

CAYMAN ISLANDS



EVIDENCE ACT

(2021 Revision)

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CAYMAN ISLANDS



EVIDENCE ACT

(2021 Revision)

PART I - Introductory

Short title

1. This Act may be cited as the *Evidence Act (2021 Revision)*.

Definitions

2. In this Act —

“**account book**” includes every book, card or device used for the recording or storing of business records and transactions, whether or not encoded;

“**bank**” has the meaning ascribed to it in the *Banks and Trust Companies Act (2021 Revision)* and in any law replacing the same;

“**banker’s book**” means a banker’s account book;

“**civil partner**” has the meaning assigned by the *Civil Partnership Act, 2020*;

“**civil partnership**” has the meaning assigned by the *Civil Partnership Act, 2020*;

“**civil proceedings**” includes, in addition to civil proceedings in any of the ordinary courts of law, civil proceedings before any other tribunal and an arbitration or reference, whether under enactment or not, but does not include civil proceedings in relation to which the strict rules of evidence do not apply;

“**computer**” means any device or combination of devices used together or in succession for the purpose of storing and processing information;

“**copy**”, in relation to a document, means any transcript or reproduction thereof in whatever form;

“**court**” includes, in addition to the ordinary courts and juries of civil and criminal jurisdiction, every tribunal where civil proceedings are conducted and includes the judge or person presiding over or constituting such tribunal and includes also an arbitrator and an umpire;

“**document**” includes any device by means of which information is recorded or stored;

“**production**” and its cognates includes the decoding of any encoded matter and the translation into the English language of any matter recorded in any language other than English; and

“**statement**” includes any representation of fact, whether made in words or otherwise.

PART II - Procedure in general

Power to administer oath

3. Every court is hereby empowered to administer an oath or affirmation to all such witnesses as are lawfully called before it.

Impeaching credit of a witness

4. (1) A party producing a witness shall not be allowed to impeach the witness’s credit by general evidence of bad character, but the party may, in case the witness, in the opinion of the court, proves adverse, contradict the witness by other evidence, or by leave of the court, prove that the witness has made at other times a statement inconsistent with such witness’s present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and the witness must be asked whether or not the witness made such statement.
- (2) If a witness, upon cross-examination as to a former statement made by the witness relative to the subject matter of the case, and inconsistent with the witness’s present testimony, does not distinctly admit that the witness has made such a statement, proof may be given that the witness did make it; but before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion, must be mentioned to the witness, and the witness must be asked whether or not the witness made such a statement.
- (3) A witness may be cross-examined as to recorded statements previously made by the witness relative to the subject matter of the cause, without such statement or a copy thereof being produced to the witness; but if it is intended to contradict such witness by such statement or a copy thereof, the witness’s attention must,



before such contradictory proof can be given, be called to those parts of the statement or copy thereof which are to be used for the purpose of so contradicting the witness but the court, at any time during the trial, may require the production of the statement or copy thereof for its inspection and it may thereupon make such use of it for the purpose of the trial as it shall think fit.

Questions as to whether a witness has been convicted of an offence allowable

5. A witness in any cause may be questioned as to whether the witness has been convicted of any offence and, upon being so questioned, if the witness either denies the fact, or refuses to answer, the opposite party may prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment or charge and conviction for such offence, purporting to be signed by the Clerk of the Court, or other officer having custody of the records of the Court where the offender was convicted is, upon proof of the identity of the person, sufficient evidence of the said conviction.

Proof of instrument in writing

6. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereof.

Mode of proof of entries in banker's books

7. (1) Subject to the *Banks and Trust Companies Act (2021 Revision)*, the *Confidential Information Disclosure Act, 2016 [Law 23 of 2016]* and to subsection (2), a copy of an entry in a banker's book certified by an officer of such bank in an affidavit made before a Justice of the Peace or by oral testimony to be a true copy is receivable in every court as *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded.
- (2) A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be first proved that the book was, at the time of the making of the entry, one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank. Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.
- (3) No bank or officer of such bank shall, in any proceedings before any court in which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under subsection (1), or appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of a court made for special cause, and any such order shall be without prejudice to, and compliance therewith shall be subject to the *Confidential Information Disclosure Act, 2016 [Law 23 of 2016]*.

Court may order inspection of banker's books

8. (1) On the application of any party to a legal proceeding a court may order that such party be at liberty to inspect and take copies of any matter in a banker's book for the purpose of such proceeding, and an order under this section may be made with or without summoning the bank or any other party, and shall be served on the bank three clear working days before the same is to be obeyed unless the court otherwise directs.
- (2) Any order made under subsection (1) shall be without prejudice to the *Confidential Information Disclosure Act, 2016 [Law 23 of 2016]*, and for the purposes of that Act compliance with such an order by a bank or officer thereof shall, for the purposes of this Act, be deemed to be giving in evidence of the matter in the banker's book to be inspected thereunder.

Comparison of handwriting

9. Comparison of a disputed writing with any writing proved to the satisfaction of the judge or magistrate to be genuine may be made by witnesses; and such writings, and the evidence of witnesses thereupon, may be submitted as evidence of the genuineness, or otherwise, of the writing in dispute.

Official or public documents, etc.

10. Whenever, by any law of the Islands, any certificate, official or public document or proceeding of any corporation, or any certified copy of any document, bye-law, entry in any register or other book, or of any other proceeding, is receivable in evidence in any court or the Cayman Islands Parliament, or any committee thereof or in any judicial proceeding, they shall be so admissible in evidence provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp and signed, as directed by such law, without any proof of the seal or stamp, where a seal or stamp is necessary, or of the signature, or of the official character of the person appearing to have signed the same, and without any further proof thereof, in every case in which the original record could have been received in evidence.

Private laws and minutes of the Cayman Islands Parliament

11. Copies of private Acts of Parliament, if purporting to be printed by the Queen's Printer, and of private laws of the Legislature of the Islands, if purporting to be printed by the Government Printer and all copies of the minutes of the Cayman Islands Parliament, and of Royal Proclamations, purporting to be printed by the Printers of the Crown, or by the Government Printer are admissible in evidence without proof that they were so printed.



Acts of state, etc.

- 12.** Proclamations, treaties and other acts of state or of any foreign state, Commonwealth country or British Overseas Territories and judgments, decrees, orders and judicial proceedings of any court of any such foreign state, Commonwealth country or British Colony and affidavits, pleadings and other legal documents filed in any such court may be proved in any court either by examined copies, or by copies authenticated as hereinafter mentioned, that is to say, if the document sought to be proved be a proclamation, treaty or other act of state the authenticated copy, to be admissible in evidence, must purport to be sealed with the seal of the foreign state, Commonwealth country or British Overseas Territories to which the original document belongs; and if the document sought to be proved be a judgment, decree, order or other judicial proceeding of any foreign, Commonwealth or overseas territories court, or an affidavit, pleading or other legal document filed or deposited in any such court, the authenticated copy, to be admissible in evidence, must purport either to be sealed with the seal of the court to which the original document belongs or, in the event of such court having no seal, to be signed by a judge of such court; and such judge shall attach to that judge's signature a statement in writing on the said copy that the court whereof that person is a judge has no seal; but if any of the aforesaid copies purport to be sealed or signed as hereinbefore respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence, without any proof of the seal where a seal is necessary or of the signature or of the truth of the statement attached thereto, where such signature or such statement is necessary, or of the judicial character of the person appearing to have made such signature and statement.

Registers of ships

- 13.** Every register of a vessel kept under any of the Acts relating to the registry of British vessels may be proved in any court of justice, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, either by the production of the original or by any examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original, and which person is hereby required to furnish such certified copy to any person applying at a reasonable time for the same, upon payment of the sum of five dollars; and every such register, or such copy of a register, and also every certificate of registry granted under any of the Acts relating to the registry of British vessels, and purporting to be signed as required by law, shall be received in evidence in any court of justice, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence as *prima facie* proof of all the matters contained or recited in such register when the register or such copy thereof as aforesaid is produced, and of all the matters contained or recited in or endorsed on such certificate of registry, when the said certificate is produced.

Judicial notice to be taken of signatures of certain judges

14. Courts shall take judicial notice of the signatures of the judges of the Supreme Courts of Judicature in England as well as of courts having jurisdiction in the Islands provided such signature be attached or appended to any decree order, certificate or other judicial or official document.

Certificate of conviction or acquittal

15. Whenever in any proceedings whatever it may be necessary to prove the trial and conviction of any person charged with any offence it is not necessary to produce the record of the conviction or acquittal of such person, but it is sufficient that a copy of such record be certified, or purport to be certified, under the hand of the Clerk of the Court where such conviction or acquittal took place that the paper produced refers to the accused and is a copy of the record of the charge or indictment, trial, conviction and judgment or acquittal, as the case may be, omitting the formal parts thereof.

Examined copies of contents of books of a public nature

16. (1) Whenever a document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no law exists which renders its contents provable by means of a copy, a copy thereof or extract therefrom is admissible in evidence if it is proved to be an examined copy or extract, or purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.
- (2) An officer having custody of such document is hereby required to furnish such certified copy or extract to any person applying for it at a reasonable time upon payment of a reasonable sum for the same, not exceeding two dollars for every folio of ninety words.

Government Notices

17. (1) Government Notices of any date whatsoever purporting to have been issued by the Governor's office, and purporting to bear the signature of the Governor or other officer for the time being administering the Government are admissible in any court without proof of the signature or official character of the person purporting to have signed the same.
- (2) Gazetted matter is admissible in accordance with section 8 of the *Official Gazette Act (1997 Revision)*.



PART III - Criminal proceedings

Accused persons, etc., as competent witnesses

18. Every person charged with an offence is a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person:

Provided that —

- (a) a person so charged shall not be called as a witness under this Act, except upon the person's own application;
- (b) **Repealed** by section 2(a) of the *Evidence (Amendment) Act, 2018 [Law 30 of 2018]*;
- (c) a person charged and being a witness under this Act may be asked any question in cross-examination notwithstanding that it would tend to incriminate the person in the offence charged;
- (d) a person charged and called as a witness under this Act shall not be asked, or required to answer, any question tending to show that that person has committed or been convicted or been charged with any offence other than that wherewith that person is charged or is of bad character unless —
 - (i) the proof that that person has been charged with or committed or been convicted of such other offence is admissible evidence to show that that person has committed the offence wherewith that person is charged;
 - (ii) the person has personally or by the person's advocate asked questions of the witnesses for the prosecution to establish the person's own good character or has given evidence of such good character, or the nature of the conduct of the defence is such as to involve imputations on the character of any other person, in which case evidence tending to show that the person has committed, been convicted, or been charged with any offence other than that with which the person is charged, or is of bad character, may be adduced whether or not the person has given evidence in the person's own defence; or
 - (iii) the person has given evidence against any other person charged with the same offence;
- (e) a person called as a witness in pursuance of this Act shall, unless otherwise ordered by the court, give that person's evidence from the witness box or other place from which the other witnesses give their evidence; and
- (f) omitted as a consequence of the **repeal** of section 91 of the *Criminal Procedure Code (2010 Revision)* by section 11 of the *Criminal Procedure Code (Amendment) Act, 2011 [Law 7 of 2011]*.

Competence and compellability of accused's spouse or civil partner

- 19.** (1) In any criminal proceedings the wife, husband or civil partner of the accused shall be competent to give evidence —
- (a) subject to subsection (4), for the prosecution; and
 - (b) on behalf of the accused or any person jointly charged with the accused.
- (2) In any criminal proceedings the wife, husband or civil partner of the accused shall, subject to subsection (4), be compellable to give evidence on behalf of the accused.
- (3) In any criminal proceedings the wife, husband or civil partner of the accused shall, subject to subsection (4), be compellable to give evidence for the prosecution or on behalf of any person jointly charged with the accused if —
- (a) the offence charged involves an assault on, or injury or threat of injury to, the wife, husband or civil partner of the accused or a person who was at the material time under the age of sixteen;
 - (b) the offence charged is a sexual offence alleged to have been committed in respect of a person who was at the material time under that age; or
 - (c) the offence charged consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a) or (b).
- (4) Where a husband and wife or civil partners are jointly charged with an offence neither spouse or civil partner shall, at the trial, be competent or compellable by virtue of subsection (1)(a), (2) or (3) to give evidence in respect of that offence unless that spouse or civil partner is not, or is no longer, liable to be convicted of that offence at the trial as a result of pleading guilty or for any other reason.
- (5) In any criminal proceedings a person who has been but is no longer married to the accused or in a civil partnership with the accused shall be competent and compellable to give evidence as if that person and the accused had never been married or in a civil partnership.
- (6) Where in any criminal proceedings the age of a person at any time is material for the purposes of subsection (3), the age of the person at the material time shall for the purposes of that provision be deemed to be or to have been that which appears to the court to be or have been the person's age at that time.
- (7) The failure of the wife, husband or civil partner of the accused to give evidence shall not be made the subject of any comment by the prosecution.

Advance notice of expert evidence

- 20.** (1) Following —
- (a) the committal for trial of any person;



- (b) the preferment of an indictment under section 108 of the *Criminal Procedure Code (2021 Revision)* (voluntary bill of indictment);
- (c) the making of an order for the re-trial of any person; or
- (d) a hearing in the Summary Court at which a trial date is set,

if any party to the proceedings proposes to adduce expert evidence (whether of a fact or opinion) in the proceedings (otherwise than in relation to a sentence) the party shall as soon as practicable, unless in relation to the evidence in question such party has already done so —

- (i) furnish the other party with a statement in writing of any finding or opinion which the party proposes to adduce by way of such evidence; and
 - (ii) where a request in writing is made to the party in that behalf by any other party, provide that party also with a copy of (or if it appears to the party proposing to adduce the evidence to be more practicable, a reasonable opportunity to examine) the record of any observation, test, calculation or other procedure on which such finding or opinion is based and any document or other thing or substance in respect of which any such procedure has been carried out.
- (2) A party may, by notice in writing, waive that party's right to be furnished with any of the matters mentioned in subsection (1) and, in particular, may agree that the statement mentioned in subsection (1)(i) may be furnished to the party orally and not in writing.
- (3) In subsection (1) —
“**document**” means anything in which information of any description is recorded.

Exception to provision of advance notice

- 21.** (1) If a party has reasonable grounds for believing that the disclosure of any evidence in compliance with the requirements imposed by section 20 might lead to the intimidation, or attempted intimidation, of any person on whose evidence that party intends to rely in the proceedings, or otherwise to the course of justice being interfered with, that party shall not be obliged to comply with those requirements with regard to any evidence in relation to that evidence.
- (2) Where in accordance with subsection (1), a party considers that they are not obliged to comply with the requirements imposed by section 20 with regard to any evidence in relation to any other party, such party shall give notice in writing to that party to the effect that the evidence is being withheld and the grounds therefor.

Failure to comply with section 20

22. A party who seeks to adduce evidence in any proceedings and who fails to comply with section 20 shall not adduce evidence in those proceedings without the leave of the court.

“Judges’ Rules” to have effect *pro tem*

23. The “Judges’ Rules” whereby in England a suspected person is required to be cautioned in a certain manner before making a statement to the police at the time when the suspected person is charged or about to be charged with an offence shall have application in the Islands until replaced by Rules made by the Rules Committee of the Grand Court.

Where accused persons give evidence

24. When persons charged with an offence give evidence they shall be called as witnesses immediately after the close of the evidence for the prosecution unless they obtain leave of the court to give evidence at a later stage.

Notice of alibi defence

25. (1) An accused person shall not, without the leave of the court, adduce evidence in support of an alibi unless, before the end of the prescribed period, the accused person gives notice of the particulars of the alibi.
- (2) Without prejudice to subsection (1), on any trial of an accused person, such person shall not without the leave of the court call any other person to give evidence unless —
- (a) the notice under that subsection includes the name and address of the witness or, if the name and address is not known to the accused person at the time the accused person gives the notice, any information in the accused person’s possession which might be of material assistance in finding the witness;
 - (b) if the name or the address is not included in that notice, the court is satisfied that the accused person, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained;
 - (c) if the name or address is not included in that notice, but the accused person subsequently discovers the name and address or receives other information which might be of material assistance in finding the witness, the accused person forthwith gives notice of the name, address or other information; and
 - (d) if the accused person is notified by or on behalf of the prosecution that the witness has not been traced by the name or at the address given, the accused person forthwith gives notice of any such information which is



then in the accused person's possession or, on subsequently receiving any such information, forthwith gives notice of it.

- (3) An accused person shall be informed of the requirements of this section in the Summary Court and the Grand Court shall not refuse leave under this section if it appears to the court that the accused person was not so informed.
- (4) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is adduced in support of the alibi.
- (5) Any notice purporting to be given under this section on behalf of the accused person by the accused person's counsel shall, unless the contrary is proved, be deemed to be given with the authority of the accused person.
- (6) A notice under subsection (1) shall either be given in court during, or at the end of, the preliminary inquiry or be given in writing to the counsel for the prosecution, and a notice under paragraph (c) or (d) of subsection (2) shall be given in writing to that counsel.
- (7) A notice required by this section to be given to the prosecution may be given by delivering it to the prosecution or by leaving it at the office of the Director of Public Prosecutions, or by sending it by registered mail addressed to the Director of Public Prosecutions at that person's office.
- (8) In this section —
 - “**evidence in support of an alibi**” means evidence tending to show that by reason of the presence of the defendant at a particular place or in a particular area at a particular time the defendant was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission; and
 - “**prescribed period**” means —
 - (i) in the case of a trial before the Summary Court, seven days from the day on which the trial date is set; and
 - (ii) in the case of trial before the Grand Court, the period of seven days from the end of the proceedings before the Summary Court.
- (9) In computing the prescribed period, a Sunday, Christmas Day, Good Friday and a day which is a public holiday under the *Public Holidays Act (2007 Revision)* shall be disregarded.

Right of reply

26. The accused person or the accused person's advocate shall have the right of reply in all criminal trials.

Proof of criminal intent

27. A court or jury in determining whether a person has committed an offence shall not be bound to infer that the person intended or foresaw a result of the person's actions by reason only of its being a natural and probable consequence of those actions, but shall decide whether the person did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence or lack of evidence or failure to give evidence as appear proper in the circumstances.

Admissibility of certain records in criminal cases

28. (1) Without prejudice to section 29, in criminal proceedings where direct oral evidence of a fact would be admissible, a statement contained in a document tending to establish that fact shall, on production of the document, be admissible as evidence of that fact if —
- (a) the document is, or forms part of, a record relating to any trade or business and compiled, in the course of that trade or business, from information supplied (whether directly or indirectly) by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply; and
 - (b) the person who supplied the information recorded in the statement in question is dead, beyond the seas, unfit by reason of the person's bodily or mental condition to attend as a witness, cannot with reasonable diligence be identified or found or cannot reasonably be expected (having regard to the time which has elapsed since the person supplied the information and to all the circumstances) to have any recollection of the matter dealt with in the information the person supplied.
- (2) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of this section, the court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be a certificate of a qualified medical practitioner.
- (3) In estimating the weight, if any, to be attached to a statement admissible as evidence by virtue of this section regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and, in particular, to the question whether or not the person who supplied the information recorded in the statement did so contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not that person or any person concerned with making or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts.



Computers

- 29.** (1) In any criminal proceedings, a statement contained in a document produced by a computer is admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown —
- (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store and process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any person;
 - (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived; and
 - (c) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.
- (2) In any criminal proceedings, where it is desired to give a statement in evidence by virtue of this section, a certificate —
- (a) identifying the document containing the statement and describing the manner in which it was produced;
 - (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer; and
 - (c) dealing with any of the matters to which the conditions mentioned in subsection (1) relate,
- and purporting to be signed by a person occupying a responsible position with relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated therein; and for the purposes of this subsection it is sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.
- (3) In this Part —
- (a) information is taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
 - (b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities; and
 - (c) a document is taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

- (4) Any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.
- (5) Any trial or any proceedings which began before the 31st March, 2004 shall be continued and completed as if the trial or proceeding had been commenced on or after the 31st March, 2004.

Provisions supplementary to section 29

- 30.** (1) Where, in criminal proceedings, a statement contained in a document is proposed to be given in evidence by virtue of section 29 it may, subject to any Rules of Court, be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of a material part thereof, authenticated in such manner as the court may approve.
- (2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 29, the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including in the case of a statement contained in a document, the form and contents of that document.
- (3) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 29, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular, to the question whether or not the matter which the information contained in the statement reproduces, or is derived from, was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with therein, and to the question whether or not any person concerned with the supply of information to that computer, or within the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.

Proof of previous conviction by fingerprints

- 31.** (1) Subject to the *Criminal Records (Spent Convictions) Act (2018 Revision)*, 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 section, and by showing that the person's finger prints and those of the person convicted are the finger prints of the same person.
- (2) A certificate purporting to be signed by or on behalf of the Commissioner of Police or by a person authorised by the Commissioner, containing particulars relating to a conviction extracted from the criminal records kept —
- (a) by the Commissioner, whether or not prior to 6th January, 1986; or



- (b) under the **repealed** *Finger Prints Law, 1964 [Law 19 of 1965]* (sic), prior to the 6th January, 1986,

and certifying that the copies of the finger prints exhibited to the certificate are copies of the finger prints appearing from those records to have been taken on the occasion of the conviction from the person convicted, shall be admissible as evidence of such conviction and evidence that the copies of the finger prints exhibited to the certificate are copies of the fingerprints of the person convicted and, in the absence of evidence to the contrary, shall be proof of the facts certified therein as to such conviction and finger prints and no evidence shall be required as to the signature or authority of the person purporting to have signed the certificate.

- (3) The method of proving a previous conviction authorised by subsection (2) shall be in addition to any other method of proving a conviction.
- (4) A certificate purporting to be signed by or on behalf of the Commissioner of Police certifying that the finger prints, copies of which are certified as aforesaid to be copies of the finger prints of a person previously convicted, and the finger prints certified as aforesaid or otherwise shown to be the finger prints of the person against whom the previous conviction is sought to be proved are the finger prints of the same person shall be admissible as evidence of such conviction and evidence that the copies of the finger prints exhibited to the certificate are copies of the finger prints of the person convicted, in the absence of evidence to the contrary, shall be proof of the facts certified therein as to such finger prints and no evidence shall be required as to the signature or authority of the person purporting to have signed the certificate.

Evidence of finger prints

- 32.** (1) In criminal proceedings, a report purporting to be signed by a constable not below the rank of sergeant authorised to do so by the Commissioner of Police and certifying that finger prints are those of the person charged with the offence or of any other person shall, subject to subsection (2), be sufficient evidence of that fact and of the authority of that constable to make the report and, in the absence of evidence to the contrary, shall be proof of the facts contained therein as to finger prints and no evidence shall be required as to the signature or authority of the person purporting to have signed the certificate.
- (2) Subsection (1) shall not apply to a report tendered on behalf of the prosecution —
- (a) unless a copy has been served on the person charged with the offence not less than fourteen days before the hearing;
- (b) where the person charged with the offence, not less than six days before the hearing or by such later time before the hearing or by such later time before that person's trial as the court may in special circumstances allow,

has served a notice on the prosecutor challenging the fact or authority mentioned in subsection (1); or

- (c) in any case where the judge or magistrate so determines:

Provided that paragraphs (a) and (b) shall not apply if the parties agree before or during the hearing that the report shall be so tendered.

- (3) The method of proving fingerprints authorised by this section shall be in addition to any other method of proving finger prints.

Proof in criminal proceedings by written statement

33. (1) A statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by the person would be admissible if —

- (a) the requirements of one of the paragraphs of subsection (2) are satisfied; or
(b) the requirements of subsection (3) are satisfied; or
(c) the requirements of subsection (4) are satisfied.

(2) The requirements mentioned in paragraph (a) of subsection (1) are —

- (a) that the person who made the statement is dead or by reason of that person's bodily or mental condition unfit to attend as a witness; or
(b) that —
(i) the person who made the statement is outside the Islands; and
(ii) it is not reasonably practicable to secure that person's attendance; or
(c) that all reasonable steps have been taken to find the person who made the statement, but that the person cannot be found.

(3) The requirements mentioned in paragraph (b) of subsection (1) are —

- (a) that the statement was made to a constable or some other person charged with the duty of investigating offences or charging offenders;
(b) that the person who made it does not give oral evidence through fear or because the person is kept out of the way; and
(c) for the purposes of paragraph (b), fear is to be widely construed and includes fear of the death or injury of another person or of financial loss.

(4) The requirements mentioned in paragraph (c) of subsection (1) are —

- (a) the statement purports to be signed by the person who made it, and it contains a declaration by that person to the effect that it is true to the best of that person's knowledge and belief and that that person made the statement knowing that, if it were tendered in evidence, that person would be liable to prosecution if the person wilfully stated in it anything which that person knew to be false or did not believe to be true;



- (b) not less than seven days before the hearing at which the statement is to be tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and
 - (c) none of the other parties or their advocates, within four days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section.
- (5) Paragraphs (b) and (c) of subsection (4) shall not apply if the parties agree before or during the hearing that the statement shall be so tendered.
- (6) Notwithstanding subsection (1), in criminal proceedings a written statement by any person is admissible as evidence to the like extent as oral evidence to the like effect by that person if the court determines that it is in the interest of justice to admit such written statement.
- (7) In relation to a written statement tendered in evidence under subsection (1), if the statement —
- (a) is made by a person under the age of eighteen years, it shall give that person's age;
 - (b) is made by a person who cannot read it, it shall be read to the person before the person signs it or attests it by that person's mark and shall be accompanied by a declaration by the person who read the statement to that person to the effect that it was so read; and
 - (c) refers to any other document as an exhibit, the copy served on any other party to the proceedings under paragraph (c) of subsection (1) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect the document or a copy thereof.
- (8) Notwithstanding that a written statement by any person may be admissible as evidence by virtue of this section —
- (a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and
 - (b) the court may, of its own motion, or on the application of any party to the proceedings, require that person to attend before the court and give evidence.
- (9) An application under paragraph (b) of subsection (8) to a court other than a Summary Court may be made before the hearing.
- (10) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court otherwise directs, be read aloud at the hearing and, where the court so directs, an account shall be given orally of so much of any statement as is not read aloud.

- (11) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.
- (12) A document required by this section to be served on any person may be served —
 - (a) by delivering it to the person or the person’s advocate;
 - (b) by addressing it to the person and leaving it at the person’s usual or last known place of abode or place of business; or
 - (c) in the case of a body corporate, by delivering it to the secretary or a clerk of the body at its registered or principal office in the Islands.
- (13) A person who, in a written statement tendered in evidence in criminal proceedings under subsection (1), wilfully makes a statement material in those proceedings which that person knows to be false or does not believe to be true commits an offence and is liable on conviction to imprisonment for seven years.

Use of documents to refresh memory

- 33A.**(1) A person giving oral evidence in criminal proceedings about any matter may, at any stage in the course of doing so, refresh such person’s memory of it from a document made or verified by such person at an earlier time if —
- (a) that person states in the person’s oral evidence that the document records the person’s recollection of the matter at that earlier time; and
 - (b) that person’s recollection of the matter is likely to have been significantly better at that time than it is at the time of the person’s oral evidence.
- (2) Where —
- (a) a person giving oral evidence in criminal proceedings about any matter has previously given an oral account of which a sound or video recording was made, and that person states in that evidence that the account represented that person’s recollection of the matter at the time;
 - (b) that person’s recollection of the matter is likely to have been significantly better at the time of the previous account than it is at the time of that person’s oral evidence; and
 - (c) a transcript has been made of the sound or video recording,
- that person may, at any stage in the course of giving that person’s evidence, refresh that person’s memory of the matter from that transcript.

Inconsistent statements

- 33B.**(1) If in criminal proceedings a person gives oral evidence and —
- (a) that person admits making a previous inconsistent statement; or



(b) a previous inconsistent statement made by that person is proved to have been made by virtue of section 4,

the statement is admissible as evidence of any matter stated of which oral evidence by that person would be admissible.

- (2) If in criminal proceedings evidence of an inconsistent statement by any person is proved by virtue of section 33F(1)(c), the statement is admissible as evidence of any matter stated in it of which oral evidence by that person would be admissible.

Other previous statements of witness

33C.(1) Where a person is called to give evidence in criminal proceedings and a previous statement by that person is admitted as evidence to rebut a suggestion that that person's oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by that person would be admissible.

- (2) A statement made by a person in a document —
- (a) which is used by that person to refresh that person's memory while giving evidence;
 - (b) on which that person is cross-examined; and
 - (c) which as a consequence is received in evidence in the proceedings,
- is admissible as evidence of any matter stated of which oral evidence by that person would be admissible.
- (3) A previous statement by a person is admissible as evidence of any matter stated of which oral evidence by that person would be admissible, if —
- (a) any of the following three conditions is satisfied —
 - (i) that the statement identifies or describes another person, object or place;
 - (ii) the statement was made by the person when the matters stated were fresh in that person's memory but that person does not remember them, and cannot reasonably be expected to remember them well enough to give oral evidence of them in the proceedings; or
 - (iii) that person claims to be the person against whom an offence has been committed and the offence is one to which the proceedings relate and the statement consists of a complaint made by that person (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence and the complaint was not made as a result of a threat or a promise, and before the statement is adduced that person gives oral evidence in connection with its subject matter; and

- (b) while giving evidence that person indicates that to the best of that person's belief that person made the statement, and that to the best of that person's belief it states the truth.
- (4) For the purposes of subsection (3) the fact that the complaint was elicited (for example, by a leading question) is irrelevant unless a threat or a promise was involved.

Additional requirement for admissibility of multiple hearsay statements

- 33D.**(1) A hearsay statement is not admissible to prove the fact that an earlier hearsay statement was made unless —
- (a) either of the statements is admissible under section 33B or 33C;
 - (b) all parties to the proceedings agree; or
 - (c) the court is satisfied that the value of the evidence in question, taking into account how reliable the statements appear to be, is so high that the interests of justice require the later statement to be admissible for that purpose.
- (2) In this section “**hearsay statement**” means a statement, not made in oral evidence, that is relied on as evidence of a matter stated in it.

Documents produced as exhibits

- 33E.**(1) If on a trial before a judge and jury for an offence —
- (a) a statement made in a document is admitted in evidence under section 33B or 33C, and
 - (b) the document or a copy of it is produced as an exhibit,
- that exhibit shall not accompany the jury when they retire to consider their verdict unless the court considers it appropriate, or all the parties to the proceedings agree that it should accompany the jury.

Credibility

- 33F.**(1) Where in criminal proceedings a statement not made in oral evidence in the proceedings is admitted as evidence of a matter stated and the maker of the statement does not give oral evidence in connection with the subject matter of the statement, in such a case —
- (a) any evidence which (if the person had given such evidence) would have been admissible as relevant to that person's credibility as a witness is admissible in the proceedings;
 - (b) evidence may with the court's leave be given of any matter which (if the person had given such evidence) could have been put to that person in cross-examination as relevant to that person's credibility as a witness but



- of which evidence could not have been adduced by the cross-examining party; and
- (c) evidence tending to prove that the person made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that person to be contradictory.
- (2) If as a result of evidence admitted under this section an allegation is made against the maker of a statement, the court may permit a party to lead additional evidence of such description as the court may specify for the purposes of denying or answering the allegation.

Stopping the case where the evidence is unconvincing

- 33G.**(1) If during a defendant's trial before a judge and jury for an offence the court is satisfied at any time after the close of the case for the prosecution that —
- (a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings; and
- (b) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the defendant, the defendant's conviction of the offence would be unsafe,
- the court shall 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) in respect of it.
- (3) If —
- (a) a jury is required to determine under section 158 of the *Criminal Procedure Code (2021 Revision)* whether a person charged on an indictment with an offence did the act or made the omission charged; and
- (b) pursuant to subsection (1), the court is satisfied at any time after the close of the case for the prosecution that —
- (i) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings; and
- (ii) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the person, a finding that the defendant 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.

Court's general discretion to exclude evidence

33H.(1) The court may, in criminal proceedings, refuse to admit a statement as evidence of a matter stated if —

- (a) the statement was made otherwise than in oral evidence in the proceedings; and
 - (b) the court is satisfied that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, taking account of the value of the evidence.
- (2) Nothing in this section prejudices the power of a court under section 40 of this Act (exclusion of unfair evidence) or any other power of a court to exclude evidence at its discretion (whether by preventing questions from being put or otherwise).

Proof by formal admission

34. (1) Subject to this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecutor or defendant, and the admission by any party of such fact under this section is, as against that party, conclusive evidence in those proceedings of the fact so admitted.

- (2) An admission under this section —
- (a) may be made before or at the proceedings;
 - (b) if made otherwise than in court, shall be in writing;
 - (c) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;
 - (d) if made on behalf of a defendant who is an individual, shall be made by that defendant's advocate; and
 - (e) if made at any stage before the trial by a defendant who is an individual, must be approved by that defendant's advocate (whether at the time it was made or subsequently) before or at the proceedings in question.
- (3) An admission under this section for the purposes of proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to the same matter.



Conviction as evidence of commission of offence

- 35.** (1) In any criminal proceedings, the fact that a person other than the accused has been convicted of an offence by or before any court in the Islands or by a competent court of a designated country shall be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that that person committed that offence whether or not any other evidence of that person having committed that offence is given.
- (2) In any criminal proceedings in which, by virtue of this section, a person other than the accused is proved to have been convicted of an offence by or before any court in the Islands or by a competent court of a designated country, the person shall be taken to have committed that offence unless the contrary is proved.
- (3) In any criminal proceedings where evidence is admissible of the fact that the accused has committed an offence, insofar as that evidence is relevant to any matter in issue in the proceedings for a reason other than a tendency to show in the accused a disposition to commit the kind of offence with which the accused is charged, if the accused is proved to have been convicted of the offence —
- (a) by or before any court in the Islands; or
- (b) by a competent court of any designated country,
- the accused shall be taken to have committed that offence unless the contrary is proved.
- (4) Nothing in this section shall prejudice —
- (a) the admissibility in evidence of any conviction which would be admissible apart from this section; or
- (b) the operation of any enactment whereby a conviction or a finding of fact in, any proceedings is, for the purposes of any other proceedings, made conclusive evidence of any fact.
- (5) In this section —
- “**designated country**” means a country designated for the purposes of this section by order of the Cabinet.

Provisions supplementary to section 35

- 36.** (1) Where evidence that a person has been convicted of an offence is admissible by virtue of section 35 alone, without prejudice to the reception of other admissible evidence for the purpose of identifying the facts on which the conviction was based —
- (a) the contents of any document which is admissible as evidence of the conviction; and

- (b) the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted,
- shall be admissible in evidence for that purpose.
- (2) Where, in any criminal proceedings, the contents of any document are admissible in evidence by virtue of subsection (1), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of the document shall be admissible in evidence and shall be taken to be a true copy of that document unless the contrary is shown.
- (3) Nothing in section 35 shall be construed as rendering admissible, in any proceedings, evidence of any conviction other than a subsisting one.
- (4) Nothing in section 35 prejudices any power of a court under section 40 or otherwise in any proceedings to exclude evidence (whether preventing questions being put or otherwise) at its discretion.

Evidence through television links

- 37.** (1) A person other than an accused person may give evidence through a live television link in proceedings to which subsection (2) applies if —
- (a) the witness is outside the Islands;
- (b) the witness is a child, or is to be cross examined following the admission under section 39 of a video recording of testimony from that witness and the offence is one to which section 39(2) applies; or
- (c) the witness is to give evidence as to a violent or sexual offence, but such evidence may not be given without the leave of the court.
- (2) This section applies to —
- (a) trials on indictment;
- (b) appeals to the Court of Appeal;
- (c) summary trials of Category B offences;
- (ca) summary trials of Category C offences;
- (d) proceedings in any youth court; and
- (e) preliminary inquiries.
- (3) A statement made on oath by a witness outside of the Islands and given in evidence through a live television link by virtue of this section shall be treated for the purpose of section 101 of the *Penal Code (2019 Revision)* as having been made in the proceedings in which it is given in evidence.
- (4) Where the court gives leave for a person to give evidence through a live television link then, subject to subsection (5), the person concerned may not give evidence otherwise than through a live television link.



- (5) A court may give permission for a person to give evidence otherwise than through a live television link if it appears to the court to be in the interests of justice to give such permission.
- (6) Permission may be given under subsection (5) —
 - (a) on an application by a party to the case; or
 - (b) of the court’s own motion,but no application may be made under paragraph (a) unless there has been a material change of circumstances since the leave was given by virtue of subsection (1).
- (7) The Cabinet may make such rules as appears to the Cabinet to be necessary for the purposes of this section.

Evidence through television links by accused

38. An accused person may give evidence through a live television link in accordance with section 60 of the *Criminal Procedure Code (2021 Revision)*.

Video recordings of testimony from child witnesses

- 39.** (1) This section applies in relation to —
- (a) trials on indictment;
 - (b) appeals to the Court of Appeal;
 - (c) summary trials of Category B offences; and
 - (d) proceedings in any youth court.
- (2) In any such proceedings, a video recording of an interview which —
- (a) is conducted between an adult and a child who is not the accused or one of the accused (“the child witness”); and
 - (b) relates to any matter in issue in the proceedings,
- may, with the leave of the court, be given in evidence insofar as it is not excluded by the court by subsection (3).
- (3) Where a video recording is tendered in evidence under this section, the court shall (subject to the exercise of any power of the court to exclude evidence which, is otherwise admissible) give leave under subsection (2) unless —
- (a) it appears that the child witness will not be available for cross-examination;
 - (b) any Rules of Court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court; or
 - (c) the court is of the opinion, having regard to all of the circumstances of the case, that in the interests of justice the recording ought not to be admitted,

and where the court gives such leave it may, if it is of the opinion that in the interests of justice any part of the recording ought not to be admitted, direct that that part shall be excluded.

- (4) In considering whether any part of the recording ought to be excluded under subsection (3), the court shall consider whether any prejudice to the accused, or one of the accused, which might result from the admission of that part is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.
- (5) Where a video recording is admitted under this section —
 - (a) the child witness shall be called by the party who tendered it in evidence; and
 - (b) that witness shall not be examined-in-chief on any matter which, in the opinion of the court, has been dealt with adequately in the witness's recorded testimony.
- (6) Where a video recording is given in evidence under this section, any statement made by the child witness which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony; and accordingly —
 - (a) any such statement shall be admissible evidence of any fact of which such testimony from that witness would be admissible; and
 - (b) no such statement shall be capable of corroborating any other evidence given by that witness,
and, in estimating the weight, if any, to be attached to such a statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn (as to its accuracy or otherwise).
- (7) Where the court gives leave under subsection (2), the child witness shall not give relevant evidence (within the meaning of subsection (10)) otherwise than by means of the video recording; but this is subject to subsection (8).
- (8) In a case falling within subsection (7), the court may give permission for the child witness to give relevant evidence (within the meaning of subsection (10)) otherwise than by means of the video recording if it appears to the court to be in the interests of justice to give such permission.
- (9) Permission may be given under subsection (8) on an application by a party to the case or of the court's own motion.
- (10) For the purpose of subsections (7) and (8), evidence shall be relevant evidence if —
 - (a) it is evidence-in-chief on behalf of the party who tendered the video recording, and



- (b) it relates to matter which, in the opinion of the court, is dealt with in the recording and which the court has not directed to be excluded under subsection (3).
- (11) In this section —
- “**child**” means a person who is under seventeen years of age;
- “**statement**” includes any representation of fact, whether made in words or otherwise; and
- “**video recording**” means any recording, on any medium, from which a moving image may, by any means, be produced and includes the accompanying sound track.

Discretion of court to disallow evidence in criminal proceedings

- 40.** Nothing in this Act derogates from the power of a court in any criminal proceeding to disallow evidence otherwise admissible which, in the opinion of such court, would, if allowed, operate unfairly against an accused person.

Abrogation of corroboration rules

- 41.** (1) Any requirement whereby, at a trial on indictment, it is obligatory for the court to give a warning about convicting the accused on the uncorroborated evidence of a person merely because that person is —
- (a) an alleged accomplice of the accused;
 - (b) a child; or
 - (c) where the offence charged is a sexual offence, the person in respect of whom it is alleged to have been committed,
- is hereby abrogated.
- (2) Any requirement that —
- (a) is applicable at the summary trial of a person for an offence; and
 - (b) corresponds to the requirement mentioned in subsection (1),
- is hereby abrogated.
- (3) Nothing in this section applies in relation to any trial or any proceedings which began before the 31st March, 2004.

PART IIIA - Special Measures Directions in Cases of Vulnerable and Intimidated Witnesses

Witnesses eligible for assistance on grounds of age or incapacity

- 41A.**(1) For the purposes of this Part a witness in criminal proceedings, other than the accused, is eligible for assistance by virtue of this section —

- (a) if under the age of seventeen at the time of the hearing; or
 - (b) if the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection (2).
- (2) The circumstances falling within this subsection are —
- (a) that the witness —
 - (i) suffers from a mental impairment within the meaning of the *Mental Health Act (2021 Revision)* or
 - (ii) otherwise has a significant impairment of intelligence and social functioning; or
 - (b) that the witness has a physical disability or is suffering from a physical disorder.
- (3) In subsection (1)(a) “**the time of the hearing**”, in relation to a witness, means the time when it falls to the court to make a determination for the purposes of section 41D(2) in relation to the witness.
- (4) In determining whether a witness falls within subsection (1)(b) the court shall consider any views expressed by the witness.
- (5) In this Part references to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose “**coherence**” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.

Witnesses eligible for assistance on grounds of fear or distress about testifying

- 41B.**(1) For the purposes of this Part a witness in criminal proceedings, other than the accused, is eligible for assistance by virtue of this subsection if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.
- (2) In determining whether a witness falls within subsection (1) the court shall take into account, in particular —
- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
 - (b) the age of the witness;
 - (c) such of the following matters as appear to the court to be relevant, namely —
 - (i) the social and cultural background and ethnic origins of the witness;
 - (ii) the domestic and employment circumstances of the witness; and



- (iii) any religious beliefs or political opinions of the witness; and
- (d) any behaviour towards the witness on the part of —
 - (i) the accused;
 - (ii) members of the family or associates of the accused; or
 - (iii) any other person who is likely to be an accused or a witness in the proceedings.
- (3) In determining that question the court shall in addition consider any views expressed by the witness.
- (4) Where the complainant in respect of a sexual offence is a witness in proceedings relating to that offence, or to that offence and any other offences, the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness's wish not to be so eligible by virtue of this subsection.

Special measures available to eligible witnesses

- 41C.**(1) For the purposes of this Part and subject to subsection (2) —
- (a) the provision which may be made by a special measures direction by virtue of each of sections 41H to 41K is a special measure available in relation to a witness eligible for assistance by virtue of section 41A; or
 - (b) the provision which may be made by such a direction by virtue of each of sections 41H to 41K is a special measure available in relation to a witness eligible for assistance by virtue of section 41B.
- (2) Where, apart from this subsection, a special measure would, in accordance with subsection (1)(a) or (b), be available in relation to a witness in any proceedings, it shall not be taken by a court to be available in relation to the witness unless —
- (a) the court has been notified by the Director of Public Prosecutions that relevant arrangements may be made available in the area in which it appears to the court that the proceedings will take place; and
 - (b) the notice has not been withdrawn.
- (3) In subsection (2)(a) “**relevant arrangements**” means arrangements for implementing the measure in question which cover the witness and the proceedings in question.
 - (4) The withdrawal of a notice under that subsection relating to a special measure shall not affect the availability of that measure in relation to a witness if a special measures direction providing for that measure to apply to the witness's evidence has been made by the court before the notice is withdrawn.
 - (5) The Cabinet may by order make such amendments of this Part as the Cabinet considers appropriate for altering the special measures which, in accordance with subsection (1)(a) or (b), are available in relation to a witness eligible for

assistance by virtue of section 41A or, as the case may be, section 41B, whether —

- (a) by modifying the provisions relating to any measure for the time being available in relation to such a witness;
- (b) by the addition —
 - (i) with or without modifications, of any measure which is for the time being available in relation to a witness eligible for assistance by virtue of any other section; or
 - (ii) of any new measure; or
- (c) by the removal of any measure.

Special measures direction relating to eligible witness

41D.(1) This section applies where in any criminal proceedings —

- (a) a party to the proceedings makes an application for the court to give a direction under this section in relation to a witness in the proceedings other than the accused; or
 - (b) the court of its own motion raises the issue whether such a direction should be given.
- (2) Where the court determines that the witness is eligible for assistance by virtue of section 41A or 41B, the court shall then —
- (a) determine whether any of the special measures available in relation to the witness, or any combination of them, would, in its opinion, be likely to improve the quality of evidence given by the witness; and
 - (b) if so —
 - (i) determine which of those measures, or combination of them, would, in its opinion, be likely to maximise so far as practicable the quality of such evidence; and
 - (ii) give a direction under this section providing for the measure or measures so determined to apply to evidence given by the witness.
- (3) In determining for the purposes of this Part whether any special measure or measures would or would not be likely to improve, or to maximise so far as practicable, the quality of evidence given by the witness, the court shall consider all the circumstances of the case, including in particular —
- (a) any views expressed by the witness; and
 - (b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.
- (4) A special measures direction shall specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.



- (5) Nothing in this Part is to be regarded as affecting any power of a court to make an order or give leave of any description, in the exercise of its inherent jurisdiction or otherwise —
- (a) in relation to a witness who is not an eligible witness; or
 - (b) in relation to an eligible witness where for example, in a case where a foreign language interpreter is to be provided, the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

Further provisions about directions: general

- 41E.** (1) Subject to subsection (2) and section 41F(8), a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either —
- (a) determined by acquittal, conviction or otherwise; or
 - (b) abandoned,
- in relation to the accused, or if there is more than one, in relation to each of the accused.
- (2) The court may discharge or vary or further vary a special measures direction if it appears to the court to be in the interests of justice to do so, and may do so either —
- (a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
 - (b) of its own motion.
- (3) In subsection (2)(a) “**the relevant time**” means —
- (a) the time when the direction was given; or
 - (b) if a previous application has been made under that subsection, the time when the application, or last application, was made.
- (4) Nothing in section 41I(2) and (3), 41J(4) to (7) or 41K(4) to (6) is to be regarded as affecting the power of the court to vary or discharge a special measures direction under subsection (2).
- (5) The court shall state in open court its reasons for —
- (a) giving or varying;
 - (b) refusing an application for, or for the variation or discharge of; or
 - (c) discharging,
- a special measures direction and, if it is a court of summary jurisdiction, the magistrate shall cause the reasons to be entered in the register of its proceedings.
- (6) Rules of Court may make provision —

- (a) for uncontested applications to be determined by the court without a hearing;
- (b) for preventing the renewal of an unsuccessful application for a special measures direction except where there has been a material change of circumstances;
- (c) for expert evidence to be given in connection with an application for, or for varying or discharging, such a direction; and
- (d) for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

Special provisions relating to child witness

41F. (1) For the purposes of this section —

- (a) a witness in criminal proceedings is a “**child witness**” if the witness is an eligible witness by reason of section 41A(1)(a), whether or not the witness is an eligible witness by reason of any other provision of section 41A or 41B;
- (b) a child witness is “in need of special protection” if the offence, or any of the offences, to which the proceedings relate is —
 - (i) a sexual offence;
 - (ii) a kidnapping or abduction offence;
 - (iii) an assault offence;
 - (iv) a firearm offence; or
 - (v) a violent offence; and
- (c) a “**relevant recording**”, in relation to a child witness, is a video recording of an interview of the witness made with a view to its admission as evidence-in-chief of the witness.

(2) Where the court, in making a determination for the purposes of section 41D(2), determines that a witness in criminal proceedings is a child witness, the court shall —

- (a) first have regard to subsections (3) to (7); and
- (b) then have regard to section 41D(2),

and for the purposes of section 41D(2), as it then applies to the witness, any special measures required to be applied in relation to the witness by virtue of this section shall be treated as if they were measures determined by the court, pursuant to section 41D(2)(a) and (b)(i), to be ones that, whether on their own or with any other special measures, would be likely to maximise, so far as practicable, the quality of the witness’s evidence.



- (3) The primary rule in the case of a child witness is that the court shall give a special measures direction in relation to the witness which complies with the following requirements —
 - (a) it shall provide for any relevant recording to be admitted under section 41J; and
 - (b) it shall provide for any evidence given by the witness in the proceedings which is not given by means of a video recording, whether in-chief or otherwise, to be given by means of a live link in accordance with section 41I.
- (4) The primary rule is subject to the following limitations —
 - (a) the requirement contained in subsection (3)(a) or (b) has effect subject to the availability within the meaning of section 41C(2) of the special measure in question in relation to the witness;
 - (b) the requirement contained in subsection (3)(a) also has effect subject to section 41J(2); and
 - (c) the rule does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the witness's evidence so far as practicable, whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason.
- (5) Subsection (4)(c) does not apply in relation to a child witness in need of special protection.
- (6) Where a child witness is in need of special protection by virtue of subsection (1)(b)(i), any special measures direction given by the court which complies with the requirement contained in subsection (3)(a) shall in addition provide for the special measure available under section 41K to apply in relation to —
 - (a) any cross-examination of the witness otherwise than by the accused in person; and
 - (b) any subsequent re-examination.
- (7) The requirement contained in subsection (6) has effect subject to the following limitations —
 - (a) it has effect subject to the availability, within the meaning of section 41C(2), of that special measure in relation to the witness; and
 - (b) it does not apply if the witness has informed the court that the witness does not want that special measure to apply in relation to such witness.
- (8) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 41A(1)(a), then —
 - (a) subject to subsection (9); and

- (b) except where the witness has already begun to give evidence in the proceedings,
the direction shall cease to have effect at the time when the witness attains the age of seventeen.
- (9) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 41A(1)(a) and —
- (a) the direction provides —
- (i) for any relevant recording to be admitted under section 41J as evidence-in-chief of the witness; or
- (ii) for the special measure available under section 41K to apply in relation to the witness; and
- (b) if it provides for that special measure to so apply, the witness is still under the age of seventeen when the video recording is made for the purposes of section 41K,
then, so far as it provides as mentioned in paragraph (a)(i) or (ii), the direction shall continue to have effect in accordance with section 41F(1) even though the witness subsequently attains that age.

Extension of provision of section 41F to certain witnesses over seventeen

- 41G.**(1) For the purposes of this section —
- (a) a witness in criminal proceedings, other than the accused, is a “**qualifying witness**” if the witness —
- (i) is not an eligible witness at the time of the hearing, as defined by section 41A(3); and
- (ii) was under the age of seventeen when a relevant recording was made;
- (b) a qualifying witness is “**in need of special protection**” if the offence, or any of the offences, to which the proceedings relate is —
- (i) a sexual offence;
- (ii) a kidnapping or abduction offence;
- (iii) an assault offence;
- (iv) a firearm offence; or
- (v) a violent offence; and
- (c) a “**relevant recording**”, in relation to a witness, is a video recording of an interview of the witness made with a view to its admission as evidence-in-chief of the witness.
- (2) Subsections (2) to (7) of section 41F shall apply as follows in relation to a qualifying witness —



- (a) subsections (2) to (4), so far as relating to the giving of a direction complying with the requirement contained in subsection (3)(a), shall apply to a qualifying witness in respect of the relevant recording as they apply to a child witness within the meaning of that section;
- (b) subsection (5), so far as relating to the giving of such a direction, shall apply to a qualifying witness in need of special protection as it applies to a child witness in need of special protection within the meaning of that section; and
- (c) subsections (6) and (7) shall apply to a qualifying witness in need of special protection by virtue of subsection (1)(b)(i) as they apply to such a child witness as is mentioned in subsection (6).

Screening witness from accused

- 41H.**(1) A special measures direction may provide for the witness, while giving testimony or being sworn in court, to be prevented by means of a screen or other arrangement from seeing the accused.
- (2) The screen or other arrangement shall not prevent the witness from being able to see, and to be seen by —
 - (a) the magistrate or judge, or both, and the jury, if there is one;
 - (b) legal representatives acting in the proceedings; and
 - (c) any interpreter or other person appointed in pursuance of the direction or otherwise to assist the witness.
 - (3) Where two or more legal representatives are acting for a party to the proceedings, subsection (2)(b) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.
 - (4) The provisions of this section shall not apply in relation to a witness who is the subject of an order under the *Criminal Evidence (Witness Anonymity) Act (2014 Revision)*.

Evidence by live link

- 41I.** (1) A special measures direction may provide for the witness to give evidence by means of a live link.
- (2) Where a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the court.
 - (3) The court may give permission for the purposes of subsection (2) if it appears to the court to be in the interests of justice to do so, and may do so either —
 - (a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or

- (b) of its own motion.
- (4) In subsection (3)(a) “**the relevant time**” means —
 - (a) the time when the direction was given; or
 - (b) if a previous application has been made under that subsection, the time when the application, or last application, was made.

Video recorded evidence in chief

- 41J.** (1) A special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence-in-chief of the witness.
- (2) A special measures direction may, however, not provide for a video recording, or a part of such a recording, to be admitted under this section if the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording, or that part of it, should not be so admitted.
 - (3) In considering for the purposes of subsection (2) whether any part of a recording should not be admitted under this section, the court shall consider whether any prejudice to the accused which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.
 - (4) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if —
 - (a) it appears to the court that —
 - (i) the witness will not be available for cross-examination, whether conducted in the ordinary way or in accordance with any such direction; and
 - (ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or
 - (b) any Rules of Court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court.
 - (5) Where a recording is admitted under this section —
 - (a) the witness shall be called by the party tendering it in evidence, unless —
 - (i) a special measures direction provides for the witness’s evidence on cross-examination to be given otherwise than by testimony in court; or
 - (ii) the parties to the proceedings have agreed as mentioned in subsection (4)(a)(ii); and
 - (b) the witness may not give evidence-in-chief otherwise than by means of the recording —



- (i) as to any matter which, in the opinion of the court, has been dealt with adequately in the witness's recorded testimony; or
 - (ii) without the permission of the court, as to any other matter which, in the opinion of the court, is dealt with in that testimony.
- (6) Where in accordance with subsection (2) a special measures direction provides for part only of a recording to be admitted under this section, references in subsections (4) and (5) to the recording or to the witness's recorded testimony are references to the part of the recording or testimony which is to be so admitted.
- (7) The court may give permission for the purposes of subsection (5)(b)(ii) if it appears to the court to be in the interests of justice to do so, and may do so either —
 - (a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
 - (b) of its own motion.
- (8) In subsection (7)(a) “**the relevant time**” means —
 - (a) the time when the direction was given; or
 - (b) if a previous application has been made under that subsection, the time when the application, or last application, was made.
- (9) The court may, in giving permission for the purposes of subsection (5)(b)(ii), direct that the evidence in question is to be given by the witness by means of a live link; and, if the court so directs, section 41I shall apply in relation to that evidence as it applies in relation to evidence which is to be given in accordance with a special measures direction.
- (10) Nothing in this section affects the admissibility of any video recording which would be admissible apart from this section.

Video recorded cross-examination or re-examination

- 41K.(1)** Where a special measures direction provides for a video recording to be admitted under section 41J as evidence-in-chief of the witness, the direction may also provide —
- (a) for any cross-examination of the witness, and any re-examination, to be recorded by means of a video recording; and
 - (b) for such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.
- (2) A recording pursuant to subsection (1) shall be made in the presence of such persons as Rules of Court or the direction may provide and in the absence of the accused, but in circumstances in which —

- (a) the magistrate or judge, or both, and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made; and
 - (b) the accused is able to see and hear any such examination and to communicate with any legal representative acting for that person.
- (3) Where two or more legal representatives are acting for a party to the proceedings, subsection (2)(a) and (b) are to be regarded as satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.
- (4) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of subsection (2) or Rules of Court or the direction has not been complied with to the satisfaction of the court.
- (5) Where in pursuance of subsection (1) a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings, whether in any recording admissible under section 41J or this section or otherwise than in such a recording, unless the court gives a further special measures direction making such provision as is mentioned in subsection (1)(a) and (b) in relation to any subsequent cross-examination, and re-examination, of the witness.
- (6) The court may only give such a further direction if it appears to the court —
 - (a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made in pursuance of subsection (1), of a matter which that party could not with reasonable diligence have ascertained by then; or
 - (b) that for any other reason it is in the interests of justice to give the further direction.
- (7) Nothing in this section shall be read as applying in relation to any cross-examination of the witness by the accused in person in a case where the accused is to be able to conduct any such cross-examination.

Warning to jury

41L. Where on a trial on indictment evidence has been given in accordance with a special measures direction, the judge shall give the trier of fact such warning, if any, as the judge considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the accused.



Interpretation

41M. In this Part —

“**special measures direction**” means a direction under this Part”; and

“**live link**” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the persons specified in section 41H(2)(a) to (c).

PART IV - Civil proceedings

Parties as witnesses in civil cases

42. The parties in civil proceedings in or before any court and their spouses or civil partners are both competent and compellable to give evidence on behalf of either or any of the parties thereto unless specifically excepted by this or any other law.

Evidence in cases arising from breach of promise of marriage

43. No plaintiff in any action for breach of promise of marriage may recover a verdict or judgment unless such plaintiff’s testimony is corroborated by some other material evidence in support of such promise.

Admissibility of hearsay evidence in civil cases

44. In civil proceedings a statement other than one made by a person while giving oral evidence in those proceedings shall be admissible as evidence of any fact stated therein to the extent that it is so admissible by virtue of this or any other law or by agreement of the parties, but not otherwise.

Admissibility of out of court statements

- 45.** (1) In civil proceedings a statement made, whether orally or in a document or otherwise, by any person, whether called as a witness in those proceedings or not, is, subject to this section and to Rules of Court, admissible as evidence of any fact stated therein of which oral evidence by the person would be admissible.
- (2) Where, in any civil proceedings, a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceedings the person by whom the statement was made, the statement —
- (a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the court; and
 - (b) without prejudice to paragraph (a), shall not be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person by whom it was made, except —

- (i) where, before that person is called, the court allows evidence of the making of the statement to be given on behalf of that party by some other person; or
 - (ii) insofar as the court allows the person by whom the statement was made to narrate it in the course of the person's examination-in-chief on the ground that to prevent the person from doing so would adversely affect the intelligibility of the person's evidence.
- (3) Where, in civil proceedings, a statement which was made otherwise than in a document is admissible by virtue of this section, no evidence other than direct oral evidence by the person who made the statement or any person who heard or otherwise perceived it being made is admissible for the purpose of proving it: Provided that, if the statement in question was made by a person while giving oral evidence in some other legal proceedings (whether civil or criminal), it may be proved in any manner authorised by the court.

When witness's previous statement may be evidence

- 46.** (1) Where in a civil proceeding —
- (a) a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved by virtue of section 4, 5 or 6; or
 - (b) a previous statement made by a person called as aforesaid is proved for the purpose of rebutting a suggestion that that person's evidence has been fabricated,
- that statement is, by virtue of this subsection, admissible as evidence of any fact stated therein of which direct oral evidence by the person would be admissible.
- (2) Nothing in this Act affects any rule of law whereby, when a person called as a witness in any civil proceedings is cross-examined on a document used by the person to refresh the person's memory, that document may be made evidence in that proceeding or where a document or any part of it is received in evidence in such proceeding by virtue of any such rule, a statement made therein by the person using it to refresh the person's memory is, by virtue of this subsection, admissible as evidence of any fact therein of which direct oral evidence by the person would be admissible.



Admissibility of certain records

- 47.** (1) Without prejudice to section 48, in a civil proceeding, a statement contained in a document is, subject to this section and to Rules of Court, admissible as evidence of any fact therein stated to which direct oral evidence would be admissible, if the document is, or forms part of, a record compiled by a person acting under a duty from information which was supplied by a person (whether acting under a duty or not) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information and which, if not supplied by that person to the compiler of the record directly, was supplied by that person to the compiler of the record indirectly through one or more intermediaries each acting under a duty.
- (2) Where, in a civil proceeding, a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceeding the person who originally supplied the information from which the record containing the statement was compiled, the statement —
- (a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the court; and
 - (b) without prejudice to paragraph (a), shall not, without the leave of the court, be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person who originally supplied the said information.
- (3) Reference in this section to a person acting under a duty includes a person acting in the course of any trade, business, profession or other occupation in which the person is engaged or employed or for the purposes of any paid or unpaid office held by him.

Computers

- 48.** (1) In any civil proceedings a statement contained in a document produced by a computer is, subject to Rules of Court, admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown —
- (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store and process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any person;
 - (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;
 - (c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly

- or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and
- (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.
- (2) In any civil proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate —
- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer; and
- (c) dealing with any of the matters to which the conditions mentioned in subsection (1) relate,

and purporting to be signed by a person occupying a responsible position with relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated therein; and for the purposes of this subsection it is sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

- (3) For the purposes of this Act —
- (a) information is taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment; and
- (b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities.
- (4) Any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

Provisions supplementary to section 45, 47 or 48

49. (1) Where, in civil proceedings, a statement contained in a document is proposed to be given in evidence by virtue of section 45, 47 or 48 it may, subject to any Rules of Court, be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of a material part thereof, authenticated in such manner as the court may approve.
- (2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 45, 47 or 48 the court may draw any reasonable inference



from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including in the case of a statement contained in a document, the form and contents of that document.

- (3) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 45, 46, 47 or 48, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular —
 - (a) in the case of a statement falling within section 45(1), 46(1) or 47(2), to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts;
 - (b) in the case of a statement falling within section 47(1), to the question whether or not the person who originally supplied the information from which the record containing the statement was compiled did so contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not that person or any person concerned with compiling or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts; and
 - (c) in the case of a statement falling within section 48(1), to the question whether or not the matter which the information contained in the statement reproduces, or is derived from, was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with therein, and to the question whether or not any person concerned with the supply of information to that computer, or within the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.
- (4) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated —
 - (a) a statement which is admissible in evidence by virtue of section 45 or 46 is not capable of corroborating evidence given by the maker of the statement; and
 - (b) a statement which is admissible in evidence by virtue of section 47 is not capable of corroborating evidence given by the person who originally supplied the information from which the record containing the statement was compiled.
- (5) A person who, in a certificate tendered in evidence in civil proceedings by virtue of section 48(2), wilfully makes a statement material to such proceedings in the

truth of which the person does not believe is liable on conviction on indictment to a fine and to imprisonment for two years.

Admissibility of evidence as to credibility of maker, etc., of certain statements

- 50.** Subject to Rules of Court, where, in any civil proceedings, a statement made by a person who is not called as a witness in those proceedings is given in evidence by virtue of section 45 —
- (a) any evidence which, if that person had been so called, would be admissible for the purpose of destroying or supporting that person's credibility as a witness is admissible for that purpose in those proceedings; and
 - (b) evidence tending to prove that, whether before or after the person made that statement, that person made (whether orally or in a document or otherwise) another statement inconsistent therewith is admissible for the purpose of showing that the person has contradicted themselves:

Provided that nothing in this section shall enable evidence to be given of any matter of which, if the person in question had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

Admissibility of certain hearsay evidence formerly admissible at common law

- 51.** (1) In any civil proceedings, a statement which, if this Part had not been passed, would by virtue of any rule of law mentioned in subsection (2) have been admissible as evidence of any fact stated therein shall be admissible as evidence of that fact by virtue of this subsection.
- (2) The rules of law referred to in subsection (1) include any rule of law whereby in a civil proceeding —
- (a) an admission adverse to a party to the proceedings, whether made by that party or by another person, may be given in evidence against that party for the purpose of proving any fact stated in the admission;
 - (b) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated therein;
 - (c) public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated therein; and
 - (d) records (for example, the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated therein.



- (3) In a civil proceeding, a statement which tends to establish reputation or family tradition with respect to any matter and which, if this Act had not been passed, would have been admissible in evidence by virtue of any rule of law mentioned in subsection (4) —
- (a) shall be admissible in evidence by virtue of this paragraph insofar as it is not capable of being rendered admissible under section 45 or 47; and
 - (b) if given in evidence under this Part (whether by virtue of paragraph (a) or otherwise) is, by virtue of this paragraph, admissible as evidence of the matter reputed or handed down,
- and, without prejudice to paragraph (b), reputation is for the purposes of this Part treated as a fact and not as a statement or multiplicity of statements dealing with the matter reputed.
- (4) The rules of law referred to in subsection (3) include any rule of law whereby in a civil proceeding —
- (a) evidence of a person’s reputation is admissible for the purpose of establishing the person’s good or bad character;
 - (b) involving a question of pedigree or of the existence of a marriage or civil partnership is in issue, evidence of reputation or family tradition is admissible for the purpose of proving or disproving pedigree or the existence of the marriage or civil partnership; or
 - (c) evidence of reputation or family tradition is admissible for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing.
- (5) It is hereby declared that insofar as any statement is admissible in a civil proceeding by virtue of subsection (1) or (3)(a), it may be given in evidence in those proceedings notwithstanding anything in sections 45 to 50 or in any Rules of Court made under section 56.
- (6) The words in which any rule of law mentioned in section 45 or 47 is there described are intended only to identify the rule in question and shall not be construed as altering that rule in any way.
- (7) In subsection (2) —
- “**admission**” includes any representation of fact, whether made in words or otherwise.

Conviction as evidence in civil proceedings

- 52.** (1) In civil proceedings, the fact that a person has been convicted of an offence before any court in the Islands is, subject to subsection (3), admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that the person committed the offence, whether the person was so convicted upon a plea of guilty or otherwise and whether or not the person is a party to the civil proceeding; but no conviction other than a subsisting one is admissible in evidence by virtue of this section.
- (2) In civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by any court in the Islands —
- (a) that person shall be taken to have committed that offence unless the contrary is proved; and
- (b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge-sheet on which the person was convicted, is admissible in evidence for that purpose.
- (3) Nothing in this section prejudices the operation of section 49 or of any other law whereby a conviction or a finding of fact in criminal proceedings is, for the purpose of any other proceedings, made conclusive evidence of any fact.
- (4) Where, in civil proceedings, the contents of a document are admissible in evidence by virtue of subsection (2), a copy of that document, or of the material part thereof, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody thereof is admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.
- (5) Nothing in any law under which a conviction leading to probation or discharge is to be disregarded, except as therein mentioned, affects the operation of this section.

Findings of adultery and paternity as evidence in civil proceedings

- 53.** (1) In civil proceedings, the fact that a person has been —
- (a) found to have committed adultery in a matrimonial or a civil partnership proceeding before any court in the Islands; or
- (b) adjudged to be the father of a child in affiliation proceedings before any court in the Islands,
- is, subject to subsection (3), admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that the person committed the adultery to which the finding relates, or as the case may be, is (or



was) the father of that child, whether or not the person offered any defence to the allegation of adultery or paternity and whether or not the person is a party to the civil proceedings; but no finding or adjudication other than a subsisting one is admissible in evidence by virtue of this section.

- (2) In civil proceedings in which by virtue of this section a person is proved to have been found guilty of adultery as mentioned in paragraph (a) of subsection (1) or to have been adjudged to be the father of a child as mentioned in paragraph (b) of subsection (1) —
 - (a) he shall be taken to have committed the adultery to which the finding relates, or, as the case may be, to be (or have been) the father of that child, unless the contrary is proved; and
 - (b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the finding or adjudication was based, the contents of any document which was before the court, or which contains any pronouncement of the court, in the matrimonial, civil partnership or affiliation proceedings in question is admissible in evidence for that purpose.
- (3) Nothing in this section prejudices the operation of any law whereby a finding of fact in any matrimonial, civil partnership or affiliation proceedings is, for the purposes of any other proceedings, made conclusive evidence of any fact.

Conclusiveness of evidence for purposes of defamation actions

- 54.** (1) In any action for libel or slander in which the question whether a person did or did not commit a criminal offence is relevant to an issue arising in the action, proof that, at the time when the issue falls to be determined, that person stands convicted of that offence is conclusive evidence that that person committed that offence; and that person's conviction thereof is admissible in evidence accordingly.
- (2) In any action in which, by virtue of this section, a person is proved to have been convicted of an offence, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge-sheet on which that person was convicted, is, without prejudice to the reception of other admissible evidence for the purpose of identifying the facts on which the conviction was based, admissible in evidence for the purpose of identifying those facts.
 - (3) For the purposes of this section a person shall be taken to stand convicted of an offence if, but only if, there subsists against that person a conviction for that offence by a court in the Islands.
 - (4) Section 52(4) and (5) applies for the purposes of any action begun after the 12th December, 1978, whenever the cause of action arose, but shall not apply for the

purposes of any action begun before the 12th December, 1978 or any appeal or other proceedings arising out of such action.

Privilege against incrimination of self or spouse or civil partner, etc.

55. (1) The right of a person in any legal proceedings other than criminal proceedings to refuse to answer any question or produce any document or thing if to do so would tend to expose that person to proceedings for an offence or for the recovery of a penalty —
- (a) shall apply only as regards criminal offences under the law of the Islands and penalties provided for by such law; and
 - (b) shall include a like right to refuse to answer any question or produce any document or thing if to do so would tend to expose the husband, wife or civil partner of that person to proceedings for any such criminal offence or for the recovery of any such penalty.
- (2) Insofar as any existing enactment conferring (in whatever words) powers of inspection or investigation confers on a person (in whatever words) any right otherwise than in criminal proceedings to refuse to answer any question or give any evidence tending to incriminate that person, subsection (1) applies to that right as it applies to the right described in that subsection; and every such existing enactment is to be construed accordingly.
- (3) Insofar as any existing enactment provides (in whatever words) that in any proceedings other than criminal proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate that person, that enactment shall be construed as providing also that in such proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate the husband, wife or civil partner of that person.
- (4) Where any existing enactment (however worded) that —
- (a) confers powers of inspection or investigation; or
 - (b) provides as mentioned in subsection (3),
- further provides (in whatever words) that any answer or evidence given by a person is not admissible in evidence against that person in any proceedings or class of proceedings (however described, and whether criminal or not), that enactment is to be construed as providing also that any answer or evidence given by that person is not admissible in evidence against the husband, wife or civil partner of that person in the proceedings or class of proceedings in question.
- (5) In this section —
- “**existing enactment**” means any enactment passed before 12th December, 1978;



and the references to giving evidence are references to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

- (6) A party other than a party to the proceedings cannot be compelled to produce any deed or document relating to the title of that party's land.
- (7) A party to the proceedings cannot be compelled to produce any document relating solely to that party's own case and in no way tending to impeach that case or support the case of any opposing party.

Rules

- 56.** (1) Without prejudice to the powers to make Rules of Court conferred upon the Chief Justice by any other law, the Chief Justice may make Rules of Court as to the procedure which, subject to any exceptions provided for in the Rules, must be followed and the other conditions which, subject as aforesaid, must be fulfilled before a statement can be given in civil proceedings by virtue of section 45, 47 or 48.
- (2) Rules of Court made under subsection (1) may, subject to such exceptions, if any, as may be provided for therein —
- (a) require a party to any civil proceedings who desires to give in evidence any such statement as is mentioned in that subsection to give every other party to the proceedings such notice of that party's desire so to do and such particulars of or relating to the statement as may be specified in the Rules, including particulars of such one or more of the persons connected with the making or recording of the statement or, in the case of a statement falling within section 45(1), such one or more of the persons concerned as mentioned in paragraph (c) of section 49(3) as the Rules may, in any case, require; and
 - (b) enable any party who receives such notice as aforesaid by counternotice to require any person of whom particulars were given with the notice to be called as a witness in the proceedings unless that person is dead, or beyond the seas, or unfit by reason of that person's bodily or mental condition to be called as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since that person was connected or concerned as aforesaid and to all the circumstances) to have any recollection of matters relevant to the accuracy or otherwise of the statement.
- (3) Rules of Court made under subsection (1) —
- (a) may confer on the court, in any civil proceedings, a discretion to allow a statement falling within section 45(1), 47(1) or 48(1) to be given in evidence notwithstanding that any requirement of the Rules affecting the admissibility of that statement has not been complied with, but except in

pursuance of paragraph (b), shall not confer on the court a discretion to exclude such a statement where the requirements of the Rules affecting its admissibility have been complied with;

- (b) may confer on the court power, where a party to any proceedings has given notice that such party desires to give in evidence —
- (i) a statement falling within section 45(1) 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
 - (ii) a statement falling within section 45(1) which is contained in a record of any direct oral evidence given in some other legal proceedings (whether civil or criminal),

to give directions, on the application of any party to the proceedings, as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted so to do and (where applicable) as to the manner in which that statement and other evidence given in those other proceedings is to be proved; and

- (c) may make different provisions for different circumstances and in particular may make different provisions with respect to statements falling within sections 45(1), 47(1) and 48(1) respectively,

and any discretion conferred on the court by Rules of Court made as aforesaid may be either a general discretion or a discretion exercisable only in such circumstances as may be specified in the Rules.

- (4) Rules of Court may make provision for preventing a party to any civil proceedings (subject to any exceptions provided for in the Rules) from adducing in relation to a person who is not called as a witness in those proceedings any evidence which could otherwise be adduced by the person by virtue of section 50 unless that party has, in pursuance of the rules, given in respect of that person such a counternotice as is mentioned in paragraph (b) of subsection (2).
- (5) In deciding for the purpose of any Rules of Court made in pursuance of this section whether or not a person is fit to attend as a witness, a court may act on a certificate purporting to be a certificate of a qualified medical practitioner.

PART V - Miscellaneous

Proof of service of summons

- 57.** The personal service of any summons issued under the process of any court may be proved in any legal proceedings by affidavit sworn or affirmed before any Justice of the Peace.



Form of affidavit

- 58.** Every affidavit as mentioned in section 57 shall state the name of the complainant or prosecutor, the name of the defendant, the date of the summons, the name of the person who issued the same, the hour of the day, day of the week, month and year, and the particular place at which the service is effected, and shall state that at the time of service such summons was read over or explained to the person served, and shall also state whether or not the person served was, previous to the service, personally known to the person serving the summons; and, if not so known, shall state how the person serving the summons knew that the person served was the person who ought to be served; such affidavit may be in the form given in the Schedule or to the like effect.

Original summons to be marked for identification

- 59.** The original summons shall be marked for identification by the person taking the affidavit, and the affidavit when made, shall be attached to the original summons.

Affidavit shall be received in evidence

- 60.** Any affidavit which contains the statement required by section 58 is receivable, without proof, in any legal proceedings as *prima facie* evidence of the facts therein stated.

Proof of service of process

- 61.** Notwithstanding anything in this or any other law contained, where any summons or other process of a court is served by a constable or other person authorised in that behalf, the service may be proved by endorsement on the original or a copy of the summons or process under the hand of such person effecting the service, showing the fact and mode of the service of such summons or process; and any such person wilfully and corruptly endorsing any false statement on the original or a copy of a summons or other process commits perjury and is punishable accordingly.

Power of court to impound documents

- 62.** Where any document has been admitted in evidence before any court and such court is of the opinion that, in relation to that document, an offence has been committed, the court may impound such document and make such order in relation to it as the court thinks fit.

False certificates

- 63.** A person who, being authorised or required by this Act to furnish any certified copy or extract, wilfully certifies any such copy or extract as being a true copy or extract, not believing the same to be a true copy or extract, commits an offence and is liable on conviction to imprisonment for two years.

Witness about to leave the Islands

- 64.** A court, on being satisfied that any person under recognisance to appear before it to give evidence in any criminal proceeding is likely to leave the Islands before having done so, may order such person to give security that such person will not leave the Islands until such person has duly appeared to give such evidence, and in default of such security the court may, if it thinks fit, order that such person shall be detained until such person has appeared to give evidence in such proceeding upon such terms as to costs and compensation for loss of time to such person as the court may deem fit.

Transitional provisions

- 65.** Where at the date of commencement of the the *Evidence (Amendment) Act, 2018 [Law 30 of 2018]*, any trial or any proceedings in respect of an offence pending before a court, the trial or proceedings shall, on and after that date, be dealt with in all respects under this Act (irrespective of when the offence was committed) and the provisions of this Act are to apply accordingly.



SCHEDULE*(section 58)***Form of Service of Affidavit of Summons**

I, E.F. (Constable), (or as the case may be), do swear that on the day of ,20 ,
at o'clock in the fore/afternoon at, , I served upon A.B. a summons
now marked "A", dated the day of ,20 , and issued by J.S., a
against A.B. on the of C.D. the .

At the time that I served the summons on A.B., I read over the same to that person (or
explained the same to that person). Before the day on which I served such summons I knew
A.B. personally (or other means of identification).

Taken and sworn to before me at this day of , 20 .

(Signed) A.B.

*Justice of the Peace
(or as the case may be)*

**Publication in consolidated and revised form authorised by the Cabinet this 5th day
of January, 2021.**

Kim Bullings
Clerk of the Cabinet



ENDNOTES

Table of Legislation History:

SL #	Law #	Legislation	Commencement	Gazette
	56/2020	Citation of Acts of Parliament Act, 2020	3-Dec-2020	LG89/2020/s1
	37/2020	Evidence (Amendment) Law, 2020	4-Sep-20	LG64/2020/s3
	35/2020	Civil Partnership Act, 2020	4-Sep-2020	LG64/2020/s1
		Evidence Law (2019 Revision)	14-Feb-2019	LG1/2019/s1
	30/2018	Evidence (Amendment) Law, 2018	19-Dec-18	GE97/2018/s5
		Evidence Law (2018 Revision)	16-Mar-18	GE22/2018/s14
	31/2017	Evidence (Amendment) Law, 2017	5-May-17	GE38/2017/s3
		Evidence Law (2011 Revision)	24-Oct-11	G22/2011/s14
	43/2010	Evidence (Amendment) Law, 2010	31-Jan-11	G3/2011/s3
		Evidence Law (2007 Revision)	9-Jul-07	G14/2007/s9
	5/2006	Evidence (Amendment) Law, 2006	13-Jun-06	G12/2006/s1
		Evidence Law (2006 Revision)	10-Jul-06	G14/2006/s2
	21/2005	Evidence (Amendment) Law, 2005	15-Nov-05	G23/2005/s6
		Evidence Law (2004 Revision)	26-Jul-04	G15/2004/s8
	2/2004	Evidence (Amendment) Law, 2004	31-Mar-04	GE14/2004/s1
	30/2001	Evidence (Amendment) Law, 2001	12-Dec-01	GE30/2001/s8
	20/2001	Evidence (Amendment) (Spouses, Experts, Foreign Convictions, Alibis, Etc.) Law, 2001	12-Dec-01	GE30/2001/s1
		Evidence Law (1995 Revision)	14-Nov-95	G23/1995/s1
	34/1985	Evidence (Amendment) Law, 1985	6-Jan-86	G1/1986/s2
	15/1984	Evidence (Amendment) Law, 1984	29-Aug-84	GE-17 Aug/1984/s2
		Evidence Law, 1978, (Commencement) Order,	14-Nov-78	GE/1978/p2
	13/1978	Evidence Law, 1978	12-Dec-78	G14/1978/s6





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