



Isle of Man

Ellan Vannin

AT 14 of 2008

ADMINISTRATION OF JUSTICE ACT 2008



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**Isle of Man***Ellan Vannin*

ADMINISTRATION OF JUSTICE ACT 2008

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AN ACT to make new provision with respect to the judges of the High Court; to modernise the law relating to the admission of hearsay evidence in civil proceedings; to amend enactments relating to civil proceedings and the administration of justice; and for connected purposes.

PART 1 – THE HIGH COURT

1 Judges of the High Court

- (1) [Amends section 2 of the *High Court Act 1991* (“**the 1991 Act**”) by substituting subsection (2).]
- (2) [Substitutes sections 3, 3A, 3B and 3C for section 3 of the *High Court Act 1991*.]
- (3) [Inserts section 4A in the *High Court Act 1991*.]
- (4) Any person who, immediately before the commencement of this section, holds the office of –
 - (a) Deputy Deemster; or
 - (b) Acting Deemster,shall continue in office as a Deemster appointed under section 3B of the 1991 Act (as inserted by this Act) for such period and subject to such conditions as are specified in his or her appointment.

2 Distribution of business amongst Judges of the High Court

[Amends section 12 of the *High Court Act 1991* by substituting subsections (4) and (5) for subsection (4).]

3 Arbitration proceedings

[Substitutes section 16 of the *High Court Act 1991*.]

4 Appeals

(1) [Inserts section 19B in the *High Court Act 1991*.]

(2) [Inserts section 21A in the *High Court Act 1991*.]

5 Practice directions and forms

[Inserts sections 27A and 27B in the *High Court Act 1991*.]

6 Powers of High Court

(1) [Amends section 34(2) of the *High Court Act 1991* (powers exercisable before commencement of action) by repealing the words “in which a claim in respect of personal injuries to a person, or in respect of a person’s death, is likely to be made”.]

(2) [Amends section 35(1) of the *High Court Act 1991* (power to order disclosure of documents, inspection of property) by repealing the words from “in which” to the end of the subsection.]

7 Costs

[Amends section 53 of the *High Court Act 1991* by substituting subsections (3), (4) and (5) for subsection (3).]

8 Salaries of certain Crown Appointments

[Inserts section 57A in the *High Court Act 1991*.]

PART 2 – ADMISSIBILITY OF HEARSAY EVIDENCE

9 Admissibility of hearsay evidence

[P1995/38/1]

(1) In civil proceedings evidence shall not be excluded on the ground that it is hearsay.

(2) In this Part –

(a) “**hearsay**” means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated; and

(b) references to hearsay include hearsay of whatever degree.

(3) Nothing in this Part affects the admissibility of evidence admissible apart from this section.

- (4) Sections 10 to 21 do not apply in relation to hearsay evidence admissible apart from this section, even though it may also be admissible by virtue of this section.

Safeguards in relation to hearsay evidence

10 Notice of proposal to adduce hearsay evidence

[P1995/38/2]

- (1) A party proposing to adduce hearsay evidence in civil proceedings shall, subject to this section, give to the other party or parties to the proceedings —
- (a) such notice (if any) of that fact; and
 - (b) on request, such particulars of or relating to the evidence,
- as is reasonable and practicable in the circumstances for the purpose of enabling them to deal with any matters arising from its being hearsay.
- (2) Provision may be made by rules of court —
- (a) specifying classes of proceedings or evidence in relation to which subsection (1) does not apply; and
 - (b) as to the manner in which (including the time within which) the duties imposed by that subsection are to be complied with in the cases where it does apply.
- (3) Subsection (1) may be excluded by agreement of the parties.
- (4) Compliance with the duty to give notice under subsection (1) may in any case be waived by the person to whom notice is required to be given.
- (5) A failure to comply with subsection (1), or with rules under subsection (2)(b), does not affect the admissibility of the evidence but may be taken into account by the court —
- (a) in considering the exercise of its powers with respect to the course of proceedings and costs; and
 - (b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 12.

11 Power to call witness for cross-examination on hearsay statement

[P1995/38/3]

Rules of court may provide that where a party (“A”) to civil proceedings adduces hearsay evidence of a statement made by a person (“B”) and does not call B as a witness, any other party to the proceedings may, with the leave of the court, call B as a witness and cross-examine B on the statement as if B had been called by A and as if the hearsay statement were B’s evidence in chief.

12 Considerations relevant to weighing of hearsay evidence

[P1995/38/4]

- (1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
- (2) Regard may be had, in particular, to the following —
 - (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
 - (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
 - (c) whether the evidence involves multiple hearsay;
 - (d) whether any person involved had any motive to conceal or misrepresent matters;
 - (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
 - (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

Supplementary provisions as to hearsay evidence

13 Competence and credibility

[P1995/38/5]

- (1) Hearsay evidence shall not be admitted in civil proceedings if or to the extent that it is shown to consist of, or to be proved by means of, a statement made by a person who at the time the statement was made was not competent as a witness.
- (2) In subsection (1), “not competent as a witness” means suffering from such mental or physical infirmity, or lack of understanding, as would render a person incompetent as a witness in civil proceedings; but a child shall be treated as competent as a witness if the child satisfies the requirements of section 77(6)(a) and (b) of the *Children and Young Persons Act 2001* (conditions for reception of unsworn evidence of child).
- (3) Where hearsay evidence is adduced in civil proceedings and the maker (“A”) of the original statement, or of any statement relied upon to prove another statement, is not called as a witness —
 - (a) evidence which if A had been so called would be admissible for the purpose of attacking or supporting A’s credibility as a witness is admissible for that purpose in the proceedings; and

- (b) evidence tending to prove that, whether before or after A made the statement, A made any other statement inconsistent with it is admissible for the purpose of showing that A had contradicted himself or herself.
- (4) Evidence may not be given under subsection (3) of any matter of which, if A 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.

14 Previous statements of witnesses

[P1995/38/6]

- (1) The provisions of this Part as to hearsay evidence in civil proceedings apply equally (but with any necessary modifications) in relation to a previous statement made by a person called as a witness in the proceedings.
- (2) Subsection (1) is subject to subsections (3) to (8).
- (3) A party who has called or intends to call a person as a witness in civil proceedings may not in those proceedings adduce evidence of a previous statement made by that person, except —
 - (a) with the leave of the court, or
 - (b) for the purpose of rebutting a suggestion that the evidence has been fabricated.
- (4) Subsection (3) shall not be construed as preventing a witness statement (that is, a written statement of oral evidence which a party to the proceedings intends to lead) from being adopted by a witness in giving evidence or treated as the evidence of the witness.
- (5) Where in the case of civil proceedings section 10, 11 or 12 of the *Evidence Act 1871* applies which make provision as to —
 - (a) how a party may contradict his own witness;
 - (b) the proof of contradictory statements made by a witness; and
 - (c) cross-examination as to previous statements in writing,sections 9 to 13 and this section do not authorise the adducing of evidence of a previous inconsistent or contradictory statement otherwise than in accordance with section 10, 11 or 12 of the *Evidence Act 1871*.
- (6) Subsection (5) is without prejudice to any provision made by rules of court under section 11.
- (7) Nothing in sections 9 to 13 and this section affects any of the rules of law as to the circumstances in which, where a person called as a witness in civil proceedings is cross-examined on a document used by the witness to refresh his or her memory, that document may be made evidence in the proceedings.

- (8) Nothing in this section shall be construed as preventing a statement of any description referred to above from being admissible by virtue of section 9 as evidence of the matters stated.

15 Evidence formerly admissible at common law

[P1995/38/7]

- (1) The common law rule effectively preserved by subsections (1) and (2)(a) of section 9 of the *Civil Evidence Act 1973* (evidence formerly admissible at common law) is superseded by sections 9 to 13.
- (2) The common law rules effectively preserved by subsections (1) and (2)(b) to (d) of section 9 of the *Civil Evidence Act 1973*, that is, any rule of law whereby in civil proceedings —
- (a) 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 in them;
 - (b) 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 in them; or
 - (c) records (for example, the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them,
- shall continue to have effect.
- (3) The common law rules effectively preserved by subsections (3) and (4) of section 9 of the *Civil Evidence Act 1973*, that is, any rule of law whereby in civil proceedings —
- (a) evidence of a person's reputation is admissible for the purpose of proving the good or bad character of that person; or
 - (b) evidence of reputation or family tradition is admissible —
 - (i) for the purpose of proving or disproving pedigree or the existence of a marriage; or
 - (ii) for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing,
- shall continue to have effect in so far as they authorise the court to treat such evidence as proving or disproving that matter.
- (4) Where the rule mentioned in subsection (3) applies, reputation or family tradition shall be treated for the purposes of this Part as a fact and not as a statement or multiplicity of statements about the matter in question.
- (5) The words in which a rule of law mentioned in this section is described are intended only to identify the rule and shall not be construed as altering it in any way.

*Other matters***16 Proof of statements contained in documents**

[P1995/38/8]

- (1) Where a statement contained in a document is admissible as evidence in civil proceedings, it may be proved —
 - (a) by the production of that document; or
 - (b) whether or not that document is still in existence, by the production of a copy of that document or of the material part of it, authenticated in such manner as the court may approve.
- (2) It is immaterial for this purpose how many removes there are between a copy and the original.

17 Proof of records of business or public authority

[P1995/38/9]

- (1) A document which is shown to form part of the records of a business or public authority may be received in evidence in civil proceedings without further proof.
- (2) A document shall be taken to form part of the records of a business or public authority if there is produced to the court a certificate to that effect signed by an officer of the business or authority to which the records belong.
- (3) For the purposes of subsection (2) —
 - (a) a document purporting to be a certificate signed by an officer of a business or public authority shall be deemed to have been duly given and signed by such an officer; and
 - (b) a certificate shall be treated as signed by a person if it purports to bear a facsimile of that person's signature.
- (4) The absence of an entry in the records of a business or public authority may be proved in civil proceedings by affidavit of an officer of the business or authority to which the records belong.
- (5) In this section —

“records” means records in whatever form;

“business” includes any activity regularly carried on over a period of time, whether for profit or not, by any person;

“officer” includes any individual occupying a responsible position in relation to the relevant activities of the business or public authority or in relation to its records; and

“public authority” includes any Department or Statutory Board, any local authority or joint board, any department or office of the government of

the Island or the government of the United Kingdom, and any person holding office under Her Majesty.

- (6) The court may, having regard to the circumstances of the case, direct that all or any of the provisions of this section do not apply in relation to a particular document or record, or description of documents or records.

18 Admissibility and proof of actuarial tables

[P1995/38/10]

- (1) The actuarial tables (together with explanatory notes) for use in personal injury and fatal accident cases issued from time to time by the Government Actuary's Department in the United Kingdom are admissible in evidence for the purpose of assessing, in an action for personal injury, the sum to be awarded as general damages for future pecuniary loss.
- (2) They may be proved by the production of a copy published by Her Majesty's Stationery Office.
- (3) For the purposes of this section —
 - (a) "personal injury" includes any disease and any impairment of a person's physical or mental condition; and
 - (b) "action for personal injury" includes an action brought by virtue of the *Law Reform (Miscellaneous Provisions) Act 1938* or the *Fatal Accidents Act 1981*.

19 Provisions as to rules of court

[P1995/38/12]

- (1) Any power to make rules of court regulating the practice or procedure of the court in relation to civil proceedings includes power to make such provision as may be necessary or expedient for carrying into effect this Part.
- (2) Any rules of court made for the purposes of this Part as they apply in relation to proceedings in the High Court apply, except in so far as their operation is excluded by agreement, to arbitration proceedings to which this Part applies, subject to such modifications as may be appropriate.
- (3) Any question arising as to what modifications are appropriate under subsection (2) shall be determined, in default of agreement, by the arbitrator or umpire, as the case may be.

*Supplemental***20 Meaning of civil proceedings**

[P1995/38/11]

- (1) In this Part, “**civil proceedings**” means civil proceedings, before any tribunal, in relation to which the strict rules of evidence apply, whether as a matter of law or by agreement of the parties.
- (2) References in this Part to “**the court**” and “**rules of court**” shall be construed in accordance with subsection (1).

21 Interpretation: Part 2

[P1995/38/13]

In this Part —

“**document**” means anything in which information of any description is recorded, and “**copy**”, in relation to a document, means anything on to which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“**hearsay**” shall be construed in accordance with section 9(2);

“**oral evidence**” includes evidence which, by reason of a defect of speech or hearing, a person called as a witness gives in writing or by signs;

“**the original statement**”, in relation to hearsay evidence, means the underlying statement (if any) by —

- (a) in the case of evidence of fact, a person having personal knowledge of that fact; or
- (b) in the case of evidence of opinion, the person whose opinion it is; and

“**statement**” means any representation of fact or opinion, however made.

22 Savings

[P1995/38/14]

- (1) Nothing in this Part affects the exclusion of evidence on grounds other than that it is hearsay.
- (2) Subsection (1) applies whether the evidence falls to be excluded in pursuance of any enactment or rule of law, for failure to comply with rules of court or an order of the court, or otherwise.
- (3) Nothing in this Part affects the proof of documents by means other than those specified in section 16 or 17.
- (4) Nothing in this Part affects the operation of the following —

- (a) section 2 of the Documentary Evidence Act 1868 (an Act of Parliament) as it has effect in respect of the Island (mode of proving certain official documents);
- (b) sections 17 to 19 of the *Evidence Act 1871* (proof of Acts);
- (c) section 2 of the Documentary Evidence Act 1882 (an Act of Parliament) as it has effect in respect of the Island (documents printed under the superintendence of Stationery Office);
- (d) section 5 of the Oaths and Evidence (Overseas Authorities and Countries) Act 1963 (an Act of Parliament) as it has effect in respect of the Island (public registers of other countries);
- (e) sections 1 to 4 of the *Evidence Act 1976* (evidence of certain legislation).

23 Consequential amendments and repeals

- (1) The enactments specified in Part 1 of Schedule 1 are amended in accordance with that Part.
- (2) The enactments specified in column 1 of Part 2 of Schedule 1 are repealed to the extent specified in column 3 of that Part.

PART 3 – PRESERVATION OF EVIDENCE AND OATHS

24 Power of court to make orders for preserving evidence, etc

[Inserts section 33A in the *High Court Act 1991*.]

25 Oaths and affirmations

- (1) [Amends the *Oaths Act 1922* as follows: paragraph (a) adds to section 2 subsections (3), (4) and (5); and paragraph (b) inserts section 2A.]
- (2) Sections 43 and 44 of the *Evidence Act 1871* are repealed.

PART 4 – MISCELLANEOUS PROVISIONS

26 Witness statements

[Amends section 27 of the *High Court Act 1991* (particular matters for which rules of court may provide), by substituting subsections (8) and (8A) for subsection (8).]

27 Interest on judgment debts

- (1) [Substitutes section 9 of the *Administration of Justice Act 1981*].
- (2) The following are repealed –

- (a) section 9A of the *Administration of Justice Act 1981*;
 - (b) section 28(1) and (2) of the *Law Reform Act 1997*;
 - (c) section 4 of the *Transfer of Deemsters' Functions Act 2003*.
- (3) This section shall not apply in respect of any judgment made before the commencement of this Act.

28 Provision with respect to costs in civil legal aid cases

[Amends section 5 of the *Legal Aid Act 1986* by adding subsection (4).]

29 [Inserts section 42A in the *Criminal Jurisdiction Act 1993*.]

30 Rules of court: Tynwald procedure

- (1) [Amends section 3 (rules of court) of the *Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968* by substituting subsection (3).]
- (2) [Amends section 12 (special referees) of the *Arbitration Act 1976* by substituting subsection (3).]
- (3) [Amends section 16 (rules of procedure of court of survey) of the *Merchant Shipping (Passenger Ships' Survey) Act 1979* as follows: paragraph (a) inserts "(1)" at the beginning; paragraph (b) repeals the words from ", but no such" to the end of the section; and paragraph (c) adds subsection (2).]
- (4) [Amends section 23 (enforcement rules) of the *Administration of Justice Act 1981* by substituting subsection (2).]
- (5) [Amends section 53 (orders, rules and regulations) of the *Adoption Act 1984* as follows: paragraph (a) inserts "(1)" at the beginning; paragraph (b) repeals the word ", rule"; and paragraph (c) adds subsection (2).]
- (6) [Amends section 21 (rules) of the *Coroners of Inquests Act 1987* by substituting subsection (2).]
- (7) The following enactments are repealed —
 - (a) section 13 of the *Charities Act 1962*;
 - (b) section 11 (rules of court) of the *Tourist Premises (Compensation for Tenants' Improvements) Act 1970*;
 - (c) in Schedule 1 of the *Governor's General Functions (Transfer) Act 1980* —
 - (i) entry 259 relating to section 13 of the *Charities Act 1962* and its cross-heading;
 - (ii) entry 301(b) relating to section 3(3) of the *Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968*.

31 Jury lists

- (1) [Substitutes sections 5, 6 and 7 of the *Jury Act 1980*.]
- (2) [Substitutes section 10 of the *Jury Act 1980*.]
- (3) [Amends section 6(5) of the *Registration of Electors Act 2006* as follows: paragraph (a) repeals the words “to the coroner of each sheading and”; and: paragraph (b) substitutes in paragraph (a) “each sheading” for the first reference to “such sheading”.]

32 Power of court of summary jurisdiction to remit the payment of certain arrears

- (1) [Amends section 45 of the *Matrimonial Proceedings Act 2003* by substituting subsection (2).]
- (2) [Amends paragraph 12 of Schedule 1 to the *Children and Young Persons Act 2001* by substituting paragraph (2).]

33 Minor amendments

The enactments specified in Schedule 2 are amended in accordance with that Schedule.

34 Short title and commencement

- (1) This Act may be cited as the Administration of Justice Act 2008.
- (2) This Act shall come into force on such day as the Council of Ministers may by order appoint and different days may be so appointed for different provisions and for different purposes.¹
- (3) An order under subsection (2) may make such transitional provisions or savings as the Council of Ministers may consider necessary in connection with any provision brought into force by the order.

[Article 5(2) of SD992/08 reads as follows:

“(2) Paragraph (1) does not affect the continuing operation until 31 August 2009 of sections 5 to 7 of the *Jury Act 1980* as they stand immediately before the coming into operation of section 31 in relation to service on a jury before that date.”]

SCHEDULE 1

[Section 23(1)]

AMENDMENTS AND REPEALS

[Sch 1 amends the following Acts —

Evidence Act 1983 q.v.

Road Traffic Act 1985 q.v.

Highways Act 1986 q.v.

Customs and Excise Management Act 1986 q.v.

Road Transport Act 2001 q.v.

Electronic Transactions Act 2000 q.v.

and repeals the following Acts in part —

Civil Evidence Act 1973

Inheritance (Provision for Family and Dependents) Act 1982

Evidence Act 1983

Customs and Excise Management Act 1986

Value Added Tax Act 1996.]

SCHEDULE 2

[Section 33]

MINOR AMENDMENTS

[Sch 2 amends the following Acts —

Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 q.v.

Interpretation Act 1976 q.v.

Advocates Act 1976 q.v.

Jury Act 1980 q.v.

Adoption Act 1984 q.v.

Summary Jurisdiction Act 1989 q.v.

Administration of Estates Act 1990 q.v.

High Court Act 1991 q.v.

Criminal Jurisdiction Act 1993 q.v.

Civil Jurisdiction Act 2001 q.v.]

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

¹ ADO (ss 25, 29, 30, 32, 34 for all purposes) 1/1/2009 (SD992/08); (s 31 (subject to the provisions of art 5(2) of SD992/08, reproduced below); 1/1/2009 (SD992/08); (remainder of Act, except to the extent indicated previously, for the purpose of making rules of court and practice directions and preparing or approving forms) 1/1/2009 (SD992/08); (remainder of Act, for all other purposes) 1/9/2009 (SD992/08).