13(4), except in so far as such information is the subject of a certificate lodged under that subsection;
 - (b) particulars of a person occupying at the material time a responsible position in relation to any of the matters mentioned or referred to in sections 13(4) and 14(2)(b) of this Act, and, if he is not included among such persons, of any person who signed any certificate lodged as aforesaid.
- (4) Any party to whom information is furnished under subsection (3) of this section may, within such time as may be prescribed, require that the party wishing to rely on the statement should call as a witness any person of whom particulars were furnished under paragraph (b) of the said subsection (3), unless that person is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the passage of time and to all the circumstances) to have any recollection of matters relevant to the accuracy or otherwise of the statement in the document.
- (5) In deciding for the purposes of this section whether or not a person is fit to attend as a witness, a court may act on a certificate purporting to be a certificate of a fully registered medical practitioner.
- (6) Without prejudice to the generality of the powers conferred on the Court of Session by sections 15 and 34 of the Administration of Justice (Scotland) Act 1933 to regulate by act of sederunt its own procedure and that of the sheriff court respectively, the said powers shall include power—
- (a) to prescribe the form of any notice or other document authorised or required to be used under section 13 of this Act or this section ;
 - (b) to prescribe the manner in which, the time within which, and the conditions on which any thing authorised or required to be done under section 13 of this Act or this section shall or may be done ;
 - (c) to prescribe exceptions to any of the requirements laid down by or under this section; and
 - (d) to modify, amend or repeal any of the provisions of this section;
- and in section 13 of this Act and this section " prescribed " shall be construed accordingly.
- (7) Any act of sederunt made for any of the purposes mentioned in subsection (6) of this section, in so far as it relates to civil proceedings in the Court of Session, shall (except in so far as its operation is excluded by agreement) apply, subject to such modifications as may be appropriate, in relation to any other civil proceedings (other than proceedings in the sheriff court) in like manner as it applies in relation to civil proceedings in the Court of Session, and if any question arises as to what are, for the purposes of any such civil proceedings, the appropriate modifications of any such act of sederunt, that question shall, in default of agreement, be determined by the court before whom the proceedings take place.
- (8) The court in any civil proceedings shall have a discretion, where it appears to them that the interests of justice so require, and subject to such conditions (if any) as to

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expenses or otherwise as the court may think fit, to allow a statement falling within section 13(1) of this Act to be given in evidence notwithstanding that any requirement laid down by or under this section has not been complied with.

Amendment of section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966

16 Amendment of s. 7 of Law Reform (Miscellaneous Provisions) (Scotland) Act 1966

Section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 shall be amended as follows—

- (a) in subsection (1) the words " on the production of the document" shall be deleted ;
- (b) after subsection (3) there shall be inserted the following subsection—

“(3A) Where a statement contained in a document is proposed to be given in evidence by virtue of this section it may be proved by the production of that document or (whether or not the document is still in existence) by the production of a copy of that document, or of the material part thereof, purporting to be certified or otherwise authenticated by a person responsible for the making of the copy or in such other manner as the court may approve; and any such copy shall be taken to be a true copy unless the contrary is shown.”.

General

17 Interpretation of Part III, saving, etc.

- (1) In this Part of this Act " civil proceedings " includes, in addition to civil proceedings in any of the ordinary courts of law.—
 - (a) civil proceedings before any other tribunal, except proceedings in relation to which the strict rules of evidence do not apply, and
 - (b) an arbitration, whether under an enactment or not,
 and " court" shall be construed accordingly.
- (2) In this Part of this Act " consistorial action" does not include an action of aliment only between husband and wife raised in the Court of Session or an action of interim aliment raised in the sheriff court.
- (3) In this Part of this Act—
 - " computer " has the meaning assigned by section 13 of this Act;
 - " document " includes, in addition to a document in writing—
 - (a) any map, plan, graph or drawing ;
 - (b) any photograph;
 - (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
 - (d) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom ;

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" film " includes a microfilm ;

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

- (4) In this Part of this Act any reference to a copy of a document includes—
- (a) in the case of a document falling within paragraph (c) but not (d) of the definition of " document" in subsection (3) of this section, a transcript of the sounds or other data embodied therein ;
 - (b) in the case of a document falling within paragraph (d) but not (c) of that definition, a reproduction or still reproduction of the image or images embodied therein, whether enlarged or not;
 - (c) in the case of a document falling within both those paragraphs, such a transcript together with such a still reproduction; and
 - (d) in the case of a document not falling within the said paragraph (d) of which a visual image is embodied in a document falling within that paragraph, a reproduction of that image, whether enlarged or not;
- and any reference to a copy of the material part of a document shall be construed accordingly.
- (5) The clerk of any court having custody of any document shall, on the application of any person who wishes to rely, by virtue of section 10(2), section 11(2) or section 12(2) of this Act or any corresponding provision for the time being in force in any part of the United Kingdom outside Scotland, on the contents of that document in proceedings which he proposes to raise, or which are pending, in any court in the United Kingdom, and on payment by that person of such fee as may be prescribed by act of adjournal or act of sederunt, as the case may be, made with the approval of the Treasury, issue to that person a copy of that document, or of the material part thereof, certified or otherwise authenticated by or on behalf of the court.
- (6) Nothing in this Part of this Act shall prejudice the operation of any agreement (whenever made) between the parties to any proceedings as to the evidence which is to be admissible (whether generally or for any particular purpose) in those proceedings.