



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XII

EVIDENCE

Special capacity

255 Special capacity

Where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house, or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged—

- (a) in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or
- (b) in summary proceedings, by preliminary objection before his plea is recorded, be held as admitted.

Agreed evidence

256 Agreements and admissions as to evidence

- (1) In any trial it shall not be necessary for the accused or for the prosecutor—
 - (a) to prove any fact which is admitted by the other; or
 - (b) to prove any document, the terms and application of which are not in dispute between them,and, without prejudice to paragraph 1 of Schedule 8 to this Act, copies of any documents may, by agreement of the parties, be accepted as equivalent to the originals.
- (2) For the purposes of subsection (1) above, any admission or agreement shall be made by lodging with the clerk of court a minute in that behalf signed—

- (a) in the case of an admission, by the party making the admission or, if that party is the accused and he is legally represented, by his counsel or solicitor; and
 - (b) in the case of an agreement, by the prosecutor and the accused or, if he is legally represented, his counsel or solicitor.
- (3) Where a minute has been signed and lodged as aforesaid, any facts and documents admitted or agreed thereby shall be deemed to have been duly proved.

257 Duty to seek agreement of evidence

- (1) Subject to subsection (2) below, the prosecutor and the accused (or each of the accused if more than one) shall each identify any facts which are facts—
- (a) which he would, apart from this section, be seeking to prove;
 - (b) which he considers unlikely to be disputed by the other party (or by any of the other parties); and
 - (c) in proof of which he does not wish to lead oral evidence,
- and shall, without prejudice to section 258 of this Act, take all reasonable steps to secure the agreement of the other party (or each of the other parties) to them; and the other party (or each of the other parties) shall take all reasonable steps to reach such agreement.
- (2) Subsection (1) above shall not apply in relation to proceedings as respects which the accused (or any of the accused if more than one) is not legally represented.
- (3) The duty under subsection (1) above applies—
- (a) in relation to proceedings on indictment, from the date of service of the indictment until the swearing of the jury or, where intimation is given under section 76 of this Act, the date of that intimation; and
 - (b) in relation to summary proceedings, from the date on which the accused pleads not guilty until the swearing of the first witness or, where the accused tenders a plea of guilty at any time before the first witness is sworn, the date when he does so.

258 Uncontroversial evidence

- (1) This section applies where, in any criminal proceedings, a party (in this section referred to as “the first party”) considers that facts which that party would otherwise be seeking to prove are unlikely to be disputed by the other parties to the proceedings.
- (2) Where this section applies, the first party may prepare and sign a statement—
- (a) specifying the facts concerned; or
 - (b) referring to such facts as set out in a document annexed to the statement,
- and shall, not less than 14 days before the trial diet, serve a copy of the statement and any such document on every other party.
- (3) Unless any other party serves on the first party, not more than seven days after the date of service of the copy on him under subsection (2) above or by such later time as the court may in special circumstances allow, a notice that he challenges any fact specified or referred to in the statement, the facts so specified or referred to shall be deemed to have been conclusively proved.

- (4) Where a notice is served under subsection (3) above, the facts specified or referred to in the statement shall be deemed to have been conclusively proved only in so far as unchallenged in the notice.
- (5) Subsections (3) and (4) above shall not preclude a party from leading evidence of circumstances relevant to, or other evidence in explanation of, any fact specified or referred to in the statement.
- (6) Notwithstanding subsections (3) and (4) above, the court—
 - (a) may, on the application of any party, where it is satisfied that there are special circumstances; and
 - (b) shall, on the joint application of all the parties,
direct that the presumptions in those subsections shall not apply in relation to such fact specified or referred to in the statement as is specified in the direction.
- (7) An application under subsection (6) above may be made at any time after the commencement of the trial and before the commencement of the prosecutor's address to the court on the evidence.
- (8) Where the court makes a direction under subsection (6) above it shall, unless all the parties otherwise agree, adjourn the trial and may, without prejudice to section 268 of this Act, permit any party to lead evidence as to any such fact as is specified in the direction, 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.
- (9) A copy of a statement or a notice required, under this section, to be served on any party shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

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

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- (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;
 - (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

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- (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, before the trial diet, give notice in writing of—
- (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.
- (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.

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—
 - (a) the statement is contained in a document;
 - (b) 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
 - (c) 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—
 - (a) contained in a precognition on oath; or
 - (b) 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.

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.

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;
 - (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.

Witnesses

263 Examination of witnesses

- (1) In any trial, it shall be competent for the party against whom a witness is produced and sworn *in causa* to examine such witness both in cross and *in causa*.
- (2) The judge may, on the motion of either party, on cause shown order that the examination of a witness for that party (“the first witness”) shall be interrupted to permit the examination of another witness for that party.
- (3) Where the judge makes an order under subsection (2) above he shall, after the examination of the other witness, permit the recall of the first witness.
- (4) In a trial, a witness may be examined as to whether he has on any specified occasion made a statement on any matter pertinent to the issue at the trial different from the evidence given by him in the trial; and evidence may be led in the trial to prove that the witness made the different statement on the occasion specified.

- (5) In any trial, on the motion of either party, the presiding judge may permit a witness who has been examined to be recalled.

264 Spouse of accused a competent witness

- (1) The spouse of an accused may be called as a witness—
- (a) by the accused;
 - (b) by a co-accused or by the prosecutor without the consent of the accused.
- (2) Nothing in this section shall—
- (a) make the spouse of an accused a compellable witness for a co-accused or for the prosecutor in a case where such spouse would not be so compellable at common law;
 - (b) compel a spouse to disclose any communication made between the spouses during the marriage.
- (3) The failure of the spouse of an accused to give evidence shall not be commented on by the defence or the prosecutor.
- (4) The spouse of a person charged with bigamy may be called as a witness either for the prosecution or the defence and without the consent of the person charged.

265 Witnesses not excluded for conviction, interest, relationship, etc

- (1) Every person adduced as a witness who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, and no objection to the admissibility of a witness shall be competent on the ground of—
- (a) conviction of or punishment for an offence;
 - (b) interest;
 - (c) agency or partial counsel;
 - (d) the absence of due citation to attend; or
 - (e) his having been precognosced subsequently to the date of citation.
- (2) Where any person who is or has been an agent of the accused is adduced and examined as a witness for the accused, it shall not be competent for the accused to object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.
- (3) No objection to the admissibility of a witness shall be competent on the ground that he or she is the father, mother, son, daughter, brother or sister, by consanguinity or affinity, or uncle, aunt, nephew or niece, by consanguinity of any party adducing the witness in any trial.
- (4) It shall not be competent for any witness to decline to be examined and give evidence on the ground of any relationship mentioned in subsection (3) above.

266 Accused as witness

- (1) Subject to subsections (2) to (8) below, the accused shall be a competent witness for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused.

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- (2) The accused shall not be called as a witness in pursuance of this section except upon his own application or in accordance with subsection (9) or (10) below.
- (3) An accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged.
- (4) An accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—
 - (a) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or
 - (b) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establishing the accused's good character or impugning the character of the complainer, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of the witnesses for the prosecution or of the complainer; or
 - (c) the accused has given evidence against any other person charged in the same proceedings.
- (5) In a case to which paragraph (b) of subsection (4) above applies, the prosecutor shall be entitled to ask the accused a question of a kind specified in that subsection only if the court, on the application of the prosecutor, permits him to do so.
- (6) An application under subsection (5) above in proceedings on indictment shall be made in the course of the trial but in the absence of the jury.
- (7) In subsection (4) above, references to the complainer include references to a victim who is deceased.
- (8) Every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.
- (9) The accused may—
 - (a) with the consent of a co-accused, call that other accused as a witness on the accused's behalf; or
 - (b) ask a co-accused any question in cross-examination if that co-accused gives evidence,but he may not do both in relation to the same co-accused.
- (10) The prosecutor or the accused may call as a witness a co-accused who has pleaded guilty to or been acquitted of all charges against him which remain before the court (whether or not, in a case where the co-accused has pleaded guilty to any charge, he has been sentenced) or in respect of whom the diet has been deserted; and the party calling such co-accused as a witness shall not require to give notice thereof, but the court may grant any other party such adjournment or postponement of the trial as may seem just.
- (11) Where, in any trial, the accused is to be called as a witness he shall be so called as the first witness for the defence unless the court, on cause shown, otherwise directs.

267 Witnesses in court during trial

- (1) The court may, on an application by any party to the proceedings, permit a witness to be in court during the proceedings or any part of the proceedings before he has given evidence if it appears to the court that the presence of the witness would not be contrary to the interests of justice.
- (2) Without prejudice to subsection (1) above, where a witness has, without the permission of the court and without the consent of the parties to the proceedings, been present in court during the proceedings, the court may, in its discretion, admit the witness, where it appears to the court that the presence of the witness was not the result of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his presence, or that injustice will not be done by his examination.

Additional evidence, etc.

268 Additional evidence

- (1) Subject to subsection (2) below, the judge may, on a motion of the prosecutor or the accused made—
 - (a) in proceedings on indictment, at any time before the commencement of the speeches to the jury;
 - (b) in summary proceedings, at any time before the prosecutor proceeds to address the judge on the evidence,permit him to lead additional evidence.
- (2) Permission shall only be granted under subsection (1) above where the judge—
 - (a) considers that the additional evidence is *prima facie* material; and
 - (b) accepts that at the commencement of the trial either—
 - (i) the additional evidence was not available and could not reasonably have been made available; or
 - (ii) the materiality of such additional evidence could not reasonably have been foreseen by the party.
- (3) The judge may permit the additional evidence to be led notwithstanding that—
 - (a) in proceedings on indictment, 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; or
 - (b) in any case, a witness must be recalled.
- (4) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.
- (5) In this section “the commencement of the trial” means—
 - (a) in proceedings on indictment, the time when the jury is sworn; and
 - (b) in summary proceedings, the time when the first witness for the prosecution is sworn.

269 Evidence in replication

- (1) The judge may, on a motion of the prosecutor made at the relevant time, permit the prosecutor to lead additional evidence for the purpose of—
 - (a) contradicting evidence given by any defence witness which could not reasonably have been anticipated by the prosecutor; or
 - (b) providing such proof as is mentioned in section 263(4) of this Act.
- (2) The judge may permit the additional evidence to be led notwithstanding that—
 - (a) in proceedings on indictment, 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; or
 - (b) in any case, a witness must be recalled.
- (3) The judge may when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.
- (4) In subsection (1) above, “the relevant time” means—
 - (a) in proceedings on indictment, after the close of the defence evidence and before the commencement of the speeches to the jury; and
 - (b) in summary proceedings, after the close of the defence evidence and before the prosecutor proceeds to address the judge on the evidence.

270 Evidence of criminal record and character of accused

- (1) This section applies where—
 - (a) evidence is led by the defence, or the defence asks questions of a witness for the prosecution, with a view to establishing the accused’s good character or impugning the character of the prosecutor, of any witness for the prosecution or of the complainer; or
 - (b) the nature or conduct of the defence is such as to tend to establish the accused’s good character or to involve imputations on the character of the prosecutor, of any witness for the prosecution or of the complainer.
- (2) Where this section applies the court may, without prejudice to section 268 of this Act, on the application of the prosecutor, permit the prosecutor to lead evidence that the accused has committed, or has been convicted of, or has been charged with, offences other than that for which he is being tried, or is of bad character, notwithstanding that, in proceedings on indictment, a witness or production concerned is not included in any list lodged by the prosecutor and that the notice required by sections 67(5) and 78(4) of this Act has not been given.
- (3) In proceedings on indictment, an application under subsection (2) above shall be made in the course of the trial but in the absence of the jury.
- (4) In subsection (1) above, references to the complainer include references to a victim who is deceased.

*Evidence of children***271 Evidence of children: special provisions**

- (1) Subject to subsections (7) and (8) below, where a child has been cited to give evidence in a trial the court may appoint a commissioner to take the evidence of the child if—
 - (a) in solemn proceedings, at any time before the oath is administered to the jury;
 - (b) in summary proceedings, at any time before the first witness is sworn;
 - (c) in exceptional circumstances in either solemn or summary proceedings, during the course of the trial,
application is made to the court in that regard; but to be so appointed a person must be, and for a period of at least five years have been, a member of the Faculty of Advocates or a solicitor.
- (2) Proceedings before a commissioner appointed under subsection (1) above shall be recorded by video recorder.
- (3) An accused shall not, except by leave of the commissioner, be present in the room where such proceedings are taking place but shall be entitled by such means as seem suitable to the commissioner to watch and hear the proceedings.
- (4) Subsections (2) to (6), (8) and (9) of section 272 of this Act shall apply to an application under subsection (1) above and evidence taken by a commissioner appointed under that subsection as those subsections apply to an application under subsection (1) of that section and evidence taken by a commissioner appointed on such an application.
- (5) Subject to subsections (7) and (8) below, where a child has been or is likely to be cited to give evidence in a trial, the court may, on an application being made to it, authorise the giving of evidence by the child by means of a live television link.
- (6) Subject to subsections (7) and (8) below, where a child has been or is likely to be cited to give evidence in a trial, the court may, on application being made to it, authorise the use of a screen to conceal the accused from the sight of the child while the child is present to give evidence; but arrangements shall be made to ensure that the accused is able to watch and hear as the evidence is given by the child.
- (7) The court may grant an application under subsection (1), (5) or (6) above only on cause shown having regard in particular to—
 - (a) the possible effect on the child if required to give evidence, no such application having been granted;
 - (b) whether it is likely that the child would be better able to give evidence if such application were granted; and
 - (c) the views of the child.
- (8) In considering whether to grant an application under subsection (1), (5) or (6) above, the court may take into account, where appropriate, any of the following—
 - (a) the age and maturity of the child;
 - (b) the nature of the alleged offence;
 - (c) the nature of the evidence which the child is likely to be called on to give; and
 - (d) the relationship, if any, between the child and the accused.
- (9) Where a sheriff to whom an application has been made under subsection (1), (5) or (6) above would have granted the application but for the lack of accommodation

or equipment necessary to achieve the purpose of the application, he may by order transfer the case to any sheriff court which has such accommodation and equipment available, being a sheriff court in the same sheriffdom.

- (10) The sheriff court to which a case is transferred under subsection (9) above shall be deemed to have granted an application under, as the case may be, subsection (1), (5) or (6) above in relation to the case.
- (11) Where a court has or is deemed to have granted an application under subsection (1), (5) or (6) above in relation to a child, and the child gives evidence that he recalls having identified, prior to the trial, a person alleged to have committed an offence, the evidence of a third party as to the identification of that person by the child prior to the trial shall be admissible as evidence as to such identification.
- (12) In this section—
“child” means a person under the age of 16 years;
“court” means the High Court or the sheriff court; and
“trial” means a trial under solemn or under summary procedure.

Evidence on commission and from abroad

272 Evidence by letter of request or on commission

- (1) In any criminal proceedings in the High Court or the sheriff court the prosecutor or the defence may, at an appropriate time, apply to a judge of the court in which the trial is to take place (or, if that is not yet known, to a judge of the High Court) for—
- (a) the issue of a letter of request to a court, or tribunal, exercising jurisdiction in a country or territory outside the United Kingdom, Channel Islands and Isle of Man for the examination of a witness resident in that country or territory; or
 - (b) the appointment of a commissioner to examine, at any place in the United Kingdom, Channel Islands, or Isle of Man, a witness who—
 - (i) by reason of being ill or infirm is unable to attend the trial diet; or
 - (ii) is not ordinarily resident in, and is, at the time of the trial diet, unlikely to be present in, the United Kingdom, Channel Islands or the Isle of Man.
- (2) A hearing, as regards any application under subsection (1) above by a party, shall be conducted in chambers but may be dispensed with if the application is not opposed.
- (3) An application under subsection (1) above may be granted only if the judge is satisfied that—
- (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
 - (b) there would be no unfairness to the other party were such evidence to be received in the form of the record of an examination conducted by virtue of that subsection.
- (4) Any such record as is mentioned in paragraph (b) of subsection (3) above shall, without being sworn to by witnesses, be received in evidence in so far as it either accords with the averment mentioned in paragraph (a) of that subsection or can be so received without unfairness to either party.

- (5) Where any such record as is mentioned in paragraph (b) of subsection (3) above, or any part of such record, is not a document in writing, that record or part shall not be received in evidence under subsection (4) above unless it is accompanied by a transcript of its contents.
- (6) The procedure as regards the foregoing provisions of this section shall be prescribed by Act of Adjournal; and without prejudice to the generality of the power to make it, such an Act of Adjournal may provide for the appointment of a person before whom evidence may be taken for the purposes of this section.
- (7) In subsection (1) above, “appropriate time” means as regards—
- (a) solemn proceedings, any time before the oath is administered to the jury;
 - (b) summary proceedings, any time before the first witness is sworn,
- or (but only in relation to an application under paragraph (b) of that subsection) any time during the course of the trial if the circumstances on which the application is based had not arisen, or would not have merited such application, within the period mentioned in paragraph (a) or, as the case may be, (b) of this subsection.
- (8) In subsection (3) and (4) above, “record” includes, in addition to a document in writing—
- (a) any disc, tape, soundtrack 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
 - (b) any film (including microfilm), 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.
- (9) This section is without prejudice to any existing power at common law to adjourn a trial diet to the place where a witness is.

273 Television link evidence from abroad

- (1) In any solemn proceedings in the High Court or the sheriff court a person other than the accused may give evidence through a live television link if—
- (a) the witness is outside the United Kingdom;
 - (b) an application under subsection (2) below for the issue of a letter of request has been granted; and
 - (c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that witness.
- (2) The prosecutor or the defence in any proceedings referred to in subsection (1) above may apply to a judge of the court in which the trial is to take place (or, if that court is not yet known, to a judge of the High Court) for the issue of a letter of request to—
- (a) a court or tribunal exercising jurisdiction in a country or territory outside the United Kingdom where a witness is ordinarily resident; or
 - (b) any authority which the judge is satisfied is recognised by the government of that country or territory as the appropriate authority for receiving requests for assistance in facilitating the giving of evidence through a live television link,
- requesting assistance in facilitating the giving of evidence by that witness through a live television link.

- (3) An application under subsection (2) above shall be granted only if the judge is satisfied that—
- (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
 - (b) the granting of the application —
 - (i) is in the interests of justice; and
 - (ii) in the case of an application by the prosecutor, is not unfair to the accused.

Evidence relating to sexual offences

274 Restrictions on evidence relating to sexual offences

- (1) In any trial of a person on any charge to which this section applies, subject to section 275 of this Act, the court shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the complainer—
- (a) is not of good character in relation to sexual matters;
 - (b) is a prostitute or an associate of prostitutes; or
 - (c) has at any time engaged with any person in sexual behaviour not forming part of the subject matter of the charge.
- (2) This section applies to a charge of committing or attempting to commit any of the following offences, that is to say—
- (a) rape;
 - (b) sodomy;
 - (c) clandestine injury to women;
 - (d) assault with intent to rape;
 - (e) indecent assault;
 - (f) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour);
 - (g) an offence under section 106(1)(a) or 107 of the Mental Health (Scotland) Act 1984 (unlawful sexual intercourse with mentally handicapped female or with patient); or
 - (h) an offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995—
 - (i) sections 1 to 3 (incest and related offences);
 - (ii) section 5 (unlawful sexual intercourse with girl under 13 or 16);
 - (iii) section 6 (indecent behaviour toward girl between 12 and 16);
 - (iv) section 7(2) and (3) (procuring by threats etc.);
 - (v) section 8 (abduction and unlawful detention);
 - (vi) section 13(5) (homosexual offences).
- (3) In this section “complainer” means the person against whom the offence referred to in subsection (2) above is alleged to have been committed.
- (4) This section does not apply to questioning, or evidence being adduced, by the Crown.

275 Exceptions to restrictions under section 274

- (1) Notwithstanding section 274 of this Act, in any trial of an accused on any charge to which that section applies, where the court is satisfied on an application by the accused—
 - (a) that the questioning or evidence referred to in subsection (1) of that section is designed to explain or rebut evidence adduced, or to be adduced, otherwise than by or on behalf of the accused;
 - (b) that the questioning or evidence referred to in paragraph (c) of that subsection—
 - (i) is questioning or evidence as to sexual behaviour which took place on the same occasion as the sexual behaviour forming the subject matter of the charge; or
 - (ii) is relevant to the defence of incrimination; or
 - (c) that it would be contrary to the interests of justice to exclude the questioning or evidence referred to in that subsection,the court shall allow the questioning or, as the case may be, admit the evidence.
- (2) Where questioning or evidence is or has been allowed or admitted under this section, the court may at any time limit as it thinks fit the extent of that questioning or evidence.
- (3) Any application under this section shall be made in the course of the trial but in the absence of the jury, the complainer, any person cited as a witness and the public.

*Biological material***276 Evidence of biological material**

- (1) Evidence as to the characteristics and composition of any biological material deriving from human beings or animals shall, in any criminal proceedings, be admissible notwithstanding that neither the material nor a sample of it is lodged as a production.
- (2) A party wishing to lead such evidence as is referred to in subsection (1) above shall, where neither the material nor a sample of it is lodged as a production, make the material or a sample of it available for inspection by the other party unless the material constitutes a hazard to health or has been destroyed in the process of analysis.

*Transcripts and records***277 Transcript of police interview sufficient evidence**

- (1) Subject to subsection (2) below, for the purposes of any criminal proceedings, a document certified by the person who made it as an accurate transcript made for the prosecutor of the contents of a tape (identified by means of a label) purporting to be a recording of an interview between—
 - (a) a police officer and an accused person; or
 - (b) a person commissioned, appointed or authorised under section 6(3) of the Customs and Excise Management Act 1979 and an accused person,shall be received in evidence and be sufficient evidence of the making of the transcript and of its accuracy.

- (2) Subsection (1) above shall not apply to a transcript—
 - (a) unless a copy of it has been served on the accused not less than 14 days before his trial; or
 - (b) if the accused, not less than six days before his trial, or by such later time before his trial as the court may in special circumstances allow, has served notice on the prosecutor that the accused challenges the making of the transcript or its accuracy.
- (3) A copy of the transcript or a notice under subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the transcript or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.
- (4) Where subsection (1) above does not apply to a transcript, if the person who made the transcript is called as a witness his evidence shall be sufficient evidence of the making of the transcript and of its accuracy.

278 Record of proceedings at examination as evidence

- (1) Subject to subsection (2) below, the record made, under section 37 of this Act (incorporating any rectification authorised under section 38(1) of this Act), of proceedings at the examination of an accused shall be received in evidence without being sworn to by witnesses, and it shall not be necessary in proceedings on indictment to insert the names of any witnesses to the record in any list of witnesses, either for the prosecution or for the defence.
- (2) On the application of either an accused or the prosecutor—
 - (a) in proceedings on indictment, subject to sections 37(5) and 72(1)(b)(iv) of this Act, the court may determine that the record or part of the record shall not be read to the jury; and
 - (b) in summary proceedings, subject to the said section 37(5) and to subsection (4) below, the court may refuse to admit the record or some part of the record as evidence.
- (3) At the hearing of an application under subsection (2) above, it shall be competent for the prosecutor or the defence to adduce as witnesses the persons who were present during the proceedings mentioned in subsection (1) above and for either party to examine those witnesses upon any matters regarding the said proceedings.
- (4) In summary proceedings, except on cause shown, an application under subsection (2) (b) above shall not be heard unless notice of at least 10 clear days has been given to the court and to the other parties.
- (5) In subsection (2) above, the “record” comprises—
 - (a) as regards any trial of an indictment, each record included, under section 68(1) of this Act, in the list of productions; and
 - (b) as regards a summary trial, each record which it is sought to have received under subsection (1) above.

*Documentary evidence***279 Evidence from documents**

Schedule 8 to this Act, which makes provision regarding the admissibility in criminal proceedings of copy documents and of evidence contained in business documents, shall have effect.

*Routine evidence***280 Routine evidence**

- (1) For the purposes of any proceedings for an offence under any of the enactments specified in column 1 of Schedule 9 to this Act, a certificate purporting to be signed by a person or persons specified in column 2 thereof, and certifying the matter specified in column 3 thereof shall, subject to subsection (6) below, be sufficient evidence of that matter and of the qualification or authority of that person or those persons.
- (2) The Secretary of State may by order—
 - (a) amend or repeal the entry in Schedule 9 to this Act in respect of any enactment; or
 - (b) insert in that Schedule an entry in respect of a further enactment.
- (3) An order under subsection (2) above may make such transitional, incidental or supplementary provision as the Secretary of State considers necessary or expedient in connection with the coming into force of the order.
- (4) For the purposes of any criminal proceedings, a report purporting to be signed by two authorised forensic scientists shall, subject to subsection (5) below, be sufficient evidence of any fact or conclusion as to fact contained in the report and of the authority of the signatories.
- (5) A forensic scientist is authorised for the purposes of subsection (4) above if—
 - (a) he is authorised for those purposes by the Secretary of State; or
 - (b) he—
 - (i) is a constable or is employed by a police authority under section 9 of the Police (Scotland) Act 1967;
 - (ii) possesses such qualifications and experience as the Secretary of State may for the purposes of that subsection by order prescribe; and
 - (iii) is authorised for those purposes by the chief constable of the police force maintained for the police area of that authority.
- (6) Subsections (1) and (4) above shall not apply to a certificate or, as the case may be, report tendered on behalf of the prosecutor or the accused—
 - (a) unless a copy has been served on the other party not less than fourteen days before the trial; or
 - (b) where the other party, not more than seven days after the date of service of the copy on him under paragraph (a) above or by such later time as the court may in special circumstances allow, has served notice on the first party that the accused challenges the matter, qualification or authority mentioned in subsection (1) above or as the case may be the fact, conclusion or authority mentioned in subsection (4) above.

- (7) A copy of a certificate or, as the case may be, report required by subsection (6) above, to be served on the accused or the prosecutor or of a notice required by that subsection or by subsection (1) or (2) of section 281 of this Act to be served on the prosecutor shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such certificate or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.
- (8) Where, following service of a notice under subsection (6)(b) above, evidence is given in relation to a report referred to in subsection (4) above by both of the forensic scientists purporting to have signed the report, the evidence of those forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.
- (9) At any trial of an offence it shall be presumed that the person who appears in answer to the complaint is the person charged by the police with the offence unless the contrary is alleged.
- (10) An order made under subsection (2) or (5)(b)(ii) above shall be made by statutory instrument.
- (11) No order shall be made under subsection (2) above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (12) A statutory instrument containing an order under subsection (5)(b)(ii) above shall be subject to annulment pursuant to a resolution of either House of Parliament.

281 Routine evidence: autopsy and forensic science reports

- (1) Where in a trial an autopsy report is lodged as a production by the prosecutor it shall be presumed that the body of the person identified in that report is the body of the deceased identified in the indictment or complaint, unless the accused not less than six days before the trial, or by such later time before the trial as the court may in special circumstances allow, gives notice that the contrary is alleged.
- (2) At the time of lodging an autopsy or forensic science report as a production the prosecutor may intimate to the accused that it is intended that only one of the pathologists or forensic scientists (whom the prosecutor shall specify) purporting to have signed the report shall be called to give evidence in respect thereof; and the evidence of that pathologist or forensic scientist shall be sufficient evidence of any fact or conclusion as to fact contained in the report and of the qualifications of the signatories, unless the accused, not less than six days before the trial or by such later time before the trial as the court may in special circumstances allow, serves notice on the prosecutor that he requires the attendance at the trial of the other pathologist or forensic scientist also.
- (3) Where, following service of a notice by the accused under subsection (2) above, evidence is given in relation to an autopsy or forensic science report by both of the pathologists or forensic scientists purporting to have signed the report, the evidence of those pathologists or forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.

*Sufficient evidence***282 Evidence as to controlled drugs and medicinal products**

- (1) For the purposes of any criminal proceedings, evidence given by an authorised forensic scientist, either orally or in a report purporting to be signed by him, that a substance which satisfies either of the conditions specified in subsection (2) below is—
- (a) a particular controlled drug or medicinal product; or
 - (b) a particular product which is listed in the British Pharmacopoeia as containing a particular controlled drug or medicinal product,
- shall, subject to subsection (3) below, be sufficient evidence of that fact notwithstanding that no analysis of the substance has been carried out.
- (2) Those conditions are—
- (a) that the substance is in a sealed container bearing a label identifying the contents of the container; or
 - (b) that the substance has a characteristic appearance having regard to its size, shape, colour and manufacturer’s mark.
- (3) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the trial diet, serve on the other party (“the second party”)—
- (a) a notice to that effect; and
 - (b) where the evidence is contained in a report, a copy of the report,
- and if the second party serves on the first party, not more than seven days after the date of service of the notice on him, a notice that he does not accept the evidence as to the identity of the substance, subsection (1) above shall not apply in relation to that evidence.
- (4) A notice or copy report served in accordance with subsection (3) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the notice or copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.
- (5) In this section—
- “controlled drug” has the same meaning as in the Misuse of Drugs Act 1971; and
 - “medicinal product” has the same meaning as in the Medicines Act 1968.

283 Evidence as to time and place of video surveillance recordings

- (1) For the purposes of any criminal proceedings, a certificate purporting to be signed by a person responsible for the operation of a video surveillance system and certifying—
- (a) the location of the camera;
 - (b) the nature and extent of the person’s responsibility for the system; and
 - (c) that visual images recorded on a particular video tape are images, recorded by the system, of events which occurred at a place specified in the certificate at a time and date so specified,
- shall, subject to subsection (2) below, be sufficient evidence of the matters contained in the certificate.

- (2) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the trial diet, serve on the other party (“the second party”) a copy of the certificate and, if the second party serves on the first party, not more than seven days after the date of service of the copy certificate on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.
- (3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.
- (4) In this section, “video surveillance system” means apparatus consisting of a camera mounted in a fixed position and associated equipment for transmitting and recording visual images of events occurring in any place.

284 Evidence in relation to fingerprints

- (1) For the purposes of any criminal proceedings, a certificate purporting to be signed by two constables and certifying that the fingerprints produced thereon were taken from a person designated in the certificate at a time, date and place specified therein shall, subject to subsection (2) below, be sufficient evidence of the facts contained in the certificate.
- (2) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the trial diet, serve on the other party (“the second party”) a copy of the certificate and, if the second party serves on the first party, not more than seven days after the date of service of the copy certificate on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.
- (3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

Proof of previous convictions

285 Previous convictions: proof, general

- (1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this subsection and subsections (2) to (6) below and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.
- (2) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept by the person by or on whose behalf the certificate is signed, and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints appearing from the said records to have been taken in pursuance of rules for the time being in force

Status: This is the original version (as it was originally enacted).

under sections 12 and 39 of the Prisons (Scotland) Act 1989, or regulations for the time being in force under section 16 of the Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.

- (3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (5) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde, and certifying that the fingerprints, copies of which are certified as mentioned in subsection (2) above by or on behalf of the Chief Constable or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as mentioned in subsection (3) or (4) above, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.
- (6) An extract conviction of any crime committed in any part of the United Kingdom bearing to have been issued by an officer whose duties include the issue of extract convictions shall be received in evidence without being sworn to by witnesses.
- (7) It shall be competent to prove a previous conviction or any fact relevant to the admissibility of the conviction by witnesses, although the name of any such witness is not included in the list served on the accused; and the accused shall be entitled to examine witnesses with regard to such conviction or fact.
- (8) An official of any prison in which the accused has been detained on such conviction shall be a competent and sufficient witness to prove its application to the accused, although he may not have been present in court at the trial to which such conviction relates.
- (9) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.

286 Previous convictions: proof in support of substantive charge

- (1) Without prejudice to section 285(6) to (9) or, as the case may be, section 166 of this Act, where proof of a previous conviction is competent in support of a substantive charge, any such conviction or an extract of it shall, if—
 - (a) it purports to relate to the accused and to be signed by the clerk of court having custody of the record containing the conviction; and

- (b) a copy of it has been served on the accused not less than 14 days before the trial diet,
- be sufficient evidence of the application of the conviction to the accused unless, within seven days of the date of service of the copy on him, he serves notice on the prosecutor that he denies that it applies to him.
- (2) A copy of a conviction or extract conviction served under subsection (1) above shall be served on the accused in such manner as may be prescribed by Act of Adjournal, and a written execution purporting to be signed by the person who served the copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of the copy.