
STATUTORY INSTRUMENTS

1981 No. 1687

The County Court Rules 1981

ORDER 20

EVIDENCE

PART IV

—HEARSAY EVIDENCE

Interpretation and application

14.—(1) In this Part of this Order “the Act of 1968” means the Civil Evidence Act 1968 and any expressions used in this Part of this Order and in Part I of the Act of 1968 have the same meanings in this Part of this Order as they have in the said Part I.

(2) This Part of this Order shall apply in relation to the trial or hearing of an issue arising in an action or matter and to a reference under section 93 of the Act as it applies to the trial or hearing of an action or matter.

(3) Nothing in this Part of this Order shall apply in relation to a reference under section 92 of the Act.

Notice of intention to give certain-statements in evidence

15.—(1) Subject to the provisions of this rule, a party to an action or matter who desires to give in evidence at the trial or hearing any statement which is admissible in evidence by virtue of section 2, 4 or 5 of the Act of 1968 shall, not less than 14 days before the day fixed for the trial or hearing, give notice of his desire to do so to the registrar and to every other party.

(2) Unless in any particular case the court otherwise directs, paragraph (1) shall not apply to an action or matter in which no defence or answer has been filed; and where a defence or answer is filed less than 14 days before the day fixed for the trial or hearing, any party required to give notice pursuant to paragraph (1) shall apply to the court for an adjournment of the trial or hearing or for such other directions as may be appropriate.

(3) Paragraph (1) shall not apply in relation to any statement which is admissible as evidence of any fact stated therein by virtue not only of the said section 2, 4 or 5 but by virtue also of any other statutory provision within the meaning of section 1 of the Act of 1968.

(4) Paragraph (1) shall not apply in relation to any statement which any party to a probate action desires to give in evidence at the trial of that action and which is alleged to have been made by the deceased person whose estate is the subject of the action.

(5) Where, by virtue of any provision of these rules or of any order or direction of the court, the evidence in any proceedings is to be given by affidavit then, without prejudice to paragraph (3), paragraph (1) shall not apply in relation to any statement which any party to the proceedings desires to have included in any affidavit to be used on his behalf in the proceedings.

Application of R.S.C

16. R.S.C. Order 38, rules 22 to 25, shall apply to a notice under the last foregoing rule as they apply to a notice under rule 21 of the said Order 38.

Counter-notice requiring person to be called as a witness

17.—(1) Subject to paragraphs (2) and (3), any party on whom a notice under rule 15 is served may, within 7 days after service of the notice on him, give to the proper officer and to the party who gave the notice a counter-notice requiring that party to call as a witness at the trial or hearing any person (naming him) particulars of whom are contained in the notice.

(2) Where any notice under rule 15 contains a statement that any person particulars of whom are contained in the notice cannot or should not be called as a witness for the reason specified therein, a party shall not be entitled to serve a counter-notice under this rule requiring that person to be called as a witness at the trial or hearing unless he contends that the person can or, as the case may be, should be called, and in that case he must include in his counter-notice a statement to that effect.

(3) Where a statement to which a notice under rule 15 relates is one to which rule 19 applies, no party on whom the notice is served shall be entitled to serve a counter-notice under this rule in relation to that statement, but the foregoing provision is without prejudice to the right of any party to apply to the court under rule 19 for directions with respect to the admissibility of that statement.

(4) If any party by whom a notice under rule 15 is served fails to comply with a counter-notice duly served on him under this rule, then, unless any of the reasons specified in paragraph (5) applies in relation to the person named in the counter-notice, and without prejudice to the powers of the court under rule 20, the statement to which the notice under rule 15 relates shall not be admissible at the trial or hearing as evidence of any fact stated therein by virtue of section 2, 4 or 5 of the Act of 1968, as the case may be.

(5) The reasons referred to in paragraph (4) are that the person in question is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness or that despite the exercise of reasonable diligence it has not been possible to identify or find him or that he cannot reasonably be expected to have any recollection of matters relevant to the accuracy or otherwise of the statement to which the notice relates.

Determination of question whether person can or should be called as a witness

18.—(1) Where a question arises whether any of the reasons specified in rule 17(5) applies in relation to a person particulars of whom are contained in a notice under rule 15, the court may, on the application of any party to the action or matter, determine that question before the trial or hearing or give directions for it to be determined before the trial or hearing and for the manner in which it is to be determined.

(2) Unless the court otherwise directs, notice of any application under paragraph (1) must be served on every other party to the action or matter.

(3) Where any such question as is referred to in paragraph (1) has been determined under or by virtue of that paragraph, no application to have it determined afresh at the trial or hearing may be made unless the evidence which it is sought to adduce in support of the application could not with reasonable diligence have been adduced at the hearing which resulted in the determination.

Directions with respect to statement made in previous proceedings

19.—(1) Where a party has given notice in accordance with rule 15 that he desires to give in evidence at the trial or hearing—

- (a) a statement falling within section 2(1) of the Act of 1968 which was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal), or
- (b) a statement falling within section 4(1) of the Act of 1968 which is contained in a record of direct oral evidence given in some other legal proceedings (whether civil or criminal), any party to the action or matter may apply to the court for directions as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so and (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved.

Power of court to allow statement to be given in evidence

20.—(1) Without prejudice to sections 2(2)(a) and 4(2)(a) of the Act of 1968 and rule 19, the court may, if it thinks it just to do so, allow a statement falling within section 2(1), 4(1) or 5(1) of the Act of 1968 to be given in evidence at the trial or hearing of an action or matter notwithstanding—

- (a) that the statement is one in relation to which rule 15(1) applies and that the party desiring to give the statement in evidence has failed to comply with that rule, or
- (b) that that party has failed to comply with any requirement of a counter-notice relating to that statement which was served on him in accordance with rule 17.

(2) Without prejudice to the generality of paragraph (1), the court may exercise its power under that paragraph to allow a statement to be given in evidence at the trial or hearing if a refusal to exercise that power might oblige the party desiring to give the statement in evidence to call as a witness at the trial or hearing an opposite party or a person who is or was at the material time the servant or agent of an opposite party.

Restriction on adducing evidence as to credibility of maker etc. of certain statements

21. Where—

- (a) a notice given under rule 15 in an action or matter relates to a statement which is admissible by virtue of section 2 or 4 of the Act of 1968, and
- (b) the person who made the statement, or, as the case may be, the person who originally supplied the information from which the record containing the statement was compiled, is not called as a witness at the trial or hearing of the action or matter, and
- (c) none of the reasons mentioned in rule 17(5) applies so as to prevent the party who gave the notice from calling that person as a witness,

no other party to the action or matter shall be entitled, except with the leave of the court, to adduce in relation to that person any evidence which could otherwise be adduced by him by virtue of section 7 of the Act of 1968 unless he gave a counter-notice under rule 17 in respect of that person or applied under rule 19 for a direction that that person be called as a witness at the trial or hearing of the action or matter.

Notice required of intention to give evidence of certain inconsistent statements

22.—(1) Where a person, particulars of whom were contained in a notice given under rule 15, is not to be called as a witness at the trial or hearing, any party who is entitled and intends to adduce in relation to that person any evidence which is admissible for the purpose mentioned in section 7(1)(b) of the Act of 1968 must, not more than 7 days after service of that notice on him, give notice of his intention to do so to the proper officer and to the party who gave the notice under rule 15.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

(2) R.S.C. Order 38, rule 22(1) and (2), shall apply to a notice under this rule as if the notice were a notice under rule 15 and the statement to which the notice relates were a statement admissible by virtue of section 2 of the Act of 1968.

(3) The court may, if it thinks it just to do so, allow a party to give in evidence at the trial or hearing of an action or matter any evidence which is admissible for the purposes mentioned in the said section 7(1)(b) notwithstanding that that party has failed to comply with the provisions of paragraph (1).

Costs

23. If—

- (a) a party to an action or matter serves a counter-notice under rule 17 in respect of any person who is called as a witness at the trial of the action or matter in compliance with a requirement of the counter-notice, and
- (b) it appears to the court that it was unreasonable to require that person to be called as a witness,

then without prejudice to Order 38, and, in particular, to rule 6 thereof, the court may direct that any costs to that party in respect of the preparation and service of the counter-notice shall not be allowed to him and that any costs occasioned by the counter-notice to any other party shall be paid by him to that other party.

Exercise of jurisdiction

24. Order 1, rule 8, shall have effect in relation to the jurisdiction of the court under sections 2(2) (a), 2(3), 4(2)(a) and 6(1) of the Act of 1968 as it has effect in relation to any jurisdiction conferred by these rules.

Evidence of findings on foreign law

25.—(1) Subject to the provisions of this rule, a party who intends to adduce in evidence a finding or decision on a question of foreign law by virtue of section 4(2) of the Civil Evidence Act 1972 shall, not less than 14 days before the day fixed for the trial or hearing or within such other period as the court may specify, serve notice of his intention on every other party to the proceedings.

(2) The notice shall specify the question on which the finding or decision was given or made and specify the document in which it is reported or recorded in citable form.

(3) In any action or matter in which evidence may be given by affidavit, an affidavit specifying the matters contained in paragraph (2) shall constitute notice under paragraph (1) if served within the period mentioned in that paragraph.

(4) Unless in any particular case the court otherwise directs, paragraph (1) shall not apply to an action or matter in which no defence or answer has been filed.

Statements of opinion

26. Where a party to an action or matter desires to give in evidence by virtue of Part I of the Act of 1968 as extended by section 1(1) of the Civil Evidence Act 1972, a statement of opinion other than a statement to which Part III of this Order applies, the provisions of rules 14 to 24 of this Order (except so much of rule 16 as applies R.S.C. Order 38, rule 24) shall apply with such modifications as the court may direct or the circumstances of the case may require.