



Civil Evidence Act 1995

1995 CHAPTER 38

Admissibility of hearsay evidence

1 Admissibility of hearsay evidence.

- (1) In civil proceedings evidence shall not be excluded on the ground that it is hearsay.
- (2) In this Act—
 - (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.
- (3) Nothing in this Act affects the admissibility of evidence admissible apart from this section.
- (4) The provisions of sections 2 to 6 (safeguards and supplementary provisions relating to hearsay evidence) do not apply in relation to hearsay evidence admissible apart from this section, notwithstanding that it may also be admissible by virtue of this section.

Safeguards in relation to hearsay evidence

2 Notice of proposal to adduce hearsay evidence.

- (1) A party proposing to adduce hearsay evidence in civil proceedings shall, subject to the following provisions of this section, give to the other party or parties to the proceedings—
 - (a) such notice (if any) of that fact, and
 - (b) on request, such particulars of or relating to the evidence,as is reasonable and practicable in the circumstances for the purpose of enabling him or them to deal with any matters arising from its being hearsay.
- (2) Provision may be made by rules of court—

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- (a) specifying classes of proceedings or evidence in relation to which subsection (1) does not apply, and
 - (b) as to the manner in which (including the time within which) the duties imposed by that subsection are to be complied with in the cases where it does apply.
- (3) Subsection (1) may also be excluded by agreement of the parties; and compliance with the duty to give notice may in any case be waived by the person to whom notice is required to be given.
- (4) A failure to comply with subsection (1), or with rules under subsection (2)(b), does not affect the admissibility of the evidence but may be taken into account by the court—
- (a) in considering the exercise of its powers with respect to the course of proceedings and costs, and
 - (b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 4.

Modifications etc. (not altering text)

- C1 S. 2 applied (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), [ss. 46\(2\)](#), 458(1); S.I. 2003/333, [art. 2\(1\)](#), [Sch.](#) (subject to [arts. 3-14](#) (as amended (6.3.2003) by S.I. 2003/531, [arts. 3, 4](#)))
- C2 S. 2 applied (31.12.2005) by S.I. 2005/3180, [art. 10\(2\)](#)
- C3 S. 2 applied (1.1.2006) by S.I. 2005/3181, [art. 13\(2\)\(5\)](#)
- C4 Ss. 2-4 applied by [Proceeds of Crime Act 2002 \(c. 29\)](#), s. 47Q(2) (as inserted (22.11.2014 for specified purposes, 1.6.2015 in so far as not already in force) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss. 55\(2\)](#), 116(1); S.I. 2014/3101, [art. 3](#); S.I. 2015/983, [art. 2\(2\)\(a\)](#))
- C5 S. 2(1) excluded (24.3.2003) by S.I. 2003/421, [rule 39](#)

3 Power to call witness for cross-examination on hearsay statement.

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.

Modifications etc. (not altering text)

- C6 S. 3 applied (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), [ss. 46\(2\)](#), 458(1); S.I. 2003/333, [art. 2\(1\)](#), [Sch.](#) (subject to [arts. 3-14](#) (as amended (6.3.2003) by S.I. 2003/531, [arts. 3, 4](#)))
- C7 S. 3 applied (31.12.2005) by S.I. 2005/3180, [art. 10\(2\)](#)
- C8 S. 3 applied (1.1.2006) by S.I. 2005/3181, [art. 13\(2\)\(5\)](#)
- C9 S. 3 applied (prosp.) by [Proceeds of Crime Act 2002 \(c. 29\)](#), s. 47Q(2) (as inserted by [Policing and Crime Act 2009 \(c.26\)](#), [ss. 55\(2\)](#), 116(1))

4 Considerations relevant to weighing of hearsay evidence.

- (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 may be had, in particular, to the following—

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- (a) whether it would have been reasonable and practicable for the party by whom the evidence was 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.

Modifications etc. (not altering text)

- C10** S. 4 applied (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\), ss. 46\(2\), 458\(1\); S.I. 2003/333, art. 2\(1\), Sch.](#) (subject to [arts. 3-14](#) (as amended (6.3.2003) by [S.I. 2003/531, arts. 3, 4](#)))
- C11** S. 4 applied (31.12.2005) by [S.I. 2005/3180, art. 10\(2\)](#)
- C12** S. 4 applied (1.1.2006) by [S.I. 2005/3181, art. 13\(2\)\(5\)](#)
- C13** S. 4 applied (prosp.) by [Proceeds of Crime Act 2002 \(c. 29\), s. 47Q\(2\)](#) (as inserted by [Policing and Crime Act 2009 \(c.26\), ss. 55\(2\), 116\(1\)](#))

Supplementary provisions as to hearsay evidence

5 Competence and credibility.

- (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.

For this purpose “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 section 96(2)(a) and (b) of the ^{M1}Children Act 1989 (conditions for reception of unsworn evidence of child).

- (2) 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 be admissible for the purpose of attacking or supporting his credibility as a witness is admissible for that purpose in the proceedings; and
 - (b) evidence tending to prove that, whether before or after he made the statement, he made any other statement inconsistent with it is admissible for the purpose of showing that he had contradicted himself.

Provided that evidence may not be given of any matter of which, if he had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

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Marginal Citations

M1 1989 c. 41.

6 Previous statements of witnesses.

- (1) Subject as follows, the provisions of this Act 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 or intends to call 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.

This shall not be construed as preventing a witness statement (that is, a written statement of oral evidence which a party to the proceedings intends to lead) from being adopted by a witness in giving evidence or treated as his evidence.

- (3) Where in the case of civil proceedings section 3, 4 or 5 of the ^{M2}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 Act does not authorise the adducing of evidence of a previous inconsistent or contradictory statement otherwise than in accordance with those sections.

This is without prejudice to any provision made by rules of court under section 3 above (power to call witness for cross-examination on hearsay statement).

- (4) Nothing in this Act 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.
- (5) Nothing in this section shall be construed as preventing a statement of any description referred to above from being admissible by virtue of section 1 as evidence of the matters stated.

Marginal Citations

M2 1865 c. 18.

7 Evidence formerly admissible at common law.

- (1) The common law rule effectively preserved by section 9(1) and (2)(a) of the ^{M3}Civil Evidence Act 1968 (admissibility of admissions adverse to a party) is superseded by the provisions of this Act.
- (2) The common law rules effectively preserved by section 9(1) and (2)(b) to (d) of the ^{M4}Civil Evidence Act 1968, that is, any rule of law whereby in civil proceedings—

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- (a) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them,
 - (b) public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them, or
 - (c) records (for example, the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them,
- shall continue to have effect.
- (3) The common law rules effectively preserved by section 9(3) and (4) of the Civil Evidence Act 1968, that is, any rule of law whereby in civil proceedings—
- (a) evidence of a person's reputation is admissible for the purpose of proving his good or bad character, or
 - (b) evidence of reputation or family tradition is admissible—
 - (i) for the purpose of proving or disproving pedigree or the existence of a marriage, or
 - (ii) for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing,
- shall continue to have effect in so far as they authorise the court to treat such evidence as proving or disproving that matter.

Where any such rule applies, reputation or family tradition shall be treated for the purposes of this Act as a fact and not as a statement or multiplicity of statements about the matter in question.

- (4) The words in which a rule of law mentioned in this section is described are intended only to identify the rule and shall not be construed as altering it in any way.

Marginal Citations

M3 1968 c. 64.

M4 1968 c. 64.

Other matters

8 Proof of statements contained in documents.

- (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.

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9 Proof of records of business or public authority.

- (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.

For this purpose—

- (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.
- (3) 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.
 - (4) In this section—
 - “records” means records in whatever form;
 - “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; and
 - “public authority” includes any public or statutory undertaking, any government department and any person holding office under Her Majesty.
 - (5) The court may, having regard to the circumstances of the case, direct that all or any of the above provisions of this section do not apply in relation to a particular document or record, or description of documents or records.

PROSPECTIVE

[^{F1}10 Admissibility and proof of Ogden Tables.

- (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 Her Majesty’s Stationery Office.
- (3) For the purposes of this section—
 - (a) “personal injury” includes any disease and any impairment of a person’s physical or mental condition; and

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- (b) “action for personal injury” includes an action brought by virtue of the ^{M5}Law Reform (Miscellaneous Provisions) Act 1934 or the ^{M6}Fatal Accidents Act 1976.]

Textual Amendments

F1 S. 10 repealed (*prosp.*) by S.I. 1997/2983 (N.I. 21), arts 1(2), 13(2), **Sch. 2**

Marginal Citations

M5 1934 c. 41.

M6 1976 c. 30.

General

11 Meaning of “civil proceedings”.

In this Act “civil proceedings” means civil proceedings, before any tribunal, in relation to which the strict rules of evidence apply, whether as a matter of law or by agreement of the parties.

References to “the court” and “rules of court” shall be construed accordingly.

12 Provisions as to rules of court.

- (1) Any power to make rules of court regulating the practice or procedure of the court in relation to civil proceedings includes power to make such provision as may be necessary or expedient for carrying into effect the provisions of this Act.
- (2) Any rules of court made for the purposes of this Act as it applies in relation to proceedings in the High Court apply, except in so far as their operation is excluded by agreement, to arbitration proceedings to which this Act applies, subject to such modifications as may be appropriate.

Any question arising as to what modifications are appropriate shall be determined, in default of agreement, by the arbitrator or umpire, as the case may be.

13 Interpretation.

In this Act—

“civil proceedings” has the meaning given by section 11 and “court” and “rules of court” shall be construed in accordance with that section;

“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 section 1(2);

“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—

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- (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; and
- “statement” means any representation of fact or opinion, however made.

14 Savings.

- (1) Nothing in this Act affects the exclusion of evidence on grounds other than that it is hearsay.

This applies whether the evidence falls to be excluded in pursuance of any enactment or rule of law, for failure to comply with rules of court or an order of the court, or otherwise.

- (2) Nothing in this Act affects the proof of documents by means other than those specified in section 8 or 9.
- (3) Nothing in this Act affects the operation of the following enactments—
- (a) section 2 of the ^{M7}Documentary Evidence Act 1868 (mode of proving certain official documents);
 - (b) section 2 of the ^{M8}Documentary Evidence Act 1882 (documents printed under the superintendence of Stationery Office);
 - (c) section 1 of the ^{M9}Evidence (Colonial Statutes) Act 1907 (proof of statutes of certain legislatures);
 - (d) section 1 of the ^{M10}Evidence (Foreign, Dominion and Colonial Documents) Act 1933 (proof and effect of registers and official certificates of certain countries);
 - (e) section 5 of the ^{M11}Oaths and Evidence (Overseas Authorities and Countries) Act 1963 (provision in respect of public registers of other countries).

Marginal Citations

- M7** 1868 c. 37.
M8 1882 c. 9.
M9 1907 c. 16.
M10 1933 c. 4.
M11 1963 c. 27.

15 Consequential amendments and repeals.

- (1) The enactments specified in Schedule 1 are amended in accordance with that Schedule, the amendments being consequential on the provisions of this Act.
- (2) The enactments specified in Schedule 2 are repealed to the extent specified.

16 Short title, commencement and extent.

- (1) This Act may be cited as the Civil Evidence Act 1995.
- (2) The provisions of this Act come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument, and different days may be appointed for different provisions and for different purposes.

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[^{F2}(3) Subject to subsection (3A), the provisions of this Act shall not apply in relation to proceedings begun before commencement.]

[^{F3}(3A) Transitional provisions for the application of the provisions of this Act to proceedings begun before commencement may be made by rules of court or practice directions.]

(4) This Act extends to England and Wales.

(5) Section 10 (admissibility and proof of Ogden Tables) also extends to Northern Ireland.

As it extends to Northern Ireland, the following shall be substituted for subsection (3)(b)—

“(b) “action for personal injury” includes an action brought by virtue of the ^{M12}Law Reform (Miscellaneous Provisions) (Northern Ireland) Act 1937 or the ^{M13}Fatal Accidents (Northern Ireland) Order 1977.”

(6) The provisions of Schedules 1 and 2 (consequential amendments and repeals) have the same extent as the enactments respectively amended or repealed.

Subordinate Legislation Made

P1 S. 16(2) power partly exercised: 31.1.1997 appointed for specified provisions by [S.I. 1996/3217](#), [art. 2](#)

Textual Amendments

F2 S. 16(3) substituted (26.4.1999) by [S.I. 1999/1217](#), [art. 4\(a\)](#)

F3 S. 16(3A) inserted (26.4.1999) by [S.I. 1999/1217](#), [art. 4\(b\)](#)

Commencement Information

I1 S. 16 partly in force; s. 16 not in force at Royal Assent see s. 16(2); s. 16 except for s. 16(5) in force at 31.1.1997 by [S.I. 1996/3217](#), [art. 2](#)

Marginal Citations

M12 [1937 c. 9 \(N.I.\)](#)

M13 [S.I. 1977/1251 \(N.I. 18\)](#)

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