



Evidence (Scotland) Act 1840

1840 CHAPTER 59 3 and 4 Vict

An Act for the Amendment of the Law of Evidence in Scotland. [7th August 1840]

Modifications etc. (not altering text)

- C1 Short title given by [Short Titles Act 1896 \(c. 14\)](#)
- C2 Preamble omitted under authority of [Statute Law Revision \(No. 2\) Act 1890 \(c. 51\)](#), [Sch. Pt. II](#)

[1.] Witnesses admissible notwithstanding relationship to party adducing them.

It shall by the law of Scotland be no objection to the admissibility of any witness that he or she is the father or mother, or son or daughter, or brother or sister, by consanguinity or affinity, or uncle or aunt, or nephew or niece, by consanguinity, of any party adducing such witness in any action, cause, prosecution, or other judicial proceeding, civil or criminal; nor shall it be competent to any witness to decline to be examined and give evidence on the ground of any such relationship.

Modifications etc. (not altering text)

- C3 [S. 1](#) repealed so far as relating to criminal proceedings by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), [Sch. 10 Pt. I](#)

2 Examination in initialibus may be dispensed with.

It shall not be necessary for any judge in Scotland, or for any person acting as commissioner in taking evidence in any action, cause, prosecution, or other judicial proceeding, civil or criminal, depending in Scotland, to examine any witness in initialibus: Provided always, that it shall nevertheless be competent for any such judge or person acting as commissioner, or the party against whom the witness shall be called, to examine any witness in initialibus as heretofore.

Changes to legislation: There are currently no known outstanding effects for the Evidence (Scotland) Act 1840. (See end of Document for details)

3 Presence in court not to disqualify witnesses in certain cases.

In any trial before any judge of the Court of Session or Court of Justiciary, or before any [^{F1}sheriff principal] in Scotland, it shall not be imperative on the court to reject any witness against whom it is objected that he or she has, without the permission of the court, and without the consent of the party objecting, been present in court during all or any part of the proceedings; but it shall be competent for the court, in its discretion, to admit the witness, where it shall appear to the court that the presence of the witness was not the consequence of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his or her presence, or that injustice will not be done by his or her examination.

Textual Amendments

F1 Words substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\), s. 4](#)

Modifications etc. (not altering text)

C4 S. 3 excluded (S.) by [Civil Evidence \(Scotland\) Act 1988 \(c. 32, SIF 47\), ss. 4\(2\), 10\(3\)](#)

C5 S. 3 repealed so far as relating to criminal proceedings by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\), Sch. 10 Pt. I](#)

4 Examination of witnesses by the parties against whom they are produced.

In any action, cause, prosecution, or other judicial proceeding, civil or criminal, where proof shall be taken, whether by the judge or a person acting as commissioner, it shall be competent for the party against whom a witness is produced and sworn in causa to examine such witness, not in cross only, but in causa.

Modifications etc. (not altering text)

C6 S. 4 repealed so far as relating to criminal proceedings by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\), Sch. 10 Pt. I](#)

5 ^{F2}

Textual Amendments

F2 S. 5 repealed by [Statute Law Revision Act 1874 \(No. 2\) \(c. 96\)](#)

Changes to legislation:

There are currently no known outstanding effects for the Evidence (Scotland) Act 1840.