



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XII

#### EVIDENCE

##### *Hearsay*

#### **259 Exceptions to the rule that hearsay evidence is inadmissible.**

- (1) Subject to the following provisions of this section, evidence of a statement made by a person otherwise than while giving oral evidence in court in criminal proceedings shall be admissible in those proceedings as evidence of any matter contained in the statement where the judge is satisfied—
  - (a) that the person who made the statement will not give evidence in the proceedings of such matter for any of the reasons mentioned in subsection (2) below;
  - (b) that evidence of the matter would be admissible in the proceedings if that person gave direct oral evidence of it;
  - (c) that the person who made the statement would have been, at the time the statement was made, a competent witness in such proceedings; and
  - (d) that there is evidence which would entitle a jury properly directed, or in summary proceedings would entitle the judge, to find that the statement was made and that either—
    - (i) it is contained in a document; or
    - (ii) a person who gave oral evidence in the proceedings as to the statement has direct personal knowledge of the making of the statement.
- (2) The reasons referred to in paragraph (a) of subsection (1) above are that the person who made the statement—
  - (a) is dead or is, by reason of his bodily or mental condition, unfit or unable to give evidence in any competent manner;

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- (b) is named and otherwise sufficiently identified, but is outwith the United Kingdom and it is not reasonably practicable to secure his attendance at the trial or to obtain his evidence in any other competent manner;
  - (c) is named and otherwise sufficiently identified, but cannot be found and all reasonable steps which, in the circumstances, could have been taken to find him have been so taken;
  - (d) having been authorised to do so by virtue of a ruling of the court in the proceedings that he is entitled to refuse to give evidence in connection with the subject matter of the statement on the grounds that such evidence might incriminate him, refuses to give such evidence; or
  - (e) is called as a witness and either—
    - (i) refuses to take the oath or affirmation; or
    - (ii) having been sworn as a witness and directed by the judge to give evidence in connection with the subject matter of the statement refuses to do so,
 and in the application of this paragraph to a child, the reference to a witness refusing to take the oath or affirmation or, as the case may be, to having been sworn shall be construed as a reference to a child who has refused to accept an admonition to tell the truth or, having been so admonished, refuses to give evidence as mentioned above.
- (3) Evidence of a statement shall not be admissible by virtue of subsection (1) above where the judge is satisfied that the occurrence of any of the circumstances mentioned in paragraphs (a) to (e) of subsection (2) above, by virtue of which the statement would otherwise be admissible, is caused by—
- (a) the person in support of whose case the evidence would be given; or
  - (b) any other person acting on his behalf,
- for the purpose of securing that the person who made the statement does not give evidence for the purposes of the proceedings either at all or in connection with the subject matter of the statement.
- (4) Where in any proceedings evidence of a statement made by any person is admitted by reference to any of the reasons mentioned in paragraphs (a) to (c) and (e)(i) of subsection (2) above—
- (a) any evidence which, if that person had given evidence in connection with the subject matter of the statement, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;
  - (b) evidence may be given of any matter which, if that person had given evidence in connection with the subject matter of the statement, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and
  - (c) evidence tending to prove that that person, whether before or after making the statement, made in whatever manner some other statement which is inconsistent with it shall be admissible for the purpose of showing that he has contradicted himself.
- (5) Subject to subsection (6) below, where a party intends to apply to have evidence of a statement admitted by virtue of subsection (1) above he shall, [F1 by the relevant time], give notice in writing of—

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- (a) that fact;
  - (b) the witnesses and productions to be adduced in connection with such evidence; and
  - (c) such other matters as may be prescribed by Act of Adjournal,
- to every other party to the proceedings and, for the purposes of this subsection, such evidence may be led notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.
- [<sup>F2</sup>(5A) In subsection (5) above, “the relevant time” means—
- (a) in the case of proceedings in the High Court—
    - (i) not less than 7 days before the preliminary hearing; or
    - (ii) such later time, before the trial diet, as the judge may on cause shown allow;
  - (b) in any other case, before the trial diet.]
- (6) A party shall not be required to give notice as mentioned in subsection (5) above where—
- (a) the grounds for seeking to have evidence of a statement admitted are as mentioned in paragraph (d) or (e) of subsection (2) above; or
  - (b) he satisfies the judge that there was good reason for not giving such notice.
- (7) If no other party to the proceedings objects to the admission of evidence of a statement by virtue of subsection (1) above, the evidence shall be admitted without the judge requiring to be satisfied as mentioned in that subsection.
- (8) For the purposes of the determination of any matter upon which the judge is required to be satisfied under subsection (1) above—
- (a) except to the extent that any other party to the proceedings challenges them and insists in such challenge, it shall be presumed that the circumstances are as stated by the party seeking to introduce evidence of the statement; and
  - (b) where such a challenge is insisted in, the judge shall determine the matter on the balance of probabilities, and he may draw any reasonable inference—
    - (i) from the circumstances in which the statement was made or otherwise came into being; or
    - (ii) from any other circumstances, including, where the statement is contained in a document, the form and contents of the document.
- (9) Where evidence of a statement has been admitted by virtue of subsection (1) above on the application of one party to the proceedings, without prejudice to anything in any enactment or rule of law, the judge may permit any party to lead additional evidence of such description as the judge may specify, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.
- (10) Any reference in subsections (5), (6) and (9) above to evidence shall include a reference to evidence led in connection with any determination required to be made for the purposes of subsection (1) above.

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#### Textual Amendments

- F1** Words in s. 259(5) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 42\(a\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (with savings in arts. 3-5)
- F2** S. 259(5A) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 42\(b\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (with savings in arts. 3-5)

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

- C1** Ss. 259-261 excluded (1.4.1996) by [1995 c. 40](#), ss. 3, 7(2), [Sch. 3 Pt. II para. 14](#)

## 260 Admissibility of prior statements of witnesses.

- (1) Subject to the following provisions of this section, where a witness gives evidence in criminal proceedings, any prior statement made by the witness shall be admissible as evidence of any matter stated in it of which direct oral evidence by him would be admissible if given in the course of those proceedings.
- (2) A prior statement shall not be admissible under this section unless—
- the statement is contained in a document;
  - the witness, in the course of giving evidence, indicates that the statement was made by him and that he adopts it as his evidence; and
  - at the time the statement was made, the person who made it would have been a competent witness in the proceedings.
- (3) For the purposes of this section, any reference to a prior statement is a reference to a prior statement which, but for the provisions of this section, would not be admissible as evidence of any matter stated in it.
- (4) Subsections (2) and (3) above do not apply to a prior statement—
- contained in a precognition on oath; or
  - made in other proceedings, whether criminal or civil and whether taking place in the United Kingdom or elsewhere,
- and, for the purposes of this section, any such statement shall not be admissible unless it is sufficiently authenticated.
- [<sup>F3</sup>(5) A prior statement made by a witness shall not, in any proceedings on indictment, be inadmissible by reason only that it is not included in any list of productions lodged by the parties.]

#### Textual Amendments

- F3** S. 260(5) inserted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 23, 27(1); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to savings in arts. 3-5)

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

- C2** Ss. 259-261 excluded (1.4.1996) by [1995 c. 40](#), ss. 3, 7(2), [Sch. 3 Pt. II para. 14](#)
- C3** S. 260(2)(c) modified (prosp.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 84, 206(1)

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## 261 Statements by accused.

- (1) Subject to the following provisions of this section, nothing in sections 259 and 260 of this Act shall apply to a statement made by the accused.
- (2) Evidence of a statement made by an accused shall be admissible by virtue of the said section 259 at the instance of another accused in the same proceedings as evidence in relation to that other accused.
- (3) For the purposes of subsection (2) above, the first mentioned accused shall be deemed—
  - (a) where he does not give evidence in the proceedings, to be a witness refusing to give evidence in connection with the subject matter of the statement as mentioned in paragraph (e) of subsection (2) of the said section 259; and
  - (b) to have been, at the time the statement was made, a competent witness in the proceedings.
- (4) Evidence of a statement shall not be admissible as mentioned in subsection (2) above unless the accused at whose instance it is sought to be admitted has given notice of his intention to do so as mentioned in subsection (5) of the said section 259; but subsection (6) of that section shall not apply in the case of notice required to be given by virtue of this subsection.

### Modifications etc. (not altering text)

C4 Ss. 259-261 excluded (1.4.1996) by 1995 c. 40, ss. 3, 7(2), Sch. 3 Pt. II para. 14

## 262 Construction of sections 259 to 261.

- (1) For the purposes of sections 259 to 261 of this Act, a “statement” includes—
  - (a) any representation, however made or expressed, of fact or opinion; and
  - (b) any part of a statement,but does not include a statement in a precognition other than a precognition on oath.
- (2) For the purposes of the said sections 259 to 261 a statement is contained in a document where the person who makes it—
  - (a) makes the statement in the document personally;
  - (b) makes a statement which is, with or without his knowledge, embodied in a document by whatever means or by any person who has direct personal knowledge of the making of the statement; or
  - (c) approves a document as embodying the statement.
- (3) In the said sections 259 to 261—

“criminal proceedings” include any hearing by the sheriff of an application made under Chapter 3 of Part II of the Children (Scotland) Act 1995 for a finding as to whether grounds for the referral of a child’s case to a children’s hearing are established, in so far as the application relates to the commission of an offence by the child, or for a review of such a finding;

“document” includes, in addition to a document in writing—

  - (a) any map, plan, graph or drawing;
  - (b) any photograph;

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- (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, disc 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;
    - “made” includes allegedly made.
- (4) Nothing in the said sections 259 to 261 shall prejudice the admissibility of a statement made by a person other than in the course of giving oral evidence in court which is admissible otherwise than by virtue of those sections.

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