



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### <sup>F1</sup>PART II

#### DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

##### Textual Amendments

- F1** Pt. 2 repealed (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 136(a), 332, 336, **Sch. 37 Pt. 6**; S.I. 2005/950, **art. 2(1)**, Sch. 1 paras. 6, 27, 44(3) (subject to art. 2(2), Sch. 2 (as amended by S.I. 2005/2122, art. 2))

#### 23 First-hand hearsay.

##### (1) Subject—

- (a) to subsection (4) below; [<sup>F2</sup>and]
- (b) to paragraph 1A of Schedule 2 to the <sup>M1</sup>Criminal Appeal Act 1968 (evidence given orally at original trial to be given orally at retrial); <sup>F3</sup> . . .

##### <sup>F3</sup>(c) . . . . .

a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if—

- (i) the requirements of one of the paragraphs of subsection (2) below are satisfied; or
- (ii) the requirements of subsection (3) below are satisfied.

##### (2) The requirements mentioned in subsection (1)(i) above are—

- (a) that the person who made the statement is dead or by reason of his bodily or mental condition unfit to attend as a witness;
- (b) that—
  - (i) the person who made the statement is outside the United Kingdom; and
  - (ii) it is not reasonably practicable to secure his attendance; or

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- (c) that all reasonable steps have been taken to find the person who made the statement, but that he cannot be found.
- (3) The requirements mentioned in subsection (1)(ii) above are—
  - (a) that the statement was made to a police officer or some other person charged with the duty of investigating offences or charging offenders; and
  - (b) that the person who made it does not give oral evidence through fear or because he is kept out of the way.
- (4) Subsection (1) above does not render admissible a confession made by an accused person that would not be admissible under section 76 of the <sup>M2</sup>Police and Criminal Evidence Act 1984.

<sup>F4F5</sup>[( 5 ) . . . ]

#### Textual Amendments

- F2** Word in s. 23(1) inserted (14.4.2000) by 1999 c. 23, s. 67, **Sch. 4 para.16** (with Sch. 7 para. 5(2)); S.I. 2000/1034, **art. 2(b)**
- F3** S. 23(1)(c) and word preceding it repealed (14.4.2000) by 1999 c. 23, s. 67, **Sch. 6** (with Sch. 7 para. 5(2)); S.I. 2000/1034, **art. 2(c)**, Sch.
- F4** S. 23(5) inserted (4.7.1996 with effect as mentioned in Sch. 1, Pt. III of the amending Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. II para. 28**, Pt. III para. 39 (with s. 78(1)); S.I. 1997/683, **art. 1(2)**
- F5** S. 23(5) repealed (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 3 para. 60(2)**, **Sch. 37 Pt. 4**; S.I. 2012/1320, **art. 4(1)(c)(d)(2)(3)** (with **art. 5**) (see S.I. 2012/2574, **art. 4(2)** and S.I. 2013/1103, **art. 4**); S.I. 2012/2574, **art. 2(2)(3)(c)(d)**, **Sch.** (with **arts. 3, 4**) (as amended (4.11.2012) by S.I. 2012/2761, **art. 2**) (with S.I. 2013/1103, **art. 4**); S.I. 2013/1103, **art. 2(1)(c)**

#### Marginal Citations

- M1** 1968 c. 19.
- M2** 1984 c. 60.

## 24 Business etc. documents.

- (1) Subject—
    - (a) to subsections (3) and (4) below; [<sup>F6</sup>and]
    - (b) to paragraph 1A of Schedule 2 to the <sup>M3</sup>Criminal Appeal Act 1968; <sup>F7</sup>. . .
    - <sup>F7</sup>(c) . . . . .
- a statement in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence would be admissible, if the following conditions are satisfied—
- (i) the document was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office; and
  - (ii) the information contained in the document was supplied by a person (whether or not the maker of the statement) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with.

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- (2) Subsection (1) above applies whether the information contained in the document was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied received it—
- (a) in the course of a trade, business, profession or other occupation; or
  - (b) as the holder of a paid or unpaid office.
- (3) Subsection (1) above does not render admissible a confession made by an accused person that would not be admissible under section 76 of the Police and Criminal Evidence Act 1984.
- (4) A statement prepared otherwise than in accordance with [<sup>F8</sup>section 7 of the Crime (International Co-operation) Act 2003] or an order under paragraph 6 of Schedule 13 to this Act or under section 30 or 31 below for the purposes—
- (a) of pending or contemplated criminal proceedings; or
  - (b) of a criminal investigation,
- shall not be admissible by virtue of subsection (1) above unless—
- (i) the requirements of one of the paragraphs of subsection (2) of section 23 above are satisfied; or
  - (ii) the requirements of subsection (3) of that section are satisfied; or
  - (iii) the person who made the statement cannot reasonably be expected (having regard to the time which has elapsed since he made the statement and to all the circumstances) to have any recollection of the matters dealt with in the statement.

<sup>F9F10</sup>[( 5 ) . . . ]

#### Textual Amendments

- F6** Word in s. 24(1) inserted (14.4.2000) by 1999 c. 23, s. 67, **Sch. 4 para.16** (with Sch. 7 para. 5(2)); S.I. 2000/1034, **art. 2**
- F7** S. 24(1)(c) and word preceding it repealed (14.4.2000) by 1999 c. 23, s. 67, **Sch. 6** (with Sch. 7 para. 5(2)); S.I. 2000/1034, **art. 2(c)**, **Sch.**
- F8** Words in s. 24(4) substituted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 91, 94, **Sch. 5 para. 14**; S.I. 2004/786, **art. 3(2)** (with S.I. 2004/787, **art. 3(3)**)
- F9** S. 24(5) inserted (4.7.1996 with effect as mentioned in Sch. 1 Pt. III para. 39 of the amending Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. II para. 29** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**
- F10** S. 24(5) repealed (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 3 para. 60(3)**, **Sch. 37 Pt. 4**; S.I. 2012/1320, **art. 4(1)(c)(d)(2)(3)** (with **art. 5**) (see S.I. 2012/2574, **art. 4(2)** and S.I. 2013/1103, **art. 4**); S.I. 2012/2574, **art. 2(2)(3)(c)(d)**, **Sch.** (with **arts. 3, 4**) (as amended (4.11.2012) by S.I. 2012/2761, **art. 2**) (with S.I. 2013/1103, **art. 4**); S.I. 2013/1103, **art. 2(1)(c)**

#### Marginal Citations

- M3** 1968 c. 19.

## 25 Principles to be followed by court.

- (1) If, having regard to all the circumstances—
- (a) the Crown Court—
    - (i) on a trial on indictment;

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- (ii) on an appeal from a magistrates' court; <sup>F11</sup> . . .
  - (iii) on the hearing of an application under section 6 of the <sup>M4</sup>Criminal Justice Act 1987 (applications for dismissal of charges of fraud transferred from magistrates' court to Crown Court); or
  - [<sup>F12</sup>(iv) on the hearing of an application under paragraph 5 of Schedule 6 to the Criminal Justice Act 1991 (applications for dismissal of charges in certain cases involving children transferred from magistrates' court to Crown Court); or]
  - (b) the criminal division of the Court of Appeal; or
  - (c) a magistrates' court on a trial of an information,
- is of the opinion that in the interests of justice a statement which is admissible by virtue of section 23 or 24 above nevertheless ought not to be admitted, it may direct that the statement shall not be admitted.
- (2) Without prejudice to the generality of subsection (1) above, it shall be the duty of the court to have regard—
- (a) to the nature and source of the document containing the statement and to whether or not, having regard to its nature and source and to any other circumstances that appear to the court to be relevant, it is likely that the document is authentic;
  - (b) to the extent to which the statement appears to supply evidence which would otherwise not be readily available;
  - (c) to the relevance of the evidence that it appears to supply to any issue which is likely to have to be determined in the proceedings; and
  - (d) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them.

#### Textual Amendments

**F11** Word in s. 25(1)(a)(ii) repealed (4.9.1995) by 1994 c. 33, s. 168(3), **Sch.11**; S.I. 1995/1957, **art.6**

**F12** S. 25(1)(a)(iv) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 31**; S.I. 1995/127, art. 2, **Sch. 1**, APPENDIX

#### Modifications etc. (not altering text)

**C1** S. 25 restricted (10.6.1991) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), s. 3(8); S.I. 1991/1072, art. 2(a), **Sch. Pt. I**

#### Marginal Citations

**M4** 1987 c. 38.

## 26 Statements in documents that appear to have been prepared for purposes of criminal proceedings or investigations.

Where a statement which is admissible in criminal proceedings by virtue of section 23 or 24 above appears to the court to have been prepared, otherwise than in accordance with [<sup>F13</sup>section 7 of the Crime (International Co-operation) Act 2003] or an order under paragraph 6 of Schedule 13 to this Act or under section 30 or 31 below, for the purposes—

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- (a) of pending or contemplated criminal proceedings; or
- (b) of a criminal investigation,

the statement shall not be given in evidence in any criminal proceedings without the leave of the court, and the court shall not give leave unless it is of the opinion that the statement ought to be admitted in the interests of justice; and in considering whether its admission would be in the interests of justice, it shall be the duty of the court to have regard—

- (i) to the contents of the statement;
- (ii) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them; and
- (iii) to any other circumstances that appear to the court to be relevant.

F14F15[ . . . . ]

#### Textual Amendments

- F13** Words in s. 26 substituted (26.4.2004) by [Crime \(International Co-operation\) Act 2003 \(c. 32\)](#), ss. 91, 94, [Sch. 5 para. 15](#); [S.I. 2004/786](#), [art. 3\(2\)](#) (with [S.I. 2004/787](#), [art. 3\(3\)](#))
- F14** Words in s. 26 inserted (4.7.1996 with effect as mentioned in [Sch. 1 Pt. III para. 39](#) of the amending Act) by [1996 c. 25](#), s. 47, [Sch. 1 Pt. II para. 30](#), Pt. III para. 39 (with s. 78(1)); [S.I. 1997/683](#), [art. 1\(2\)](#)
- F15** Words in s. 26 repealed (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 3 para. 60\(4\)](#), [Sch. 37 Pt. 4](#); [S.I. 2012/1320](#), [art. 4\(1\)\(c\)\(d\)\(2\)\(3\)](#) (with [art. 5](#)) (see [S.I. 2012/2574](#), [art. 4\(2\)](#) and [S.I. 2013/1103](#), [art. 4](#)); [S.I. 2012/2574](#), [art. 2\(2\)\(3\)\(c\)\(d\)](#), [Sch.](#) (with [arts. 3, 4](#)) (as amended (4.11.2012) by [S.I. 2012/2761](#), [art. 2](#)) (with [S.I. 2013/1103](#), [art. 4](#)); [S.I. 2013/1103](#), [art. 2\(1\)\(c\)](#)

## 27 Proof of statements contained in documents.

Where a statement contained in a document is admissible as evidence in criminal 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; and it is immaterial for the purposes of this subsection how many removes there are between a copy and the original.

F16F17[ . . . . ]

#### Textual Amendments

- F16** Words in s. 27 inserted (4.7.1996 with effect as mentioned in [Sch. 1 Pt. III para. 39](#) of the amending Act) by [1996 c. 25](#), s. 47, [Sch. 1 Pt. II para. 31](#), Pt. III para. 39 (with s. 78(1)); [S.I. 1997/683](#), [art. 1\(2\)](#)
- F17** Words in s. 27 repealed (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 3 para. 60\(5\)](#), [Sch. 37 Pt. 4](#); [S.I. 2012/1320](#), [art. 4\(1\)\(c\)\(d\)\(2\)\(3\)](#) (with [art. 5](#)) (see [S.I. 2012/2574](#), [art. 4\(2\)](#) and [S.I.](#)

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[2013/1103](#), art. 4); [S.I. 2012/2574](#), art. 2(2)(3)(c)(d), Sch. (with arts. 3, 4) (as amended (4.11.2012) by [S.I. 2012/2761](#), art. 2) (with [S.I. 2013/1103](#), art. 4); [S.I. 2013/1103](#), art. 2(1)(c)

## **28 Documentary evidence— supplementary.**

- (1) Nothing in this Part of this Act shall prejudice—
- (a) the admissibility of a statement not made by a person while giving oral evidence in court which is admissible otherwise than by virtue of this Part of this Act; or
  - (b) any power of a court to exclude at its discretion a statement admissible by virtue of this Part of this Act.
- (2) Schedule 2 to this Act shall have effect for the purpose of supplementing this Part of this Act.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 36(2)(b)(v) and word inserted by [2019 c. 17 s. 13\(3\)\(b\)](#)
- s. 36(3A)(3B) substituted for s. 36(3A) by [2008 c. 4 s. 46\(2\)](#)
- s. 41(4A) inserted by [2004 c. 28 Sch. 10 para. 28](#)
- s. 139AZA(1)(a)(iii) and word inserted by [2019 c. 17 s. 13\(4\)\(b\)](#)