



Law Reform (Miscellaneous Provisions) (Scotland) Act 1968

1968 CHAPTER 70

PART III

AMENDMENT OF THE LAW OF EVIDENCE IN CIVIL PROCEEDINGS

9^{F1}

Textual Amendments

F1 S. 9 repealed by [Civil Evidence \(Scotland\) Act 1988 \(c. 32, SIF 47\)](#), s. 10(1)(3), [Sch.](#)

Convictions, etc., as evidence in civil proceedings

10 **Convictions as evidence in civil proceedings.**

- (1) If 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 else-where 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

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- (b) without prejudice to the reception of any other admissible evidence for the purposes 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—
- ^{F2}section 14 of the Powers of Criminal Courts (Sentencing) Act 2000](under which a conviction leading to probation or discharge is to be disregarded except as therein mentioned) ;
 - ^{F3}section 191 of the ^{M1}Criminal Procedure (Scotland) Act 1975] (which makes similar provision in respect of convictions on indictment in Scotland) ;
 - section 8 of the ^{M2}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 ^{F3}section 383 of the said Act of 1975] shall be treated as a conviction.
- (6) In this section “court-martial” means a court-martial constituted under the ^{M3}Army Act 1955, the ^{M4}Air Force Act 1955 or the ^{M5}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.

Textual Amendments

- F2** Words in s. 10(5)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 37**
- F3** Words substituted by virtue of [Interpretation Act 1889 \(c. 63\)](#), **s. 38(1)**

Modifications etc. (not altering text)

- C1** S. 10 extended by [Fair Trading Act 1973 \(c. 41\)](#), **s. 36(1)**
- C2** S. 10 extended by [S.R. 1983/153](#), **art. 18** and [S.I. 1983/887](#), **art. 18**
- C3** S. 10 explained (1.4.1996) by 1995 c. 43, **s. 46(13)**
- C4** S. 10 extended (31.3.1996) by 1995 c. 20, **s. 112(13)** (which s. 112 was repealed (1.4.1996) by 1995 c. 40, ss. 4, 6(1), [Sch. 3 Pt. II para. 16\(3\)](#), **Sch. 5**)
- S. 10 extended (20.6.2003) by 2002 c. 40, ss. 228(1)(b), 279; [S.I. 2003/1397](#), **art. 2**, [Sch.](#)

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Marginal Citations

- M1 1975 c. 21.
- M2 1950 c. 7 (N.I.).
- M3 1955 c. 18.
- M4 1955 c. 19.
- M5 1957 c. 53.

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, . . . ^{F4}
 - (b) ^{F4}
- 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 . . . ^{F5}, whether or not he offered any defence to the allegation of adultery . . . ^{F5} 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) If 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 . . . ^{F5}—
- (a) he shall be taken to have committed the adultery to which the finding relates . . . ^{F5}, 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 . . . ^{F5} 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 . . . ^{F5} 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 [^{F6}receiving evidence from the pursuer].
- (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 High Court in Northern Ireland, or any appeal arising out of any such action or cause, and
 - (b) ^{F7}

Textual Amendments

- F4 S. 11(1)(b) and word “and” immediately preceding it repealed by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), ss. 9, 10(2), [Sch. 2](#)

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- F5** Words repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 9, 10(2), Sch. 2
- F6** Words substituted by Divorce (Scotland) Act 1976 (c. 39), Sch. 1 para. 4
- F7** S. 11(6)(b) repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 9, 10(2), Sch. 2

12 Conclusiveness of convictions for purposes of defamation actions.

- (1) In an action for defamation in which the question whether [^{F8}the pursuer] 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, [^{F8}he] 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 [^{F8}the pursuer] 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 [^{F8}he] 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.

[^{F9}(2A) In the case of an action for defamation in which there is more than one pursuer—

- (a) the references in subsections (1) and (2) above to the pursuer shall be construed as references to any of the pursuers, and
- (b) proof that any of the pursuers stands convicted of an offence shall be conclusive evidence that he committed that offence so far as that fact is relevant to any issue arising in relation to his cause of action or that of any other pursuer.]

- (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 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 section (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.

Textual Amendments

- F8** Words in S. 12(1)(2) substituted (4.9.1996) by 1996 c. 31, ss. 12(2), 19 (with s. 20(2))
- F9** S. 12(2A) inserted (4.9.1996) by 1996 c. 31, ss. 12(2), 19 (with s. 20(2))

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Textual Amendments

F10 Ss. 13–16 repealed by [Civil Evidence \(Scotland\) Act 1988 \(c. 32, SIF 47\)](#), s. 10(1)(3), [Sch.](#)

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 ailment 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—

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“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 ;

“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.

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- (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.

Textual Amendments

F11 Definition repealed by [Civil Evidence \(Scotland\) Act 1988 \(c. 32, SIF 47\)](#), s. 10(1)(3), **Sch.**

Modifications etc. (not altering text)

- C5** S. 17(4) applied by [1988 c. 52, s. 46B\(4\)](#) (as inserted (11.4.2003) by [1999 c. 12, ss. 4, 9\(2\)](#); S.I. 2003/1095, **art. 2**)
- C6** S. 17(4) applied by [Finance Act 1988 \(c. 39, SIF 63:1\)](#), s. **127(5)(a)**
- C7** S. 17(4) applied (1.9.1994) by [1994 c. 22, s. 52\(4\)\(b\)\(5\)](#) (with s. 57(4))
- C8** S. 17(4) applied by [1969 c. 27, s. 27\(4\)\(b\)](#) (as substituted (31.1.1997) by [1995 c. 38, s. 15\(1\)](#), **Sch. 1 para. 5(3)** (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, **art. 2**)
- C9** S. 17(4) applied by [1994 c. 22, s. 52\(4\)](#) (as substituted (31.1.1997) by [1995 c. 38, s. 15\(1\)](#), **Sch. 1 para. 19** (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, **art. 2**)

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