

Status: Point in time view as at 24/06/2013.

Changes to legislation: Criminal Procedure (Scotland) Act 1995, SCHEDULE 8 is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 8

Section 279.

DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

Production of copy documents

- 1 (1) For the purposes of any criminal proceedings a copy of, or of a material part of, a document, purporting to be authenticated in such manner and by such person as may be prescribed, shall unless the court otherwise directs, be—
 - (a) deemed a true copy; and
 - (b) treated for evidential purposes as if it were the document, or the material part, itself,whether or not the document is still in existence.
- (2) For the purposes of this paragraph it is immaterial how many removes there are between a copy and the original.
- (3) In this paragraph “copy” includes a transcript or reproduction.

Statements in business documents

- 2 (1) Except where it is a statement such as is mentioned in paragraph 3(b) and (c) below, a statement in a document shall be admissible in criminal proceedings as evidence of any fact or opinion of which direct oral evidence would be admissible, if the following conditions are satisfied—
 - (a) the document was created or received in the course of, or for the purposes of, a business or undertaking or in pursuance of the functions of the holder of a paid or unpaid office;
 - (b) the document is, or at any time was, kept by a business or undertaking or by or on behalf of the holder of such an office; and
 - (c) the statement was made on the basis of information supplied by a person (whether or not the maker of the statement) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in it.
- (2) Sub-paragraph (1) above applies whether the information contained in the statement was supplied directly or indirectly unless, in the case of information supplied indirectly, it appears to the court that any person through whom it was so supplied did not both receive and supply it in the course of a business or undertaking or as or on behalf of the holder of a paid or unpaid office.
- (3) Where in any proceedings a statement is admitted as evidence by virtue of this paragraph—
 - (a) any evidence which, if—
 - (i) the maker of the statement; or
 - (ii) where the statement was made on the basis of information supplied by another person, such supplier,

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had been called as a witness, would have been admissible as relevant to the witness's credibility shall be so admissible in those proceedings;

- (b) evidence may be given of any matter which, if the maker or as the case may be the supplier had been called as a witness, could have been put to him in cross-examination as relevant to his credibility but of which evidence could not have been adduced by the cross-examining party; and
- (c) evidence tending to prove that the maker or as the case may be the supplier, whether before or after making the statement or supplying the information on the basis of which the statement was made, made (in whatever manner) some other representation which is inconsistent with the statement shall be admissible for the purpose of showing that he has contradicted himself.

(4) In sub-paragraph (3)(c) above, "representation" does not include a representation in a precognition.

3 A statement in a document shall be admissible in criminal proceedings as evidence of the fact that the statement was made if—

- (a) the document satisfies the conditions mentioned in sub-paragraph (1)(a) and (b) of paragraph 2 above;
- (b) the statement is made, whether directly or indirectly, by a person who in those proceedings is an accused; and
- (c) the statement, being exculpatory only, exculpates the accused.

Documents kept by businesses etc.

4 Unless the court otherwise directs, a document may in any criminal proceedings be taken to be a document kept by a business or undertaking or by or on behalf of the holder of a paid or unpaid office if it is certified as such by a docquet in the prescribed form and purporting to be authenticated, in such manner as may be prescribed—

- (a) by a person authorised to authenticate such a docquet on behalf of the business or undertaking by which; or
- (b) by, or by a person authorised to authenticate such a docquet on behalf of, the office-holder by whom,

the document was kept.

Statements not contained in business documents

5 (1) In any criminal proceedings, the evidence of an authorised person that—

- (a) a document which satisfies the conditions mentioned in paragraph 2(1)(a) and (b) above does not contain a relevant statement as to a particular matter; or
- (b) no document, within a category of documents satisfying those conditions, contains such a statement,

shall be admissible evidence whether or not the whole or any part of that document or of the documents within that category and satisfying those conditions has been produced in the proceedings.

(2) For the purposes of sub-paragraph (1) above, a relevant statement is a statement which is of the kind mentioned in paragraph 2(1)(c) above and which, in the ordinary course of events—

- (a) the document; or

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- (b) a document within the category and satisfying the conditions mentioned in that sub-paragraph,
might reasonably have been expected to contain.
- (3) The evidence referred to in sub-paragraph (1) above may, unless the court otherwise directs, be given by means of a certificate by the authorised person in the prescribed form and purporting to be authenticated in such manner as may be prescribed.
- (4) In this paragraph, “authorised person” means a person authorised to give evidence—
 - (a) on behalf of the business or undertaking by which; or
 - (b) as or on behalf of the office-holder by or on behalf of whom,
the document is or was kept.

Additional evidence where evidence from business documents challenged

- 6 (1) This sub-paragraph applies where—
 - (a) evidence has been admitted by virtue of paragraph 2(3) above; or
 - (b) the court has made a direction under paragraph 1(1), 4 or 5(3) above.
- (2) Where sub-paragraph (1) above applies the judge may, without prejudice to sections 268 and 269 of this Act—
 - (a) in solemn proceedings, on a motion of the prosecutor or defence at any time before the commencement of the speeches to the jury;
 - (b) in summary proceedings, on such a motion at any time before the prosecutor proceeds to address the judge on the evidence,
permit him to lead additional evidence of such description as the judge may specify.
- (3) Subsections (3) and (4) of section 268 of this Act shall apply in relation to sub-paragraph (2) above as they apply in relation to subsection (1) of that section.

General

- 7 (1) Nothing in this Schedule—
 - (a) 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 this Schedule;
 - (b) shall affect the operation of the ^{M1}Bankers’ Books Evidence Act 1879;
 - (c) shall apply to—
 - (i) proceedings commenced; or
 - (ii) where the proceedings consist of an application to the sheriff by virtue of section 42(2)(c) of the ^{M2}Social Work (Scotland) Act 1968, an application made,
before this Schedule comes into force.
- (2) For the purposes of sub-paragraph (1)(c)(i) above, solemn proceedings are commenced when the indictment is served.

Marginal Citations

M1 1879 c. 11.

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M2 1968 c. 45.

8

In this Schedule—

“business” includes trade, profession or other occupation;

“criminal proceedings” includes any hearing by the sheriff [^{F1}of an application made by virtue of section 93(2)(a) or 94(2)(a) of the Children’s Hearings (Scotland) Act 2011 (asp 1) to determine whether a ground is established, in so far as the application relates to the commission of an offence by the child, or for a review of such a determination,]

“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 produced therefrom;

“film” includes a microfilm;

“made” includes allegedly made;

“prescribed” means prescribed by Act of Adjournal;

“statement” includes any representation (however made or expressed) of fact or opinion, including an instruction, order or request, but, except in paragraph 7(1)(a) above, does not include a statement which falls within one or more of the following descriptions—

- (a) a statement in a precognition;
- (b) a statement made for the purposes of or in connection with—
 - (i) pending or contemplated criminal proceedings; or
 - (ii) a criminal investigation; or
- (c) a statement made by an accused person in so far as it incriminates a co-accused; and

“undertaking” includes any public or statutory undertaking, any local authority and any government department.

Textual Amendments

F1 Words in Sch. 8 para. 8 substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, [sch. 1 para. 10\(9\)](#)

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