



Civil Evidence (Family Mediation) (Scotland) Act 1995

CHAPTER 6

ARRANGEMENT OF SECTIONS

Section

1. Inadmissibility in civil proceedings of information as to what occurred during family mediation.
2. Exceptions to general rule of inadmissibility.
3. Short title, construction, commencement and extent.



Civil Evidence (Family Mediation) (Scotland) Act 1995

1995 CHAPTER 6

An Act to make provision for the inadmissibility as evidence in civil proceedings in Scotland of information as to what occurred during family mediation. A.D. 1995.
[1st May 1995]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) Subject to section 2 of this Act, no information as to what occurred during family mediation to which this Act applies shall be admissible as evidence in any civil proceedings.

Inadmissibility in civil proceedings of information as to what occurred during family mediation.

(2) This Act applies to family mediation—

(a) between two or more individuals relating to—

- (i) the residence of a child;
- (ii) the regulation of personal relations and direct contact between a child and any other person;
- (iii) the control, direction or guidance of a child's upbringing;
- (iv) the guardianship or legal representation of a child; or
- (v) any other matter relating to a child's welfare;

(b) between spouses or former spouses concerning matters arising out of the breakdown or termination of their marriage;

(c) between parties to a purported marriage concerning matters arising out of the breakdown or annulment of their purported marriage;

c. 6 *Civil Evidence (Family Mediation) (Scotland) Act 1995*

- (d) between co-habitants or former co-habitants concerning matters arising out of the breakdown or termination of their relationship; or
 - (e) of such other description as the Secretary of State may prescribe, which is conducted by a person accredited as a mediator in family mediation to an organisation which is concerned with such mediation and which is approved for the purposes of this Act by the Lord President of the Court of Session.
- (3) The Lord President of the Court of Session may—
- (a) in approving an organisation under subsection (2) above, specify the period for which the approval is granted;
 - (b) if he thinks fit, withdraw the approval at any time.
- (4) A certificate by the Lord President approving an organisation under subsection (2) above shall be—
- (a) in such form as may be prescribed by Act of Sederunt; and
 - (b) admissible as evidence in any civil proceedings and sufficient evidence of the matters contained therein.
- (5) A document purporting to be a certificate by the Lord President for the purposes of this Act shall be accepted by the court as such unless the contrary is proved.
- (6) The Lord President may, in connection with the performance of any of his functions under this Act, require an organisation which is seeking, or has been granted, approval under subsection (2) above to provide him with such information as he thinks fit.
- (7) For the purposes of subsection (2)(d) above, “co-habitants” means a man and a woman who are not married to each other but who are living together as if they were husband and wife.
- (8) In this Act, “civil proceedings” does not include an arbitration or proceedings before a tribunal or inquiry.
- (9) In this section and section 2 of this Act, any reference to what occurred during family mediation shall include a reference to what was said, written or observed during such mediation.

Exceptions to
general rule of
inadmissibility.

- 2.—(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;
- (ii) under Part III of the Social Work (Scotland) Act 1968 before, or relating to, a children's hearing; 1968 c. 49.
- (iii) for an adoption order under section 12 of the Adoption (Scotland) Act 1978; 1978 c. 28.
- (iv) for an order under section 18 of the said Act of 1978 declaring a child free for adoption;
- (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 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 co-habitant 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 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. 1991 c. 50.

(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.

3.—(1) This Act may be cited as the Civil Evidence (Family Mediation) (Scotland) Act 1995.

Short title, construction, commencement and extent.

(2) In this Act, "prescribe", except in relation to an Act of Sederunt, means prescribe by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(3) This Act shall come into force on such day as the Lord Advocate may by order made by statutory instrument appoint; and such order may include such transitional or incidental provisions as appear to him to be necessary or expedient.

(4) This Act extends to Scotland only.

HMSO publications are available from:

HMSO Publications Centre

(Mail, fax and telephone orders only)

PO Box 276, London SW8 5DT

Telephone orders 0171 873 9090

General enquiries 0171 873 0011

(queuing system in operation for both numbers)

Fax orders 0171 873 8200

HMSO Bookshops

49 High Holborn, London WC1V 6HB

(counter service only)

0171 873 0011 Fax 0171 831 1326

68-69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

33 Wine Street, Bristol BS1 2BQ

0117 9264306 Fax 0117 9294515

9-21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

01232 238451 Fax 01232 235401

71 Lothian Road, Edinburgh EH3 9AZ

0131 228 4181 Fax 0131 229 2734

The HMSO Oriel Bookshop,

The Friary, Cardiff CF1 4AA

01222 395548 Fax 01222 384347

The Parliamentary Bookshop

12 Bridge Street, Parliament Square,

London SW1A 2JX

Telephone orders 0171 219 3890

General enquiries 0171 219 3890

Fax orders 0171 219 3866

HMSO's Accredited Agents

(see Yellow Pages)

And through good booksellers

LONDON: HMSO

ISBN 0-10-540695-3



9 780105 406952