



# Civil Evidence (Scotland) Act 1988

## 1988 CHAPTER 32

An Act to make fresh provision in relation to civil proceedings in Scotland regarding corroboration of evidence and the admissibility of hearsay and other evidence; and for connected purposes. [29th July 1988]

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 Rule requiring corroboration abolished.**

- (1) In any civil proceedings the court or, as the case may be, the jury, if satisfied that any fact has been established by evidence in those proceedings, shall be entitled to find that fact proved by that evidence notwithstanding that the evidence is not corroborated.
- (2) Any rule of law whereby any evidence may be taken to be corroborated by a false denial shall cease to have effect.

### **2 Admissibility of hearsay.**

- (1) In any civil proceedings—
  - (a) evidence shall not be excluded solely on the ground that it is hearsay;
  - (b) a statement made by a person otherwise than in the course of the proof shall be admissible as evidence of any matter contained in the statement of which direct oral evidence by that person would be admissible; and
  - (c) the court, or as the case may be the jury, if satisfied that any fact has been established by evidence in those proceedings, shall be entitled to find that fact proved by the evidence notwithstanding that the evidence is hearsay.
- (2) Nothing in this section shall affect the admissibility of any statement as evidence of the fact that the statement was made.

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- (3) In paragraph (e) of section 5 of the Court of Session Act 1988 (power to make provision as regards the Court of Session for admission of written statements etc. in lieu of parole evidence), for the words “the admission in lieu of parole evidence of written statements (including affidavits) and reports, on such conditions as may be prescribed” there shall be substituted the words “written statements (including affidavits) and reports, admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988, to be received in evidence, on such conditions as may be prescribed, without being spoken to by a witness”.
- (4) For paragraph (e) of section 32(1) of the <sup>M1</sup>Sheriff Courts (Scotland) Act 1971 (corresponding power to make provision as regards the sheriff court) there shall be substituted the following paragraph—
- “(e) providing in respect of any category of civil proceedings for written statements (including affidavits) and reports, admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988, to be received in evidence, on such conditions as may be prescribed, without being spoken to by a witness;”.

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**Marginal Citations**

**M1** 1971 c. 58.

**3 Statement as evidence as to credibility.**

In any civil proceedings a statement made otherwise than in the course of the proof by a person who at the proof is examined as to the statement shall be admissible as evidence in so far as it tends to reflect favourably or unfavourably on that person’s credibility.

**4 Leading of additional evidence.**

- (1) For the purposes of section 2 or 3 above, any person may at the proof, with leave of the court, at any time before the commencement of closing submissions—
- (a) be recalled as a witness whether or not he has been present in court since giving evidence initially; or
  - (b) be called as an additional witness whether or not he has been present in court during the proof (or during any other part of the proceedings).
- (2) Nothing in section 3 of the <sup>M2</sup>Evidence (Scotland) Act 1840 (presence in court not to disqualify witnesses in certain cases) shall apply as respects a witness called or recalled under subsection (1) above.

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**Marginal Citations**

**M2** 1840 c. 59.

**5 Document as part of business records.**

- (1) Unless the court otherwise directs, a document may in any civil proceedings be taken to form part of the records of a business or undertaking if it is certified as such by a

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docquet purporting to be signed by an officer of the business or undertaking to which the records belong; and a statement contained in any document certified as aforesaid may be received in evidence without being spoken to by a witness.

- (2) For the purposes of this section, a facsimile of a signature shall be treated as a signature.

## **6 Production of copy document.**

- (1) For the purposes of any civil proceedings, a copy of a document, purporting to be authenticated by a person responsible for the making of the copy, shall, unless the court otherwise directs, be—
- (a) deemed a true copy; and
  - (b) treated for evidential purposes as if it were the document itself.
- (2) In subsection (1) above, “copy” includes a transcript or reproduction.
- (3) Sections 3 to 5 of the <sup>M3</sup>Bankers’ Books Evidence Act 1879 (mode of proof of entries in bankers’ books, proof that book is a bankers’ book and verification of copy of entry in such a book) shall not apply to civil proceedings.

### **Marginal Citations**

**M3** 1879 c. 11.

## **7 Statement not contained in business records.**

- (1) In any civil proceedings, the evidence of an officer of a business or undertaking that any particular statement is not contained in the records of the business or undertaking shall be admissible as evidence of that fact whether or not the whole or any part of the records have been produced in the proceedings.
- (2) The evidence referred to in subsection (1) above may, unless the court otherwise directs, be given by means of the affidavit of the officer.
- (3) In section 6 of the Bankers’ Books Evidence Act 1879 (case in which banker not compellable to produce book), after the word “Act” there shall be inserted the words “or under the Civil Evidence (Scotland) Act 1988”.

## **8 Evidence in actions concerning family relationships, etc.**

- (1) In any action to which this subsection applies (whether or not appearance has been entered for the defender), no decree or judgment in favour of the pursuer shall be pronounced until the grounds of action have been established by evidence.
- (2) Subsection (1) above applies to actions for divorce, [<sup>F1</sup>for dissolution of civil partnership, for separation of spouses or of civil partners, for declarator of marriage or of nullity of marriage or of civil partnership or for], <sup>F2</sup>. . . parentage or non-parentage.
- (3) Subject to subsection (4) below, in any action for divorce, separation or declarator of marriage or nullity of marriage, the evidence referred to in subsection (1) above shall consist of or include evidence other than that of a party to the marriage (or alleged or purported marriage).

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[<sup>F3</sup>(3A) Subject to subsection (4) below, in any action for dissolution of civil partnership, separation of civil partners or declarator of nullity of civil partnership, the evidence referred to in subsection (1) above shall consist of or include evidence other than that of a partner in the civil partnership (or purported civil partnership).]

(4) The Lord Advocate may by order made by statutory instrument provide that subsection (3) [<sup>F4</sup>or (3A)] above shall not apply, or shall apply subject to such modifications as may be specified in the order, in respect of such class or classes of action as may be so specified.

(5) No order shall be made under this section unless a draft of the order has been laid before Parliament and has been approved by resolution of each House.

#### Textual Amendments

- F1** Words in s. 8(2) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 55\(1\)\(2\)](#); S.S.I. 2005/604, [art. 2\(a\)\(c\)](#)
- F2** Words in s. 8(2) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp. 3\)](#), ss. 45(2), 46(2), [sch. 3](#); S.S.I. 2006/212, [art. 2](#) (with [art. 12](#))
- F3** S. 8(3A) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 55\(1\)\(3\)](#); S.S.I. 2005/604, [art. 2\(a\)\(c\)](#)
- F4** Words in s. 8(4) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 55\(1\)\(4\)](#); S.S.I. 2005/604, [art. 2\(a\)\(c\)](#)

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

- C1** S. 8: certain functions transferred (19.5.1999) by 1999/678, art. 2(1), Sch.
- C2** S. 8(3) excluded by S.I. 1989/582, [art. 3](#)
- C3** S. 8(3A) excluded (30.3.2012) by [The Evidence in Civil Partnership and Divorce Actions \(Scotland\) Order 2012 \(S.S.I. 2012/111\)](#), arts. 1, [2\(1\)](#)

## 9 Interpretation.

In this Act, unless the context otherwise requires—

“business” includes trade or profession;

“civil proceedings” includes, in addition to such proceedings in any of the ordinary courts of law—

- (a) any hearing by the sheriff <sup>F5</sup>. . . of an application [<sup>F6</sup>made by virtue of section 93(2)(a), 94(2)(a) or 110(2) of the [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#) except in so far as the application relates to the ground mentioned in section 67(2)(j) of that Act;]
- (b) any arbitration, whether or not under an enactment, except in so far as, in relation to the conduct of the arbitration, specific provision has been made as regards the rules of evidence which are to apply;
- (c) any proceedings before a tribunal or inquiry, except in so far as, in relation to the conduct of proceedings before the tribunal or inquiry, specific provision has been made as regards the rules of evidence which are to apply; and
- (d) any other proceedings conducted wholly or mainly in accordance with rules of procedure agreed between the parties themselves (or as respects which it would have been open to them to agree such rules had they wished to do so) except in so far as any such agreement makes specific provision as regards the rules of evidence which are to apply;

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“court” shall be construed in accordance with the definition of “civil proceedings”;

“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 recorded 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 recorded so as to be capable (as aforesaid) of being reproduced therefrom;
  - “film” includes a microfilm;
  - “hearsay” includes hearsay of whatever degree;
  - “made” includes “allegedly made”;
  - “proof” includes trial or other hearing of evidence, proof on commission and any continued proof;
  - “records” means records in whatever form;
  - “statement” includes any representation (however made or expressed) of fact or opinion but does not include a statement in a precognition; and
  - “undertaking” includes any public or statutory undertaking, any local authority and any government department.

#### Textual Amendments

- F5** Words in s. 9(a) repealed (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 44(a), Sch. 5 (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F6** Words in s. 9(a) substituted (24.6.2013) by The Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (S.S.I. 2013/211), art. 1, Sch. 1 para. 6

## 10 Repeals and application.

- (1) The enactments specified in columns 1 and 2 of the Schedule to this Act are hereby repealed to the extent specified in column 3 of the Schedule.
- (2) This Act shall apply to proceedings whether commenced before or after the date of its coming into force (but not to proceedings in which proof commenced before that date).
- (3) Nothing in this Act shall affect the operation of the following enactments—
  - (a) section 2 of the <sup>M4</sup>Documentary Evidence Act 1868 (mode of proving certain documents);
  - (b) section 2 of the <sup>M5</sup>Documentary Evidence Act 1882 (documents printed under superintendence of Stationery Office);
  - (c) section 1 of the <sup>M6</sup>Evidence (Colonial Statutes) Act 1907 (proof of statutes of certain legislatures);
  - (d) section 1 of the <sup>M7</sup>Evidence (Foreign, Dominion and Colonial Documents) Act 1933 (proof and effect of registers and official certificates of certain countries); and
  - (e) section 5 of the <sup>M8</sup>Oaths and Evidence (Overseas Authorities and Countries) Act 1963 (provision in respect of public registers of other countries).

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**Marginal Citations**

- M4** 1868 c. 37.  
**M5** 1882 c. 9.  
**M6** 1907 c. 16.  
**M7** 1933 c. 4.  
**M8** 1963 c. 27.

**11 Citation, commencement and extent.**

- (1) This Act may be cited as the Civil Evidence (Scotland) Act 1988.
- (2) This Act shall come into force on such day as the Lord Advocate may by order made by statutory instrument appoint.
- (3) This Act shall extend to Scotland only.

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

- C4** S. 11(2) power of appointment fully exercised: 3.4.1989 appointed by S.I. 1989/556

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SCHEDULE

Section 10(1).

ENACTMENTS REPEALED

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<b>Chapter</b>	<b>Short Title</b>	<b>Extent of repeal</b>
11 Geo. 4. & 1 Will. 4. c. 69.	The Court of Session Act 1830.	Section 36.
15 & 16 Vict. c. 27.	The Evidence (Scotland) Act 1852.	Section 3.
1966 c. 19.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1966.	Section 7.
1968 c.70.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1968.	Section 9.  Sections 13 to 16. In section 17(3), the definition of “computer”.
1983 c.12.	The Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983.	Section 2.  In Schedule 1, paragraph 2.
1986 c.9.	The Law Reform (Parent and Child) (Scotland) Act 1986.	Section 7(4).

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