



# Criminal Justice Act 2003

## 2003 CHAPTER 44

### PART 11 **E+W**

#### EVIDENCE

### CHAPTER 1 **E+W**

#### EVIDENCE OF BAD CHARACTER

##### *Defendants*

#### **101 Defendant's bad character **E+W****

- (1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if—
  - (a) all parties to the proceedings agree to the evidence being admissible,
  - (b) the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it,
  - (c) it is important explanatory evidence,
  - (d) it is relevant to an important matter in issue between the defendant and the prosecution,
  - (e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant,
  - (f) it is evidence to correct a false impression given by the defendant, or
  - (g) the defendant has made an attack on another person's character.
- (2) Sections 102 to 106 contain provision supplementing subsection (1).
- (3) The court must not admit evidence under subsection (1)(d) or (g) if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

*Status: Point in time view as at 15/12/2004.*

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- (4) On an application to exclude evidence under subsection (3) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.

**102 “Important explanatory evidence” E+W**

For the purposes of section 101(1)(c) evidence is important explanatory evidence if—

- (a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and
- (b) its value for understanding the case as a whole is substantial.

**103 “Matter in issue between the defendant and the prosecution” E+W**

- (1) For the purposes of section 101(1)(d) the matters in issue between the defendant and the prosecution include—

- (a) the question whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence;
- (b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant’s case is untruthful in any respect.

- (2) Where subsection (1)(a) applies, a defendant’s propensity to commit offences of the kind with which he is charged may (without prejudice to any other way of doing so) be established by evidence that he has been convicted of—

- (a) an offence of the same description as the one with which he is charged, or
- (b) an offence of the same category as the one with which he is charged.

- (3) Subsection (2) does not apply in the case of a particular defendant if the court is satisfied, by reason of the length of time since the conviction or for any other reason, that it would be unjust for it to apply in his case.

- (4) For the purposes of subsection (2)—

- (a) two offences are of the same description as each other if the statement of the offence in a written charge or indictment would, in each case, be in the same terms;
- (b) two offences are of the same category as each other if they belong to the same category of offences prescribed for the purposes of this section by an order made by the Secretary of State.

- (5) A category prescribed by an order under subsection (4)(b) must consist of offences of the same type.

- (6) Only prosecution evidence is admissible under section 101(1)(d).

**104 “Matter in issue between the defendant and a co-defendant” E+W**

- (1) Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible on that basis under section 101(1)(e) only if the nature or conduct of his defence is such as to undermine the co-defendant’s defence.

- (2) Only evidence—

- (a) which is to be (or has been) adduced by the co-defendant, or

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- (b) which a witness is to be invited to give (or has given) in cross-examination by the co-defendant,  
is admissible under section 101(1)(e).

## 105 “Evidence to correct a false impression” **E+W**

- (1) For the purposes of section 101(1)(f)—
  - (a) the defendant gives a false impression if he is responsible for the making of an express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant;
  - (b) evidence to correct such an impression is evidence which has probative value in correcting it.
- (2) A defendant is treated as being responsible for the making of an assertion if—
  - (a) the assertion is made by the defendant in the proceedings (whether or not in evidence given by him),
  - (b) the assertion was made by the defendant—
    - (i) on being questioned under caution, before charge, about the offence with which he is charged, or
    - (ii) on being charged with the offence or officially informed that he might be prosecuted for it,and evidence of the assertion is given in the proceedings,
  - (c) the assertion is made by a witness called by the defendant,
  - (d) the assertion is made by any witness in cross-examination in response to a question asked by the defendant that is intended to elicit it, or is likely to do so, or
  - (e) the assertion was made by any person out of court, and the defendant adduces evidence of it in the proceedings.
- (3) A defendant who would otherwise be treated as responsible for the making of an assertion shall not be so treated if, or to the extent that, he withdraws it or disassociates himself from it.
- (4) Where it appears to the court that a defendant, by means of his conduct (other than the giving of evidence) in the proceedings, is seeking to give the court or jury an impression about himself that is false or misleading, the court may if it appears just to do so treat the defendant as being responsible for the making of an assertion which is apt to give that impression.
- (5) In subsection (4) “conduct” includes appearance or dress.
- (6) Evidence is admissible under section 101(1)(f) only if it goes no further than is necessary to correct the false impression.
- (7) Only prosecution evidence is admissible under section 101(1)(f).

## 106 “Attack on another person’s character” **E+W**

- (1) For the purposes of section 101(1)(g) a defendant makes an attack on another person’s character if—
  - (a) he adduces evidence attacking the other person’s character,

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- (b) he (or any legal representative appointed under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 (c. 23) to cross-examine a witness in his interests) asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so, or
  - (c) evidence is given of an imputation about the other person made by the defendant—
    - (i) on being questioned under caution, before charge, about the offence with which he is charged, or
    - (ii) on being charged with the offence or officially informed that he might be prosecuted for it.
- (2) In subsection (1) “evidence attacking the other person’s character” means evidence to the effect that the other person—
- (a) has committed an offence (whether a different offence from the one with which the defendant is charged or the same one), or
  - (b) has behaved, or is disposed to behave, in a reprehensible way;
- and “imputation about the other person” means an assertion to that effect.
- (3) Only prosecution evidence is admissible under section 101(1)(g).

## **107 Stopping the case where evidence contaminated** **E+W**

- (1) If on a defendant’s trial before a judge and jury for an offence—
- (a) evidence of his bad character has been admitted under any of paragraphs (c) to (g) of section 101(1), and
  - (b) the court is satisfied at any time after the close of the case for the prosecution that—
    - (i) the evidence is contaminated, and
    - (ii) the contamination is such that, considering the importance of the evidence to the case against the defendant, his conviction of the offence would be unsafe,
- the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.
- (2) Where—
- (a) a jury is directed under subsection (1) to acquit a defendant of an offence, and
  - (b) the circumstances are such that, apart from this subsection, the defendant could if acquitted of that offence be found guilty of another offence,
- the defendant may not be found guilty of that other offence if the court is satisfied as mentioned in subsection (1)(b) in respect of it.
- (3) If—
- (a) a jury is required to determine under section 4A(2) of the Criminal Procedure (Insanity) Act 1964 (c. 84) whether a person charged on an indictment with an offence did the act or made the omission charged,
  - (b) evidence of the person’s bad character has been admitted under any of paragraphs (c) to (g) of section 101(1), and
  - (c) the court is satisfied at any time after the close of the case for the prosecution that—
    - (i) the evidence is contaminated, and

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- (ii) the contamination is such that, considering the importance of the evidence to the case against the person, a finding that he did the act or made the omission would be unsafe,
- the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a rehearing, discharge the jury.
- (4) This section does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.
- (5) For the purposes of this section a person's evidence is contaminated where—
- (a) as a result of an agreement or understanding between the person and one or more others, or
  - (b) as a result of the person being aware of anything alleged by one or more others whose evidence may be, or has been, given in the proceedings,
- the evidence is false or misleading in any respect, or is different from what it would otherwise have been.

## **108 Offences committed by defendant when a child** E+W

- (1) Section 16(2) and (3) of the Children and Young Persons Act 1963 (c. 37) (offences committed by person under 14 disregarded for purposes of evidence relating to previous convictions) shall cease to have effect.
- (2) In proceedings for an offence committed or alleged to have been committed by the defendant when aged 21 or over, evidence of his conviction for an offence when under the age of 14 is not admissible unless—
- (a) both of the offences are triable only on indictment, and
  - (b) the court is satisfied that the interests of justice require the evidence to be admissible.
- (3) Subsection (2) applies in addition to section 101.

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