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STATUTORY INSTRUMENTS

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**1997 No. 2983**

**The Civil Evidence (Northern Ireland) Order 1997**

*Introductory*

**Title and commencement**

1.—(1) This Order may be cited as the Civil Evidence (Northern Ireland) Order 1997.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint.

(3) An order under paragraph (2) may contain such transitional provisions as appear to the Secretary of State to be appropriate; and subject to any such transitional provision, no provision of this Order shall apply in relation to any proceedings begun before the coming into operation of that provision.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“document” means anything in which information of any description is recorded, and “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;

“hearsay” shall be construed in accordance with Article 3(3);

“oral evidence” includes evidence which, by reason of a defect of speech or hearing, a person called as a witness gives in writing or by signs;

“the original statement”, in relation to hearsay evidence, means the underlying statement (if any) by—

(a) in the case of evidence of fact, a person having personal knowledge of that fact, or

(b) in the case of evidence of opinion, the person whose opinion it is;

“statement” means any representation of fact or opinion, however made;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) In this Order “civil proceedings” means civil proceedings, before any court or other tribunal, in relation to which the strict rules of evidence apply.

(4) In the following provisions of this Order—

“court” means any such court or tribunal as is referred to in paragraph (3);

“rules of court” means rules regulating the practice and procedure of such a court or tribunal.

*Admissibility of hearsay evidence*

**Admissibility of hearsay evidence**

- 3.—(1) In civil proceedings evidence shall not be excluded on the ground that it is hearsay.
- (2) All common law rules providing for exceptions to the rule against hearsay in civil proceedings are superseded by this Order.
- (3) In this Order—
- (a) “hearsay” means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated; and
  - (b) references to hearsay include hearsay of whatever degree.
- (4) Nothing in this Order affects the admissibility of evidence admissible apart from this Article.
- (5) The provisions of Articles 4 to 6 (safeguards relating to hearsay evidence) do not apply in relation to hearsay evidence admissible apart from this Article, notwithstanding that it may also be admissible by virtue of this Article.

*Safeguards in relation to hearsay evidence*

**Power to call witness for cross-examination on hearsay statement**

- 4.—(1) Rules of court may provide that, where a party to civil proceedings adduces hearsay evidence of a statement made by a person and does not call that person as a witness, any other party to the proceedings may, with the leave of the court, call that person as a witness and cross-examine him on the statement as if he had been called by the first-mentioned party and as if the hearsay statement were his evidence in chief.
- (2) Without prejudice to any other power to adjourn proceedings, where, in accordance with rules of court made by virtue of paragraph (1), the court gives a party leave to call the maker of a statement as a witness, the court may adjourn the proceedings, on such terms as to costs or other matters as it thinks fit, for the purpose—
- (a) of enabling the witness to be brought before the court; or
  - (b) of giving the party concerned a proper opportunity to investigate the statement or the credibility of the witness.

**Considerations relevant to weighing of hearsay evidence**

- 5.—(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
- (2) Regard shall be had, in particular, to whether the party by whom the hearsay evidence is adduced gave notice to the other party or parties to the proceedings of his intention to adduce the hearsay evidence and, if so, to the sufficiency of the notice given.
- (3) Regard may also be had, in particular, to the following—
- (a) whether it would have been reasonable and practicable for the party by whom the evidence is adduced to have produced the maker of the original statement as a witness;
  - (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters 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 proper evaluation of its weight.

### **Competence and credibility**

6.—(1) Hearsay evidence shall not be admitted in civil proceedings if or to the extent that it is shown to consist of, or to be proved by means of, a statement made by a person who at the time he made the statement was not competent as a witness.

(2) In paragraph (1) “not competent as a witness” means suffering from such mental or physical infirmity, or lack of understanding, as would render a person incompetent as a witness in civil proceedings; but a child shall be treated as competent as a witness if he satisfies the requirements of Article 169(4)(a) and (b) of the Children (Northern Ireland) Order 1995 (conditions for reception of unsworn evidence of child).

(3) Where in civil proceedings hearsay evidence is adduced and the maker of the original statement, or of any statement relied upon to prove another statement, is not called as a witness—

- (a) evidence which, if he had been so called, would have been admissible for the purpose of attacking his credibility as a witness is admissible for that purpose in the proceedings;
- (b) evidence may, with the leave of the court, be adduced of any matter which, if he had been called as a witness, could have been put to him in cross-examination in relation to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and
- (c) evidence tending to prove that, whether before or after he made the statement, he made another statement inconsistent with it is admissible for the purpose of showing that he has contradicted himself; and
- (d) evidence which, if he had been so called, would have been admissible for the purpose of supporting his credibility as a witness is admissible for that purpose in the proceedings, but, in the case of evidence of another statement made by that person, only with the leave of the court;

and where evidence of another statement which is admissible by virtue of sub-paragraph (c) or (d) is adduced accordingly, it shall also be admissible as evidence of the matters stated.

### *Previous statements of witnesses*

#### **Previous statements of witnesses**

7.—(1) Subject as follows, the provisions of this Order as to hearsay evidence in civil proceedings apply equally (but with any necessary modifications) in relation to a previous statement made by a person called as a witness in the proceedings.

(2) A party who has called a person as a witness in civil proceedings may not in those proceedings adduce evidence of a previous statement made by that person, except—

- (a) with the leave of the court; or
- (b) for the purpose of rebutting a suggestion that his evidence has been fabricated.

(3) Without prejudice to any provision made by rules of court by virtue of Article 4(1), where in the case of civil proceedings section 3,4 or 5 of the Criminal Procedure Act 1865 applies, which make provision as to—

- (a) how far a witness may be discredited by the party producing him,

- (b) the proof of contradictory statements made by a witness, and
- (c) cross-examination as to previous statements in writing,

this Order does not authorise the adducing of evidence of a previous inconsistent or contradictory statement otherwise than in accordance with those sections.

(4) Where evidence of a previous statement is adduced as mentioned in paragraph (2) or (3), the statement shall be admissible as evidence of the matters stated.

(5) Nothing in this Order affects any of the rules of law as to the circumstances in which, where a person called as a witness in civil proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in the proceedings.

### *Documents*

#### **Proof of statements contained in documents**

**8.—**(1) Where a statement contained in a document is admissible as evidence in civil proceedings, it may be proved—

- (a) by the production of that document; or
- (b) whether or not that document is still in existence, by the production of a copy of that document or of the material part of it,

authenticated in such manner as the court may approve.

(2) It is immaterial for this purpose how many removes there are between a copy and the original.

#### **Proof of records of business or public authority**

**9.—**(1) A document which is shown to form part of the records of a business or public authority may be received in evidence in civil proceedings without further proof.

(2) A document shall be taken to form part of the records of a business or public authority if there is produced to the court a certificate to that effect signed by an officer of the business or authority to which the records belong.

(3) For the purposes of paragraph (2)—

- (a) a document purporting to be a certificate signed by an officer of a business or public authority shall be deemed to have been duly given by such an officer and signed by him; and
- (b) a certificate shall be treated as signed by a person if it purports to bear a facsimile of his signature.

(4) The absence of an entry in the records of a business or public authority may be proved in civil proceedings by affidavit of an officer of the business or authority to which the records belong.

(5) In this Article—

“business” includes any activity regularly carried on over a period of time, whether for profit or not, by any body (whether corporate or not) or by an individual;

“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;

“public authority” includes any public or statutory undertaking, any Northern Ireland department or department of the Government of the United Kingdom and any person holding office under Her Majesty;

“records” means records in whatever form.

(6) The court may, having regard to the circumstances of the case, direct that all or any of the above provisions of this Article do not apply in relation to a particular document or record, or description of documents or records.

### **Admissibility and proof of Ogden Tables**

**10.**—(1) The actuarial tables (together with explanatory notes) for use in personal injury and fatal accident cases issued from time to time by the Government Actuary’s Department are admissible in evidence for the purpose of assessing, in an action for personal injury, the sum to be awarded as general damages for future pecuniary loss.

(2) They may be proved by the production of a copy published by or under the authority of Her Majesty’s Stationery Office.

(3) For the purposes of this Article—

- (a) “personal injury” includes any disease and any impairment of a person’s physical or mental condition; and
- (b) “action for personal injury” includes an action brought by virtue of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 or the Fatal Accidents (Northern Ireland) Order 1977.

### *Supplementary*

### **Rules of court**

**11.** Any power to make rules of court includes power to make such provision as may be necessary or expedient for carrying into effect the provisions of this Order.

### **Savings**

**12.**—(1) Nothing in this Order affects the exclusion of evidence on grounds other than that it is hearsay; and this applies whether the evidence falls to be excluded in pursuance of any statutory provision or rule of law, for failure to comply with rules of court or an order of the court, or otherwise.

(2) Nothing in this Order affects the proof of documents by means other than those specified in Article 8, 9 or 10.

(3) Nothing in this Order affects the operation of the following statutory provisions—

- (a) section 2 of the Documentary Evidence Act 1868 (mode of proving certain official documents);
- (b) section 2 of the Documentary Evidence Act 1882 (documents printed under the superintendence of Her Majesty’s Stationery Office);
- (c) section 1 of the Evidence (Colonial Statutes) Act 1907 (proof of statutes of certain legislatures);
- (d) section 1 of the Evidence (Foreign, Dominion and Colonial Documents) Act 1933 (proof and effect of registers and official certificates of certain countries);
- (e) section 5 of the Oaths and Evidence (Overseas Authorities and Countries) Act 1963 (provision in respect of public registers of other countries).

### **Amendments and repeals**

**13.**—(1) The statutory provisions set out in Schedule 1 shall have effect subject to the amendments specified in that Schedule.

(2) The statutory provisions set out in Schedule 2 are hereby repealed to the extent specified in column 3 of that Schedule.

*N. H. Nicholls*  
Clerk of the Privy Council